

**New York Mar. & Gen. Ins. Co. v 26 W. 127 Owner
LLC**

2026 NY Slip Op 30376(U)

February 3, 2026

Supreme Court, New York County

Docket Number: Index No. 151134/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

NEW YORK MARINE & GENERAL INSURANCE
COMPANY AND CERTAIN UNDERWRITERS AT LLOYD'S
A/S/O GENESIS Y15 OWNERS LLC,

Plaintiffs,

- v -

26 WEST 127 OWNER LLC, TITAN ENGINEERS,
P.C., HIGHLINE DEVELOPERS NY INC, HSK
MANAGEMENT INC, A-HOMESITE LLC, CITI SAFETY OF
NY, LLC, AR-TECH ENGINEERING, P.C.,

Defendants.

-----X

26 WEST 127 OWNER LLC

Plaintiff,

-against-

HIGHLINE DEVELOPERS NY INC.,

Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596071/2023

The following e-filed documents, listed by NYSCEF document number (Motion 008) 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

Plaintiffs' motion for partial summary judgment as to liability is granted. Defendant 26 West 127 Owner LLC ("26 West")'s cross-motion for summary judgment on its cross-claim for contractual indemnity against defendant Highline Developers NY Inc. is denied.

Background

This subrogation action concerns plaintiffs' allegation that their subrogor suffered damages when its property was damaged due to construction by the adjoining property owner (26 West). Plaintiffs seek partial summary judgment as to liability on their claim that the subject building suffered damages as a result of defendants' faulty construction. Both plaintiffs issued insurance policies to the subrogor.

They point to an inspection report prepared by an "independent adjuster" for plaintiff New York Marine who purportedly investigated the damage and saw crack monitors installed on the building. Plaintiffs assert that the presence of the crack monitors suggests that the neighboring construction project "was given appropriate access to the damaged building in order to monitor the damage" (NYSCEF Doc. No. 181, ¶ 9).

Plaintiffs also point to an affidavit from its purported expert, which incorporates his report, that contends that the damage to the building was caused by the excavation work at the adjoining property (NYSCEF Doc. No. 188 at 3-4). Mr. Fuchs (the expert) observed that the new cellar in the neighboring property extends 10 feet below grade, which made the subrogor's building at significant risk (*id.* at 3). They argue that the neighboring owners are strictly liable for these damages.

In opposition, 26 West contends that this motion is premature. It contends that plaintiffs have only turned over part of the claims file and that their witness was not knowledgeable at his deposition. 26 West argues that there has been no testimony regarding the ownership of the property or who was the general contractor. It contends that there is no information about a license to access a neighboring property as suggested by plaintiffs in their moving papers.

26 West also cross-moves against co-defendant Highline for contractual indemnification on the ground that Highline was responsible for doing any work at the site.

Highline opposes the cross-motion and contends that it is premature. It stresses that 26 West did not submit anything in admissible form and that 26 West denied ownership of the property adjoining the subrogor's land in the pleadings. Highline also contends that none of the depositions held so far have discussed the actual work done at the neighboring parcel.

Highline also opposes plaintiffs' motion as premature.

Plaintiffs' Motion

The Court grants plaintiffs' motion for summary judgment on liability as to 26 West and Highline. The relevant statute imposes strict liability for damages caused by a neighboring property owner (*Yenem Corp. v 281 Broadway Holdings*, 18 NY3d 481, 490, 941 NYS2d 20 [2012]; see e.g., *7-11 E. 13th St. Tenants Corp. v New School*, 221 AD3d 401, 402 [1st Dept 2023] [implementing the newer statute]).

In support of their motion, plaintiffs included an affidavit from their expert, Robert Fuchs (NYSCEF Doc. No. 189), who contends that the damage to the subrogor's property was caused by the construction and excavation activity next door at 26 West's property. That admissible evidence, which included his investigative report (NYSCEF Doc. No. 188), was not rebutted by any admissible evidence from Highline or 26 West.

Neither of these defendants included an expert report to rebut plaintiffs' prima facie case or even an affirmation or affidavit from the client to rebut the assertions by Mr. Fuchs. The contention that this motion is premature is without merit. If there were genuine issues of fact, such as whether 26 West or Highline ever did a construction project in the first place, both of these defendants certainly had the ability to submit evidence to raise an issue. Similarly, both of

these defendants would necessarily have access to a possible license (which could explain the presence of crack monitors on the subrogor's property). Because the applicable standard is strict liability and there are unrebutted claims that 26 West's construction project caused the damage, the Court grants plaintiffs' motion.

26 West's Cross-Motion

The Court denies this motion for several reasons. First, it is an improper cross-motion as it does not seek relief against the moving party and, instead, requests summary judgment against co-defendant Highline. Second, even if it made as a proper motion, 26 West did not meet its burden on a motion for summary judgment. It did not include anything from someone with personal knowledge to substantiate the alleged facts. As Highline pointed out in its opposition, the purported contract between 26 and Highline has never been authenticated (either in this motion or at a deposition).

26 West also denies that it owned the property in the pleadings (*compare* NYSCEF Doc. No. 182, ¶ 6 with NYSCEF Doc. No. 186, ¶ 2) and denied having knowledge sufficient to confirm the truth about whether Highline was the general contractor for the job (*compare* NYSCEF Doc. No. 182, ¶ 16 with NYSCEF Doc. No. 186, ¶ 1). That, combined with the fact that 26 West did not authenticate the apparent contract, compels the Court to deny the improper cross-motion.

Moreover, it bears pointing out that 26 West simultaneously contends that plaintiffs' motion is premature while also arguing that it is entitled to summary judgment against Highline.

Summary

As this case was recently transferred to this part, the Court sees that the parties entered into a discovery schedule back in September 2025 (which was not so-ordered by the judge previously assigned to this case) (NYSCEF Doc. No. 267). Given that all of the items in that order were to be completed by November 17, 2025, the Court orders that a note of issue be filed on or before February 24, 2026. That should provide enough time to finish whatever discovery may be remaining especially in light of the fact that discovery should have been largely completed about three months ago.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for partial summary judgment (on liability) against defendants 26 West 127 Owner LLC and Highline Developers NY, Inc. is granted; and it is further

ORDERED that the cross-motion by defendant 26 West 127 Owner LLC is denied.

Note of Issue Deadline: February 24, 2026.



2/3/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE