Board of Mgrs. of the A Bldg. Condominium v 13th & 14th St. Realty LLC
2026 NY Slip Op 30475(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 100061/2011
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

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THE BOARD OF MANAGERS OF THE A BUILDING CONDOMINIUM et al,

Plaintiffs,

- against -

13TH & 14TH STREET REALTY LLC et al,

Defendants.

----------X

13TH & 14TH STREET REALTY LLC et al,

Third Party Plaintiffs,

-against-

HUDSON MERIDIAN CONSTRUCTION GROUP et al,

Third Party Defendants.

----------X

HUDSON MERIDIAN CONSTRUCTION GROUP

Second Third-Party Plaintiff,

-against-

DEMAR PLUMBING CORP., et al,

Second Third-Party Defendants.

----------X

HUDSON MERIDIAN CONSTRUCTION GROUP

Third Third-Party Plaintiff,

-against-

STRUCTURAL GROUP, INC., et al,

Third Third-Party Defendants.

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INDEX NO.	100061/2011
MOTION DATE	02/17/2023 06/13/2024
MOTION SEQ. NO.	055, 056

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 055) 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678,

2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2696, 2699
were read on this motion to/for DISMISS / SUMMARY JUDGMENT .

The following e-filed documents, listed by NYSCEF document number (Motion 056) 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2752, 2753, 2756, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2782, 2783

were read on this motion for SUMMARY JUDGMENT .

BACKGROUND

In the instant action, the Board of Managers (Board) of the A Building Condominium (Condominium), for itself and on behalf of the individual unit owners of the Condominium (collectively Plaintiffs), seek damages relating to the alleged defective design and construction of the Condominium located at 425 East 13th Street, New York, NY (425 East 13th), which Plaintiffs allege is riddled with water leaks and as-yet undiscovered latent building defects, as it was not constructed in compliance with the condominium's offering plan, applicable codes and regulations, and industry standards.

Defendant/third-party plaintiff 13th & 14th Street Realty, LLC (13th & 14th Street Realty) and defendant Ascend Group, LLC (Ascend) were sponsors of the Condominium offering plan. Defendants Benjamin Shaoul and Robert Kaliner are the principals of the sponsors who, together with defendants 13th & 14th Street Realty and Ascend, are included in all references to sponsors herein.[1] Defendants John A. Cetra Architecture, PC/Cetra/Ruddy, Inc., and John A. Cetra (collectively, Cetra defendants) are the architects retained by sponsors to design the buildings and prepare the offering plan. Defendant/third-party defendant/second third-party plaintiff/third

[1] After failing to comply with an order of this court, directing it to enter into a discovery stipulation by a date certain, the sponsors' answer with cross-claims has been stricken in the instant action (NYSCEF 2697, *Board of Managers of the A Building Condominium v 13th & 14th St. Realty LLC*, 216 AD3d 450 [1st Dept 2023]).

third-party plaintiff Hudson Meridian Construction Group, LLC (Hudson) is the construction company retained by sponsors to construct the buildings.

Defendant Taube Management Realty, LLC (Taube) was the management company initially retained by sponsors to manage the Condominium. It was succeeded by defendant Magnum Management, LLC (Magnum). Defendants Crystal Curtain Wall System Corp. (Crystal Curtain), Crystal Window & Door Systems, Ltd. (Crystal Window, the parent of Crystal Curtain) (collectively, Crystal defendants), TingWall, Inc. (TingWall), and Advanced Building Systems, Inc., (Advanced) were allegedly responsible for the installation, design, and manufacture of the window and curtain wall systems of the buildings. Defendant American Hydrotech, Inc., (Hydrotech) was allegedly responsible for the manufacture and watertightness of certain roof areas of the building (*see*, NYSCEF 2648, [Consolidated Complaint]).[2]

Plaintiffs allege that Hudson oversaw construction of the Condominium, and asserts two causes of action against it: breach of contract and negligence, both relating to the allegedly defective and non-conforming construction (*Id.*). Plaintiffs further allege that Cetra failed to fulfill its obligations under the architectural services agreement (NYSCEF 2703, [Cetra Agreement]). Specifically, plaintiffs allege that Cetra failed to prepare proper building plans and specifications in accordance with Building Code standards, and exercise due diligence and perform its duties in accordance with the highest professional standards. Plaintiffs assert six causes of action against Cetra including: breach of contract for construction defects, breach of contract for failure to comply with General Business Law, negligence, professional malpractice, fraud, and negligent misrepresentation, all relating to the allegedly defective and non-conforming construction (*see*, Consolidated Complaint).

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[2] The Consolidated Complaint has since been dismissed as against Hydrotech (*see*, NYSCEF 496).

Hudson previously was granted summary judgment, dismissing plaintiffs' Consolidated Complaint as against it, by the Decision and Order of the Hon. Barbara Jaffe, JSC, dated August 29, 2013 (NYSCEF Doc. No. 496). The Court rejected plaintiffs' contention that plaintiffs were third-party beneficiaries of Hudson's contract with the sponsors, finding that plaintiffs' claims for common law negligence and breach of contract as against Hudson were legally insufficient (*see*, NYSCEF 496).[3]

Significantly, the sponsors previously initiated a separate action against Hudson and Crystal, under New York County Supreme Court Index No. 651062/2011. In that action, the sponsors alleged that Hudson, in its capacity as the construction manager, failed to adequately supervise, direct and control the construction of the Condominium (NYSCEF 2649, sponsors' complaint). However, pursuant to a so-ordered stipulation by Hon. Barbara Jaffe, JSC, dated June 24, 2014, that action was discontinued with prejudice, and the sponsors' claims were converted to third-party claims as against Hudson and to cross-claims as against Crystal in the instant action.[4]

Prior to the conversion of the sponsors' action, Hudson initiated its own third-party actions against various subcontractors it retained to perform work on both buildings, including second third-party defendant Baisiles Interiors, Inc. (Baisiles) (*see*, NYSCEF 2651, second third-party complaint).[5] In the second third-party action, Hudson alleges that it had retained Baisiles to perform carpentry and interior construction work, and that pursuant to its contract with them, Baisiles was obligated to defend, indemnify, and hold Hudson harmless against any claims made against it in connection with the work Baisiles performed on the building, and that Hudson was

[3] This is also filed as NYSCEF 2742.
[4] (Index No. 651062/2011, NYSCEF 72).
[5] When the conversion of the sponsors' claims occurred, Hudson's third-party actions became the second third-party and third third-party actions in the instant proceeding.

to be named as an additional insured on Baisiles' general liability insurance policy. Hudson asserts seven causes of action against Baisiles, including negligence, breach of contract, breach of express and implied warranties, contractual and common law indemnification, failure to procure insurance coverage, and contribution, all relating to Bailsiles' alleged failure to fulfill its contractual duties, and to its alleged negligently performed work (*Id.*). Plaintiffs do not assert any claims as against Baisiles.

Baisiles now moves by notice of motion (NYSCEF 2644, motion sequence 055), pursuant to CPLR § 3211 and § 3212 for an order granting dismissal of Hudson's second third-party complaint and all cross-claims as against it. Hudson and Crystal oppose the motion. Cetra also moves by notice of motion (NYSCEF 2701, motion sequence 056), pursuant to CPLR § 3212, for an order granting it dismissal of the consolidated complaint and all cross-claims against it. Plaintiffs oppose the motion. The motions are addressed in turn below.

LEGAL STANDARD

Dismissal pursuant to CPLR 3211(a)(7) requires a reading of the pleadings to determine whether a legally cognizable cause of action can be identified, and if it is properly pled. A cause of action must present facts so that it can be identified and establish a potentially meritorious claim (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The court must also give the complaint a liberal construction, accept the allegations as true and provide plaintiffs with the benefit of every favorable inference, because whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss (*see Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018] [internal quotation marks and citations omitted]). When evidentiary material is provided in support of a motion pursuant to CPLR 3211(a)(7), the court must determine whether the plaintiff has a cause of action, not whether the plaintiff has stated

one (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Further, the motion will be denied, if from the four corners of the complaint, factual allegations are discerned which taken together manifest any cause of action cognizable at law (*Id.*). However, dismissal is warranted where the allegations in the complaint are merely conclusory (*see Commerce Bank v Bank of NY Mellon*, 141 AD3d 413, 416 [1st Dept 2016]).

On a motion for summary judgment "the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Madeline D'Anthony Enters., Inc. v Sokolowsky*, 101 AD3d 606, 607 [1st Dept 2012] [internal quotation marks and citation omitted]). "Once this showing has been made, the burden shifts to the party opposing the motion for summary judgement to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024] [internal citation and quotation marks omitted]). Where the moving party fails to make such a showing, the motion must be denied without regard to the sufficiency of the opposing papers (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]).

A plaintiff moving for summary judgment on a cause of action asserted in a complaint generally has the burden of establishing, prima facie, all of the essential elements of the cause of action (*see generally*, *Bendeck v NYU Hospitals Center*, 77 AD3d 552, 553 [1st Dept 2010]). While a defendant moving for summary judgment dismissing one of the plaintiff's causes of action may generally sustain its prima facie burden by negating a single essential element of that cause of action (*Id.*). "Since [summary judgment] deprives the litigant of [its] day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). However, a moving

defendant does not meet its burden of establishing its entitlement to summary judgment by pointing to gaps in the plaintiff's case, as it must affirmatively demonstrate the merit of its claim or defense (*see Koulermos v A.O. Smith Water Products*, 137 AD3d 575, 576 [1st Dept 2016]).

DISCUSSION

Baisiles' Motion - Sequence 055

Baisiles argues that Hudson's complaint and all cross-claims as against it must be dismissed and summary judgment must be granted in its favor because neither plaintiffs nor the sponsors allege any defective carpentry work, damages or delays caused by Baisiles, and therefore, Hudson cannot establish that Baisiles performed any act or omission for which Hudson is or could be held liable. Baisiles further argues that each cause of action Hudson has brought against it is dismissible on independent grounds.

Additionally, Baisiles contends that Hudson's allegations and complaints regarding the carpentry work on the building concern the work of Concept Contracting Corp. (Concept), the carpenter Hudson originally retained to perform carpentry work on the building (NYSCEF 2656 [Concept Contract]). Therefore, Baisiles contends that its own carpentry work cannot be the basis for Hudson's allegations, as Baisiles was only retained to replace Concept after Concept was terminated by Hudson due to quality of work issues (NYSCEF 2657, letter to Concept). Baisiles further contends that it is not responsible for Concept's defective work, nor was it permitted to correct Concept's defective work (NYSCEF 2675, ¶ 20 [Guggino Affidavit]).

In opposition, Hudson primarily argues that Baisiles' motion is premature, and that dismissal should be denied as discovery remains ongoing (NYSCEF 2686, Memo of Law in Opp.). Hudson further argues that summary judgment is precluded, as material issues of fact

exist as to whether Baisiles properly performed it obligations under the terms of the parties' agreement (NYSCEF 2658, [Trade Contract]).

Crystal also opposes the instant motion and joins Hudson in support of Hudson's arguments that the motion is premature and that disputed issues of material fact related to the quality of Baisiles' work preclude an award of summary judgment in Baisiles' favor (NYSCEF 2685).

As a preliminary matter, Hudson successfully argued on its prior summary judgment motion that Plaintiffs in the underlying action seek only economic damages arising from a breach of contract (*see*, NYSCEF 496). Here, Baisiles argues Hudson's first cause of action for negligence against it should be dismissed as duplicative of Hudson's second cause of action for breach of contract because Hudson cannot establish that Baisiles owed a legal duty of care independent of the contractual duty arising from the Trade contract.

Hudson not only argues that Baisiles owed a duty to Hudson independent of Hudson's breach of contract claim but also contends that the threat of property damage resulting from Baisiles' failure to work in accordance with the specifications in the Trade Contract conceivably creates the presence of an independent duty which can give rise to a tort claim (NYSCEF 2686, p 14). As it is now the law of the case that plaintiffs' injuries relate solely to economic loss, Hudson may not now take the inconsistent position that plaintiffs are seeking other damages as well (*Board of Managers of the A Building Condominium v 13th & 14th St. Realty LLC*, 137 AD3d 505, 506 [1st Dept 2016] [NYSCEF 1780]).

Here, Hudson's allegations of negligence in its complaint relate solely to Baisiles' alleged faulty performance of its carpentry work, which does not fall outside of the obligations agreed to under the Trade Contract. Therefore, Hudson's contention is unavailing, as the failure

to properly perform one's contractual duties does not amount to the creation or exacerbation of a hazardous condition (*Id.*). Additionally, a breach of contract shall not be considered a tort unless a legal duty independent of the contract itself has been violated (*Board of Managers of Soho North 267 West 124th Street Condominium v NW 124 LLC*, 116 AD3d 506, 507 [1st Dept 2014]). Accordingly, Hudson's first cause of action for negligence is dismissed as a matter of law.

Basilies next seeks dismissal of Hudson's second and third causes of action. Specifically, Baisiles argues Hudson's second cause of action for breach of contract should be dismissed because Baisiles was paid in full after completing the final punch list, with signoffs from Hudson, and was never contacted to return to the building to fix any defects (Guggino Affidavit, ¶¶ 16-18), indicating that it fully performed its duties pursuant to the Trade Contract. Baisiles further argues that Hudson's third cause of action for breach of express and implied warranties is duplicative of Hudson's second cause of action as these claims are based on the same agreement, contain the same allegations, and are based on the same alleged construction defects.

In its opposition, Hudson argues that whether Baisiles negligently performed its work or not is a question of fact. Hudson alleges that there were numerous problems with the doors Baisiles hung as well as the drywall it installed around mechanical and electrical systems, which were imbedded between walls, and Hudson submits the affidavit of Thomas Barr (NYSCEF 2693, Barr Aff.)[6], as well as a series of Rand reports (NYSEF 2688)[7] and punch lists (NYSCEF 2691-2) in support. Hudson further contends that without the benefit of further discovery it is

[6] Thomas Barr was Hudson's senior project manager from 2006 until approximately 2011 and assigned to work on the project from early 2007 until sometime around 2009 (*see*, Barr Aff.).
[7] Rand Engineering & Architecture DPC (Rand) reports is a series of seven reports dated from 2011-2012 detailing defects in the building at issue after work was completed. It is attached as Exhibit A to the Affirmation of George Meierhoffer in opposition (NYSCEF 2687).

too early to determine that Baisiles did not perform its work negligently. In response, Baisiles argues that Hudson cannot support its claim, as the Rand reports do not attribute any defects to Baisiles, and the punch lists, which are undated and unlabeled, do not indicate that any of the items listed remained outstanding. Finally, the sponsor Benjamin Shaoul testified that all punch list items were completed (NYSCEF 2668 p 173, EBT Shaoul).

Hudson's contention that its claim should survive dismissal because there is a question of fact as to whether Baisiles negligently performed its work is unavailing, as claims based on the negligent performance of a contract are not cognizable (*see, 320 West 115 Realty LLC v All Building Construction Corp.*, 194 AD3d 511, 512 [1st Dept 2021]; *Megaris Furs v Gimbel Bros.*, 172 AD2d 209, 211 [1st Dept 1991] [negligent performance of the contract is a cause of action which simply does not exist]).

Moreover, Baisiles has established that Hudson does not set forth the essential elements of its claim. A cause of action for a breach of contract to recover damages must include the existence of a valid contract, performance of the contract by the injured party, breach of contractual obligations by the other party, and resulting damages *(see Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478 [1st Dept 2007]). Hudson's allegations in its complaint are merely conclusory and factually unsupported. While "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint" (*see Leon v Martinez*, 84 NY2d 83, 88 [1994] [citation omitted]), the Barr affidavit does not remedy such defects here. Further, Hudson's additional submissions on this record, consisting of 146 pages of Rand reports and 1,108 pages of punch lists, while voluminous, are of little value as these submissions do not raise an issue of fact.

The Rand reports fail to ever mention Baisiles or any defect specifically attributable to it within its extremely detailed pages, and the punch lists, included without any specificity, mention Baisilies as well as several other sub-contractors. However, the sponsor Shaoul testified that all punch list items were completed. Barr does not dispute this. Nor does Barr dispute that Baisiles was paid in full for the work they were hired to do pursuant to the Trade Contract. Further, Barr attests that the Rand reports do not identify the subcontractors who are responsible for ongoing defects in the building's construction. "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017] [internal citations omitted]). Here, Hudson does not set forth an essential element of its claim as Hudson does not establish how Baisiles breached the Trade Contract. Accordingly, Hudson's second cause of action for breach of contract is hereby dismissed.

Hudson's third cause of action for breach of express and implied warranties is also dismissed. Baisiles argues that Hudson's claims are duplicative of its breach of contract claim and that General Business Law Article 36-B is inapplicable here as it applies only to buildings which are five stories or less. While Hudson asserts that Baisiles' promise to perform defect-free work is not duplicative of its performance obligations under the scope of work section of the Trade Contract, this contention is unavailing. Here, Hudson's express warranty claims are based on the same alleged construction defects as Hudson's breach of contract cause of action and seek the same relief. Accordingly, this cause of action is dismissed as duplicative. Hudson's third cause action also pleads a breach of implied warranty. However, the First Department has held that this common law warranty does not apply to condominiums, such as that here, with more

than five stories (*20 Pine St. Homeowners Assn. v 20 Pine St. LLC*, 109 AD3d 733, 735 [1st Dept 2013]). As such, Hudson's third cause of action for breach of express and implied warranties is hereby dismissed.

Baisiles next seeks dismissal of Hudson's fourth cause of action for contractual indemnification arguing that plaintiffs' and the sponsor's claims against Hudson do not arise out of Baisiles' conduct, nor can Hudson show it was free from negligence as it was sued for its own wrongdoing in the underlying action. Hudson posits that the Trade Contract requires Baisiles to indemnify Hudson, even if Baisiles was not negligent and Hudson was, and Hudson asserts the court's discretionary law of the case doctrine should not be followed here. Specifically, Hudson asserts that the prior decision of the Hon. Barbara Jaffe J.S.C. (*Board of Managers of the A Building Condominium v 13th & 14th Street Realty, LLC*, 2014 NY Slip Op 33121[U] [Sup Ct, NY County 2014] [NYSCEF 1259, Decision & Order on Mtn Seq 16]) erroneously held that Hudson was not entitled to indemnification because Hudson failed to establish that it was not negligent. As such, Hudson contends that Baisiles may not obtain dismissal of Hudson's indemnification claims without establishing that Hudson was negligent. Hudson's contentions are without merit.

Entitlement to contractual indemnification requires a clear expression or implication from the language and purpose of the agreement as well as the surrounding facts and circumstances of an intention to indemnify (*Martins v Little 40 Worth Associates, Inc.*, 72 AD3d 483, 484 [1st Dept 2010]). Here, the parties clearly expressed in Article 19 of the Trade Contract that Baisiles is to indemnify Hudson. However, the claim must arise from Baisiles' acts or omissions and be connected to its performance of the Trade Contract. Plaintiffs in the underlying action do not allege that their damages arose from the acts or omissions of Baisiles in connection with the

performance of the Trade Contract. Further, claims arising from economic loss do not fall within the scope of the Trade Contract's indemnity provision (*see*, *NYP Holdings, Inc. v McClier Corp.*, 83 AD3d 426 [1st Dept 2011] [dismissal of claim warranted as economic losses did not fall within the scope of contractual indemnification clause]). The economic losses claimed by plaintiffs in the underlying action do not fall within the scope of the parties' contractual indemnification clause, nor do plaintiffs assert any allegations as against Baisiles. Accordingly, Hudson's fourth cause of action is hereby dismissed.

Baisiles next seeks dismissal of Hudson's fifth cause of action for failure to procure insurance arguing it is entitled to summary judgment in its favor because Baisiles procured an insurance policy naming Hudson as an additional insured as required by the Trade Contract (NYSCEF 2659, First Mercury Insurance Policy). In opposition, Hudson asserts Baisiles has failed to establish is prima facie entitlement to summary judgment in its favor as Baisiles did not procure the amount of insurance coverage required pursuant to the Insurance Requirements of Section B in Exhibit C of the Trade Contract. Specifically, Hudson argues Baisiles was required to obtain limits of at least $2 million for each occurrence and $2 million in the aggregate for bodily injury and property damage, and cites to the declarations page of the insurance policy to demonstrate that Baisiles only obtained $1 million for the limit of each occurrence.

"[A] party moving for summary judgment dismissing a breach of contract claim for failure to procure insurance meets its prima facie burden by identifying the contract provision requiring the procurement of insurance and tendering the procured insurance policy that satisfies that requirement" (*Cooper v BLDG 7th St. LLC*, 231 AD3d 533, 534 [1st Dept 2024] [internal citations omitted]). Here, Baisiles does not dispute that it obtained an insurance policy with a $1 million limit instead of the required $2 million for each occurrence, pursuant to the Trade

Contract. However, it asserts these limits are inconsequential, as Hudson does not set forth how it has been damaged by Baisiles' breach in obtaining such coverage. The court agrees, as an essential element of any breach of contract claim is damages from the breach (*Apogee Handcraft, Inc. v Verragio, Ltd.*, 155 AD3d 494, 495 [1st Dept 2017]). Accordingly, Hudson's fifth cause of action for failure to procure insurance, is hereby dismissed.

Hudson's sixth and seventh causes of action for common law indemnification and contribution are dismissed as a matter of law. Baisiles argues that Hudson's claims cannot be maintained here, as plaintiffs in the underlying action seek only economic damages, and the court previously found that Hudson was sued for its own wrongdoing. Baisiles further argues that the law of the case doctrine dictates that Hudson's claims must be dismissed. Hudson has declined to oppose this part of Baisiles' motion. However, such claims are unavailable to Hudson here, as a claim for common law indemnification is predicated on a finding of vicarious liability without actual fault on the part of the potential indemnitee (*Richards Plumbing & Heating Company, Inc. v Washington Group International, Inc.*, 59 AD3d 311, 312 [1st Dept 2009]). In the underlying action, plaintiffs do not allege that Hudson is vicariously liable for Baisiles' actions. Rather, plaintiffs allege that Hudson failed to uphold its contractual responsibilities to build a defect-free building. Therefore, Hudson's claim for common law indemnification must fail.

As previously mentioned herein, it is the law of the case that plaintiffs' injuries relate solely to economic loss (*see*, NYSCEF 496). Therefore, there is no basis here on which Baisiles may be held liable for contribution (*see Board of Education. v Sargent, Webster, Crenshaw & Folley*, 71 NY2d 21 [1987] [no right to contribution where damages claimed are economic loss resulting from breach of contract]; *see also*, *Board of Managers of the A Building Condominium*

v 13th & 14th St. Realty LLC, 137 AD3d 505, 505 [1st Dept 2016] [contribution barred where plaintiff in underlying action seeks only to recover economic losses resulting from a breach of contract]). Accordingly, Hudson's sixth and seventh causes of action are hereby dismissed.

Second third-party defendants Rotavele Elevator, Inc., (Rotavele) and Restor Technologies, Inc., i/s/h/a Restor Technologies Inc., and Restor Tech, LLC., (Restor) have both submitted attorney affirmations in partial support of that part of Baisiles' motion that seeks dismissal of Hudson's seventh cause of action for contribution as against Baisiles (NYSCEF 2679, Restor Aff., 2681 Rotavele Aff.). By operation of these affidavits, Rotavele and Restor also seek dismissal of Hudson's seventh cause of action for contribution as against each of them. Although Baisiles was the second third-party defendant who moved for summary judgment, a motion for summary judgment, irrespective of by whom it is made, empowers a court to search the record and award judgment where appropriate (*DCA Advertising, Inc. v The Fox Group, Inc.*, 2 AD3d 173, 174 [2003] [internal quotations and citation omitted]). Since there are no triable issues of fact with respect to contribution, all second third-party defendants remaining in the second third-party action are hereby granted summary judgment dismissing this cause of action.

Finally, Baisiles requests dismissal of all cross-claims as against it for common law and contractual indemnification, contribution, negligence and failure to procure insurance coverage, arguing that the only contractual relationship it maintained was with Hudson. Further, as all parties were sued for their own wrongdoing, Baisiles asserts contribution is not an available remedy here. This relief is granted without opposition, and the cross-claims are hereby dismissed.

Considering the lengthy procedural history of this case, and in the interest of judicial economy, the court notes that Hudson's prayer for relief in its third-party complaint seeks

"judgment dismissing the plaintiffs' Consolidated Complaint as against it" (NYSCEF 2651, p 43). Accordingly, it is quite likely that all of Hudson's claims here are now moot, as Hudson was previously granted the very relief it seeks (*see*, NYSCEF 496).

Cetra's Motion – Sequence 056

Cetra argues that it is entitled to summary judgment in its favor dismissing plaintiffs' Consolidated Complaint because each cause of action plaintiffs assert as against Cetra lacks legal merit and therefore, must be dismissed. Specifically, Cetra argues that plaintiffs lack standing to bring their breach of contract claims as there is no credible dispute that the Cetra Agreement did not identify plaintiffs as third-party or intended beneficiaries. As such, Cetra contends plaintiffs were not in privity with Cetra. Similarly, because plaintiffs are seeking recovery of only economic loss damages, Cetra further contends that plaintiffs' negligence and malpractice claims are not legally viable against Cetra as plaintiffs were not in privity with Cetra.

In opposition, plaintiffs assert there is no lack of privity between plaintiffs and Cetra as plaintiffs were intended, and not merely incidental beneficiaries, to the Cetra Agreement. As such, plaintiffs argue its claims for breach of contract, negligence and malpractice remain viable.

While a nonparty to a contract may maintain a cause of action alleging breach of contract, it may do so only if it is an intended, and not a mere incidental, beneficiary of the contract (*CWCapital Investments LLC v CWCapital Cobalt VR Ltd.*, 182 AD3d 448, 452 [1st Dept 2020] [internal quotation marks and citation omitted). However, "even if not mentioned as a party to the contract, the parties' intent to benefit the third party must be apparent from the face of the contract" (*Id.*). Further, "[a] party asserting rights as a third-party beneficiary must establish (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for its benefit, and (3) that the benefit to it is sufficiently immediate, rather than

incidental, to indicate the assumption by the contracting parties of a duty to compensate it if the benefit is lost" (*CB v Howard Sec.*, 158 AD3d 157, 166 [1st Dept 2018] [internal quotation marks and citation omitted]).

There is no dispute on this record that the plaintiffs are not signatories to the Cetra Agreement. Therefore, the best evidence of whether Cetra and the Sponsor, as the contracting parties, intended a benefit to accrue to plaintiffs, as a third party, can be ascertained from the words of the contract itself (*Alicea v New York*, 145 AD2d 315, 318 [1st Dept 1988]). The terms of the Cetra Agreement limit the scope of Cetra's services to "schematic design, design development, construction documents, bid phase, and construction administration phase services," but services such as the "hiring of all project consultants" was explicitly excluded, along with the supervision, direction, or control of the sponsors' contractor. While plaintiffs assert that they are intended third party beneficiaries to the Cetra Agreement, plaintiffs point to no language in the Cetra Agreement indicating that the sponsor and Cetra agreed to confer third-party beneficiary status on plaintiffs or that the sponsor intended that result. Further, Plaintiffs' reliance on Cetra's participation in promotional materials is misplaced.

Even if Cetra's work was directly targeted and marketed to the unit owners through promotional material, it is not enough to convey privity, as the Cetra Agreement does not include a successors and assigns provision (*see*, *Board of Managers of the Alfred Condominium v Carol Management*, 214 AD2d 380, 382 [1st Dept 1995]). Therefore, at best, plaintiffs are incidental beneficiaries here. Plaintiffs seek recovery based on Cetra's representations made in the architectural report and certification, included in the offering plan, that the building would be constructed in accordance with the Building Code. However, the architectural report and

certification included in the offering plan does not create a contract between plaintiffs and Cetra (*see*, *Leonard v Gateway II, LLC*, 68 AD3d 408, 409 [1st Dept 2009]).

Here, Cetra has demonstrated that Cetra and the plaintiffs were not in contractual privity, nor are the plaintiffs intended beneficiaries to the Cetra Agreement, as the relationship, as alleged between Cetra and plaintiffs, does not approximate privity. Absent privity of contract, or the functional equivalent of privity of contract, plaintiffs have no right to recover from Cetra for breach of contract (*Southern Wine & Spirits of America, Inc. v Impact Environmental Engineering, PLLC*, 104 AD3d 613, 614 [1st Dept 2013]). Accordingly, as plaintiffs fail to raise an issue of fact, plaintiffs' breach of contract claims are hereby dismissed as a matter of law.

Similarly, plaintiffs' claims for negligence and professional malpractice are also dismissed. It has previously been established as law of the case, that where plaintiffs have been determined to be incidental, and not intended beneficiaries, plaintiffs cannot recover solely for economic loss arising out of negligent construction in the absence of a contractual relationship (*see*, NYSCEF 496; *see also*, *Americon Construction, Inc. v Cirocco & Ozzimo, Inc.*, 205 AD3d 568 [1st Dept 2022] [recovery barred for purely economic losses arising out of negligent construction in the absence of contractual privity]). Therefore, absent such privity of contract, plaintiffs have no right to recover from Cetra either for negligence or professional malpractice (*Board of Managers of Soho North 267 West 124th Sreet Condominium v NW 124 LLC*, 116 AD3d 506, 507 [1st Dept 2014] ["Allegations of negligence based on defects in construction of a condominium sound in breach of contract rather than tort"]).

Certa further argues that plaintiffs' negligent misrepresentation claim fails as a matter of law, as the plaintiffs, as future purchasers of land, were not known parties at the time of Cetra's alleged misrepresentations. In opposition, plaintiffs assert that plaintiffs were known parties at

the time Cetra made their affirmative misrepresentations within the September 12, 2006, Architect Report and Architect Certification (NYSCEF 2704-5), thereby precluding summary judgment in Cetra's favor with respect to plaintiffs' negligent misrepresentation claim.

To maintain a cause of action for negligent misrepresentation, a plaintiff must show either contractual privity between the plaintiff and the defendant or a relationship so close as to approach that of privity (*Sykes v RFD Third Avenue 1 Associates, LLC*, 15 NY3d 370, 372 [2010] [internal quotation marks and citation omitted]). To demonstrate such a relationship as to approach that of privity, a plaintiff must show that: (1) the defendant has an awareness that his or her statement is for a particular purpose; (2) a known party relies on the statement in furtherance of that purpose; and (3) there must be some conduct linking defendant to the relying party which evinces defendant's understanding of that reliance (*Id.* at 373).

However, as discussed above, there is no contractual privity here and the alleged relationship between the parties is too attenuated to support a relationship approaching privity. While the allegations in the Consolidated Complaint may satisfy the first prong, plaintiffs have failed to establish the other requirements. Particularly, plaintiffs fail to plead any facts sufficient to satisfy the second prong, as the second prong requires reliance by a known party at the time of the alleged misrepresentation. While Cetra knew in a very general way that prospective purchasers of apartments would rely on the offering plan, there is no indication that it knew these plaintiffs would be among them, or that Cetra knew or had the means of knowing of these plaintiffs' existence when it made the statements for which it is being sued (*see, Id.*). This is insufficient to establish that plaintiffs were known to Cetra (*see*, *Bri-Den Construction Co., Inc. v Kapell & Kostow Architects, P.C.*, 56 AD3d 355 [1st Dept 2008] [prequalified bidders not

considered known party at the time of the complained-of conduct]).[8] Accordingly, plaintiffs' cause of action for negligent misrepresentation is dismissed.

Cetra also seeks dismissal of plaintiffs' cause of action for fraud as against it. This cause of action is based on alleged false statements in the architectural report and architect certification signed by the principle of Cetra which were incorporated with the condominium's offering plan. Individual unit owners allegedly relied on Cetra's statements in purchasing units in the condominium. Certa argues that plaintiffs cannot establish any alleged fraudulent statements made by Cetra to the plaintiffs, and that plaintiffs cannot assert a private cause of action for an alleged violation of the Martin Act. In opposition, Plaintiffs also argue that its fraud claim will not be preempted by the Martin Act when, as here, the action is based on affirmative misrepresentations in the Offering Plan.

"The essential elements of a cause of action for fraud are representation of a material existing fact, falsity, scienter, deception and injury" (*Friedman v Anderson*, 23 AD3d 163, 166 [1st Dept 2005]) [internal citations and quotation marks omitted]). "There is no private right of action where the alleged fraud and misrepresentation relies entirely on alleged omissions in filings required by the Martin Act" (*Berenger v 261 West LLC*, 93 AD3d 175, 184 [1st Dept 2012] [internal citation omitted]). "However, a private action may still be maintained where the claim alleges a basis for fraud that is distinct from the Martin Act" (*Id.* [internal citation omitted]).

Here, the architectural certification incorporated into the offering plan and signed by Cetra explicitly states that it was being provided to comply with the requirements set forth in 13

[8] In the instant case, the First Department granted summary judgment dismissing the complaint as against two named defendants, finding plaintiffs lacked privity (*see, Board of Managers of the A Building Condominium v 13th & 14th St. Realty, LLC*, 121 AD3d 432 [1st Dept 2014] [plaintiffs not intended third-party beneficiaries of the license agreements at issue and no functional equivalent of privity found as plaintiffs were not known parties]).

NYCRR Part 20. The regulations found in 13 NYCRR Part 20 were promulgated by the Attorney General pursuant to General Business Law § 352-e (6) of the Martin Act (*see, Kerusa Co. LLC v W10Z/515 Real Estate LP*, 12 NY3d 236, 244, [2006]). These regulations detail the format and content of offering plans and filings, including the word-for-word representations that must be made in the certifications signed by an architect (13 NYCRR 20.4 [c]). Cetra's certification is a verbatim recitation of the form certification set out in the Attorney General's regulation. "But for the Martin Act and the Attorney General's implementing regulations, [Cetra] did not have to make the disclosures in the [certification]" (*see*, *Kerusa Co. LLC*, 12 NY3d at 245).

Accordingly, a fraud claim predicated on this certification is entirely dependent on a violation of the Martin Act and is therefore barred. Similarly, as the complaint refers to representations made in the architectural report issued by Cetra and incorporated into the Offering Plan, this too is a report only required by virtue of the Martin Act and the Attorney General's implementing regulations (*see,* 13 NYCRR 20.7). Plaintiffs contend that the testimony of several plaintiffs that their unit floor plans did not match floor plans as set forth in the offering plan, constitutes alleged affirmative misrepresentations by Cetra. However, these alleged representations stem from the same architectural report and architect certification discussed above. Therefore, plaintiffs' contention is without merit. Furthermore, plaintiffs fail to plead any specific allegations of the details of how and when Cetra actively concealed purported defects from any particular prospective unit purchaser. As such, this aspect of plaintiffs' claim fails to meet the particularity requirement of CPLR 3016 (b) (*see also*, CPLR 3013).

Lastly, Cetra seeks dismissal of all cross-claims asserted against it by all co-defendants, including the sponsor defendants, and all third-party defendants, for contractual and common law

indemnification and contribution. Cetra argues that it did not contractually agree to indemnify any party, and that all defendants are alleged to have been negligent. Cetra further argues that contribution is not available in connection with plaintiffs' economic loss damages. As the sponsors' answer with cross-claims was previously dismissed, Cetra's request is moot as to asserted cross-claims of the sponsor co-defendants (*see*, fn 1). However, this relief is granted without opposition as to all other remaining co-defendants and third-party defendants, and all cross-claims as against Cetra are hereby dismissed.

The court has considered the parties' additional arguments on both motions, even if not specifically addressed herein and finds them unpersuasive.

CONCLUSION

Accordingly, it is hereby

ORDERED, that the motion of second third-party defendant Baisiles Interiors, Inc. for an order dismissing the second third-party complaint of second third-party plaintiff Hudson Meridian Construction Group, LLC, and all cross claims as against it is granted, and the second third-party complaint is dismissed as against second third-party defendant Baisiles Interiors, Inc., and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the seventh cause of action for contribution in the second third-party complaint is dismissed as against all remaining second third-party defendants; and it is further

ORDERED, that the remainder of the second third-party action shall continue; and it is further

ORDERED, that the motion of defendants John A. Cetra Architecture, PC/Cetra/Ruddy, Inc., and John A. Cetra for an order granting summary judgment dismissing the plaintiffs'

Consolidated Complaint and all cross-claims as against it is granted, and the Consolidated Complaint is dismissed as against defendants John A. Cetra Architecture, PC/Cetra/Ruddy, Inc., and John A. Cetra, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the remainder of the instant action shall continue.

This constitutes the decision and order of the court.

1/28/2026
DATE

HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE