

**Makkos v Braka**

2026 NY Slip Op 30558(U)

February 11, 2026

Supreme Court, New York County

Docket Number: Index No. 160721/2017

Judge: James G. Clynes

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

-----X

GEORGE MAKKOS,

Plaintiff,

- v -

IVOR BRAKA, ROBIN BRAKA, CENTURIAN CREDIT CORP.,

Defendant.

-----X

IVOR BRAKA, ROBIN BRAKA

Plaintiff,

-against-

THE GALLERIA CONDOMINIUM

Defendant.

-----X

CENTURIAN CREDIT CORP.

Plaintiff,

-against-

PLANTUS, LTD D/B/A PLANTUSNYC

Defendant.

-----X

CENTURIAN CREDIT CORP.

Plaintiff,

-against-

BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC T/A THE GALLERIA CONDOMINIUM

Defendant.

-----X

INDEX NO. 160721/2017
MOTION DATE 08/06/2024, 08/06/2024, 08/07/2024
MOTION SEQ. NO. 009 010 011

DECISION + ORDER ON MOTION

Third-Party Index No. 595150/2019

Second Third-Party Index No. 595429/2020

Third Third-Party Index No. 595877/2020

The following e-filed documents, listed by NYSCEF document number (Motion 009) 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 329, 345, 347, 352, 354, 356, 359

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 010) 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 330, 346, 348, 349, 350, 351, 353, 355, 357, 360

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 011) 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 361

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that motion sequence numbers 090, 010, and 011 are consolidated for disposition and decided as follows. This action arises from a water leak incident that occurred on January 11, 2015, at The Galleria Condominium complex located at 117 East 57th Street, NY, NY, 10022.

Third-Party Defendant, The Galleria Condominium ("Galleria") and Third-Third Party Defendant, Brown Stevens Residential Management, LLC T/A The Galleria Condominium ("BHS"), move under CPLR 3212 for summary judgment dismissing the third-party and third third-party complaints of Ivor and Robin Braka ("the Brakas") and Centurian Credit Corporation ("Centurian"), respectively (motion sequence 009). Third-Party Defendant Plantus, LTD d/b/a PlantusNYC ("Plantus") moves under CPLR 3212 for summary judgment dismissing the third-party complaint of Defendant/Third-Party Plaintiff Centurian in its entirety and dismissing of all cross claims against Plantus (motion sequence 010). Defendants the Brakas, move under CPLR 3212 dismissing Plaintiff's complaint as well as all crossclaims and counterclaims by co-defendants and third-party plaintiffs/defendants against the Brakas in their entirety (motion sequence 011).

### **Background**

Plaintiff owns condominium unit 50D ("Plaintiff's Unit") in the Galleria Condominium complex (NYSCEF Doc. No. 260, p 11 lines 7-12). Defendant Centurian owns unit 52B ("Braka/Centurian Unit") (NYSCEF Doc. No. 265). This case concerns an incident where water leaked into Plaintiff's Unit from the Braka/Centurian Unit coming from a garden hose on the terrace (NYSCEF Doc. No. 292). The Brakas stayed at the Brakas/Centurian Unit periodically during the time relevant to this case (NYSCEF Doc. No. 321, p 10 lines 20-25, p 11 lines 1-9).

Ivor Braka is president and sole shareholder of Centurian (*id.* at p 41 lines 2-5, p 42 lines 19-24). BHS manages Galleria.

On or about January 11, 2015, Plaintiff's wife notified him by phone that water was coming into his unit through the 50th floor (NYSCEF Doc. 260, p 46 lines 18-23). After he learned about the water, Plaintiff went to the unit and checked the apartment for water damage (*id.* at p 49, lines 3-17). Plaintiff then placed a bucket under the dining room chandelier to collect the water, and he reported the incident to the superintendent (*id.* at p 53, lines 2-5, p 54 lines 22-24). Victor Kqira, a handyman at the Galleria, went to Plaintiff's Unit and looked at the leak coming through the dining room chandelier (NYSCEF Doc. No. 290, p 17 lines 2-15). Kqira then inspected the Braka/Centurian unit to determine the source of the leak (NYSCEF Doc. No. 292). While inspecting the unit, Kqira discovered water on the terrace coming from the garden hose connector (*id.*). On January 26, 2015, Plaintiff sent a letter to the Brakas informing them of the water damage to his unit from the January 11 incident and requesting that they contact him to discuss how to handle the situation and provide him with their insurance information (NYSCEF Doc. No. 261).

Prior to the incident, Michelle Needle, vice president and secretary of Centurian, had hired Plantus to do some planting on the terrace at the Braka/Centurian Unit and to install an irrigation system in 2012 (NYSCEF Doc. No. 320, p 54 lines 15-25; NYSCEF Doc. No. 288, p 15 lines 3-8). Plantus also had an agreement with Ivor Braka dated August 23, 2012 to conduct weekly plant care at the Braka/Centurian Unit, monitor the irrigation system, fertilize the plants, prune the plants, turn on the irrigation system in March, turn the irrigation system off in November, and make monthly visits in December, January, and February to spray plants and prevent winter burn (NYSCEF Doc. No. 289). Plantus continued to maintain the plants and irrigation system at the Braka/Centurian Unit during the incident at issue (NYSCEF Doc. No 321, p 64 lines 1-7). In a September 24, 2024, email from Lawrence Shepps of Plantus to Marci Catala, administrative assistant at Centurian, Shepps said,

"We pruned the plants and adjusted the water system. The water to the plants is turned off from the building. We should wait till the spring and turn it back on to automate the watering. Please have the building confirm the pipes are winterized. I can come back next week to assist them if you like" (NYSCEF Doc. No. 291).

Centurian maintains that this email meant that the water was turned off (NYSCEF Doc. No. 321, p 76 lines 5-6). Plantus claims that this email meant that they were asking for confirmation that the building turned off the water (NYSCEF Doc. No. 288, p 24 lines 3-5).

Plaintiff commenced this action on December 4, 2017 (NYSCEF Doc. No. 1). The amended complaint, which Plaintiff filed on May 28, 2019, asserts two causes of action for common law negligence against the Brakas and Centurian (NYSCEF Doc. No. 83). In their answer to the complaint, Centurian cross-claimed for negligence (NYSCEF Doc. No. 91). The Brakas subsequently impleaded Galleria seeking common law indemnification, contribution, contractual indemnification, and breach of contract for failure to procure insurance (NYSCEF Doc. No. 50). Centurian impleaded BHS seeking contribution, contractual indemnification, and breach of contract for failure to procure insurance (NYSCEF Doc. No. 106). Centurian brought a second third-party action against Plantus seeking contribution and contractual indemnification (NYSCEF Doc. No. 100). In its answer to the second third party complaint, Plantus asserts a crossclaim for contribution against the Brakas, Centurian, and Galleria (NYSCEF Doc. No. 105).

### Analysis

#### Summary Judgment Standard

On a motion for summary judgment under CPLR 3212, the moving party 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 (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party makes that prima facie showing, the burden then shifts to the nonmoving party to establish the existence of material issues of fact requiring a trial (*id.*). The evidence should be analyzed in the light most favorable to the nonmoving party (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]).

#### Negligence

To establish a prima facie case of negligence, a plaintiff must show “(1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom” (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). There can be no liability for negligence without a duty of care owed to the injured party (*id.*).

#### Common Law Indemnification

A party is entitled to common law indemnification without proof of negligence or supervision when it is vicariously liable for the acts of the culpable party; and “the proposed

indemnitor was either negligent or exercised actual supervision or control over the injury-producing work” (*Naughton v City of NY*, 94 AD3d 1, 10 [1st Dept 2012]). A successful common law indemnification claim requires that the party pursuing indemnity is free of negligence and the alleged indemnitor’s negligence played a part in causing the accident (*Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 [1st Dept 2010]).

### **Contractual Indemnification**

The right to contractual indemnification depends on the specific language of the agreement (*id.*). “When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed” (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491-492 [1989]). The intent to indemnify must be clearly expressed or implied from the purpose and language of the entire contract in addition to the accompanying facts and circumstances (*see Martins*, 72 AD3d at 484).

### **Contribution**

Generally, contribution is an available remedy when two or more tortfeasors breached their respective duties to the injured party and share responsibility for the accident (*Trump Vil. Section 3, Inc. v NY State Hous. Fin. Agency*, 307 AD2d 891, 896 [1st Dept 2003]). The contributor does not have to owe a duty directly to the injured plaintiff (*id.*). The contribution claim may stand if the contributor breached a duty to the responsible defendant (*id.*). “[A] party can establish its prima facie entitlement to judgment as a matter of law dismissing a cause of action for contribution by showing that the work it performed did not cause or contribute to the happening of the accident” (*Zhao Ming Lu v Jackson Ht. Roosevelt Dev. II, LLC*, 231 AD3d 1198, 1199 [2d Dept 2024]).

### **Breach of Contract for Failure to Procure Insurance**

A party establishes its entitlement to judgment as a matter of law dismissing a claim for breach of contract for failure to procure insurance if it shows “that it was not contractually obligated to name the claiming entity as an additional insured based on the language of the subject agreement” (*Corter-Longwell v Juliano*, 200 AD3d 1578, 1580 [4th Dept 2021]). Additionally, language in the agreement that requires the purchase of insurance will not be read as also requiring that a party be named as an additional insured (*see Clavin v CAP Equip.*

*Leasing Corp.*, 156 AD3d 404, 405 [1st Dept 2017]). Such a requirement must be specifically and expressly stated (*id.*).

### **Motion 009**

Third-Party Defendant Galleria moves to dismiss the Brakas' third-party complaint, which seeks common law indemnification, contribution, contractual indemnification, and breach of contract for failure to procure insurance. Third Third-Party Defendant BHS requests summary judgment dismissing Centurian's third third-party complaint for the same reasons.

First, for the Brakas and Centurian to succeed on common law indemnification, Galleria and BHS's negligence must have contributed to causing the accident (*see Martins*, 72 AD3d at 484). The Brakas and Centurian also must not be negligent (*id.*). Without a breach of duty to the injured party, a cause of action founded upon negligence cannot stand (*Pasternack*, 27 NY3d at 825). Here, Galleria and BHS do not owe a duty to Plaintiff. Collectively, the by-laws and declaration establish that Galleria and BHS were not responsible for maintaining the terrace where the accident took place and the drain that is the alleged cause of the accident (NYSCEF Doc. Nos. 270-271). Under the by-laws, the residential unit owner is responsible for all gas, plumbing, and heating fixtures in their residential unit (NYSCEF Doc. No. 270). Any exposed "...water pipes attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which a Unit Owner may install within a wall or ceiling, or under the floor..." are also the responsibility of the residential unit owner (*id.*). In opposition, the Brakas argue that the by-laws and declaration require Galleria to maintain the drain. Specifically, the Brakas rely on the section of the by-laws that provide that

"[a]ll normal maintenance, repairs and replacement of all wintergardens and terraces shall be made by the Residential Unit Owner owning such wintergarden or terrace at his own cost and expense, but any structural or extraordinary repairs or replacements to such wintergardens or terraces (including any leaks in terraces which are not caused by the acts or negligence of the Unit Owner owning the same) shall be made by the Residential Board and the cost and expense thereof shall be charged to all Residential Unit Owners as a Residential Common Expense"(NYSCEF Doc. No. 271).

The Court rejects this argument because the plain language of the declaration and by-laws establish that the owner is responsible for the maintenance of the terrace and wintergarden where the incident took place (NYSCEF Doc. Nos. 270-271). Additionally, the record confirms that the drain on the terrace was exposed and clogged with leafy debris when the accident happened

(NYSCEF Doc. No. 290, p 31 lines 2-5; NYSCEF Doc. No. 266, p 27 lines 2-7). As the owner of the unit, Centurian was responsible for maintaining and clearing the drain, and their failure to do so contributed to the terrace leak at issue. Accordingly, neither Galleria nor BHS breached a duty to the Brakas or Centurian and the common law indemnification claims are dismissed.

Second, contribution also requires the breach of a duty to either the injured Plaintiff or a defendant that has been held liable (*Trump Vil. Section*, 307 AD2d at 896). As stated above, Centurian owned the unit at the time of the incident, making Centurian solely responsible for the upkeep and maintenance of the balcony and drain that caused the incident. Therefore, neither Galleria nor BHS breached a duty to the Brakas, Centurian, or Plaintiff, and the contribution claims are dismissed. Third, for the Brakas or Centurian to be entitled to contractual indemnification, there must be an agreement that clearly expresses or implies that Galleria or BHS intended to indemnify (*see Martins*, 72 AD3d at 484). Here, the by-laws and declaration govern the relationship between the Brakas and/or Centurian and Galleria and/or BHS. The by-laws state that, "...any structural or extraordinary repairs or replacements to such wintergardens or terraces (including any leaks in terraces which are not caused by the acts or negligence of the Unit Owner owning the same) shall be made by the Residential Board and the cost and expense thereof shall be charged to all Residential Unit Owners as a Residential Common Expense" (NYSCEF Doc. No. 271). However, as previously stated, Centurian was the owner of the unit at the time of the leak, and their failure to maintain the exposed drain on the terrace contributed to the incident. Therefore, the causes of action for contractual indemnification must be dismissed.

Fourth, to be entitled to summary judgment dismissing the breach of contract claim for failure to procure insurance, BHS and Galleria must show that they were "not contractually obligated to name the claiming entity as an additional insured based on the language of the subject agreement" (*Corter-Longwell*, 200 AD3d at 1580). Here, the by-laws provide that the Condominium Board is required to obtain and maintain insurance, including water damage legal liability insurance (NYSCEF Doc. No. 271). Centurian claims that BHS is contractually obligated to obtain and maintain insurance coverage providing liability coverage to them covering the circumstances at issue (NYSCEF Doc. No. 106, ¶ 20). Additionally, the Brakas maintain that Galleria was to procure insurance coverage for their benefit (NYSCEF Doc. No. 50, ¶ 58). However, there is no provision requiring BHS and Galleria to name the Brakas and/or Centurian as additional insured (NYSCEF Doc. No. 271). Accordingly, the agreement does not

require BHS and Galleria to name the Brakas and/or Centurian as additional insureds (*Clavin*, 156 AD3d at 405). Despite this, movants have not presented evidence that they procured any insurance that would satisfy the requirement in the by-laws. Therefore, the Court does not dismiss the breach of contract claims for failure to procure insurance claims.

### **Motion 010**

Third-Party Defendant, Plantus, moves for summary judgment dismissing Centurian's third-party complaint seeking contribution, contractual indemnification, and breach of contract for failure to procure insurance. Plantus also requests the dismissal of BHS's crossclaim for contribution. First, no language in the agreement between Plantus and Centurian indicates that Plantus intended to indemnify Centurian or created an obligation for Plantus to insure Centurian (NYSCEF Doc. No. 289). Therefore, the contractual indemnification and breach of contract for failure to procure insurance claims are dismissed.

Second, there is a material issue of fact as to whether the work Plantus performed at the Brakas/Centurian Unit "cause[d] or contribute[d] to the happening of the accident" (*Zhao Ming Lu*, 231 AD3d at 1199). Here, the email from Lawrence Shepps to Marci Catala regarding whether Plantus turned off the water is ambiguous (NYSCEF Doc. No. 291). In fact, in his deposition, Mr. Shepps admits that the email is confusing (NYSCEF Doc. No. 288, p 27 lines 18-23). Therefore, the Court denies Plantus' motion for summary judgment on the contribution claims.

### **Motion 011**

In this motion, the Brakas, request summary judgment dismissing Plaintiff's complaint seeking damages for common law negligence. The Brakas also seek the dismissal of Galleria's counterclaim for contribution, BHS's counterclaim for contribution, and Centurian's crossclaim for contribution. In opposition, Plaintiff seeks to pierce the corporate veil, arguing that Ivor Braka only placed the residence at issue in Centurian's name to protect himself from liability.

"When a party seeks to pierce the corporate veil, the court considers "[f]actors . . . include[ing] the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity. No one factor is dispositive" (*Fantazia Intl. Corp. v CPL Furs NY, Inc.*, 67 AD3d 511, 512 [1st Dept 2009]).

Plaintiff has raised issues of fact to whether the Brakas dominated Centurian as to justify piercing the corporate veil. Here, Ivor Braka is the owner, president, and sole shareholder of Centurian. The invoices for the work by Plantus at the condominium at issue are billed to Ivor and Robin Braka and not Centurian, but Centurian signs the checks used to pay for the services (NYSCEF Doc. Nos. 289, 337). The insurance that covers the condominium at issue lists Ivor and Robin Braka and does not list Centurian (NYSCEF Doc. No. 338). These facts considered together, at least, raise an issue of fact as to whether the Brakas are using Centurian as an alter ego and should be held personally liable. Accordingly, the Brakas' motion dismissing all claims against them is denied.

Accordingly, it is hereby

ORDERED that motion 009 is granted only to the extent that the causes of action for common law indemnification, contribution, and contractual indemnification are dismissed; and it is further,

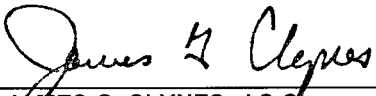
ORDERED that the causes of action for breach of contract for failure to procure insurance remain; and it is further,

ORDERED that motion 010 is granted only to the extent that the causes of action for contractual indemnification and breach of contract for failure to procure insurance are dismissed; and it is further,

ORDERED that the causes of action for contribution remain; and it is further,

ORDERED that motion 011 is denied.

This constitutes the Decision and Order of the Court.

2/11/2026			
DATE			JAMES G. CLYNES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE