

**Ochoa v Trylon LLC**

2026 NY Slip Op 30563(U)

February 10, 2026

Supreme Court, Kings County

Docket Number: Index No. 514445/2024

Judge: Gina Abadi

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At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10<sup>th</sup> day of February, 2026.

PRESENT:  
HON. GINA ABADI,  
J.S.C.

ANGEL AYRTON MALDONADO OCHOA,

Index No.: 514445/2024  
Motion Seq: 2

Plaintiff,

-against-

DECISION AND ORDER

TRYLON LLC and K S K CONSTRUCTION GROUP LLC,

Defendants.

TRYLON LLC and K S K CONSTRUCTION GROUP LLC,

Third-Party Plaintiffs,

-against-

DEFALCO CONSTRUCTION INC.,

Third-Party Defendant.

DEFALCO CONSTRUCTION INC.,

Second Third-Party Plaintiff,

-against-

ATOZ CONSTRUCTION SERVICES, INC.,

Second Third-Party Defendant.

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion:

Papers

NYSCEF Numbered

Notice of Motion and Exhibits Annexed . . . . .  
Affirmation in Opposition and Exhibit Annexed . . . . .  
Affirmation in Reply . . . . .

64-65  
67, 69  
70

Upon foregoing cited papers in this action to recover damages for personal injuries, second third-party defendant AtoZ Construction Services, Inc. (AtoZ) moved for leave to reargue its prior motion for summary judgment dismissing the second third-party complaint against it (the prior motion) and, upon reargument, vacating the order, dated October 29, 2025 (the prior order), which denied the prior motion, and further upon reargument granting the prior motion. Second third-party plaintiff Defalco Construction Inc. (Defalco) opposed the instant motion. On January 12, 2026, the Court heard oral argument and reserved decision on the instant motion.

On May 26, 2023, the plaintiff in the underlying action was allegedly injured at a construction site while in the employ of AtoZ.<sup>1</sup> It is undisputed that the plaintiff did not sustain a “grave injury” within the meaning of Workers’ Compensation Law (WCL) § 11.<sup>2</sup> As a result of the underlying accident, the plaintiff received workers’ compensation benefits from AtoZ’s insurance carrier.<sup>3</sup> On May 23, 2024, the plaintiff commenced the underlying action against the principal defendants sounding in violation of (among other provisions) Labor Law §§ 241 (a) and 200. The principal defendants answered the complaint in the underlying action and, on December 10, 2024, commenced a third-party action against Defalco. On February 27, 2025, Defalco commenced a second third-party action against AtoZ. Defalco, in its amended second third-party complaint, asserted four causes of action against AtoZ; namely: (1) contractual indemnification;

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<sup>1</sup> Plaintiff’s Verified Bill of Particulars, dated September 24, 2024, ¶¶ 2 and 12.a (NYSCEF Doc No. 8).

<sup>2</sup> Plaintiff’s Verified Bill of Particulars, ¶ 11 (alleging injuries to the plaintiff’s left hand, left knee, right shoulder, cervical spine, lumbar spine, left shoulder, and left ankle).

<sup>3</sup> Affidavit of AtoZ’s president Ali Talebiam, dated August 8, 2025, ¶¶ 5-6 (NYSCEF Doc No. 51).

(2) breach of contract for failure to procure insurance; (3) common-law indemnification; and (4) contribution.<sup>4</sup> The basis for Defalco's second third-party action against AtoZ is its Subcontractor Agreement, dated May 1, 2023, with AtoZ, pursuant to which Defalco retained AtoZ to perform construction work at the subject project (the subcontract).<sup>5</sup> On April 15, 2025, AtoZ answered the amended second third-party complaint, asserting (among other defenses) that the second third-party action was barred by the exclusivity provisions of the WCL.<sup>6</sup> In addition, AtoZ asserted in its answer three counterclaims against Defalco, as well as three cross-claims against the principal defendants.<sup>7</sup> AtoZ's counterclaims and cross-claims were duly replied to by the applicable defendants.<sup>8</sup>

On August 8, 2025, AtoZ served its prior motion for summary judgment dismissing the second third-party action against it. AtoZ contended in its prior motion that the common-law indemnification and contribution claims (the third and fourth causes of action in the underlying third-party action) were barred by WCL § 11 because the plaintiff did not sustain a statutorily defined grave injury. AtoZ further contended that the remaining claims for contractual indemnification and breach of contract for failure to procure insurance (the first and second causes of action in the underlying third-party action) were subject to dismissal because the subcontract failed to identify Defalco as

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<sup>4</sup> Defalco's Amended Second Third-Party Complaint, dated March 3, 2025, the first through fourth causes of action, respectively (NYSCEF Doc No. 30).

<sup>5</sup> Subcontractor Agreement, dated May 1, 2023, between Defalco and AtoZ, a copy of which is annexed as an exhibit to the Amended Second Third-Party Complaint at NYSCEF Doc No. 29.

<sup>6</sup> AtoZ's Verified Answer, dated April 15, 2025, ¶ 21 (eighth affirmative defense) (NYSCEF Doc No. 35).

<sup>7</sup> AtoZ's Verified Answer, ¶¶ 30-53.

<sup>8</sup> Defalco's Verified Answer to Counterclaim[s], and Principal Defendants' Reply to Cross[-] Claims, both dated April 21, 2025 (NYSCEF Doc Nos. 38 and 37, respectively).

a party to be indemnified and, likewise, as a party to be named as an additional insured on AtoZ's general liability policy. Defalco, in its opposition to the prior motion, "conceded that the causes of action sounding in common-law indemnification and contribution are barred by the exclusivity provisions of the Worker's Compensation Law."<sup>9</sup> Conversely, Defalco, in its opposition to the prior motion, contended that "the causes of action sounding in contractual indemnification and breach of contract to purchase insurance are not subject to dismissal."<sup>10</sup>

The Court, in the prior order, denied the prior motion "due to no insurance policy exhibit provided [with AtoZ's prior motion], therefore [AtoZ] failed to meet [its] prima facie burden that it was not contractually obligated to indemnify or procure insurance. *See Rahmonov v Purves Dev., LLC*, 236 AD3d 941 (2d Dept 2025)." The Court, in the prior order, did not address and thus, *sub silentio*, denied dismissal of Defalco's common-law indemnification and contribution claims against AtoZ.

Under the circumstances of this case, leave to reargue is granted in the Court's discretion (*see* CPLR 2221 [d] [2]; *Liberty Mut. Ins. Co. v Active Fire Sprinkler NYC, LLC*, 240 AD3d 870, 872 [2d Dept 2025]).

Where, as here, "the plaintiff has not sustained a 'grave injury,' section 11 of the Workers' Compensation Law bars third-party actions against employers for indemnification or contribution unless the third-party action is for contractual indemnification pursuant to a written contract in which the employer '*expressly agreed*'

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<sup>9</sup> Defalco's Affirmation in Partial Opposition, dated October 16, 2025, ¶ 7 (NYSCEF Doc No. 58).

<sup>10</sup> Defalco's Affirmation in Partial Opposition, ¶ 7.

to indemnify the claimant” (*Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004] [emphasis added]). “Requiring the indemnification contract to be clear and express furthers the spirit of the legislation” (*id.*).

Here, AtoZ established, *prima facie*, that it was the plaintiff’s employer and that it did not “expressly agree” to contractually indemnify Defalco pursuant to the subcontract (*see Garcia v Fed LI, LLC*, 239 AD3d 942, 946 [2d Dept 2025]). In that regard, AtoZ demonstrated, *prima facie*, that the applicable section of the subcontract – in particular, section 19.1 thereof (the bodily-injury indemnification clause) – contained a bracketed blank line for the names/capacities of the entities to be indemnified by AtoZ under the subcontract, as more fully set forth in the margin.<sup>11</sup> The Court is without power to superimpose (or pencil in) Defalco in the bracketed blank line of the bodily-injury indemnification clause. The merger clause in section 24.10 of the subcontract provides, in relevant part, that the subcontract “may not be changed in any way except in a writing signed by a duly authorized officer or agent of Contractor and Subcontractor.”<sup>12</sup> Furthermore, the interpretation clause in section 24.6 of the subcontract provides, in

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<sup>11</sup> Section 19.1 of the subcontract provides, in relevant part, that:

“In consideration of this [Subcontract] and to the fullest extent permitted by law, Subcontractor [AtoZ] shall defend, indemnify and hold harmless [\_\_\_\_\_] and their respective members, shareholders, officers, directors, agents, servants, employees, successors and assigns (‘Indemnified Parties’) from and against any claim, cost, expense, loss, damage or liability of any nature, including attorneys’ fees, *attributable to bodily injury, sickness, disease*, or death, or to damage to or destruction of property (including loss of use thereof) or any other economic loss, caused by, arising out of, resulting from, or occurring in connection with the breach of this [Subcontract] or with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants or employees, whether or not caused in part by the active or passive negligence or other fault of any of the Indemnified Parties indemnified hereunder” (emphasis added).

<sup>12</sup> In this regard, the Court notes that the bracketed blank line in Section 19.1 of the bodily-injury indemnification clause is not the only bracketed blank line in the subcontract. There are two other (and likewise significant) bracketed blank lines in the subcontract; one in Section 3.1 for the time of completion and the other in Section 4.1 for the subcontract sum and payment.

relevant part, that “[i]n the event that there is any dispute over the meaning or application of a provision of this [Subcontract], the parties agree that this [Subcontract] shall be interpreted reasonably and *neither for or against either Contractor [Defalco] or the Subcontractor [AtoZ]*” (emphasis added). Superimposing (or penciling in) Defalco in the bracketed blank line of the bodily-injury indemnification clause would violate the interpretation clause. The penciling in of Defalco would be “*for . . . Contractor [Defalco]* and “*against . . . the Subcontractor [AtoZ]*” (emphasis added).

In opposition, Defalco failed to raise a triable issue of fact. Defalco’s reliance on Section 19.2 of the subcontract is misplaced because Section 19.2 (unlike the aforementioned Section 19.1) is limited to the indemnification in a “proceeding against [Defalco] involving the manner or sufficiency of the performance of the Work” (the performance-of-work indemnification clause), as more fully set forth in the margin.<sup>13</sup> The performance-of-work indemnification clause is distinct and different in kind from the aforementioned bodily-injury indemnification clause.

Similarly misplaced is Defalco’s reliance on Section 20.1 of the subcontract which governs insurance procurement. Defalco argued (and the prior order so reflected) that Section 20.1 of the subcontract required AtoZ to “procure and maintain the insurance coverage and limits described in Exhibit D [to the subcontract],” and that AtoZ’s failure

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<sup>13</sup> Section 19.2 of the subcontract provides, in relevant part, that:

“Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against [Defalco] involving *the manner or sufficiency of the performance of the Work*, [AtoZ] shall upon request of [Defalco] promptly assume the defense of such claim, suit, action or proceeding, at [AtoZ’s] expense. To the fullest extent permitted by law, [AtoZ] shall indemnify and hold harmless [Defalco] as well as the Indemnified Parties, from and against any liability, loss, damage, or expense (including costs and attorneys’ fees incurred in enforcing *this indemnity*) arising out of or related to *such* claim, suit, action or proceeding” (emphasis added).

to annex the insurance-requirement exhibit from the subcontract defeated its request for dismissal of such claim. This ruling was incorrect both as a matter of contract and as a matter of law. As a matter of contract, Section 20.1 of the subcontract provides, in relevant part, that “[a]ll parties [which are] listed as Indemnified Parties herein shall also be included as Additional Insureds on [AtoZ’s] insurance policies.” In that regard, AtoZ’s insurance policy with State Farm (which was in effect at the time of the accident) covered only those entities as additional insureds “if [AtoZ] and such person or organization have agreed in writing in a contract or agreement that such person or organization be included as an additional insured on [AtoZ’s] policy.”<sup>14</sup> As noted, however, the bodily-injury indemnification clause in Section 19.1 of the subcontract fails to define the Indemnified Parties because it has a bracketed blank line for the names/capacities of the entities to be indemnified by AtoZ under the subcontract. Separately and as a matter of law, “contract language that merely requires the purchase of insurance will not be read as also requiring that a contracting party be named as an additional insured” (*Uddin v A.T.A. Constr. Corp.*, 164 AD3d 1402, 1405 [2d Dept 2018] [internal quotation marks omitted]). The subcontract’s failure to define the Indemnified Parties in Section 19.1 had a domino effect in regard to (and tainted) Defalco’s insurance-procurement claim against AtoZ.

Lastly, the prior order’s citation to *Rahmonov v Purves Dev., LLC*, 236 AD3d 941 (2d Dept 2025), was inapposite. In *Rahmonov*, plaintiff’s employer moved for summary judgment dismissing the third-party contractual indemnification and insurance-

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<sup>14</sup> Additional Insured – Owners, Lessees, or Contractors (Blanket Endorsement), Form CMP-4530, Page 1 of 1, which is part of AtoZ’s State Farm policy (NYSCEF Doc No. 47). The State Farm policy was attached to AtoZ’s Response to Combined Demands, dated August 8, 2025, ¶ 4 (NYSCEF Doc No. 45).

procurement claims against it. The lower court granted the employer's motion, but on appeal the Second Judicial Department reversed and held, in relevant part, that:

“Although the defendants were not specifically named as indemnitees in the [employer's] subcontract, *indemnites are defined therein to include . . . 'such persons and entities as may be required by the Contract Documents.'* The [employer's] subcontract defined the 'Contract Documents' as including, among other things, the subcontract between [subcontractor] and the general contractor. [The employer], however, did not submit that contract or any other evidence to show that the defendants were not indemnitees under the indemnification provision of the [employer's] subcontract.

Similarly, [the employer] failed to establish its prima facie entitlement to judgment as a matter of law dismissing the third-party cause of action alleging breach of contract for failure to procure insurance insofar as asserted against it. . . . Here, *by failing to submit the 'Contract Documents,' which included the subcontract between [subcontractor] and the general contractor, incorporated by reference into the insurance procurement provisions of the [employer's] subcontract, [the employer] failed to eliminate a triable issue of fact as to whether those contract documents contained provisions requiring it to obtain additional insured coverage for the benefit of the defendants.*”

(*Rahmonov*, 236 AD3d at 943-944) (internal citations omitted; emphasis added).

Whereas in *Rahmonov* the indemnified parties were defined by reference to the outside (or contract) documents and such contract documents were not provided to the court (thereby resulting in a reversal), here the indemnified parties were *not* defined either in the subcontract itself or by reference to any outside document incorporated into the subcontract. Further, the insurance-policy requirements in Exhibit D to the subcontract could *not* supply a definition to the phrase “indemnified parties” as used in the bodily-injury indemnification clause of the subcontract. To reiterate the point, Section 20.1 of the subcontract provides that “[a]ll parties [which are] *listed as*

Indemnified Parties herein shall also be included as Additional Insureds on [AtoZ's] insurance policies," meaning that the subcontract (not the insurance policy) is the governing document when it comes to defining the beneficiaries of the bodily-injury indemnification clause and, concomitantly, the insurance procurement clause. The prior order, however, improperly shifted the emphasis from the exclusive (and governing) definition of the beneficiaries of the bodily-injury indemnification clause (as well as the insurance procurement clause) to the subordinate insurance requirements provision in Exhibit D to the subcontract.

The Court considered the parties' remaining arguments and found them either moot or unavailing in light of its disposition.

Accordingly, it is

ORDERED that leave to reargue the prior motion is *granted*; and, upon reargument, the prior order, dated October 29, 2025 and e-filed October 30, 2025 under NYSCEF Doc No. 61, is *vacated in its entirety*, and the prior motion is *granted in its entirety*; and it is further

ORDERED that all claims, third-party claims, cross-claims, and counterclaims by (or against) AtoZ are dismissed with prejudice and without costs/disbursements; and it is further

ORDERED that the second third-party action is severed and dismissed in its entirety, and the caption is amended accordingly; and it is further

ORDERED that AtoZ's counsel is directed to electronically serve a copy of this Decision and Order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service with the Kings County Clerk.

The foregoing constitutes the Decision and Order of this Court.

ENTER,



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HON. GINA ABADI  
J.S.C.

**Hon. Gina Abadi  
J.S.C.**