

Figaro v City of New York
2026 NY Slip Op 30583(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 154631/2023
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

GREGORY FIGARO,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, GEOMATRIX SERVICES, INC.,

Defendant.

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CITY OF NEW YORK, GEOMATRIX SERVICES, INC.

Plaintiff,

-against-

KOSURI ENGINEERING & CONSULTING PC, ROMA IRON WORKERS INC.

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party Index No. 595119/2025

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Third-Party Defendant Kosuri Engineering & Consulting PC's ("Kosuri") motion to dismiss all claims and crossclaims asserted against it is granted in part and denied in part.

I. Background

Plaintiff Gregory Figaro ("Plaintiff"), an iron worker allegedly employed by Third-Party Defendant Roma Iron Workers Inc. ("Roma"), was purportedly injured when he was struck by a 200 pound aluminum beam at the North River Water Pollution Control Plant at 725 West 135th

Street, New York, New York (the “Premises”). Defendant/Third-Party Plaintiff City of New York (“NYC”) owns the Premises and retained Defendant/Third-Party Plaintiff Geomatrix Services, Inc. (“Geomatrix”) to serve as a general contractor on a construction project at the Premises. Geomatrix retained Cube Construction Services LLC (“Cube”) who allegedly retained Kosuri to design a system for installing the steel beams that allegedly injured Plaintiff.

Kosuri was brought into this lawsuit by NYC and Geomatrix (collectively “Third-Party Plaintiffs”) via Third-Party Complaint alleging contractual and common law indemnification, contribution, and breach of contract for failure to procure insurance. Kosuri moves pre-answer to dismiss the Third-Party Complaint pursuant to CPLR 3211(a)(1), (a)(3), and (a)(7). Kosuri argues it had no contractual relationship with the Third-Party Plaintiffs and there can be no common law indemnification or contribution because Kosuri only provided limited engineering plans on the project. The Third-Party Plaintiffs oppose.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). A motion to dismiss pursuant to CPLR 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff’s factual allegations (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

B. Indemnification & Breach of Contract

The motion to dismiss the contractual and common law indemnification claims is granted in part and denied in part. As a preliminary matter, it is premature to make any rulings on the common law indemnification claims as it remains an issue of fact as to whether Third-Party Plaintiffs will be held solely vicariously liable as a result of Kosuri's active negligence. Kosuri's factual arguments made in support of the motion are inappropriate given the procedural posture – namely a pre-answer motion to dismiss. Therefore, the common law indemnification claims are sustained.

The contractual indemnification claim is denied as to NYC. The indemnification clause in the purchase order requires Kosuri to indemnify the “Owner and others as may be required by the Prime Contract.” The purchase order makes clear where the job site is and therefore the identity of NYC as the “owner” owed indemnification is unambiguous (*see Frank v 1100 Avenue of Americas Associates*, 159 AD3d 537, 538 [1st Dept 2018]).

However, the reference to “and others as may be required by the Prime Contract” is insufficient for Geomatrix to sustain a third-party contractual indemnification claim (*see Naupari v Murray*, 163 AD3d 401, 402 [1st Dept 2018] citing *Bussanich v 310 E. 55th St. Tenants*, 282 AD2d 243, 243 [1st Dept 2001]; *see also Goncalves v 515 Park Ave. Condominium*, 39 AD3d 262, 262-263 [1st Dept 2007] [“incorporation clauses in a construction subcontract, incorporating prime contract clauses by reference into a subcontract, bind a subcontractor only as to the prime contract provisions relating to the scope, quality, character and manner of the work to be performed by the subcontractor”]). Therefore, the contractual indemnification claim against Kosuri is dismissed to the extent it is asserted by Geomatrix. The breach of contract for failure to procure insurance claim

is also dismissed to the extent it is alleged by Geomatrix as the purchase order shows that Geomatrix is not a party to the contract, nor is it entitled to indemnification from Kosuri.

However, because NYC may ultimately be found to be entitled to contractual indemnification from Kosuri, NYC maintains a valid breach of contract claim against Kosuri, especially since Kosuri failed to produce documentary evidence showing the requisite insurance to cover its indemnification obligations was procured.

C. Contribution

The motion to dismiss the contribution claims is denied. Kosuri's arguments in support of dismissing the contribution claim are better suited for summary judgment after depositions and the exchange of discovery. Kosuri's argument that it cannot be found negligent because it owed neither Third-Party Plaintiffs nor Plaintiff a duty is without merit. As Kosuri designed the mechanism that allegedly led to Plaintiff's injury, it remains an issue of fact as to whether the negligent design of the mechanism launched an instrument of harm thereby bringing it within the exception to the rule that contractors ordinarily owe no duty of care to third-parties (*see Harelick v De La Cruz Lora*, --- A.D.3d ----, --- N.Y.S.3d ----, 2026 N.Y. Slip Op. 00315 at *2 [1st Dept 2026]; *Luck v Rockledge Scaffold Corp.*, 159 AD3d 660, 661 [1st Dept 2018]; *see also Nachamie v County of Nassau*, 147 AD3d 770, 774-775 [2d Dept 2017]). Simply, at this pre-discovery juncture, it is too early to rule out Kosuri's potential involvement in the accident that allegedly injured Plaintiff.

Accordingly, it is hereby,

ORDERED that Kosuri's motion to dismiss is granted solely to the extent that the contractual indemnification and breach of contract claims asserted by Geomatrix are dismissed, and the remainder of the motion is denied; and it is further

ORDERED that Kosuri’s motion to dismiss is granted solely to the extent that the contractual indemnification and breach of contract claims asserted by Geomatrix are dismissed, and the remainder of the motion is denied; and it is further

ORDERED that within 20 days of entry of this Decision and Order, Kosuri shall file its Answer to the Third-Party Complaint; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the preliminary conference order be submitted any later than March 31, 2026; and it is further

ORDERED that within ten days of entry, counsel for Third-Party Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/17/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE