

Aguilar v Walsh

2026 NY Slip Op 31174(U)

March 24, 2026

Supreme Court, New York County

Docket Number: Index No. 155573/2022

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

JOSE AGUILAR,

Plaintiff,

- v -

PETER J. WALSH, IMPERIAL PARKING (U.S.), LLC,
200 WEST 79TH STREET OWNERS, INC.,
AKAM ASSOCIATES INC.,
200 WEST 79TH STREET REALTY CORP., THE
PARKLAND GROUP, LLC,

Defendants.

-----X

PETER WALSH,

Third-Party Plaintiff,

-against-

ADRIATIC PLUMBING & HEATING CORP.,

Third-Party Defendant.

-----X

INDEX NO. 155573/2022
MOTION DATE 07/02/2025
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595968/2024

The following e-filed documents, listed by NYSCEF document number (Motion 004) 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149

were read on this motion to/for DISMISS.

Upon the foregoing documents, Adriatic Plumbing & Heating Corp.’s motion for summary judgment dismissing the third-party complaint is granted.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, an employee of Adriatic Plumbing & Heating Corporation (“Adriatic”) reported to 200 West 79th Street, New York, New York (the “Premises”) on June 1, 2022, to fix broken pipes in the Premises’ garage. His complaint alleges that a vehicle owned and operated by

defendant Peter J. Walsh entered the garage and hit him and, as pertinent here, asserts a negligence claim against Walsh. Walsh commenced a third-party action against Adriatic, asserting claims for contribution and indemnification (NYSCEF Doc No. 108).

Adriatic now moves for summary judgment dismissing Walsh's third-party complaint on the grounds that the only avenue for recovery on Walsh's claim, Workers' Compensation Law §11, is foreclosed because Aguilar has not sustained a "grave injury" within the meaning of that statute. Walsh opposes the motion, asserting that issues of fact exist as to whether plaintiff was acting within the scope of his employment when he was injured and whether his injuries meet the "grave injury" threshold. Walsh also argues that Adriatic's motion is premature because Adriatic has not yet been deposed or provided discovery responses.

DISCUSSION

"The proponent of a summary judgment motion 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. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*id.* [internal citations omitted]).

Adriatic has carried its burden here. Workers' Compensation Law §11 provides that:

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury.

(Workers' Compensation Law § 11).

“Grave injury” is narrowly defined under the statute, limited to:

death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

(*id.*).

Here, Adriatic has established through plaintiff's testimony that he was unclogging a drain at the Premises as part of his work for Adriatic at the time of the accident. Adriatic has further demonstrated that the injuries set forth in plaintiff's complaint and bill of particulars—various fractures and hematomas—do not satisfy the statutory standard for a “grave injury” (*see Butler v Marco Realty Assoc., L.P.*, — NYS.3d —; 2026 NY Slip Op 01006 [1st Dept 2026] [“plaintiff's shoulder and spine injuries are not among the “grave injuries” enumerated in Workers' Compensation Law §11”]; *TCS Constr. Corp. v AmTrust N. Am., Inc.*, 235 AD3d 479, 481 [1st Dept 2025] [back and neck injuries not grave injuries]).

Walsh's argument that triable issues of fact remain as to whether plaintiff was acting outside the scope of his employment is unavailing. Even if this were the case, it would not allow Walsh to proceed on his claims; where, as here, the Workers' Compensation Board has determined that Adriatic was plaintiff's employer, Workers' Compensation Law §11 is the only avenue to recover on claims for indemnification and contribution (*Velazquez-Guadalupe v Ideal Builders and Constr. Services, Inc.*, 216 AD3d 63, 66-67 [2d Dept 2023]). Neither does the Court credit Walsh's argument that further discovery precludes summary judgment; Walsh's “mere hope or speculation that discovery might turn up some evidence giving rise to a triable issue of fact”

(*DaSilva v Haks Engineers, Architects and Land Surveyors, P.C.*, 125 AD3d 480, 482 [1st Dept 2015]).

Accordingly, it is

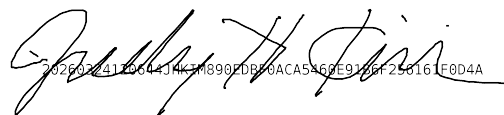
ORDERED that Adriatic Plumbing & Heating Corp.’s motion for summary judgment dismissing the third-party complaint is granted, and it is hereby dismissed; and it is further

ORDERED that Adriatic Plumbing & Heating Corp. shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry upon Peter J. Walsh and the Clerk of the Court; and it is further

ORDERED that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court's website); and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.



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3/24/2026

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE