

<b>AIG Prop. Cas. Co. v Lane</b>
2026 NY Slip Op 31423(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 150840/2024
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

AIG PROPERTY CASUALTY COMPANY,
Plaintiff,

INDEX NO. 150840/2024

MOTION DATE 10/10/2025

MOTION SEQ. NO. 005

- v -

CURTIS LANE, STACEY LANE, C-SQUARED
CONTRACTING INC., ASSOCIATED MECHANICAL,
INC., LTB MECHANICAL CORP., B & H RESTORATION,
INC., TRI-POWER ENGINEERING, LLC,

DECISION + ORDER ON
MOTION

Defendant.

-----X

C-SQUARED CONTRACTING INC.
Plaintiff,

Third-Party
Index No. 595436/2024

-against-

ASSOCIATED MECHANICAL, INC. and LTB MECHANICAL
CORP.,

Defendant.

-----X

LTB MECHANICAL CORP.
Plaintiff,

Second Third-Party
Index No. 595177/2025

-against-

B&H RESTORATION INC. and TRI-POWER ENGINEERING,
LLC

Defendant.

-----X

C-SQUARED CONTRACTING INC.
Plaintiff,

Third Third-Party
Index No. 595385/2025

-against-

B&H RESTORATION INC.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 122, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 142, 144, 145, 146, 147

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, Defendant/Second-Third Party Defendant Tri-Power Engineering, LLC's ("Tri-Power") motion to dismiss Plaintiff's Second Amended Complaint and all crossclaims as asserted against it is granted in part and denied in part.

Plaintiff insured William and Carol Lewis, residents of Unit 7CD/8D ("Lewis Unit") at 101 Central Park West, New York, New York (the "Building"). Defendants Curtis Lane and Stacey Lane (collectively "Lane Defendants") live in Unit 10E (the "Lane Unit") of the Building. The Lane Defendants retained Defendant/Third-Party Plaintiff C-Squared Contracting Inc. ("C-Squared") to perform renovation work in the Lane Unit. Plaintiff alleges LTB Mechanical was retained to install exhaust systems, refrigerator lines duct, electric heaters, and other items associated with the HVAC system serving the Lane Unit. Allegedly, on February 5, 2023, as a result of the renovation work related to an HVAC system, in the Lane Unit, a pipe failed and caused water to flood the Lewis Unit. Plaintiff reimbursed William and Carol Lewis for their alleged property damage and now seeks to recover sums paid out in this subrogation action.

Tri-Power, which is now named a direct defendant, was originally impleaded as a second third-party defendant by LTB Mechanical. According to LTB Mechanical, Tri-Power provided engineering, inspection, and design plans for the HVAC work which allegedly caused Plaintiff's damages. Tri-Power now moves to dismiss arguing Plaintiff's claims are barred by the *Espinal* doctrine and based on the sufficiency of Plaintiff's pleadings. Tri-Power also moves to dismiss all crossclaims asserted against it.

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives claimant the benefit of all favorable inferences which may be drawn from the pleadings, and determines 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 based on documentary evidence is appropriately granted when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]).

As a preliminary matter, no party has substantively opposed dismissal of their crossclaims against Tri-Power, therefore the crossclaims are dismissed as abandoned (*see Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]). The only Defendants to oppose are the Lane Defendants, but they offer no substantive opposition and instead oppose under 3212(f) even though this is a 3211 motion. The 3212(f) argument is also unavailing as it is unsupported by an affidavit from any individual with personal knowledge of the facts (*354 Chauncey Realty, LLC v Brownstone Agency, Inc.* 213 AD3d 544 [1st Dept 2023]).

However, Tri-Power's motion to dismiss Plaintiff's Complaint is denied. Tri-Power's arguments regarding the application of the *Espinal* doctrine, which is typically a fact-intensive analysis, is not ripe for determination on a motion to dismiss where there has been little if any discovery exchanged (*see, e.g. Harelick v De LA Cruz Lora*, 245 AD3d 595, 596 [1st Dept 2026] [issue of fact as to whether construction firm and electrical subcontractor launched instrument of harm by improperly installing temporary pedestrian signal]; *Hyland v MFM Contracting Corp.*, 225 AD3d 424, 424 [1st Dept 2024] [issue of fact as to whether resident engineer on construction project launched instrument of harm based on choice of fabric used to enclose construction area]). Accepting the allegations as true, and affording plaintiff the benefit of all favorable inferences, the

Court is constrained to dismiss Plaintiff's claims against Tri-Power at this juncture. Tri-Power may renew this argument on a more developed record on summary judgment.

Tri-Power's arguments as to whether Plaintiff has adequately alleged a negligence claim is likewise unavailing at this juncture. New York is a notice pleading state and Tri-Power is on notice of the claims being asserted against it, which is sufficient for purposes of a pre-answer motion to dismiss. It can reasonably be inferred from the pleadings that Plaintiff is alleging Tri-Power negligently engineered, designed, and inspected the ongoing construction which led a pipe to be improperly installed and cause water damage. Therefore, Tri-Power's motion to dismiss Plaintiff's Second Amended Complaint is denied.

Accordingly, it is hereby,

ORDERED that Tri-Power's motion to dismiss is granted to the extent that any crossclaim asserted against it are dismissed without opposition, but the remainder of the motion is denied; and it is further

ORDERED that within twenty days of entry, Tri-Power shall serve an Answer to plaintiff's Second Amended Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail on or before May 5<sup>th</sup>, 2026. If there is a serious discovery dispute requiring a Court conference, the parties shall inform the Court accordingly so an in-person conference may be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court's sponsored ADR program, the parties shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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.

4/8/26  
DATE

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

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