Red Apple 86 Fleet Place Dev. LLC v Hudson Mach. Works, Inc.
2026 NY Slip Op 31594(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 650097/2021
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02M**

Justice

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RED APPLE 86 FLEET PLACE DEVELOPMENT LLC,

Plaintiff,

- v -

HUDSON MACHINE WORKS, INC.,CINCINNATI INSURANCE COMPANY, FEDERAL INSURANCE COMPANY

Defendant.

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INDEX NO. 650097/2021

MOTION DATE 05/14/2025, 08/28/2025

MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

were read on this motion to/for STRIKE JURY DEMAND.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167

were read on this motion to/for JUDGMENT – SUMMARY.

In this action seeking to recover damages related to the construction of a building, Plaintiff Red Apple 86 Fleet Place Development LLC ("Plaintiff") moves for an order striking the jury demand of Defendant Hudson Machine Works, Inc. ("Defendant") (Motion Seq. 004). Plaintiff further moves for summary judgment in its favor against Defendant in the amount of $479,710.39 together with reasonable attorneys' fees (Motion Seq. 005). Defendant opposes both motions. The action has been previously discontinued as against Cincinnati Insurance Company (NYSCEF Doc. 48) and Federal Insurance Company (NYSCEF Doc. No. 61).

Plaintiff is the owner of a building that was under construction located at 86 Fleet Place in Brooklyn ("Project"). The construction manager for the Project was non-party Hudson Meridian Construction Group, LLC ("HMC"). On September 30, 2015, Defendant and HMC, acting as

Plaintiff's agent, entered into a trade contract, pursuant to which Defendant was to perform balcony and terrace railing work (NYSCEF Doc. No. 100, "Trade Contract" ¶ 3, Exhibit B). The work required installing ornamental glass rail systems, including selecting and applying sealant to set the glass into aluminum shoes (NYSCEF Doc. No. 101, Specification ¶ 3.2). The Trade Contract included a waiver of trial by jury (Trade Contract ¶ 25.7.1.), and a guarantee for the quality of the work (Trade Contract ¶ 22.1).

Plaintiff terminated the Trade Contract on August 14, 2017 due to Defendant's purported failure to cure delays in performance of the work (NYSCEF Doc. No. 99, Zorn's Affirmation ¶¶ 27-30). The termination was later rescinded by an agreement dated September 26, 2017 (NYSCEF Doc. 103, Reinstatement Letter). The parties reaffirmed the Trade Contract and amended some of its terms, specified deadlines and milestones for the work to be performed, as well as modified the payment terms (Reinstatement Letter). No amendments were made to the jury waiver provision (Trade Contract ¶ 25.7.1; Reinstatement Letter). The parties explicitly agreed that these changes together with the Trade Contract and other Trade Contract documents constituted the entire agreement (Reinstatement Letter ¶ 9).

Defendant chose SikaGlaze GG-735 ("SikaGlaze") as the sealant for setting the glass and the sealant was approved by Plaintiff's technical advisor Socotec Inc. (Zorn's Affirmation ¶ 20; NYSCEF Doc. No. 112, Socotec's Affirmation ¶¶ 1, 3-11; NYSCEF Doc. No. 113, Shop drawings at 25, 52, 74, 85). The work was completed at the end of 2017, except for some final punch list items which were completed in early 2018 (NYSCEF Doc. No. 149, ¶ 2). Defendant received full payment for the work performed in March 2018 (NYSCEF Doc. No. 150). At that time, Defendant also issued a one-year warranty for the quality of the work performed (NYSCEF Doc. No. 150, Warranty).

More than two years later, in September 2020, Socotec conducted an inspection of the SikaGlaze applied by Defendant and observed that in some places it was soft and sticky rather than hard, or it was insufficiently filling the aluminum shoe (Socotec's Affirmation ¶¶ 12-20; NYSCEF Doc. No. 116, Socotec's letter of September 29, 2020; NYSCEF Doc. No. 120, Socotec's letter of November 16, 2020). Plaintiff also invited the producer of SikaGlaze, non-party Sika Corporation ("Sika"), to inspect the site, who concluded that the samples collected "provide a general tendency of" improper proportions of the product components, but conceded its analysis was limited due to the age and contamination of the samples (NYSCEF Doc. No. 124, Sika's Affirmation ¶¶ 8-10; NYSCEF Doc. No. 129, Sika's First Letter; NYSCEF Doc. No. 130, Sika's Second Letter). Plaintiff informed Defendant of the purported issues in September 2020, telling them that repairs were needed (NYSCEF Doc. No. 104). Although the parties discussed a site inspection and the need for repair in October and November 2020 via email, Defendant never responded after the site visit or returned to perform the work (NYSCEF Doc. No. 105).

On November 24, 2020, Plaintiff received a notice of violation from the City of New York Department of Buildings ("DOB"), stating that the inspector "observed loose/improperly secured glass railing at 32nd floor roof" and directing Plaintiff to inspect and evaluate all glass railings at all exposures in the building (NYSCEF Doc. No. 106, DOB Notice; NYSCEF Doc. No. 107). Presumably in response to the violation, Plaintiff informed Defendant that it would be hiring a non-party to repair the defects (NYSCEF Doc. No. 107). Following that, on December 30, 2020 Plaintiff entered into an agreement with non-party KJP Enterprise for repair work (NYSCEF Doc. No. 108).

In January 2021, Plaintiff commenced this action, interposing four causes of action against Defendant for breach of the Trade Contract, breach of contractual indemnity, common law

indemnification, and negligence. In its answer, Defendant interposed a counterclaim for failure to pay the full amount for the work performed, but this counterclaim was dismissed by the Court's Decision and Order of June 17, 2021 (NYSCEF Doc. No. 134, Decision, Love, J.).

Plaintiff now moves for summary judgment in its favor, alleging that the evidence conclusively demonstrates that Defendant failed to apply the SikaGlaze strictly in line with its specification. In opposition, Defendant maintains there are material issues of fact as to the cause of the alleged defects, pointing to the inspection conducted by Sika, which Defendant contends is inconclusive. Defendant further argues that the terms of the Trade Contract and Warranty bar Plaintiff's claims, as they were purportedly brought after the expiration of the guarantees therein.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). A cause of action for breach of contract requires a plaintiff to demonstrate "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010], *citing Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [2007]).

Here, the evidence presented by Plaintiff does not eliminate all material issues of fact as to Defendant's breach of the Trade Contract. The evidence submitted by Plaintiff, namely letters from its consultant Socotec and from the sealant's producer, Sika, were inconclusive as to the cause of the issues with the sealant. Socotec attributes the defects to Defendant's workmanship, while Sika indicates that the age and contamination of the samples prevented testing using

"common analytical methods" and that the results "provide a tendency rather than scientifically or forensically proven facts" (NYSCEF Doc. No. 130, Sika's Second Letter). The parties further dispute when certain weather barriers were removed, and whether that impacted the SikaGlaze curing process (NYSCEF Doc. No. 153, Moss's Affidavit ¶¶ 2-3; NYSCEF Doc. No. 157, Socotec's Second Affirmation ¶¶ 4-10). Additionally, Defendant's officer states that Defendant did not receive any complaints in the nearly three years between the completion of the work and commencement of the action, and that no issues were found by DOB in granting certificates of occupancy or by Plaintiff or HMC in prior inspections (NYSCEF Doc. No. 153, Moss's Affidavit, ¶ 5).

Defendant further argues the guarantee in the Trade Contract and Warranty preclude Plaintiff from obtaining the relief sought in this action. This argument is unavailing. The Trade Contract provides that Defendant guarantees that "for a period of one (1) year after acceptance of Work . . . Work shall be free from defects in workmanship, materials and equipment, and that equipment furnished hereunder shall develop ratings, capacities and characteristics specified" (Trade Contract ¶ 22.1). The Warranty provides that with respect to the balconies and terrace rails, for a period of "12 months on labor, TBD length on material per contract docs," Defendant warrants the work and "shall remove, replace and/or repair at our own expense and the convenience of the owner any failed component of the balconies and terrace railings per our scope of work/fabrication/installed by" (Warranty). Neither of these guarantees can be read as limiting Plaintiff's ability to assert a breach of contract claim against Defendant after the one-year period.

Since the causes of action for contractual and common law indemnity and negligence are based on the allegation that Defendant failed to apply SikaGlaze in accordance with its

specification, the issues of fact discussed herein also preclude summary judgment on these causes of action.

Plaintiff's motion to strike Defendant's trial by jury demand is granted, given the waiver set forth in the ¶ 25.7.1 of the Trade Contract, which was not modified by the Reinstatement Letter.

Accordingly, it is hereby

ORDERED that Plaintiff's motion to strike Defendant's demand for trial by jury is granted and this demand is stricken, and the matter shall proceed to trial without jury (Motion Seq. 004); and it is further

ORDERED that Plaintiff's motion for summary judgment is denied (Motion Seq. 005).

All other relief sought is denied. This constitutes the Decision and Order of the Court.

4/10/2026
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE