

**Vasquez v Kaufman Astoria Studios, Inc.**

2026 NY Slip Op 31685(U)

February 18, 2026

Supreme Court, Queens County

Docket Number: Index No. 717457/2019

Judge: Maurice E. Muir

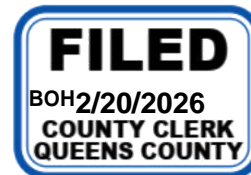
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR  
Justice



JOHNATHAN L. GUEVARA VASQUEZ,

Plaintiff,

-against-

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA  
STUDIOS INCORPORATED, ASTORIA STUDIOS  
LIMITED PARTNERSHIP, ASTORIA STUDIOS  
LIMITED PARTNERSHIP II, ASTORIA ON  
STAGE, LLC, URBAN ATELIER GROUP, LLC,  
THE J CONSTRUCTION CO LLC and  
W.J. CONTRACTING,

Defendants.

IAS Part - 42

Index No.: 717457/2019

Motion Date: 8/22/24

Motion Cal. No. 18

Motion Seq. No. 3

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA  
STUDIOS LIMITED PARTNERSHIP, ASTORIA  
STUDIOS LIMITED PARTNERSHIP II, ASTORIA  
ON STAGE, LLC, and URBAN ATELIER GROUP,  
LLC,

Third-Party Plaintiffs,

-against-

RSC GROUP L.L.C.,

Third-Party Defendant.

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA  
STUDIOS LIMITED PARTNERSHIP, ASTORIA  
STUDIOS LIMITED PARTNERSHIP II, ASTORIA  
ON STAGE, LLC, and URBAN ATELIER GROUP,  
LLC,

Second Third-Party Plaintiffs,

-against-

RIGHT AWAY ELECTIC LLC,

Second Third-Party Defendant.

The following electronically filed (“EF”) documents read on this motion by Astoria On Stage, LLC (“AOS”) and Urban Atelier Group, LLC (“UAG”) (collectively, the “movants”) for an order: 1) pursuant to CPLR § 3212, granting Defendants/Third-Party Plaintiffs Astoria On Stage, LLC and Urban Atelier Group, LLC partial summary judgment on liability against Third-Party Defendant RSC GROUP LLC on Defendants/Third-Party Plaintiffs’ third-party cause of action sounding in contractual indemnity and setting that matter down for a hearing on damages including reimbursement for past and future attorneys’ fees and expenses incurred for which contractual indemnity is warranted; and 2) granting such other relief and further this court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation in Support-Exhibits-Service.....	EF 335 – 370
Affirmation in Opposition-Exhibits.....	EF 380 – 383
Reply Affirmation-Exhibits-Service.....	EF 384 – 389
RSC Affirmation in Opposition.....	EF 390

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Johnathan L. Guevara Vasquez (“Mr. Vasquez” or “plaintiff”) allegedly sustained at a site known as ‘Kaufman Astoria Studios N & O’, which is located at 36-02 34th Avenue, Astoria, New York. By way of background, on or about February 27, 2017, Astoria on Stage is the owner of the subject premises, who entered into a contract with UAG to provide construction management services for the project. Thereafter, on or about June 5, 2017, UAG entered into a subcontract with the plaintiff’s employer (i.e., RSC Group, LLC (“RSC”)), who agreed to perform masonry work at the construction site. The plaintiff alleges that on March 19, 2019, he was injured when a round metal object fell from above the location where he was working and struck the blade of the electric saw, severing his right thumb. As a result, on October 14, 2019, Plaintiff commenced this action based upon violation of Labor Laws §§§ 240 (1), 241 (6), and 200 and common-law

negligence, *inter alia*. On January 22, 2020, Kaufman, Astoria Studios, Astoria Studios II, Astoria on Stage, and UAG commenced a third-party action against RSC alleging claims for contractual indemnification, common-law indemnification, contribution, and breach of contract. Moreover, on November 30, 2020, Kaufman, Astoria Studios, Astoria Studios II, Astoria on Stage, and UAG instituted a second third-party action against Right Away Electric LLC (“RAE”) alleging claims for contractual indemnification, common-law indemnification, contribution, and breach of contract. Additionally, pursuant to a stipulation executed by the parties dated March 29, 2021, the action against Kaufman, Astoria Studios, Astoria Studios II, and The J Construction Co LLC (“J Construction”) and all claims, counterclaims, cross-claims, and third-party claims brought by Kaufman, Astoria Studios, Astoria Studios II, and J Construction were voluntarily discontinued.

Now, AOS and UAG seek partial summary judgment on the issue of liability against RSC sounding in contractual indemnity, *inter alia*. In support of the instant motion, the movants argue that they established their entitlement to a conditional judgment on the issue of indemnity against RSC, pending the determination of the plaintiff’s action against them because where there was no showing that the defendants directed or controlled the plaintiff’s work; and the evidence indicated that RSC was solely responsible for directing the plaintiff’s work. In opposition, the plaintiff argues the following: a) UAG was responsible to supervise site safety, implement all safety procedures for the project, stop work performed unsafely, terminate subcontractors “and cause all the Work to be finished by whatever means, method or agency which UAG [may choose],” and demand subcontractors correct work not performed to specification; b) UAG acknowledged allowing RSC to set the saw on a makeshift table of pallets without having submitted a “set up plan”; c) the court should reject the affidavits of Joseph Carzzarella (“Carzzarella”) and Steven Wu (“Wu”) because the defendants failed to disclose them as witnesses during discovery; d) Carzzarella and Wu were not present when the plaintiff was injured; e) Carzzarella and Wu failed to rule out falling metal associated with overhead steel decking both witnesses acknowledged was present; f) Carzzarella and Wu affidavits are conflict with George H. Pfreunds Schuh, P.E expert opinion, etc.

It is well settled law that “[a] party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances” (*De Souza v. Empire Tr. Mix. Inc.*, 155 AD3d 605, 606 [2d Dept 2017] citing *Cuellar v. City of New York*, 139 AD3d 996, 998

[2d Dept 2016] [internal quotation marks omitted]; see *Hooper Assoc. v. AGS Computers*, 74 NY2d 487, 491-492 [1989]; *Dos Santos v. Power Auth. of State of N.Y.*, 85 AD3d 718, 722 [2d Dept 2011]; *George v. Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]; *Cedillo v. Nautilus Realty Limited Partnership*, 219 AD3d 1300 [2d Dept 2023]; *Mas v. Two Bridges Association by National Kinney Corp.*, 75 NY2d 680 [1990]; *Roger v. Dorchester Assocs.*, 32 NY2d 553 [1973]). In addition, “[a] party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor” (*Bellefleur v. Newark Beth Israel Med. Ctr.*, 66 AD3d 807, 808 [2d Dept 2009] [internal quotation marks omitted]; see *Shea v. Bloomberg, L.P.*, 124 AD3d 621, 622 [2d Dept 2015]; *Cedillo v. Nautilus Realty Limited Partnership*, 219 AD3d 1300 [2d Dept 2023]).

Under the Subcontract between UAG and RSC, Third-Party Defendant RSC agrees to indemnify, defend, save and hold harmless Defendants/Third-Party Plaintiffs ASTORIA and UAG [Exhibit “CC”; Emphasis added]:

8.1 To the fullest extent permitted by law and to the extent not caused in whole or in part by the negligence of a party to be indemnified herein, the Subcontractor shall indemnify, defend, save and hold harmless Urban Atelier Group, the Owner, and their respective members, partners, parents, affiliates, agents, officers, employees, landlords, sublandlords, property managers, tenants, joint venturers, joint ventures, licensees, invitees, other contractors or subcontractors, and anyone else acting for or on behalf of any of them and any other indemnitee required under the General Contract or others reasonably requested to be named, whether or not Subcontractor has a direct contract with any indemnitee (herein collectively called "Indemnitees"), from and against any and all claims, suits, subpoenas, liabilities, losses, obligations, damages, penalties, claims, costs, charges, losses of use, business interruption and expenses (whether or not groundless), including without limitation reasonable attorneys' fees, settlement costs or expenses, and court costs related thereto or in enforcement of the indemnity obligations hereunder ("Claims"), which may be imposed upon or incurred by or asserted against Indemnitees arising out of or related to any of the following: (i) the Subcontractor's failure to perform any covenant or agreement under this Subcontract, (ii) the Work (including without limitation any extension, modification, or change to the Work, by change order or otherwise) or the preparation or performance of such Work, including claims attributable to bodily injury or death to persons or damage to property, or (iv) the acts or omissions of Subcontractor or any person or entity acting on its behalf. As used in this Article 8, the term "Subcontractor" shall include its sub-subcontractors of any tier. Without limiting the generality of the foregoing, Claims shall include all liability, damages, loss, claims, demands, proceedings and/or actions on account of personal injury, death, including bodily injury or death of any employee or agent of Subcontractor, including legal fees and disbursements, fines, property loss, workers' compensation, economic loss, trademark, copyright or patent

infringement, unfair competition or infringement of any other so called "intangible" property rights, based or claimed to be based upon the alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Indemnitees whether or not such claims are based upon contractual, tort or other liability of any Indemnitee, contractor, subcontractor or any other entity or persons. To the extent permitted by law, it is expressly understood and agreed that the indemnity contained in this paragraph covers claims by Subcontractor's employees and that Subcontractor expressly waives any defense to this indemnification obligation which may arise under the Workers' Compensation Act of any State. The obligations under this section shall include indemnification against liability claims from non-parties as well as claims brought by any Indemnitee against Urban Atelier Group or brought by any Indemnitee, including Urban Atelier Group, against Subcontractor for the enforcement of any term within the Agreement.

\* \* \* \*

8.3 The Subcontractor agrees that it shall bear any expense, whether incurred or paid, of any Indemnitee because of any Claim or other matter indemnified against hereunder, including any judgment that may be entered against Indemnites, reasonable attorneys' fees and court costs arising from or in the defense of any such claim and incurred in enforcing this Article. If any such claim has not been settled or discharged when the Work is finished, final settlement between Urban Atelier Group and the Subcontractor and final payment of the Subcontract Price and the acceptance of the Work shall be deferred until any such claim is paid or settled or the Subcontractor provides a bond, acceptable to Urban Atelier Group, in its sole discretion, to satisfy such claim. In no way shall this provision supersede or modify the otherwise applicable language of Paragraph 2.4. At the request of any Indemnitee, the Subcontractor, at its own expense, shall assume the defense, on behalf of such Indemnitee, of any such claim; provided, however, that any attorney employed in such defense must be satisfactory to such Indemnitee. Subcontractor's failure to pay an expense related to its obligations under this Article 8 when due without additional penalty or interest, shall constitute consent for Urban Atelier Group, in its sole discretion, to deduct such expenses from any then outstanding payment or any payment thereafter due Subcontractor without Change Order or other further action of Subcontractor.

Here, the movants failed to establish its entitlement to partial summary judgment on the theory contractual indemnification, because it failed to prove itself free from negligence. In facts, the movant failed to adequately address the plaintiff's allegations about the falling metal associated with overhead steel decking. (*Bellefleur v. Newark Beth Israel Med. Ctr.*, 66 AD3d 807, 808 [2d Dept 2009] [internal quotation marks omitted]; see *Shea v. Bloomberg, L.P.*, 124 AD3d 621, 622 [2d Dept 2015]; *Cedillo v. Nautilus Realty Limited Partnership*, 219 AD3d 1300 [2d Dept 2023]). Moreover, the court finds that there exists a quintessential battle of the experts and such battles are best left for a jury's resolution and not this Court on

papers. “Where, as here, a plaintiff’s expert affidavit ‘squarely opposes’ the affirmation of the defendants’ expert, the result is ‘a classic battle of the experts that is properly left to a jury for resolution’ ” (*Mason v. Adhikary*, 159 AD3d 1439 [4<sup>th</sup> Dept 2018]; *Nowelle B. v. Hamilton Med. Inc.*, 177 AD3d 1256 [4<sup>th</sup> Dept 2019]; *Cerrone v. North Shore-Long Island*, 197 AD3d 449 [2d Dept 2021]; *Tinao v. City of New York*, 112 AD2d 363 [2d Dept 1985]; *Cummings v. Brooklyn Hosp. Ctr.*, 147 AD3d 902 [2d Dept 2017]; *Cassagnol v. Williamsburg Plaza Taxi*, 234 AD2d 208 [1<sup>st</sup> Dept 1996]).

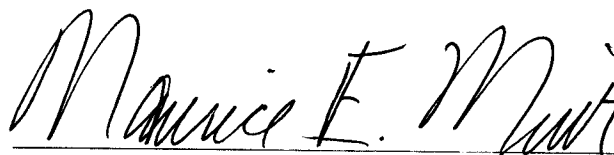
Accordingly, it is hereby

ORDERED, that Astoria On Stage, LLC and Urban Atelier Group, LLC’s motion for summary judgment, pursuant to CPLR § 3212, is denied in its entirety; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon the parties, via first class mail email and NYSCEF, on or before March 20, 2026.

The foregoing constitutes the Decision and Order of the court.

Dated: February 18, 2026  
Long Island City, New York

  
MAURICE E. MUIR, J.S.C.

