

**Thakur v Ahead Inc.**

2026 NY Slip Op 31758(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 152975/2025

Judge: Kathleen Waterman-Marshall

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31M

Justice

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MONISH THAKUR,

Plaintiff,

- v -

AHEAD INC, DAVID HOFRIETER, JOSEPH BARBARELLO,
HERMAN OESMAN,

Defendant.

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INDEX NO. 152975/2025

MOTION DATE 06/16/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 27, 28, 29, 30

were read on this motion to/for DISMISS

Upon the foregoing documents and following on-the-record oral argument today, the motion by defendants Ahead Inc. ("Ahead"), David Hofrieter ("Mr. Hofrieter"), and Joseph Barbarello ("Mr. Barbarello"), to dismiss the cross-claims of defendant Herman Oesman ("Mr. Oesman") for indemnification and contribution, is granted.

Brief Background

Plaintiff Monish Thakur ("Mr. Thakur"), a former employee of Ahead, commenced this action against Ahead, Mr. Hofrieter (his alleged supervisor), Mr. Barbarello and Mr. Oesman (his co-workers), to recover damages for, among other things, alleged employment discrimination and assault. Briefly, in his complaint (NYSCEF Doc. No. 1), Mr. Thakur alleges that he experienced discrimination, harassment, and threatening conduct - including derogatory comments about his religion, race, and national origin, from his co-workers Barbarello and Oesman - and that he advised and complained of this conduct to his supervisors, including Mr. Hofrieter. Mr. Thakur also alleges that, on March 21, 2024, he was assaulted by Mr. Oesman, for which he sustained personal injuries and that Mr. Oesman was arrested for the assault. According to the complaint, Ahead terminated Mr. Thakur's employment on May 1, 2024 as a result of discriminatory and retaliatory practices.

Based upon those core facts, Mr. Thakur alleges causes of action, in chronological order, for: (1) discrimination, based upon national origin in violation of New York State Human Rights Law § 296; (2) retaliation (no specific statute cited); (3) assault, as against Mr. Oesman only; (4) negligent hiring, as against Ahead only; (5) retaliation, against Ahead, Hofrieter, and Barbarello

1 Neither plaintiff, Mr. Thakur, or defendant, Mr. Oesman, appeared at the oral argument. However, the argument was put on the record, the transcript of which will be So-Ordered and uploaded to NYSCEF.

only (no specific statute cited); and (6) whistleblower claims, against Ahead only as employer, in violation of New York Labor Law §§190, 196-d, 615(5), 652, and 740.

Mr. Oesman served a “Verified Answer, Counterclaims and Cross-Claims” (“the Answer”; NYSCEF Doc. No. 5), in which he denies the material allegations of Mr. Thakur’s complaint, raises twenty-two affirmative defenses, and asserts counterclaims for contribution, assault and battery against Mr. Thakur. Mr. Oesman also asserts two cross-claims against Ahead, Mr. Hofrieter, and Mr. Barbarello for indemnification and for contribution. In pertinent part, the cross-claims read:

If Plaintiff sustained any of the damages alleged in the Complaint, said damages were sustained, in whole or in part, because of the negligence, intentional tort(s) and/or other wrongful act(s) of one or more of the other Defendants herein, and Oesman is entitled to indemnification from said other Defendant(s, and each of them), for/toward each and every part of any judgment that Plaintiff may obtain against Oesman.

If Plaintiff sustained any of the damages alleged in the Complaint, said damages were sustained, in whole or in part, because of the negligence, intentional tort(s) and/or other wrongful act(s) of one or more of the other Defendants herein, and Oesman is entitled to contribution from said other Defendant(s, and each of them), for/toward each and every part of any judgment that Plaintiff may obtain against Oesman, and any sum which Plaintiff may be found entitled to recover from Oesman should accordingly be reduced in proportion to all such other Defendants’ aggregate, as well as each such other Defendant’s individual, share of responsibility for such culpable conduct.

### **Discussion**

At the outset, it is important to clarify which causes of action in Mr. Thakur’s complaint are alleged against Mr. Oesman in order to consider the merit of his indemnification and contribution cross-claims against his co-defendants. Mr. Thakur’s fourth cause of action, for negligent hiring, and sixth cause of action, the whistleblower claim, are asserted against Ahead only. The first cause of action, for discrimination, is alleged under NYSHRL § 296(1)(a). The Court presumes that the second and fifth causes of action, each for retaliation, are also alleged under the NYSHRL (specifically, NYSHRL § 296[1][e]) because they are based upon prior allegations of the complaint and do not otherwise identify the statute upon which retaliation is based.

Discrimination and retaliation claims brought under the NYSHRL lie against the employer or a supervisor, but not against a co-worker (*see generally Livingston v City of New York*, 563 FSupp3d 201, 256 [SDNY 2021]) [“An individual defendant may be liable as an ‘employer’ under the NYSHRL ‘when that individual has an ownership interest in the relevant organization or the power to do more than carry out personnel decisions made by others,’ *i.e.*, the

power to hire or fire.”)]. Mr. Thakur’s complaint does not allege that Oesman had an ownership interest in Ahead or any supervisory power over Mr. Thakur; to the contrary, the complaint alleges that Mr. Oesman is merely a co-worker. Thus, the discrimination and retaliation causes of action do not lie against Mr. Oesman.

Given the foregoing, Mr. Thakur’s complaint alleges only a single cause of action against Mr. Oesman, the third cause of action for assault. It therefore follows that Mr. Oesman’s indemnification and contribution cross-claims can only be based upon his alleged liability to Mr. Thakur for assault.

However, Mr. Oesman does not state a cross-claim for contractual or common-law indemnification for any damages Mr. Thakur may recover on his assault claim. Mr. Oesman does not allege any written contract pursuant to which Ahead, Hofrieter, or Barbarello agreed to indemnify him (*see O’Donnell v A.R. Fuels, Inc.*, 155 AD3d 644, 645 [2d Dept 2017] [“The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances”]). The fact that Ahead employed Mr. Oesman and paid him a salary and benefits in exchange for his work, is insufficient to establish any basis for contractual indemnification.

Even if Mr. Oesman properly alleged that he had a contract containing an indemnification provision (and he did not), his indemnification cross-claim still fails as he did not plead that he was free from negligence in the March 21, 2024 assault for which Mr. Thakur seeks damages (*see Mejia v Cohn*, 188 AD3d 1035, 1038 [2d Dept 2020] [“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.”]). To the contrary, Mr. Oesman admits, in his counterclaim against Mr. Thakur, that only those two parties were involved in the assault and that Mr. Oesman was arrested by the police after Mr. Thakur identified him.

Similarly, to the extent that Mr. Oesman’s cross-claim seeks common law indemnity from Ahead, Hofrieter, and Barbarello for any damages Mr. Thakur sustained in the March 21, 2024 assault incident, the cross-claim fails because it does not allege that he is free from fault (*see Desena v North Shore Hebrew Academy*, 119 AD3d 631, 635 [2014] [“Since the predicate of common-law indemnity is vicarious liability without actual fault on the part of the proposed indemnitee, it follows that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine”]).

Contribution is permitted only between parties who are subject to liability for damages for the same injury (CPLR § 1401). “The critical requirement for apportionment under... CPLR article 14 is that the breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought” (*Nassau Roofing & Sheet Metal Co. Inc. v Facilities Dev. Corp.*, 71 NY2d 599 [1988]; *Sommer v Fed. Signal Corp.*, 79 NY2d 540, 556-557 [1992] [contribution ensures injured plaintiff’s “loss is more equitably distributed among the culpable parties, according to their degree of fault. The goal of contribution, as announced in *Dole* and applied since, is fairness to tortfeasors who are jointly liable”]). As Mr. Thakur does not allege that Ahead, Hofrieter, or Barbarello had part in the assault for which he seeks damages in the third cause of action – again, as noted, Mr. Oesman alone was arrested for the assault upon Mr. Thakur’s

identification – contribution for the assault claim is unavailable to Mr. Oesman (*see generally, Gonzales v Jacoby & Meyers*, 258 AD2d 560 [2d Dept 1999] [law firm could not seek contribution from third-party for malpractice claim where the third-party was not responsible for the malpractice]).

The Court declines to grant Mr. Oesman leave to replead his cross-claims for indemnification and contribution, as a proper motion, and showing, under CPLR 3025(b) is not made.

Accordingly, it is hereby

**ORDERED** that the motion by defendants Ahead Inc., Mr. Hofrieter, and Mr. Barbarello, to dismiss Mr. Oesman’s indemnification and contribution cross-claims, is granted and the cross-claims are dismissed; and it is further

**ORDERED** that this matter is scheduled for a **Preliminary Conference on June 3, 2026 at 10:00 a.m.** Counsel are reminded of the Part 31 Rules, particularly those governing conferences and conference orders.

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4/21/2026

DATE

KATHLEEN WATERMAN-MARSHALL,  
J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: