

64 Univ. Place LLC v Ancora Engg. PLLC

2026 NY Slip Op 32014(U)

May 11, 2026

Supreme Court, New York County

Docket Number: Index No. 152027/2025

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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64 UNIVERSITY PLACE LLC, GUIDEONE
NATIONAL INSURANCE COMPANY AS SUBROGEE OF
64 UNIVERSITY PLACE LLC,

Plaintiff,

INDEX NO. 152027/2025

MOTION DATE 05/08/2026

MOTION SEQ. NO. 008 009

- v -

ANCORA ENGINEERING PLLC,

Defendant.

**DECISION + ORDER ON
MOTION**

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ANCORA ENGINEERING PLLC

Plaintiff,

Third-Party
Index No. 595907/2025

-against-

THE CASA GROUP, INC., CNY GROUP, BAUER
STRUCTURES INC., EARTH CONSTRUCTION SERVICES,
SALTUS CONSTRUCTION MONITORING SERVICES, EXCEL
RESTORATION INC., CICHETTI ENGINEERING, PLLC,
FENAGH ENGINEERING AND TESTING, ARGO REAL
ESTATE, JOHN DOES, XYZ COMPANIES 1-30

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 107, 108, 109, 110, 121, 133, 134, 135, 136, 141, 142, 143

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 111, 112, 113, 114, 115, 116, 117, 118, 120, 137, 138, 139, 140, 152, 153, 154, 155, 156

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 008 and 009 are consolidated for disposition. Third-party defendant Bauer Structures Inc. (“Bauer”)’s motion to dismiss is denied. Third-party defendant CNY Group (“CNY”)’s motion (MS009) to dismiss the third-party complaint is denied

Background

Plaintiffs bring this case to recover damages arising out of a fault construction project at the property plaintiff 64 University Place LLC owns in Manhattan. The project entailed the construction of a new fifteen-story mixed-use residential condo with 28 residential units. They claim that defendant Ancora Engineering PLLC (“Ancora”) did a faulty job that resulted in required repairs to an adjacent property, Ancora’s work had to be corrected and there were construction delays. Ancora was hired to design plans, such as the underpinning design, layout and be the engineer of record. The insurer plaintiff seeks over \$1.3 million that it allegedly paid to the plaintiff owner to settle a claim.

Bauer moves (MS008) to dismiss on the ground that plaintiffs did not cite Bauer in the operative complaint and that it never had a contract with the property owner. It emphasizes that defendant Ancora is accused of affirmative negligence and, therefore, Bauer cannot be held liable under a theory of common law indemnification or contribution. Bauer argues that Ancora is barred from asserting a third-party claim against it.

CNY moves (MS009) to dismiss on many grounds. It contends that the operative complaint does not mention CNY at all and that the third-party complaint only contains vague references to its role in this case. CNY emphasizes that there are no allegations about any acts or omissions by CNY that could constitute negligence. It observes that because there are no contractual obligations between CNY and Ancora, the only remaining causes of action for common law indemnification and contribution fail because Ancora only offers conclusory assertions against it.

CNY argues that even if Ancora were to seek leave to amend, the claims would fail because Ancora was sued solely for its own wrongdoing and so the imposition of any liability

against Ancora would necessarily mean it was negligent. It argues that there is no way to construe a potential Ancora obligation to pay damages as vicarious liability which might raise the possibility of a common law indemnification claim. CNY also argues that the common law contribution claim is precluded by plaintiff's complaint, which seeks purely economic damages.

In opposition, Ancora contends that it was sued due to alleged negligence regarding excavation engineering services in that soil disturbance and movement resulted in physical damage to a neighboring property. Ancora contends that CNY was the general contractor and that it oversaw the performing of the work, including the foundation drilling and excavation. With respect to Bauer, Ancora argues that Bauer performed foundation drilling at the same time it was excavating for the underpinning. It alleges that Bauer dug the underpinning pits larger than they should have been and this caused the damages plaintiffs about which plaintiffs complain.

Discussion

“Under CPLR 3211(a)(7), pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible favorable inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory” (*CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556, 146 NYS3d 17 [1st Dept 2021] [internal citation omitted]).

“CPLR Section 1007 permits a defendant to implead a person not a party who is or may be liable to him for all or part of the plaintiff's claim against him into the primary action by instituting a third-party action. Consistent with CPLR Section 3014, the third-party complaint may contain alternative, hypothetical or inconsistent causes of action and such a pleading will be sustained as long as the facts alleged do not necessarily preclude liability on the primary defendant's part. Impleader is available even if the impleaded party owes no duty whatsoever to

the primary plaintiff. However, the liability sought to be imposed upon a third-party defendant must arise from or be conditioned upon the liability asserted against the third-party plaintiff in the main action” (*BBIG Realty Corp. v Ginsberg*, 111 AD2d 91, 92-93, 489 NYS2d 224 [1st Dept 1985] [internal quotations and citations omitted]).

Here, Ancora clearly stated a cognizable theory of recovery in the third-party complaint as to both Bauer and CNY. Ancora alleges that it was merely the engineer tasked with coming up with plans and that the actual work was overseen by CNY and that defendant Bauer did some of the excavation that caused the damage about which plaintiff complains. There is a plausible scenario in which some or all of the damage was caused by CNY’s and Bauer’s faulty implementation of the plans made by Ancora. Simply put, it is entirely reasonable for an engineering firm sued by a property owner for damages arising out of a construction project to implead the general contractor and a key contractor for that project. Discovery or a fact finder will determine whether the plans were faulty, the implementation of those plans were faulty or some combination of both – but for now, it make sense for the general contractor and the driller to be part of this case.

Moreover, the fact that plaintiff quantified its claimed damages does not render them purely economic as there is no question that this case involves factual issues concerning soil movement and property damage. That plaintiff has formulated its complaint in a certain way does not restrict the broad ability of a third-party plaintiff to bring a third-party complaint.

Accordingly, it is hereby

ORDERED that Bauer Structures Inc.’s motion (MS008) to dismiss is denied and it shall answer pursuant to the CPLR; and it is further

ORDERED that third-party defendant CNY Group’s motion (MS009) to dismiss is denied and it shall answer the third-party complaint pursuant to the CPLR.

See NYSCEF Doc. No. 128 regarding the next conference.



5/11/2026

DATE

ARLENE P. BLUTH, 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