

Ryan v West 135th Apts., LLC

2024 NY Slip Op 34364(U)

December 11, 2024

Supreme Court, New York County

Docket Number: Index No. 155843/2021

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 08

-----X
SHIRLEY RYAN,

Plaintiff,

- v -

WEST 135TH APARTMENTS, LLC, ROSE COMMUNITY
MANAGEMENT, LLC, HP WEST 135 HOUSING
DEVELOPMENT FUND COMPANY, INC., NYC
PARTNERSHIP HOUSING DEVELOPMENT FUND
COMPANY, INC., HOUSING PARTNERSHIP
DEVELOPMENT CORPORATION,

Defendant.
-----X

INDEX NO. 155843/2021

MOTION DATE 08/13/2024,
10/08/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

WEST 135TH APARTMENTS, LLC, ROSE COMMUNITY
MANAGEMENT, LLC, HP WEST 135 HOUSING
DEVELOPMENT FUND COMPANY, INC., NYC
PARTNERSHIP HOUSING DEVELOPMENT FUND
COMPANY, INC., HOUSING PARTNERSHIP DEVELOPMENT
CORPORATION

Plaintiff,

-against-

Defendant.
-----X

Third-Party
Index No. 595248/2023

HON. LYNN R. KOTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 101

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM
TRIAL CALENDAR

Upon the foregoing documents, these motions are consolidated for the courts consideration and
decided as follows.

155843/2021 RYAN, SHIRLEY vs. WEST 135TH APARTMENTS, LLC ET AL
Motion No. 002 003

In motion sequence 2, fourth-party plaintiff Broadway Builders, LLC (Broadway) moves for an order, pursuant to CPLR § 3215, granting it a default judgment against fourth-party defendant City Construction NY, Inc. (CCNY) declaring that Broadway is entitled to full common law and contractual indemnification from CCNY. That motion has been submitted without opposition despite proof of service and an opportunity to respond. Therefore, the motion is considered without opposition.

In motion sequence 3, Broadway also seeks an order vacating plaintiff's note of issue or alternatively extending the deadline to file a motion for summary judgment. Broadway explains that defendants/third-party plaintiffs have not provided responses to their demands. However, since the motion was made, defendants/third-party plaintiffs have provided various responses but still owe a response to Broadway's demand for a bill of particulars. Plaintiff opposes Broadway's motion to vacate note of issue.

Broadway's motion for a default judgment is granted for the reasons that follow. While a default in answering the complaint constitutes an admission of the factual allegations therein, and the reasonable inferences which may be made therefrom (*Rokina Optical Co., Inc. v. Camera King, Inc.*, 63 NY2d 728 [1984]), plaintiff is entitled to default judgment in its favor, provided it otherwise demonstrates that it has a prima facie cause of action (*Gagen v. Kipany Productions Ltd.*, 289 AD2d 844 [3d Dept 2001]). An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim (*Zelnick v. Biderman Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; and CPLR §

3215[f]) or a complaint verified by a person with actual knowledge of the facts surrounding the claim (*Hazim v. Winter*, 234 AD2d 422 [2d Dept 1996]; and CPLR § 105 [u]).

Broadway has established on default that CCNY performed professional services at the underlying construction project pursuant to a subcontract between it and CCNY which obligated CCNY to indemnify and hold harmless Broadway, amongst others, for claims arising out of CCNY's work under the subcontract. Further, Broadway has established that plaintiff's personal injury claims in this action arises out of or results from CCNY's performance of the work in repairing the subject steps.

“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’” (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], quoting *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]; see also *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). However, “General Obligations Law § 5-322.1 prohibits and renders unenforceable any promise to hold harmless and indemnify a promisee which is a construction contractor or a landowner against its own negligence” (*Kilfeather v Astoria 31st St. Assoc.*, 156 AD2d 428 [2d Dept 1989]).

Meanwhile, “[t]o establish a claim for common-law indemnification, ‘the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to

the causation of the accident” (*Perri v Gilbert Johnson Enters., Ltd.*, 14 AD3d 681, 684-685 [2d Dept 2005], quoting *Correia v Professional Data Mgt.*, 259 AD2d 60, 65 [1st Dept 1999]).

On this record, the court finds that Broadway has demonstrated a prima facie cause of action for contractual indemnification against CCNY. Therefore, the motion for a default judgment must be granted.

Turning to motion sequence 3, it is granted only to the extent that defendants/third-party plaintiffs are directed to provide a response to Broadway’s demand for a bill of particulars within 15 days. The motion is otherwise denied because Broadway has received responsive discovery from defendants/third-party plaintiffs since the motion was made, the outstanding demands have been pending for a significant period of time during which Broadway did not take sufficient steps to ensure defendants/third-party plaintiffs’ compliance, and Broadway has otherwise failed to demonstrate that an extension of the deadline to file a motion for summary judgment is necessary.

Accordingly, it is hereby **ORDERED** that motion sequence 2 is granted to the extent that , fourth-party plaintiff Broadway Builders, LLC is granted a default judgment against fourth-party defendant City Construction NY, Inc. declaring that Broadway Builders, LLC is entitled to full common law and contractual indemnification from City Construction NY, Inc.; and it is further

ORDERED that motion sequence 3 is granted only to the extent that defendants/third-party plaintiffs are directed to provide a response to Broadway’s demand for a bill of particulars within 15 days; and it is further

ORDERED that motion sequence 3 is otherwise denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

12/11/2024

DATE



LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN