

**RXR Main Owner LLC v Hudson Meridian Constr.
Group LLC**

2023 NY Slip Op 31532(U)

May 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653169/2022

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER, PART IAS MOTION 61EFM

Justice

Table with 2 columns: Case details (INDEX NO., MOTION DATE, MOTION SEQ. NO.) and Parties (RXR MAIN OWNER LLC, Plaintiff, HUDSON MERIDIAN CONSTRUCTION GROUP LLC, Defendant).

DECISION + ORDER ON MOTION

HUDSON MERIDIAN CONSTRUCTION GROUP LLC, Third-Party Plaintiff, - v - PG PRODUCTS OF NY, INC., THE LALO GROUP, INC., PAULUS, SOKOLOWSKI AND SARTOR, LLC, Third-Party Defendants.

HON. BARRY R. OSTRAGER

This is an action by RXR 587 Main Owner LLC ("RXR") against Hudson Meridian Construction Group LLC ("Hudson") in which the Complaint alleges, inter alia, that Hudson breached its contract with RXR by defectively installing waterproofing membranes at a 26-story, 28-unit residential building owned by RXR.

Hudson answered the Complaint and, thereafter, filed a Third-Party Complaint against various third-party defendants, including the architectural firm Paulus, Sokolowski and Sartor, LLC ("PSS"). NYSCEF Doc. Nos. 4, 7. Third-party defendant PG Products of NY, Inc. ("PG") answered the Third-Party Complaint on March 24, 2023.¹ Third-party defendant The Lalo

¹ Third-party defendant P.G. Products' answer originally asserted a counterclaim against third-party plaintiff Hudson, but subsequently withdrew that counterclaim pursuant to a Stipulation of Discontinuance as to Counterclaim of Third-Party Defendant PG. NYSCEF Doc. No. 46.

Group, Inc. (“Lalo”) answered the Third-Party Complaint on May 2, 2023. NYSCEF Doc. No. 48.

The architects moved to dismiss the Third-Party Complaint asserting that the PSS entity named in the Third-Party Complaint was incorrectly named and, much more importantly, that no claim could lie against PSS by Hudson for any liability or indemnification because, *inter alia*, RXR’s contract with Hudson provides that (NYSCEF Doc. No. 23, §3.6.1.2):

... The Architect [PSS] shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall ... not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

The contract between PXR and Hudson further provides that the Architect shall visit the site at appropriate intervals to the stage of construction, but that “the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.” NYSCEF Doc. No. 23, §3.6.2.1. PSS urges that, because PSS only contracted with RXR and has no contractual relationship with Hudson, PSS can have no indemnity obligations for the economic losses RXR seeks to recover against Hudson.

In response to PSS’ motion to dismiss the Third-Party Complaint, Hudson filed a cross-motion seeking leave to amend the Third-Party Complaint. The proposed Amended Third-Party Complaint does not appear to change the causes of action or allegations asserted against third-party defendants PG and Lalo. However, the proposed Amended Third-Party Complaint does add allegations and causes of action against both PSS and an entity named Paulus, Sokolowski and Sartor Engineering, P.C. (“PSS Engineering”), the entity that is purportedly the correct PSS

entity involved in the RXR project. NYSCEF Doc. No. 38. Hudson's proposed Amended Third-Party Complaint not only names PSS Engineering as a third-party defendant, but also attempts to plead around PSS's motion to dismiss by removing the claim for common law indemnity and contribution against PSS and instead asserting claims against PSS and PSS Engineering for professional malpractice and negligent misrepresentation under the theory that Hudson and the PSS entities were in quasi-privity with each other.² Consequently, however dubious the claims against the PSS entities may appear to be, Hudson's cross-motion to amend the Third-Party Complaint must be granted and the motion to dismiss by PSS must be denied. PSS' motion to dismiss is denied without prejudice.

Hudson shall efile the Amended Third-Party Complaint as a separate document within five days of this Order. Hudson shall serve the new party, PSS Engineering, with the Amended Third-Party Summons and Complaint within 7 days of this Order, with proof of service to be efiled as a separate document within 10 days of this Order. All Third-Party defendants, including the newly named PSS Engineering must respond to the Amended Third-Party Complaint by June 2, 2023.

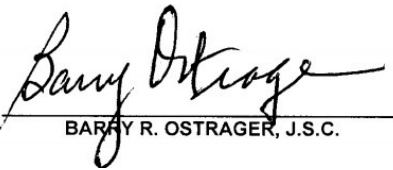
A Preliminary Conference is scheduled for June 27, 2023 at 11:00 a.m. The parties are directed to efile a letter containing dial-in access for the conference by June 9, 2023. The parties are directed to download the Preliminary Conference Order form from the Part 61 website. The parties are directed to meet and confer and complete the form with a Note of Issue deadline no

² In its memorandum in opposition to the motion to dismiss and in support of the cross-motion to amend, Hudson asserts, "In the event Hudson is granted leave to amend, it is respectfully submitted [PSS's argument for dismissal of Hudson's common law indemnity claim] becomes moot as Hudson has reframed its Amended Third-Party Complaint to plead two separate causes of action against [PSS] for professional malpractice and negligent misrepresentation." NYSCEF Doc. No. 40 at 15.

later than 22 months after the date of the Order and interim deadlines agreed to by the parties.

The parties are directed to efile the proposed Preliminary Conference Order with a request to So Order no later than June 9, 2023. If the proposed Preliminary Conference Order is acceptable, it will be So Ordered and no appearance will be necessary on June 27.

Dated: May 5, 2023


BARRY R. OSTRAGER, 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