

**Board of Mgrs. of the 432 Park Condominium v 56th
& Park (NY) Owner, LLC**

2023 NY Slip Op 33182(U)

September 13, 2023

Supreme Court, New York County

Docket Number: Index No. 655617/2021

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

-----X

BOARD OF MANAGERS OF THE 432 PARK
CONDOMINIUM, ON BEHALF OF THE INDIVIDUAL UNIT
OWNERS AND THE COMMERCIAL UNIT OWNERS,
BOARD OF MANAGERS OF THE COMMERCIAL
SECTION OF THE 432 PARK CONDOMINIUM, BOARD OF
MANAGERS OF THE RESIDENTIAL SECTION OF THE
432 PARK CONDOMINIUM, ON BEHALF OF THE
INDIVIDUAL UNIT OWNERS,

Plaintiff,

- v -

56TH AND PARK (NY) OWNER, LLC,RYAN HARTER,
HARRY MACKLOWE,

Defendant.

-----X

56TH AND PARK (NY) OWNER, LLC

Plaintiff,

-against-

LEND LEASE (US) CONSTRUCTION LMB INC., SLCE
ARCHITECTS LLP, WSP USA BUILDINGS, INC. F/K/A, WSP
USA BUILDINGS, INC. F/K/A WSP CANTOR SEINUK
STRUCTURAL ENGINEERS, CGI NORTHEAST INC, ROWAN
DAVIES, IRWIN, INC., JENKINS AND HUNTINGTON, INC.,
VDA, INC.

Defendant.

-----X

HARRY MACKLOWE

Plaintiff,

-against-

432 PARK PROPERTIES INC.

Defendant.

-----X

INDEX NO. 655617/2021
MOTION DATE N/A
MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595204/2022

Second Third-Party
Index No. 595923/2022

LEND LEASE (US) CONSTRUCTION LMB INC.

Third Third-Party
Index No. 595956/2022

Plaintiff,

-against-

RAEL AUTOMATIC SPRINKLER COMPANY, INC., ASM
MECHANICAL SYSTEMS, A.S.R. ELECTRICAL
CONTRACTING, INC., CELTIC SHEETMETAL, INC.,
COMPONENT ASSEMBLY SYSTEMS, INC., IDA EXTERIOR
SYSTEMS, LLC, L.I.F. INDUSTRIES, INC., MAYRICH
CONSTRUCTION CORP., PARAMOUNT PLUMBING CO. OF
NY, INC., ROGER & SONS CONCRETE, INC., NICHOLAS &
GALLOWAY, INC., A&H CUSTOM MACHINE LTD., TAYLOR
DEVICES, INC., METROPOLITAN WALTERS, LLC,
SCHINDLER ELEVATOR CORPORATION, JOHN DOES

Defendant.

-----X

CELTIC SHEETMETAL, INC.

Fourth Third-Party
Index No. 595257/2023

Plaintiff,

-against-

INTERNATIONAL ASBESTOS REMOVAL, INC. F/K/A JOHN
GRANDO, INC., PREMIER INSULATION SERVICES CORP.,
PRECISION TEST AND BALANCE OF NY CORP.

Defendant.

-----X

MAYRICH CONSTRUCTION CORP.

Fifth Third-Party
Index No. 595301/2023

Plaintiff,

-against-

STARBRITE WATERPROOFING CO. INC., CIVETTA-
COUSINS JV, L.L.C.

Defendant.

-----X

ROGER & SONS CONCRETE, INC.

Sixth Third-Party
Index No. 595305/2023

Plaintiff,

-against-

FERRARA BROS. BUILDING MATERIALS CORP., DOKA
USA LTD., PERI FORMWORK SYSTEMS, INC., RETECH

SYSTEMS LLC, SAS STRESSTEEL, INC., THE CITY REBAR
 DETAILING, INC., HARRIS REBAR ATLANTIC, INC.,
 STARBRITE WATERPROOFING CO., INC., DYWIDAG-
 SYSTEMS INTERNATIONAL, USA, INC., FALCON STEEL
 COMPANY, INC., MEADOW BURKE, LLC, HILTI, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 011) 397, 398, 399, 400, 401, 402, 403, 404, 420, 446, 447, 448, 455, 484

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is

Third Third-Party Defendant, Schindler Elevator Corporation's ("Schindler") moves to dismiss that part of the second cause of action seeking common law indemnification and the fourth cause of action seeking contribution. Schindler has not moved to dismiss the first cause of action for breach of contract or that part of the second cause of action for contractual indemnification. Moreover, Lendlease has agreed to dismiss the third cause of action for negligence against Schindler without prejudice (see Lendlease Opp. Brief [EDOC 446] at fn. 3). Accordingly, the negligence claim is dismissed.

As for common law indemnification, it is dismissed without prejudice. Given the way the case is currently postured, if, as Lendlease describes (see opp. Brief [EDOC 446 at pg 6]), a jury finds the elevator and escalator defects were caused solely by Schindler, then Lendlease would simply be off the hook. Lendlease has not articulated how, given its role in the project vis a vis Schindler, it could ever be held strictly or vicariously liable for Schindler's activities. Therefore, Lendlease has failed to state a claim for common law indemnification. However, should the pleadings against Lendlease change, common law indemnification may become appropriate at that juncture.

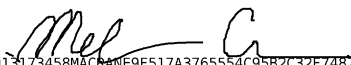
However, Lendlease has pled a proper claim for contribution. The Sponsor is seeking to hold Lendlease liable for faulty work that resulted in property damage. To the extent Schindler contributed to that property damage, it is on the hook for contribution, and the economic loss rule does not bar the cause of action (see *Seymour v. Hovnanian*, 211 A.D.3d 549, 557 [1st Dep't 2022]; *Sound Refrigeration & Air Conditioning, Inc. v. All City Testing & Balancing Corp.*, 84 A.D.3d 1349, 1350 [2d Dep't 2011]).

Accordingly, it is

ORDERED THAT Schindler's motion to dismiss that part of the second cause of action for common law indemnification and the third cause of action for negligence is granted and the motion is otherwise denied; and it is further

ORDERED THAT the remaining claims are severed and shall continue; and it is further

ORDERED THAT Schindler has 30 days from the e-filed date of this decision and order to answer the third third party complaint.


 20230913173458MACRANE9F517A3765554C95B2C32F74877DCA21

<u>9/13/2023</u> DATE			<u>MELISSA A. CRANE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE