

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 13

PRESENT : HON. MANUEL J. MENDEZ
Justice

-----X
IN RE 91ST STREET CRANE COLLAPSE LITIGATION:
-----X

JACK RIZZOCASIO,
Plaintiff,
-against-

Index No. 108088/2009
Motion Seq. No. 007

THE CITY OF NEW YORK, 1765 FIRST ASSOCIATES,
LLC, MATTONE GROUP CONSTRUCTION CO., LTD.,
DEMATTEIS CONSTRUCTION, LEON D. DEMATTEIS
CONSTRUCTION CORPORATION, and NEW YORK
CRANE & EQUIPMENT CORP.,

Defendants.

-----X
1765 FIRST ASSOCIATES, LLC,

Fifth Third-Party Plaintiff,

Fifth Third-Party Index No.
590801/2013

-against-

SORBARA CONSTRUCTION CORP.,

Fifth Third-Party Defendant.

-----X
AND ALL RELATED ACTIONS
-----X

Upon the oral motion of the Defendant/Fifth Third-Party Plaintiff 1765 First Associates, LLC (“1765 First”) seeking that the Court: (1) vacate its prior order on Motion Sequence No. 007, to the extent that the order granted 1765 First conditional contractual indemnification on its motion for summary judgment against Fifth Third-Party Defendant Sorbara Construction Corp. (“Sorbara”) and instead substitute a provision granting 1765 First full and unconditional contractual indemnification against Sorbara, based upon the law of the case as established at the

trial in the related action brought by the Estate of Donald Christopher Leo against James F. Lomma, et al. (“the *Leo* action”) (Index No. 117294/2008); and (2) grant 1765 First full and unconditional common-law indemnification against New York Crane & Equipment Corp. (“New York Crane”) based upon the law of the case as established by the trial and the jury’s verdict in the *Leo* action, and upon the arguments made in opposition to the motion by counsel for Sorbara and New York Crane, all as stated on the Record on September 22, 2015, and for the reasons stated by the Court on the Record following said oral argument on that same date (the arguments and decision on the Record being annexed to this Order), and based upon the arguments made on the record on July 8, 2015 in the *Leo* action, and for the reasons stated by the Court on the Record following said oral argument on that same date (the arguments and decision on the Record in the *Leo* action are contained in the trial transcript at 19881-19902, a copy of which is also annexed to this Order), it is hereby

ORDERED, that this Court’s order dated March 7, 2014 on Motion Sequence No. 007 is vacated to the extent that it granted 1765 First conditional contractual indemnification against Sorbara; and it is further

ORDERED, that 1765 First is granted full and unconditional contractual indemnification against Sorbara; and it is further

ORDERED, that 1765 First is granted full and unconditional common-law indemnification against New York Crane.

Dated: October ___, 2015

ENTER: _____

Manuel J. Mendez
J.S.C.

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART: 13
-----X
IN RE 91ST STREET CRANE COLLAPSE LITIGATION
Index No. 771000/2010
-----X

SIMEON ALEXIS, Index No. 105221/09
CHRISTOPHER DORAN, Index No. 110200/08
DANIEL ODDO, Index No. 111626/08
JACK RIZZOCASIO, Index No. 108088/09

Plaintiff,

-against-

THE CITY OF NEW YORK, et al,

Defendants.

-----X
PROCEEDINGS September 22, 2015
71 Thomas Street
New York, New York

B E F O R E:

HONORABLE MANUEL J. MENDEZ, Justice

A P P E A R A N C E S:

SACKS and SACKS, LLP
Attorneys for Plaintiffs
Doran, Oddo and Rizzocasio
150 Broadway, 4th Floor
New York, New York 10038
BY: DANIEL WEIR, ESQ.

PARKER WAICHMAN LLP
Attorneys for Plaintiff Alexis
6 Harbor Park Drive
Port Washington, New York 11050
BY: BRETT A. ZEKOWSKI, ESQ.

FABIANI COHEN & HALL LLP
Attorneys for Defendant City of New York
570 Lexington Avenue
New York, New York 10022
BY: MICHAEL TOBIN, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A p p e a r a n c e s : (Continued)

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Attorneys for Defendant *New York Crane*
150 East 42nd Street
New York, New York 10017
BY: GLENN J. FUERTH, ESQ.

LAW OFFICES OF CARTAFALSA, SLATTERY TURPIN & LENOFF
Attorneys for Defendant *Sorbara Construction Corp.*
165 Broadway, 28th Floor
New York, New York 10006
BY: RAYMOND F. SLATTERY, ESQ.

SMITH MAZURE DIRECTOR WILKINS YOUNG & YAGERMAN, P.C.
Attorneys for Defendant *Leon D. DeMatteis Construction*
111 John Street
New York, New York 10038-3198
BY: MARK D. LEVI, ESQ.

SHAUB AHMUTY CITRIN & SPRATT, LLP
Appellate Counsel to Lewis Brisbois/DeMatteis
1983 Marcus Avenue
Lake Success, New York 11042
BY: ROBERT M. ORTIZ, ESQ., of Counsel

NICOLETTI HORNIG & SWEENEY
Attorneys for Defendant *1765 First Associates, LLC*
Wall Street Plaza
88 Pine Street
New York, New York 10005-1801
BY: BARBARA A. SHEEHAN, ESQ.

GARFUNKEL WILD, P.C.
Attorneys for Defendant *Matttone Group*
111 Great Neck Road
Great Neck, New York 11021
BY: SALVATORE PUCCIO, ESQ.

Reported by:
Vicki K. Glover
Senior Court Reporter

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.