

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

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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

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