

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Zurich Am. Ins. Co. v. 56th & Park (NY) Owner, LLC

Zurich Am. Ins. Co., 2026 NY Slip Op 02234 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index Nos. 160495/22, 595588/23, 595106/24; Appeal No. 6371; Case No. 2025-02232
· Decided April 14, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order granting 56th and Park (NY) Owner, LLC summary judgment on its contractual indemnification claim against CGI Northeast Inc. The court held that the owner established that neither it nor the other potential indemnitees actively caused the underlying accident and that General Obligations Law § 5-322.1 did not bar recovery. CGI failed to raise a triable issue regarding active or willful misconduct, the scope of the indemnification provision, or the owner's control over the means and methods of the work.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Mendez, J.; Pitt-Burke, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 14, 2026
DOCKET	Index Nos. 160495/22, 595588/23, 595106/24; Appeal No. 6371; Case No. 2025-02232
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting 56th and Park (NY) Owner, LLC summary judgment on its contractual indemnification claim against GCI Northeast Inc. and declaring that 56th and Park was entitled to contractual indemnification.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	GCI Northeast Inc. v. 56th and Park (NY) Owner, LLC

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QUESTIONS PRESENTED

1. Whether 56th and Park established entitlement to contractual indemnification by showing that neither it nor the other potential indemnitees actively caused the underlying accident.
2. Whether alleged negligence by McGraw Hudson Construction Company could be imputed to 56th and Park under the contractual indemnification provision.
3. Whether General Obligations Law § 5-322.1 barred enforcement of the indemnification clause because 56th and Park exercised authority over the means and methods of the work.

HOLDINGS

1. 56th and Park was entitled to summary judgment on its contractual indemnification claim because it established prima facie that neither it nor any other potential indemnitee identified in the agreement actively caused the underlying accident, and GCI failed to raise a triable issue of fact.
2. General Obligations Law § 5-322.1 did not bar recovery because 56th and Park established that it did not exercise authority over the means and methods of the work, and GCI failed to raise a triable issue concerning 56th and Park's control.

KEY QUOTATIONS

“Owner (56th and Park (NY) Owner, LLC), its related or affiliated companies, subsidiaries, partnerships, joint ventures, shareholders, members, donors, lenders, investors, officers, directors, trustees, [and] employees at every tier . . . (‘Indemnitees’) from and against all losses . . . except to the extent caused by the Indemnitees’ active negligence or willful misconduct” ([*1])

“that it did not exercise any authority over the means and methods of [the] work” ([*2])

FACTUAL BACKGROUND

GCI Northeast Inc. had a contractual obligation to indemnify 56th and Park (NY) Owner, LLC and specified related indemnitees for losses, except those caused by an indemnitee's active negligence or willful misconduct. The underlying accident arose from construction work, and 56th and Park was not actively involved in the construction or in supervising or directing the work of McGraw Hudson Construction Company, which acted as development manager. GCI relied on testimony that McGraw's project manager worked "on behalf of" 56th and Park and that the entities were "related," but the court found that evidence insufficient to create a triable issue regarding control, contractual indemnitee status, active negligence, or willful misconduct.

PROCEDURAL HISTORY

Supreme Court, New York County, granted the motion of 56th and Park (NY) Owner, LLC for summary judgment on its contractual indemnification claim against GCI Northeast Inc. and declared 56th and Park entitled to contractual indemnification under the parties' agreement. GCI appealed, and the Appellate Division affirmed the order to the extent appealed from.

DISPOSITION

affirmed

CASES CITED

- Sosa v 46th St. Dev. LLC, 101 AD3d 490, 493 (1st Dept 2012)

OPINION

Zurich Am. Ins. Co. v. 56th & Park (NY) Owner, LLC 2026 NY Slip Op 02234
PER CURIAM.

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<p>Appellate Division, First Department</p> <p>Published by New York State Law Reporting
Bureau pursuant to Judiciary Law § 431.</p> <p>This decision is uncorrected and subject to
revision before publication in the Official Reports.</p> </div> <div> <p>Zurich American
Insurance Company, as Subrogee of 432 Park Condominium, Plaintiff,</p> <p>v</p> <p>56th
and Park (NY) Owner, LLC, Defendant-Respondent, GCI Northeast Inc., Defendant-Appellant,
Mueser Rutledge Consulting Engineers PLLC et al, Defendants.</p> <p></p> <p>56th and Park
(NY) Owner, LLC, Third-Party Plaintiff,</p> <p>v</p> <p>Mueser Rutledge Consulting
Engineers, Third-Party Defendant-Respondent. And A Second Third-Party Action</p> </div>
<p>Decided and Entered: April 14, 2026</p> <p>Index No. 160495/22, 595588/23,
595106/24|Appeal No. 6371|Case No. 2025-02232|</p> <p>Before: Webber, J.P., Gesmer,
Mendez, Pitt-Burke, Hagler, JJ. </p> <div> <p>Hogan & Cassell, LLP, Jericho (Michael
Cassell of counsel), for appellant.</p> <p>Troutman Pepper Locke LLP, New York (Kevin P.
Wallace of counsel), for 56th and Park (NY) Owner LLC, respondent.</p> </div> [*1]
 <p>Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about
February 27, 2025, which, to the extent appealed from as limited by the briefs, granted the motion

of defendant/third-party plaintiff 56th and Park (NY) Owner, LLC for summary judgment on its contractual indemnification claim against defendant CGI Northeast Inc., and declared that 56th and Park (NY) Owner, LLC is entitled to contractual indemnification from CGI under the terms of their agreement, unanimously affirmed, with costs.

56th and Park (NY) Owner, LLC , whose agreement with CGI required the latter to indemnify "Owner (56th and Park (NY) Owner, LLC), its related or affiliated companies, subsidiaries, partnerships, joint ventures, shareholders, members, donors, lenders, investors, officers, directors, trustees, [and] employees at every tier . . . ('Indemnitees') from and against all losses . . . except to the extent caused by the Indemnitees' active negligence or willful misconduct," met its prima facie burden by showing that neither it nor any of the other potential indemnitees identified in the agreement actively caused the underlying accident. 56th and Park (NY) Owner, LLC was not actively involved in the construction work. Moreover, it did not supervise or direct the work of defendant McGraw Hudson Construction Company (McGraw) which was hired as development manager to supervise the design and construction of a building. McGraw's work in that capacity cannot reasonably be included in any of the categories of indemnitees defined in the contract, so the alleged negligence on its part cannot be imputed to 56th and Park (NY) Owner, LLC for purposes of the indemnification provision.

CGI failed to raise a triable issue of fact as to whether the underlying accident was caused by the active or willful misconduct of any of the potential indemnitees identified in the contract, or whether McGraw could be considered one of those indemnitees. We note that "agent" is not one of the categories of potential indemnitees set forth in the agreement, and that the building's general manager's testimony that 56th and Park (NY) Owner, LLC and McGraw were "related," without elaboration, is insufficient to create an issue of fact as to whether they were related for purposes of the agreement.

56th and Park (NY) Owner, LLC satisfied its initial burden of showing that General Obligations Law § 5-322.1 is not a bar to recovery under the indemnification clause by establishing "that it did not exercise any authority over the means and methods of [the] work" (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 493 [1st Dept 2012]). It did this by showing that it did not have control over McGraw's project manager. CGI again failed to raise a triable issue of fact. While it submitted testimony from its project manager and two other witnesses that he performed work "on behalf of" 56th and Park (NY) Owner, LLC, this testimony does not suggest that 56th and Park (NY) Owner, LLC had control over the means and methods of the work (*id.*).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 14, 2026

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