

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Hart v. Theatre Three Prods., Inc.

2026 NY Slip Op 01187 (N.Y. Ct. App. 2026) · No. 2024-03331 · Decided March 4, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying V.P. Plumbing & Heating, LLC's motion to dismiss a third-party complaint. The court held that the third-party complaint failed to allege a grave injury supporting common-law indemnification or contribution under Workers' Compensation Law § 11 and that documentary evidence disproved any contractual indemnification obligation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 4, 2026
DOCKET	2024-03331
DISPOSITION	reversed
PROCEDURAL POSTURE	Third-party defendant V.P. Plumbing & Heating, LLC, appealed from an order denying its CPLR 3211(a) cross-motion to dismiss the third-party complaint or, alternatively, sever the third-party action.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, dismissal based on documentary evidence is proper only when the evidence utterly refutes the factual allegations and conclusively establishes a defense as a matter of law. On a CPLR 3211(a)(7) motion, the complaint is liberally construed, factual allegations are accepted as true, and the nonmoving party receives the benefit of every favorable inference; when evidentiary material is considered, the issue is whether the plaintiff has a cause of action.
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QUESTIONS PRESENTED

1. Whether the third-party claims for common-law indemnification and contribution against Hart's employer were barred under Workers' Compensation Law § 11 because the complaint did not allege a grave injury.
2. Whether the contractual indemnification claim should be dismissed under CPLR 3211(a)(1) and (7) because documentary evidence showed that the agreement contained no indemnification provision.
3. Whether the alternative request to sever the third-party action remained viable after dismissal of the third-party complaint.

HOLDINGS

1. Workers' Compensation Law § 11 bars third-party causes of action for indemnification and contribution against an employer unless the employee sustained a grave injury or the employer expressly agreed in a written contract entered into before the accident to contribute or indemnify. Because the third-party complaint failed to allege that Hart sustained a grave injury, the common-law indemnification and contribution claims were properly subject to dismissal under CPLR 3211(a)(7).
2. The contractual indemnification claim was subject to dismissal under CPLR 3211(a)(1) and (7) because documentary evidence showed that V.P. Plumbing's agreement with Theatre Three contained no indemnification provision.
3. The request to sever the third-party action was denied as academic after the third-party complaint was dismissed.

KEY QUOTATIONS

"Workers' Compensation Law § 11(1) prohibits most third-party causes of action for indemnification and contribution against an employer unless the employee has sustained a "grave injury" or there is "a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant""

"Grave injury is defined as "death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability""

FACTUAL BACKGROUND

On December 6, 2018, Robert Hart, an employee of V.P. Plumbing & Heating, LLC, was working at property owned by Theatre Three Productions, Inc. Hart allegedly was injured when a boiler he was carrying with two other employees fell on him. Theatre Three later commenced a third-party action against V.P. Plumbing seeking contractual indemnification, common-law indemnification, and contribution, but the third-party complaint did not allege that Hart sustained a grave injury and the parties' agreement contained no indemnification provision.

PROCEDURAL HISTORY

Robert Hart commenced a personal-injury action in 2019 against, among others, Theatre Three Productions, Inc. Theatre Three commenced a third-party action against Hart's employer, V.P. Plumbing, in March 2023, asserting contractual indemnification, common-law indemnification, and contribution. The Supreme Court, Suffolk County, denied V.P. Plumbing's cross-motion to dismiss or sever, and the Appellate Division reversed insofar as appealed from, granted dismissal of the third-party complaint, and denied severance as academic.

DISPOSITION

reversed

CASES CITED

- Smith v. Bank of N.Y. Mellon, 237 A.D.3d 1128, 1129 (2d Dep't 2025)
- Goshen v. Mut. Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002)
- Cassese v. SVJ Joralemon, LLC, 168 A.D.3d 667, 668-69 (2d Dep't 2019)
- Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994)
- AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co., 5 N.Y.3d 582, 591 (2005)
- Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 (1977)
- Flores v. Lower E. Side Serv. Ctr., Inc., 4 N.Y.3d 363, 367 (2005)
- Velazquez-Guadalupe v. Ideal Bldrs. & Constr. Servs., Inc., 216 A.D.3d 63, 71-74 (2d Dep't 2023)
- Malan v. QPS 23-10 Dev., LLC, 237 A.D.3d 802 (2d Dep't 2025)