

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

AIG Prop. Cas. Co. v. High Line Constr. Group LLC

2026 NY Slip Op 02872 · No. Index Nos. 158444/18, 595626/19, 595475/21; Appeal No. 6555; Case No. 2025-01839 · Decided May 7, 2026

SUMMARY

The Appellate Division, First Department, modified an order concerning a sprinkler discharge allegedly caused by work performed by Sammy's Interior Painting, Inc., awarding High Line Construction Group LLC conditional summary judgment on its contractual indemnification claim against Sammy's. The court otherwise affirmed summary judgment in favor of AIG Property Casualty Company and The Night LLC on contractual indemnification claims against High Line. It held that evidence could support a finding that Sammy's negligently triggered the sprinkler and that the indemnification provisions were enforceable because High Line was not negligent.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 7, 2026
DOCKET	Index Nos. 158444/18, 595626/19, 595475/21; Appeal No. 6555; Case No. 2025-01839
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order granting partial summary judgment to AIG and The Night on contractual indemnification claims against High Line, denying Sammy's summary judgment motion on negligence and related claims, and denying High Line partial summary judgment on its contractual indemnification claims against Sammy's.
STANDARD OF REVIEW	De novo review of summary judgment determinations and contractual indemnification issues.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	High Line Construction Group LLC, Sammy's Interior Painting, Inc. v. AIG Property Casualty Company as Subrogee of Adam Schwartz, The

TOPICS

indemnity construction law negligence standard of review appellate procedure

PRACTICE AREAS

construction law insurance contracts torts appellate procedure

QUESTIONS PRESENTED

1. Whether Sammy's was entitled to summary judgment dismissing the negligence claim and related cross-claims and third-party claims where evidence could support a finding that its work caused the sprinkler discharge.
2. Whether AIG and The Night were entitled to summary judgment for contractual indemnification against High Line under broad indemnification provisions covering claims arising from the work or the acts of High Line or its subcontractors.
3. Whether High Line was entitled to conditional summary judgment for contractual indemnification against Sammy's where there was no evidence that High Line was negligent or controlled the work near the sprinkler.

HOLDINGS

1. Summary judgment was properly denied because evidence in the record could allow a jury to conclude that Sammy's negligently caused the sprinkler's initial discharge by launching a force or instrument of harm.
2. AIG and The Night were properly awarded summary judgment on their contractual indemnification claims against High Line because High Line's indemnification provision was broad and did not limit liability to situations in which High Line itself was negligent.
3. High Line was entitled to conditional summary judgment against Sammy's on its contractual indemnification claim because the record contained no evidence that High Line workers were near the sprinkler or controlled the relevant work, and High Line therefore was not negligent.

KEY QUOTATIONS

*"Supreme Court properly denied Sammy's motion for summary judgment since there is evidence in the record from which a jury could conclude that Sammy's, a painting subcontractor which was performing touch-up work on the same wall where a sprinkler head discharged, negligently caused the initial discharge by launching a force or instrument of harm" (*1)*

*"This provision 'is written in broad terms' and does not limit High Line's liability to instances where it is negligent" (*2)*

"Because High Line was not negligent, the provisions in the agreement between it and Sammy's requiring the latter to indemnify it and provide a defense are 'enforceable under General Obligations Law § 5-322.1 even

*though the agreement does not limit the obligation to what the law allows” (*2)*

FACTUAL BACKGROUND

A sprinkler head discharged while Sammy's Interior Painting, Inc., a painting subcontractor, was performing touch-up work on a wall. The record included testimony that Sammy's workers used a ladder and metal spackle knives, video showing a ladder near the sprinkler, and evidence that the sprinkler could have been triggered by contact with the work tools. High Line's contract with The Night required broad indemnification and defense obligations for claims arising from the work or the negligent or willful acts of High Line or its subcontractors.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on March 5, 2025. The Appellate Division unanimously modified the order to award High Line conditional summary judgment against Sammy's on High Line's contractual indemnification claim and otherwise affirmed the order.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified only to award High Line conditional summary judgment against Sammy's on High Line's contractual indemnification claim; the order was otherwise affirmed.

CASES CITED

- Espinal v Melville Snow Contrs., 98 NY2d 136, 140 [2002]
- Karydas v Ferrara-Ruurds, 142 AD3d 771, 772 [1st Dept 2016]
- Brown v Two Exch. Plaza Partners, 76 NY2d 172, 178 [1990]
- Regal Constr. Corp. v National Union Fire Ins. Co. of Pittsburgh, PA, 15 NY3d 34, 38 [2010]
- Needham & Co., LLC v UpHealth Holdings, Inc., 212 AD3d 561, 561 [1st Dept 2023]
- Great N. Ins. Co. v Interior Constr. Corp., 7 NY3d 412, 419 [2006]
- O'Sullivan v IDI Constr. Co., Inc., 7 NY3d 805, 806 [2006]
- Jamindar v Uniondale Union Free School Dist., 90 AD3d 612, 616 [2d Dept 2011]
- Spielmann v 170 Broadway NYC LP, 187 AD3d 492, 494 [1st Dept 2020]
- Crouse v Hellman Constr. Co., Inc., 38 AD3d 477, 478 [1st Dept 2007]
- Itri Brick & Concrete Corp. v Aetna Cas. & Sur. Co., 89 NY2d 786, 795 n 5 [1997]

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. AIG Property Casualty Company as Subrogee of Adam Schwartz, Plaintiff-Respondent, v High Line Construction Group LLC, Defendant-Respondent-Appellant, The Night LLC et al., Defendants-Respondents, Sammy's Interior Painting, Inc., Defendant-Appellant-Respondent. High Line Construction Group LLC, Third-Party Plaintiff-Respondent-Appellant, Sammy's Interior Painting, Inc., Third-Party Defendant-Appellant-Respondent, FirstService Residential New York, Inc., Third-Party Defendant-Respondent, John Does 1-10 et al., Third-Party Defendants.

The Night LLC, Second Third-Party Plaintiff-Respondent, Metro Loft Management LLC et al., Second Third-Party Defendants. Decided and Entered: May 07, 2026 Index No. 158444/18 595626/19 595475/21|Appeal No. 6555|Case No. 2025-01839| Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ. Feldman, Rudy, Kirby & Farquharson, P.C., Jericho (Gerald F. Kirby of counsel), for appellant-respondent.

Riker Danzig LLP, New York (Peter M. Perkowski Jr. of counsel), for respondent-appellant. Frenkel Lambert Weisman & Gordon, LLP, Bay Shore (Lawrence B. Lambert of counsel), for AIG Property Casualty Company, respondent. Yapchanyk, Prezioso & Yang, New York (Maureen E. Peknic of counsel), for The Night LLC, respondent. [*1] Order, Supreme Court, New York County (Nicholas W. Moyne, J.), entered March 5, 2025, which, to the extent appealed from, denied the motion of defendant Sammy's Interior Painting, Inc., for summary judgment dismissing plaintiff's cause of action for negligence and all cross-claims and third-party claims against it, granted the motion by plaintiff for summary judgment to the extent of awarding judgment to it on its claim against defendant/third-party plaintiff High Line Construction Group LLC, granted the motion by defendant The Night, LLC for summary judgment on its cross-claim for contractual indemnification against High Line, and denied the motion by High Line for partial summary judgment on its cross-claims against Sammy's for contractual indemnification, unanimously modified, on the law, to the extent of awarding conditional summary judgment to High Line against Sammy's on its claim for contractual indemnification, and otherwise affirmed, without costs.

Supreme Court properly denied Sammy's motion for summary judgment since there is evidence in the record from which a jury could conclude that Sammy's, a painting subcontractor which was performing touch-up work on the same wall where a sprinkler head discharged, negligently caused the initial discharge by launching a force or instrument of harm (see *Espinal v Melville Snow*

Contrs., 98 NY2d 136, 140 [2002]; Karydas v Ferrara-Ruurds, 142 AD3d 771, 772 [1st Dept 2016]).

One of the workers testified that Sammy's was only working on the lower portion of the wall before the discharge occurred some distance away from the sprinkler, which was 10-15 inches from the ceiling. However, Sammy's owner testified that his workers used a ladder to perform the work, video evidence shows there was a ladder placed near the sprinkler that discharged, and it is undisputed that Sammy's employees used metal spackle knives when repairing the wall, which could have triggered the sprinkler by coming into contact with it. [*2] Supreme Court properly granted plaintiff AIG and The Night summary judgment for contractual indemnification against High Line.

High Line's contract with The Night required that it indemnify The Night, and other parties including all unit owners in the building (such as plaintiff's subrogor) for, and provide a defense against, "claims, damages, losses and expenses... arising out of or related to (i) the Work... or (iii) the negligent or willful acts or omissions" of High Line or any of its subcontractors.

This provision "is written in broad terms" and does not limit High Line's liability to instances where it is negligent (Brown v Two Exch. Plaza Partners, 76 NY2d 172, 178 [1990]; see also Regal Constr. Corp. v National Union Fire Ins. Co. of Pittsburgh, PA, 15 NY3d 34, 38 [2010]; cf. Needham & Co., LLC v UpHealth Holdings, Inc., 212 AD3d 561, 561 [1st Dept 2023] [claim for indemnification denied where "indemnification clause in the contract between [indemnatee] and [indemnitor] does not explicitly require [indemnitor] to indemnify [indemnatee] for expenses arising out of [indemnitor]'s breach"]).

Thus, Supreme Court properly upheld the agreement, negotiated by sophisticated parties, which used "insurance to allocate the risk of liability to third parties between themselves" (Great N. Ins. Co. v Interior Constr. Corp., 7 NY3d 412, 419 [2006]), since there is evidence in the record to establish that something other than the work being performed in the subject premises caused the sprinkler to discharge.

High Line's contention that the tender made by The Night was late or insufficient is belied by the record. High Line should have been granted conditional summary judgment against Sammy's for contractual indemnification since there is no evidence that any High Line workers were in the vicinity of the area where the sprinkler was located before it discharged or had control over the work (see O'Sullivan v IDI Constr.

Co., Inc., 7 NY3d 805, 806 [2006]). Thus, since High Line was not negligent, it could be held "liable solely by virtue of statutory [or vicarious] liability" (Jamindar v Uniondale Union Free School Dist., 90 AD3d 612, 616 [2d Dept 2011]; see Spielmann v 170 Broadway NYC LP, 187 AD3d 492, 494 [1st Dept 2020]).

Because High Line was not negligent, the provisions in the agreement between it and Sammy's requiring the latter to indemnify it and provide a defense are "enforceable under General Obligations Law § 5-322.1 even though the agreement does not limit the obligation to what the law allows" (Crouse v Hellman Constr. Co., Inc., 38 AD3d 477, 478 [1st Dept 2007]; see Itri Brick & Concrete Corp. v Aetna Cas. & Sur.

Co., 89 NY2d 786, 795 n 5 [1997] ["without a finding of negligence on the part of the general [contractor], the agreements as applied would not run afoul" of General Obligations Law § 5-322.1]). We have considered the remaining contentions and find them unavailing. [*3] THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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PER CURIAM.

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Loft Management LLC et al., Second Third-Party Defendants.

Decided and Entered: May 07, 2026

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Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ.

Feldman, Rudy, Kirby & Farquharson, P.C., Jericho (Gerald F. Kirby of counsel), for appellant-respondent.

Riker Danzig LLP, New York (Peter M. Perkowski Jr. of counsel), for respondent-appellant.

Frenkel Lambert Weisman & Gordon, LLP, Bay Shore (Lawrence B. Lambert of counsel), for AIG Property Casualty Company, respondent.

Yapchanyk, Prezioso & Yang, New York (Maureen E. Peknic of counsel), for The Night LLC, respondent.

Order, Supreme Court, New York County (Nicholas W. Moyne, J.), entered March 5, 2025, which, to the extent appealed from, denied the motion of defendant Sammy's Interior Painting, Inc., for summary judgment dismissing plaintiff's cause of action for negligence and all cross-claims and third-party claims against it, granted the motion by plaintiff for summary judgment to the extent of awarding judgment to it on its claim against defendant/third-party plaintiff High Line Construction Group LLC, granted the motion by defendant The Night, LLC for summary judgment on its cross-claim for contractual indemnification against High Line, and denied the motion by High Line for partial summary judgment on its cross-claims against Sammy's for contractual indemnification, unanimously modified, on the law, to the extent of awarding conditional summary judgment to High Line against Sammy's on its claim for contractual indemnification, and otherwise affirmed, without costs.

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Appellate Division, First Department

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