SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III **PART** IAS MOTION 32

Acting Justice

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GRANITE STATE INSURANCE COMPANY as subrogee of THE ARDSLEY COUNTRY CLUB, INC.,

Plaintiff,

- v -

ARDSLEY CURLING CLUB, INC., C.R.P. SANITATION, INC., MURPHY BROTHERS CONTRACTING, INC. and ALARM SPECIALISTS, INC.,

Defendants.

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INDEX NO. 160832/2017

MOTION DATE 01/21/2020

MOTION SEQ. NO. 001 and 002

DECISION + ORDER ON MOTION

ALARM SPECIALISTS, INC.

Third-Party Plaintiff,

-against-

THE ARDSLEY COUNTRY CLUB, INC.

Third-Party Defendant.

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Third-Party
Index No. 595025/2018

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26-41, 59, 67-73, 82 (Motion 002) 42-56,61-66, 74-81, 83 were read SUMMARY JUDGMENT.

Upon the foregoing documents, the motion[1] is determined as follows:

This case arises out of a dumpster fire that occurred at the Arsdley Country Club ("Club") on December 13, 2014. Plaintiff issues a policy of insurance covering Club's property and paid for damages incurred as a result of the fire. Plaintiff then commenced this action as Club's subrogee to recover the funds paid alleging causes of action in negligence, breach of contract and gross negligence against Alarm Specialists, Inc. ("Alarm"), CRP Sanitation, Inc. ("Sanitation"), Murphy Brothers Contracting, Inc. ("Murphy") and Club. Defendants Alarm, Sanitation, Murphy and Club cross-claimed against Alarm for common-law contribution and indemnification.

[1] While *sub judice,* this action was reassigned to Justice Bluth. However, this court will render the decision as the motion was orally argued before this court.

Plaintiff claims that Alarm, which provided fire monitoring service under contract to Club, failed to reactivate its fire alarm system after construction work being performed at the premises ceased on December 12, 2014, thereby allowing the fire to spread. Alarm commenced a third-party action against Club for contractual indemnification and breach of contract.

The provision concerning indemnification in the contract between Club and Alarm states:

> "Subscriber [Club] agrees to and shall indemnify and hold harmless [Alarm], its employees, agents and subcontractors, from and against all claims, lawsuits, including reasonable attorneys' fees and losses asserted against and alleged to be by [Alarm] performance, negligent performance, or failure to perform any obligation."

Alarm moved by two separate motions for summary judgment against Plaintiff and Club. In the first motion, Alarm sought summary judgment in the third-party action on its claims for contractual indemnification and for attorney's fees and expenses. Plaintiff opposed Alarm's first motion. By the second motion, Alarm moved for summary judgment dismissing Plaintiff's complaint as well as all cross claims. Club and Sanitation opposed Alarm's second motion, Plaintiff served partial opposition and Murphy did not serve opposition.

By written stipulation dated April 23, 2018, Plaintiff discontinued its claims against Alarm. Further, Alarm agreed to discontinue its third-party claims against Club (*see* NYCEF Doc No 72).

The branch of Alarm's first motion for summary judgment against Club on its third-party claim for contractual indemnification is denied as moot based upon the parties' stipulation of discontinuance. The branch of the motion for an award of attorney's fees and expenses is denied as the parties' stipulation of discontinuance was without limitation and expressly provided the claims were discontinued "without costs".

The branch of Alarm's second motion for summary judgment dismissing Plaintiff's claims is denied as unnecessary as those claims were discontinued. As to the branch of the motion to dismiss the co-defendant's cross-claims for contribution those claims by co-defendants fail as the movant bought its peace with the settlement (*see* GOL §15-108). The claims for common-law indemnification also fail but for reasons more fundamental than argued by Alarm in its motion. "Common-law indemnification is generally available 'in favor of one who is held responsible solely by operation of law because of his relation to the actual wrongdoer'" (*Mas v Two Bridges Assocs.*, 75 NY2d 680, 690 [1990]; *see D'Ambrosio v City of New York*, 55 NY2d 454, 460 [1982]; *see also Glaser v M. Fortunoff of Westbury Corp*, 71 NY2d 643, 646 [1988] ["In the 'classic indemnification case,' the one seeking indemnity "had committed no wrong, but by virtue of some relationship with the tort-feasor or obligation imposed by law, was nevertheless held liable to the injured party"]). Here, Plaintiff has only asserted claims of negligence and gross negligence against Alarm and not claimed that any of the other Defendants, Sanitation, Murphy and Club, are responsible for the acts of Alarm by operation of law. Accordingly, the cross-claims for contribution and common law indemnification against Alarm

fail as a matter of law (*see Farrell v Gristede's Supermarkets, Inc.*, 50 AD3d 603 [1st Dept 2008]).

Accordingly, Defendant/Third-Party Plaintiff Alarm Specialists, Inc.'s motions for summary judgment to dismissing the complaint and all cross-claims against are granted. However, its claims for attorney's fees are denied and dismissed.

4/7/2020
DATE

FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE