

Company; Madison Construction Group, Inc.,)
Worthington Integrated Building Systems;)
McDowell Commercial Construction, LLC;)
Jollay Masonry; National Fire Insurance)
Company of Hartford; R.J. Kenney Associates,)
Inc.; Antunovich Associates; TG Construction,)
LLC; Luis Banegas d/b/a Luis Trim Work;)
Nora Del Carmen Lagos, Nora Del Carmen)
Lagos d/b/a Luis Trim Work; and Ovation)
Custom Trim, LLC,)

Third-Party Defendants.)

McCrary Construction Company, LLC,)

Third-Party Plaintiff,)

vs.)

Collins & Wright; Baker Roofing; Glasstech)
Inc.; Palmetto State Roofing and Sheet Metal;)
Strickland Waterproofing; Maiday, Inc.; and)
Atlas Drywall & Acoustics, Inc.,)

Third-Party Defendants.)

Spann Roofing & Sheet Metal, Inc.,)

Fourth-Party Plaintiff,)

vs.)

Coastal Commercial Roofing Co., Inc., and)
Daniel Kniffen d/b/a East Coast)
Improvements,)

Fourth-Party Defendants.)

Wallcraft Construction, Inc.,)

Fourth-Party Plaintiff,)

vs.)

Vienamin Petresku d/b/a BT Construction,)
LLC,)

Fourth-Party Defendant.)

THIS MATTER COMES BEFORE THE COURT upon motion of Third-Party Defendant Antunovich Associates, Inc's ("Antunovich") for partial summary judgment ("Antunovich's Motion"), as to Lend Lease (US) Construction, Inc., F/K/A Bovis Lend Lease, Inc.'s ("Lend Lease") First Cause Of Action For Contribution, Fifth Cause Of Action For Negligence / Gross Negligence / Recklessness, And Eighth Cause Of Action For Breach Of Warranty Of Plans And Specifications. The Court received oral arguments on this motion on October 30, 2019, with The Honorable William H. Seals, Jr., presiding. After careful consideration of the record before the Court, and those oral arguments, the Court hereby GRANTS Antunovich's Motion for the reasons set forth herein.

SUMMARY OF FACTS

This is a construction defect case, involving buildings A2, A3, A4, A5, A6, A7, and A8 of The Market Common multi-use development in Myrtle Beach, South Carolina (the "Project"). The current Project owner is Plaintiff BEI-Beach, LLC, ("Plaintiff" or "BEI"), which has asserted claims against the three general contractors which built the Project, based on numerous alleged construction defects. Lend Lease was the general contractor for buildings A6, A7, and A8.

Antunovich was the Project architect which contracted with the developer, which later sold the Project to BEI. There's no contract between Lend Lease and Antunovich. Lend Lease filed its Amended Third-Party Complaint against Antunovich on April 24, 2017, alleging design deficiencies and asserting claims for "Contribution" (Lend Lease Third-Party Compl., ¶¶ 76-78), "Negligence/Gross Negligence/Recklessness" (*Id.* at ¶¶ 97-105), "Equitable Indemnity" (*Id.* at ¶¶ 116-128), and "Breach of Warranty of Plans and Specifications" (*Id.* at ¶¶ 129-135).

ANALYSIS

I. Lend Lease's Contribution Claim.

The South Carolina Code states that “[t]he right of contribution exists **only** in favor of a tortfeasor **who has paid** more than his pro rata share of the common liability....” S.C. Code Ann. § 15-38-20 (emphasis added). The South Carolina Supreme Court has held that “the right to contribution does not arise prior to payment.” *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445, 445 S.E.2d 446, 448 (1994)

Lend Lease concedes that it has not made any payment to Plaintiff in this case, and that its contribution claim is not ripe, but contends that such claim may become ripe prior to a trial of this case. The Court finds this argument unpersuasive. Lend Lease's potential future right to contribution has not accrued,¹ and this third-party claim must be dismissed.

II. Lend Lease's Negligence/Gross Negligence/Recklessness and Breach of Warranty of Plans and Specifications Claims.

Antunovich argues that Lend Lease's claims for Negligence / Gross Negligence / Recklessness, and Breach of Warranty of Plans and Specifications are merely disguised equitable indemnity claims and should be dismissed, leaving only Lend Lease's seventh cause of action for Equitable Indemnity. This Court agrees.

To determine the true nature of a given claim, one must look to the “nature of the issues and the remedies which are sought,” as opposed to just the nomenclature of same. *State v. Yelsen Land Co.*, 257 S.C. 401, 403, 185 S.E.2d 897, 898 (1972); *see also Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 692-93, 239, S.E.2d 726, 727 (1977). South Carolina's Court of Appeals has held that disguised equitable indemnity claims should be summarily dismissed. *Stoneledge at*

¹ This Court makes no finding herein as to whether Lend Lease may potentially be entitled to Contribution from Antunovich in the future.

Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015); *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders Firstsource-Southeast Group*, 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015); (see also *Horry Elec. Coop., Inc. v. S.C. Pub. Serv. Auth.*, 2016 WL 4208091, at *2 (S.C. Ct. App., Aug. 10, 2016)). Lend Lease claims it may "incur actual damages in the amount of any money adjudged to be owed to the Plaintiff by Lend Lease, or which Lend Lease must pay Plaintiff in settlement of Plaintiff's Claims, plus the costs associated with investigating the Plaintiff's claims and defending this action." (Lend Lease's Amend. Third-Party Compl., ¶ 134). Lend Lease prays for judgment on its Third-Party claims in "the amount of any settlement paid by Lend Lease to the Plaintiff or judgement rendered against Lend Lease in favor of the Plaintiff and all attorney's fees and cost incurred by Lend Lease as a result of this action." (Lend Lease's Amend. Third-Party Compl., ¶ a. Prayer for Relief). As in Stoneledge, Lend Lease has not shown that it has suffered its own damages as a result of Antunovich's alleged negligence or breach of warranty. Rather, Lend Lease's allegations and prayer for relief show damages and claims that have arisen exclusively from having to defend itself in this lawsuit, perhaps including a judgment to BEI for which it seeks indemnity. Lend Lease's negligence and breach of warranty claims are not independent of Lend Lease's equitable indemnity claim; in substance, they are nothing more than equitable indemnity claims, and must therefore be dismissed.

Lend Lease also alleges it has suffered damages to its "business reputation" because of BEI's claims against it, and contends that this "business reputation" damage claim is separate and distinct from its indemnity claims. Lend Lease cites no South Carolina legal authority for the proposition that it may recover "business reputation" damages in a negligence or breach of implied warranty cause of action, and the Court finds no such authority. Furthermore, Lend Lease has

presented no admissible evidence that it has incurred "business reputation" damages. This Court finds that the alleged "business reputation" damages claim does not support an independent cause of action by Lend Lease against Antunovich for negligence or breach of warranty.

CONCLUSION

For these reasons, Lend Lease's claims against Antunovich for Contribution, Negligence / Gross Negligence / Recklessness, and Breach of Warranty of Plans and Specifications are hereby dismissed *with prejudice*. This Order is without prejudice to Lend Lease's sole remaining cause of action against Antunovich for equitable indemnity, which remains pending.

IT IS SO ORDERED!

[Judge's Electronic Signature Page to Follow]



Horry Common Pleas

Case Caption: BEI Beach LLC , plaintiff, et al VS Mashburn Christman JV ,
defendant, et al
Case Number: 2015CP2607275
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157