

Tom, J.P., Friedman, Sweeny, Saxe, Clark, JJ.

15229 Board of Managers of Hester Gardens, Index 111148/11
Plaintiff, 590195/13

-against-

Well-Come Holdings LLC, et al.,
Defendants.

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Well-Come Holdings LLC, et al.,
Third-Party Plaintiffs-Appellants,

-against-

Peter F. Poon Architect, P.C., et al.,
Third-Party Defendants-Respondents,

Flintlock Construction Services, LLC,
Third-Party Defendant.

Rich, Intelisano & Katz, LLP, New York (Victor Rivera Jr. of
counsel), for appellants.

Donovan Hatem LLP, New York (Scott K. Winikow of counsel), for
respondents.

Order, Supreme Court, New York County (Anil C. Singh, J.),
entered November 20, 2013, which, insofar as appealed from as
limited by the briefs, granted the motion of defendant/third-
party defendant Peter F. Poon Architect, P.C. (Poon, P.C.) to
dismiss so much of defendant/third-party plaintiffs' (Well-Come)
first cause of action in the third-party complaint seeking
contractual indemnification, unanimously reversed, on the law,

without costs, and the motion denied.

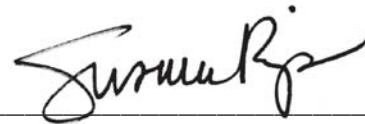
The terms of the contract between Well-Come and Poon, P.C., provide for indemnity for sums due to the negligent or intentional acts, errors, and omissions of Poon, P.C., or material breaches of the agreement. Thus, while Well-Come cannot seek those damages plaintiffs allege to have been caused by failures of construction, or other areas not covered by the contract between Well-Come and Poon, P.C., Well-Come can seek indemnity for those claims based upon negligent design and/or inspection of work.

Contrary to Poon P.C.'s contentions, the clause at issue is not subject to General Obligations Law § 5-322.1, since that statute applies only to claims "against liability for damage arising out of bodily injury to persons or damage to property contributed to, caused by or resulting from the negligence of the promisee." This action is not for either personal injury or property damage, but one for pure economic damages stemming from breach of contract (*see generally Board of Educ. Of Hudson City School Dist. v Sargent, Webster, Crenshaw & Folley*, 71 NY2d 21, 26 [1987]). Nor is this claim barred by the economic-loss rule, which bars claims of common-law contribution, not

contractual indemnification (see *id.* at 29-30; *Children's Corner Learning Ctr. v A. Miranda Contr. Corp.*, 64 AD3d 318 [1st Dept 2009])).

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

ENTERED: MAY 26, 2015

A handwritten signature in black ink, appearing to read "Susan R. [unclear]", written over a horizontal line.

CLERK