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SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-2287-15

TRAVIS, INC.,
a New Jersey corporation,

Plaintiff/Counterclaim
Defendant,
v.

HONEYWELL INTERNATIONAL INC.,
THOMAS JACOSITZ, SKANSKA,
USA BUILDING, INC.,
STRUCTURE – TONE, INC.,
STAR-LO ELECTRIC, INC., SJP
PROPERTIES CO., JOHN SCIARA,
PRUDENTIAL FINANCIAL, INC.,
PRUDENTIAL NEWARK REALTY, LLC.

Defendants,

HONEYWELL INTERNATIONAL INC.,
A Delaware corporation,

Third-Party Plaintiff,

v.

ENDURANCE AMERICAN INSURANCE
COMPANY

Third-Party Defendant.

Decided: February 16, 2018

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FRANK J. DEANGELIS, J.S.C.

Plaintiff Travis Inc. ("Travis") brought this action against Defendant Honeywell International Inc. ("Honeywell") seeking, primarily, damages for Honeywell's alleged breach of a construction contract for nonpayment. Plaintiff joined various parties engaged in the same construction project to the current action, including: Thomas Jakositz; Skanska USA Building, Inc. ("Skanska"); Structure-Tone Inc. ("STI"); Star-Lo electric, Inc. ("Star-Lo"); SJP Properties, Co. ("SJP"); John Sciara; Prudential Financial, Inc. and Prudential Newark Realty, LLC (together "Prudential").

Prudential engaged SJP, Skanska and STI to perform certain development and construction management in connection with the two high-rise office buildings located on Prudential's real property in Newark, New Jersey (the "Project"). First Amen. Compl. ¶¶ 23-26. Skanska engaged Honeywell to design and install core and shell of the building management systems ("BMS") and fire alarm systems ("FAS") and STI engaged Honeywell to design and install BMS and FAS fit outs. Id. at ¶¶ 26-27. In an agreement negotiated by Mr. Jakositz, Honeywell subcontracted Travis to mount, wire, and terminate the components of BMS and FAS core and shell and fit outs. Id. at ¶¶ 28-29. Skanska engaged Star-Lo to perform the electrical installation at the Project. Id. at 30.

In April 2014, Travis and Honeywell reached an agreement for the BMS and FAS work for the Project. Id. at ¶ 53. Because of its long-term working relationship with Honeywell, Travis represents that Travis began working on the Project following the agreement absent Honeywell's completed design drawings. Id. at ¶¶ 33-37 & 55. Travis alleges Honeywell was unable to manage its work effectively and caused Travis costs and delay. Id. at ¶ 68. Further, after receiving Defendant Jakositz's assurance for payment, Honeywell allegedly stopped paying Travis in May 2015. Id. at ¶ 80. Travis also alleges that Sciara, Star-Lo's employee who served as a secondment at SJP, together with SJP, influenced Honeywell to retain Star-Lo for certain work that Travis was not

prepaid for and to create inflated back charges against Travis's work. Id. at ¶¶ 86-89.

On August 23, 2016, Travis filed a First Amended Complaint requesting declaratory judgment against Honeywell declaring that Honeywell's refusal to pay Travis for its work on the Project constituted a material breach, and causes of action against Honeywell for breach of contract, fraudulent inducement on the basis of Jakositz's actions, and violations of the Prompt Payment Act. Travis also brought causes of action against Jakositz for fraudulent inducement, against Star Lo, SJP and Sciara for tortious interference and claims for negligence against Prudential, SJP, Skanska and STI. After failed attempts at mediation in 2016, several motions to dismiss Plaintiff's Complaint were filed by various Defendants. After the Court resolved those motion, Honeywell filed an Amended Answer and Third-Party Complaint. Several of the Third-Party Defendants filed motions to dismiss Honeywell's Third-Party Complaint. SJP moved to dismiss Honeywell's cross-claim for indemnification and contribution against it. Skanska moved to dismiss Honeywell's cross-claims for breach of contract, declaratory relief, and indemnification and contribution against it. Prudential moved to dismiss Honeywell's claims for indemnity and contribution, unjust enrichment, and quantum meruit against it. And Star-Lo filed a motion to dismiss

Travis's tortious interference claim and Honeywell's indemnification and contribution cross-claims.

R. 4:6-2 provides, in relevant part, that the defendant may raise, by motion with accompanying brief, the failure of the plaintiff's pleading to state a claim upon which relief can be granted as a defense to the plaintiff's claim for relief. Such motions should be granted "in only the rarest of instances." Printing Mart v. Sharp Elect. Corp., 116 N.J. 739, 772 (1989). In approaching a motion to dismiss for failure to state a claim upon which relief can be granted, the Court's inquiry is limited to "examining the legal sufficiency of the facts alleged on the face of the complaint." Id. at 746. The court is permitted to consider additional documents, aside from the complaint, when those documents form the basis of plaintiff's claims. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005). The Court must search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim . . . ." Id. For purposes of analysis, the plaintiff is entitled to "every reasonable inference of fact . . . [and the examination] should be one that is at once painstaking and undertaken with a generous and hospitable approach." Id.

In reviewing the motion, the Court is not concerned with the "ability of plaintiffs to prove the allegations contained in the complaint." Id. The complaint need only allege sufficient facts

as to give rise to a cause of action or prima facie case. Dismissal of the plaintiff's complaint is only appropriate after the complaint has been "accorded . . . [a] meticulous and indulgent examination. . . ." Printing Mart, 116 N.J. at 772. If dismissal of the plaintiff's complaint is appropriate, the dismissal "should be without prejudice to a plaintiff's filing of an amended complaint." Id. In circumstances where the plaintiff's pleading is inadequate in part, the Court has the discretion to dismiss only certain counts from the complaint. See, e.g., Jenkins v. Region Nine Housing Corp., 306 N.J. Super. 258 (App. Div. 1997).

A. SJP's Motion to Dismiss Honeywell's Cross-Claims

Honeywell seeks indemnification and contribution from SJP in the event that Honeywell is found liable for damages to any other parties on account of the actions of SJP. SJP brought a motion to dismiss Honeywell's cross-claims for indemnification and contribution. SJP argues that Honeywell's indemnification claim fails because Honeywell has not pled the existence of a contractual indemnity obligation from SJP, no special relationship exists between Honeywell and SJP, and Honeywell cannot demonstrate that it is without fault.

In this case, there is no contract, agreement or statute to which Honeywell can point as requiring indemnification. Thus, Honeywell's claim depends on the existence of a special legal relationship between it and SJP that implies a right

to indemnification. Port Authority of New York & New Jersey v. Honeywell Protective Servs., Honeywell, Inc., 222 N.J. Super. 445, 461, (App. Div. 1987); Ruvolo v. U.S. Steel Corp., 133 N.J. Super. 362, 367 (Law Div. 1975). Although Honeywell argues that a special legal relationship is not required for implied indemnity to exist, the Court finds that this case does not fall into the exception to an already narrow doctrine of implied indemnification without a special relationship. Honeywell cites SGS U.S. Testing Co., Inc. v. Takata Corp., No. 09-6007, 2012 U.S. Dist. LEXIS 102650, 2012 WL 3018262, at *5 (D.N.J. July 24, 2012), aff'd, 547 F. App'x 147 (3d Cir. 2013) (citing Adles' Quality Bakery, Inc. v. Gaseteria, Inc., 332 N.J. 55 (N.J. 1960)) for the proposition that a right to indemnification may be implied in the absence of a special relationship. However, in SGS U.S. Testing Co., Inc., the court explained that, in holding that a party can maintain a claim for indemnification, the Adles' Court focused on absolute or strict liability, rather than lack of a special relationship. Id. at *16. In Adles', the Court held that under the Joint Tortfeasor Contribution Law, a negligent defendant could seek contribution and indemnification from a strictly liable codefendant who was the operator of an airplane that without fault fell from the sky. Adles' Quality Bakery, Inc., 332 N.J at 77. Consistent with other post-Adles' cases involving implied indemnification, the court in SGS U.S. Testing Co., Inc refused to extend the holding of Adles'

to cases that do not involve strict liability and found that a party cannot maintain a claim for implied indemnification absent a special relationship. SGS U.S. Testing Co., Inc., supra, *20. See also Port Authority of New York & New Jersey, 222 N.J. Super. at 461; Ruvolo., 133 N.J. Super. at 367.

In Ruvolo, the court noted that "[t]he cases involving New Jersey law, while upholding the bar to indemnification between joint tortfeasors, also recognize that a right to indemnity may arise out of a special legal relationship of the parties." Ruvolo, 133 N.J. Super. at 367. The issue of whether a special legal relationship arises out of a lessor-lessee relationship was one of first impression to the Ruvolo court, and it noted that, for example, a bailor-bailee relationship was enough to establish a special legal relationship between a third-party and an employer. Id. The Ruvolo court ultimately held that the lessor-lessee relationship is a sufficient special legal relationship to create duties between an employer and manufacturer so that a manufacturer may seek common law indemnification. Id. In reaching that finding, the Ruvolo court held that "[i]t is the existence of a special legal relationship sufficient to impose certain duties and a subsequent breach of those duties that permits an implied indemnification." Id.

Ruvolo and later case law indicate that, absent strict liability, the parties must be in certain contractual or special

relationships in order to support a claim for implied indemnity. [1] In this case, Honeywell asserted claims for breach of contract against Skanska, Travis and STI. Honeywell did not plead facts that could demonstrate that SJP and Honeywell were in a special

[1] See also Longport Ocean Plaza Condo., Inc. v. Robert Cato & Assocs., 2002 U.S. Dist. LEXIS 16334 (E.D. Pa 2002). Although not binding, this case is illustrative. In Longport Ocean Plaza Condo., Inc., the court considered a dispute regarding a construction-renovation project where plaintiff, Longport Ocean Plaza Condominium, Inc. ("Longport") asserted breach of construction contracts and warranties against the general contractor, Robert Cato & Associates, Inc. ("Cato"). Cato then asserted various tort and contract claims against various parties, including EFCO Corporation, Inc. ("EFCO"), the designer and manufacturer of windows and doors used for the project. Summary judgment was entered on the other parties' claims for contribution and indemnification against EFCO, since these claims were premised upon EFCO's status as a tortfeasor. Longport then filed a separate action against EFCO asserting contract claims for breach of warranty. EFCO filed a third-party complaint against Longport's board members (the "Board") asserting claims for contribution and indemnification, arguing that the "Board intentionally, recklessly, or negligently failed to discharge its responsibilities to Longport and its individual condominium owners when it failed to properly evaluate the scope of the renovation project and failed to hire an appropriate contractor to manage the project. As a result . . . [EFCO] wrongly incurred damages and costs associated with the [] litigation." Longport, supra, at *4. In dismissing EFCO's claim for common law indemnity, the Longport court held that "[c]ommon law indemnification 'is available under New Jersey law to a person who is not at fault, but has become responsible in tort for the conduct of another." Longport, supra, at *11 (citations omitted). "Furthermore, common law indemnification must be based on a 'special legal relationship between the parties [that] creates an implied right of indemnification,' since the party asserting such a claim must only be liable in a 'constructive, secondary, or vicarious' manner." Id. at *11-12. The Longport court dismissed EFCO's common law indemnity and contribution claims which were based on contract claims, not claims based in tort.

relationship. SJP was a building manager hired by Prudential while Honeywell was hired by Skanska and had later contracted for certain work with Star-Lo. Accepting all factual allegations as true, these relationships between the parties do not establish a showing of a special relationship between Honeywell and SJP. Accordingly, Honeywell's cross-claim against SJP for implied indemnification is dismissed.

Honeywell's claims for contribution against SJP also fail as a matter of law. Honeywell would be entitled to contribution from SJP only if Honeywell was a joint tortfeasor, pursuant to the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53A-1 to -5 ("JTCL"). Under the JTCL, "'joint tortfeasors' means two or more persons jointly or severally liable in tort for the same injury." N.J.S.A. 2A:53A-1. "It is common liability at the time of the accrual of plaintiff's cause of action which is the Sine qua non of defendant's contribution right." Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 72 (2004) (quoting Markey v. Skog, 129 N.J. Super. 192, 200 (Law Div. 1974)). "Where the pleadings show separate torts, severable as to time and breaching different duties, rather than a joint tort, dismissal of the third-party action is appropriate." Finderne Mgmt. Co., Inc. v. Barrett, 355 N.J. Super. 197, 208 (App. Div. 2002).

Honeywell seeks contribution from SJP for Travis's contractual claims against Honeywell and Travis's tortious

interference claim against SJP for interference with contract(s) between Honeywell and Travis. It is undisputed that SJP was not a party to the contract(s) between Honeywell and Travis. Moreover, the JTCL clearly states that joint tortfeasors must be liable in tort for the same injury. Therefore, Honeywell cannot seek contribution from SJP for Travis' contract claims against it. Honeywell argues that the holding of Dunn v. Praiss, 139 N.J. 564, 575-78 (1995) demonstrates that the right to contribution is not limited to situations involving joint tortfeasors. In Dunn, a physician-provider who was guilty of medical malpractice sought contribution from his health maintenance organization ("HMO") on the basis of the HMO's independent breach of a contractual duty to the patient. The court, carving out an exception to the general rule that contribution must be sought between parties jointly liable in tort, held that such claims were permitted. However, it did so by carefully limiting its holding based on (1) the harm suffered and (2) the particular nature of the breach of contractual duty in that case. The instant case is dissimilar from Dunn on these matters.

First, the Dunn court limited its holding to cases in which the harm suffered by the plaintiff was personal injury. The court defined the question before it as: "Can there be contribution between a party whose breach of contract is the proximate cause of personal injury and another party whose negligence is a proximate

cause of the same injury?" Dunn, 139 N.J. at 575 (emphasis added). It went on to "agree . . . that it is appropriate in this case to apportion responsibility based on a breach of contract that is alleged to have proximately caused personal injury." Dunn, 139 N.J. at 577 (emphasis added). In the instant case, there is no similar allegation of personal injury by any party.

Second, the court stressed the fact that the HMO's contractual duty was closely analogous to the tort duties imposed on the physician-provider. The court held that "[i]n the context of this case in which the breach of contractual duty appears to parallel closely the fault-based duty of care imposed on a health care provider, it is appropriate to allow for contribution. . . In this case, the alleged failure of the HMO is more like a negligent act." Id. In the case at bar, the facts set out in Honeywell's cross-claims do not demonstrate any parallels between contractual duties by SJP and negligent acts of Honeywell. Thus, Dunn is distinguishable from the present case. Here, there is no allegation of personal injury by any party. Additionally, SJP cannot be held liable as a joint tortfeasor for contractual claims. The cross-claims for contribution against SJP for contractual claims must therefore be dismissed.

Further, SJP cannot be found liable for contribution for tortious interference because the count for tortious interference

for the contract between Travis and Honeywell seeks different damages from the claims brought by Travis against Honeywell. Travis seeks damages against Honeywell for failure to pay for work that Travis performed and the claim against SJP for tortious interference seeks damages for additional work that was performed by Star-Lo but allegedly should have been performed by Travis. There are no factual allegations in the pleadings that assert that Sciara's interference with Travis's contract caused any liability on behalf of Honeywell. Therefore, SJP and Honeywell cannot be joint tortfeasors because they are not responsible for the same damages. See Finderne Management Co., Inc. v. Barrett, 355 N.J. Super. 197, 208 (App. Div. 2002). Honeywell's claim for contribution against SJP thus fails as a matter of law. Accordingly, SJP's motion to dismiss Honeywell cross-claims for contribution and indemnification is GRANTED.

B. Skanska's Motion to Dismiss Honewell's Cross-Claims.

Skanska seeks to dismiss Honeywell's cross-claims against Skanska including Count I for breach of contract, Count V for declaratory relief, and Count VI for indemnification and contribution, because Skanska's obligations to Honeywell under the Skanska/Honeywell subcontract were extinguished by a novation, by which Honeywell agreed to accept Prudential as the party to the subcontract in lieu of Skanska. Skanska further seeks to dismiss

these claims on the basis of unreasonable delay and because these cross-claims are procedurally deficient.

Generally, a novation is "the substitution of a new contract or obligation for an old one which is thereby extinguished." Fusco v. City of Union City, 261 N.J. Super. 332, 336 (App. Div. 1993) (citing 15 Williston On Contracts, § 1865 at 582-85 (3d ed. 1972)). A novation requires "(1) a previously valid contract; (2) an agreement to make a new contract; (3) a valid new contract; and (4) an intent to extinguish the old contract." Wells Reit II-80 Park Plaza, LLC v. Dir., Div. of Taxation, 414 N.J. Super. 453, 466 (App. Div. 2010). When determining whether there has been a novation, "intent is the primary inquiry." Id. at 467. A novation need not be express, but may be implied. Fusco, 261 N.J. Super. at 337. "The extinguishment of the original duty is fundamental to a novation, because a subsequent breach gives no right of action against the initial obligor." Id. Importantly, there must be a mutual agreement among all the parties to the new and the old agreements. Id. (citing Adams v. Jersey Central Power & Light Co., 21 N.J. 8, 15 (1956)). A party's unilateral agreement to relieve itself from a contract is insufficient for a novation. Id.

Skanska argues that (1) the Skanska-Honeywell subcontract was a previously valid contract; (2) the November 18, 2015 letter from Prudential amounts to an agreement to make a new contract, where

Prudential agreed to assume Skanska's contractual obligations to Honeywell and Honeywell agreed to perform under the assumed subcontract for Prudential; (3) the parties intended to extinguish the old subcontract; and (4) Honeywell never contested the validity of the novation contract, thus making the new contract valid. Skanska's Br. in Supp. of Mot. 12.

The November 18, 2015 letter states that Prudential agreed to pay Honeywell a certain amount of money, and in exchange Honeywell agreed to immediately resume work on the Project to complete Honeywell's obligations under its subcontract with Skanska and STI. See O'Reilly Cert. in Supp. of Prudential's Mot., Ex. G. Honeywell points out that November 18, 2015 letter specifically states that "Honeywell and Prudential are reserving all of their rights with regard to unresolved Honeywell claims and Skanska/STI/Prudential claims and/or back charges." DeLuca Cert., Ex. I. Honeywell argues that the reservation of rights in the November 18, 2015 letter shows that Honeywell never intended to create a novation and to extinguish Skanska's obligations. Honeywell's Br. in Opp'n to Skanska's Mot. 12.

The terms of Skanska's and Honeywell's subcontract were governed by Skanska's Standard Subcontract Terms and Conditions (the "Subcontract"). Section 16.3 of the Subcontract states

> Subcontractor acknowledges and agrees that none of its rights or obligations under the Subcontract may be assigned or delegated

> without the prior written consent of the Contractor[2]. Any assignment or delegation by Subcontractor of a right or obligation hereunder without Contractor's prior written consent shall be null and void and of no force or effect. Contractor shall have the right on written notice to Subcontractor to assign this Subcontract in whole or in part to the Owner of its Designee (including Owner's lender) if Owner terminates Contractor's performance under the Owner Contract for any reason or other circumstances exist under the Owner Contract requiring such assignment. Subcontractor will cooperate with Contractor as required to effect any such assignment.

Pursuant to this provision, the Contractor can assign the contract to the owner at its own accord; there is nothing in the Subcontract that indicates that a Subcontractor's permission is needed for an assignment of the contract to the owner. The only requirement for an effective assignment is notice to the Subcontractor. Thus, Honeywell's assent to an assignment is irrelevant. Skanska assigned the contract to Prudential and notified Honeywell of the assignment by letter dated October 23, 2015. O'Reilly Cert., Ex. H. The letter expressly states that the subcontract "is hereby assigned as of right from Skanska to Prudential." Id. The letter further states, in relevant part, that "[a]ll rights, duties, responsibilities and obligations of the Subcontractor remain unmodified, in full force and effect. Prudential has assumed all rights, duties, responsibilities and

[2] Contractor refers to Skanska USA Building Inc. Subcontract, Article 1 §1.1(h).

obligations of Skanska under the Subcontract Agreement. . . Pursuant to this Notice of Assignment and Assumption of Subcontract Agreement, Subcontractor agrees that all claims arising out of the guarantee or warranty due from Subcontractor for work that it performed under the Subcontract Agreement is hereby assigned to Prudential. . . Prudential will proceed promptly and in good faith to address outstanding change order requests and cost events presented to Skanska as of the date of this Assignment." Id. Honeywell acknowledges the receipt of this letter but argues that the assignment is not valid because Honeywell did not agree to it. However, under the Subcontract that governed Honeywell's work for Skanska, Honeywell's agreement to an assignment is not necessary for Skanska to assign the Subcontract to Prudential.

Therefore, while from the facts presented by the parties, it is clear that the Subcontract was assigned to Prudential, the requirement for a novation is different. Novation requires (1) mutual intent to substitute in another party and (2) an agreement reflecting this intention. Hunt v. Gorenberg, 9 N.J. Misc. 463, 472 (1930); Fusco v. City of Union City, 261 N.J. Super. 332, 337 (App. Div. 1993). See also The Sixteenth, Ward Bldg. and Loan Ass'n of Newark, N.J. v. Reliable Loan, Mortgage and Sec. Co., 125 N.J. Eq. 340, 342-43 (E & A 1939) (citations omitted):

> In order to effect a novation there must be a clear and definite intention on the part of all concerned that such is the purpose of the

> agreement, for it is a well settled principle that novation is never to be presumed. The intention by the obligor that the existing debt should be discharged by the new obligation must be concurred in by both debtor and creditor. The existence of such an intention need not be shown by express words to that effect, but the same may be implied from the facts and circumstances attending the transaction and the conduct of the parties thereafter.

The party alleging such a novation carries the burden of proof. Id. at 345. Here, Honeywell argues that its intent to reserve rights in the November 18, 2015 letter shows that Honeywell never intended to create a novation, while Skanska argues that a novation can be implied through the relevant documents, attendant circumstances and conduct of the parties. Such a determination, however, is premature at the motion to dismiss stage. In reviewing a motion to dismiss, the Court is not concerned with the "ability of plaintiffs to prove the allegations contained in the complaint." Banco Popular N. Am., 184 N.J. at 183. The complaint need only allege sufficient facts as to give rise to a cause of action or prima facie case. Id. Therefore, after accepting all of the factual allegations in the Complaint as true and drawing all of the inferences in favor of the non-moving party, the Court concludes that from the facts asserted by Honeywell, it is possible that there was no novation of the contract.

Notwithstanding the question of fact regarding novation, Prudential conceded at oral argument that pursuant to the

assignment of the subcontract, Prudential assumed all obligations, including any past payments and/or performance obligations by Skanska to Honeywell. Based upon this concession and the language of the notice of the assignment, the Court finds that Skanska's contractual liabilities to Honeywell were extinguished by the assignment and any claims related to Honeywell's work at the project are all against Prudential.

Skanska also argues that the Court should disallow Honeywell's claims against Skanska because Honeywell unreasonably delayed in bringing its cross-claims. Skanska proposed that the Court use Rule 1:13-7(a) (permission to reinstate following lack of prosecution dismissal), laches, and unclean hands. Honeywell originally joined Skanska into this action by way of a Third Party Complaint, filed on November 2, 2015. Honeywell's claims against Skanska were subsequently administratively dismissed for failure to serve Skanska. Honeywell moved to reinstate its claim against Skanska on August 3, 2016 and was granted permission to file new pleadings against the parties Honeywell sought to reinstate on August 19, 2016.

Dismissals under Rule 1:13-7(a) are "without prejudice" and "the right to 'reinstatement is ordinarily routinely and freely granted when [the] plaintiff has cured the problem that led to the dismissal even if the application is made many months later.'" Ghandi v. Cespedes, 390 N.J. Super. 193, 196 (App. Div.

2007) (quoting Rivera v. Atl. Coast Rehab. Ctr., 321 N.J. Super. 340, 346 (App. Div. 1999)). The courts' past considerations of this issue reflect a preference for the adjudication of claims on their merits rather than barring "a litigant's way to the courtroom" because of procedural errors. Id. at 198. For example, in Baskett v. Kwokleung Cheung, thirty-three months passed from the filing of the complaint and its service upon defendant. Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 382-83 (App. Div. 2011). The delay in service resulted because prior counsel was "disengaged" and failed to discover service had not been effectuated. Id. at 380, 385. The court found "good cause" was shown even where the justifications for the lack of oversight were deemed "meager and incomplete." Id. at 385. Here, in granting Honeywell's motion to reinstate its claims, the Court already found good cause for the reinstatement. Similarly, the Court does not find a reason to disturb its prior decision.

Skanska also seeks to dismiss Honeywell's claims on the basis of laches. Skanska does not dispute that Honeywell brought its claims within the statute of limitations but asserts that Honeywell's claims must nonetheless be dismissed based on unreasonable delay under the principles of laches. Laches is an equitable defense that may be asserted in the absence of the statute of limitations and has been defined as an inexcusable delay in asserting a right that is prejudicial to the other party. Nw.

Covenant Med. Ctr. V. Fishman, 167 N.J. 123, 140 (2001). Laches cannot be used to bar an action at law commenced within the statute of limitations. Fox v. Millman, 210 N.J. 410 (2012). Furthermore, laches cannot be used to accelerate a statute of limitations. Id. at 423. Because there is no dispute that (1) this is an action at law; (2) the statute of limitations is applicable to Honeywell's claims; and (3) the claims are within the statute of limitation, laches is inapplicable to this case.

Lastly, Skanska asserts that the equitable doctrine of unclean hands precludes Honeywell's delayed assertion of its claims. Courts may invoke the doctrine of unclean hands and deny equitable relief to a party that is itself guilty of inequitable conduct in reference to the matter in controversy. See Hageman v. 28 Glen Park Assoc., LLC, 402 N.J. Super. 43, 48 (Ch. Div. 2008). Unclean hands may exist when a party breaches its duty by engaging in acts of bad faith, fraud, or unconscionable conduct in commercial transactions. See Brunswick v. Route 18 Shop. Ctr., 182 N.J. 210, 222-23 (2005). The doctrine of unclean hands, however, is only applicable to equitable claims, not legal claims. Sprenger v. Trout, 375 N.J. Super. 120 (App. Div. 2005). Honeywell has not asserted equitable claims against Skanska, therefore, the doctrine of unclean hands is inapplicable.

Skanska's last argument for dismissal of Honeywell's cross-claims is that the claims are procedurally deficient because

Skanska no longer exists as a defendant in this lawsuit. Skanska was dismissed as a defendant in the underlying action on October 28, 2016, therefore Skanska argues that since it is no longer a co-party in the litigation, Honeywell's cross-claims against it must also be dismissed in accordance with R. 4:7-5. No authority cited by Skanska, however, provides support for the result sought by it. R. 4:7-5 sets out circumstances when a cross-claim may be filed. Skanska highlights that the rule states that "a pleading may state as a crossclaim any claim by one party **against a co-party**…" R. 4:7-5 (emphasis added). It is undisputed that at the time of filing of the cross-claims Skanska and Honeywell were co-parties. Nothing in the rule indicates that once a claim against a co-party fails that the cross-claim must also fail or be dismissed. While it is true that by definition such a claim would be defined as a third-party claim, as opposed to a cross-claim, the Court finds no authority that requires the dismissal of such a claim with or without prejudice subject to a need to re-file the claim as a third-party claim. Similarly, Young v. Latta, cited by Skanska does not address the dismissal of the cross-claims but instead focused on contribution claims between co-defendants when there is a settling defendant and held that a claim for contribution "is available in every case in which there are multiple defendants, whether or not a cross-claim for contribution

has been filed." Young v. Latta, 123 N.J. 584, 586 (1991). The Latta Court went on to explain that:

> [A] settling tortfeasor shall have no further liability to any party beyond that provided in the terms of settlement, and that a non-settling defendant's right to a credit reflecting the settler's fair share of the amount of the verdict—regardless of the actual settlement—represents the judicial implementation of the statutory right to contribution.

Young v. Latta, 123 N.J. 584, 591(1991).

Thus, although a settling defendant's liability is extinguished as to matters set forth in the settlement, the non-settling defendant retains the right to a credit in the amount equal to the settling party's share, and to have that "settling defendant's liability apportioned by the jury." Vernix ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 207 (App. Div. 2006). Regardless of whether there has been a settlement, the essential element for recovery under the JTCL is that the defendants share a common liability to the plaintiff, even where the actual liability of each tortfeasor derives from a different theory of recovery. Cartel Capital Corp. v. Fireco, 81 N.J. 548, 567 (1980); Tomkovich v. Pub. Serv. Coordinated Transp., 61 N.J. Super. 270, 274 (App. Div.), certif. denied, 33 N.J. 116 (1960). Accordingly, these cases do not support Skanska's assertions that Honeywell cannot pursue its cross-claims against Skanska because Skanska was dismissed as a defendant in the underlying action.

Nonetheless, Skanska's motion to dismiss is GRANTED because all claims related to Honeywell's work for Skanska at the Project shall be brought against Prudential pursuant to the Assignment.

C. Prudential's Motion to Dismiss Honeywell's Cross-Claims

Prudential seeks to dismiss Honeywell's claims for indemnity and contribution (Count VI), unjust enrichment (Count VIII), and quantum meruit (Count IX) against it on the basis of the parties' contractual relationship and because Honeywell cannot establish that Honeywell and Prudential are joint tortfeasors.

First, Prudential argues that Honeywell's cross-claims for unjust enrichment and quantum meruit fail as a matter of law because Honeywell recognizes the existence of a contract between the parties. Honeywell has asserted a cross-claim for breach of contract, which Prudential is not seeking to dismiss in this motion. Additionally, Prudential asserts that Honeywell's quasi-contractual claims are barred by the economic loss doctrine, which prohibits plaintiffs from suing a party in tort for negligence or other tortious conduct to recover purely economic losses for which they can recover by way of contract. Honeywell counters that its equitable claims are properly asserted because Skanska Subcontract is unenforceable against Honeywell because of Skanska's material breaches and Honeywell is entitled to the reasonable value of the work it performed as a remedy. Honeywell also argues that it performed work for Prudential beyond the scope of the Skanska

Subcontract and is entitled to equitable compensation for that work.

"Quasi-contract liability [should] not be imposed . . . if an express contract exists concerning the identical subject matter." Suburban Transfer Serv. v. Beech Holdings, Inc., 716 F.2d 220, 226-27 (3d Cir.1983); see also C.B. Snyder Realty Co. v. National Newark & Essex Banking Co., 14 N.J. 146, 162-63 (1953); Moser v. Milner Hotels, Inc., 6 N.J. 278, 280-81 (1951). This general rule, however, is subject to exceptions. See e.g., Power-Matics, Inc. v. Ligotti, 79 N.J. Super. 294, 304 (App. Div.1963) (recognizing that both theories may be pled when the applicability of the express contract is debatable, as in cases where rescission or voidness is alleged, or where the existence or enforceability of the express contract is a subject of contention). Generally, the parties are bound by their agreement, and there are no grounds for imposing an additional obligation where there is a valid unrescinded contract that governs their rights. Suburban Transfer Serv., 716 F.2d at 227.

Honeywell and Prudential do not dispute that there is a binding written contract between the parties. Furthermore, while the contract between Honeywell and Skanska was assigned to Prudential, Honeywell reserved all claims it had under the contract in the November 18, 2015 Letter Agreement. Pursuant to the assignment, these claims must be brought against Prudential.

Additional work was also within the scope of the contract. The Subcontract contemplates any additional work performed by Honeywell that was not initially agreed upon through its change order/extra work provision. Honeywell has not pleaded that the Subcontract was void or unenforceable, but instead conceded that notwithstanding Skanska's alleged breach, Honeywell's performance of its obligations was in accordance with the binding contract between the parties. Therefore, while unjust enrichment claims and contract claims can be pleaded as alternative theories in the event that no valid contract exists between the parties, the existence and validity of the Subcontract is not in dispute in this case and Honeywell's claims for unjust enrichment and quantum meruit fail as a matter of law.

Next, Prudential argues that Honeywell cannot establish its contribution claim because Prudential is not a joint tortfeasor to any of the claims Travis asserts against Honeywell. Prudential also argues that Honeywell cannot sustain a claim for vicarious liability as a matter of law because to be entitled to indemnification as one who is secondarily or vicariously liable, a party must be without fault. Prudential asserts that, here, for indemnification to be necessary, Honeywell must be found at fault for one of Travis's causes of actions against it.

An indemnity agreement is interpreted in accordance with general rules of contract construction. Ramos v. Browning Ferris

Indus., Inc., 103 N.J. 177 (1986). In determining the meaning of an indemnity provision, the clause "is to be strictly construed and not extended to things other than those therein expressed." Longi v. Raymond-Commerce Corp., 34 N.J. Super. 593, 603 (App. Div. 1955) (citing George M. Brewster & Son, Inc. v. Catalytic Constr. Co., 17 N.J. 20 (1954)). As discussed by the Court above, implied indemnification is available where a special legal relationship between the parties. Port Authority of New York & New Jersey, 222 N.J. Super. at 461. See also Ramos, 103 N.J. at 188-89 ("[A] third party may recover on a theory of implied indemnity from an employer only when a special legal relationship exists between the employer and the third party, and the liability of the third party is vicarious." (citations omitted)).

Honeywell has not alleged that a contractual obligation to indemnify on behalf of Prudential or Skanska exists. Honeywell alleges that Prudential was the owner of the Project and that it assumed Skanska's obligations under the Subcontract. However, Honeywell does not plead a special relationship between itself and Prudential nor does it allege an express contractual indemnification obligation. Honeywell, nonetheless, asserts that Prudential may have a legal obligation to indemnify Honeywell based on implied indemnification doctrines in other jurisdictions. Honeywell cites no authority in New Jersey indicating New Jersey

Courts' willingness to extend the reach of implied indemnification to the same circumstances as the out of state cases to which it cites. New Jersey courts have considered the issue of implied indemnification multiple times and have never shifted contractual liability to a party who caused an alleged breach of a contract absent special relationship or vicarious liability. New Jersey courts have also been clear that to find a basis for implied indemnification, "the indemnitee 'must have been without fault and his liability must be merely constructive, secondary or vicarious in order to make a claim for indemnification.'" Port Authority of New York & New Jersey, 222 N.J. Super. at 454 (quoting New Milford Bd. of Ed. v. Juliano, 219 N.J. Super. 182, 186 (App.Div.1987). Honeywell has not pointed to any factual allegations that would demonstrate a potential purely vicarious finding of liability without fault on its part, therefore, Honeywell cannot sustain a claim for implied indemnification as a matter of law. Cartel Capital Corp., 81 N.J. at 566.

Honeywell's claim for contribution against Prudential also fails for the same reasons as set out by the Court above in regard to contribution claim against SJP. Dunn is distinguishable from this case and does not allow contribution claims between non-joint tortfeasors because Dunn allowed contribution in a breach of contractual duty that was a proximate cause of a personal injury. Dunn, 139 N.J. at 575-78. All of Travis's claims sound in

contract, not tort and there are no claims resulting in personal injury. Therefore, Honeywell cannot seek contribution for its contractual claims. See N.J.S.A. 2A:53A-1. Furthermore, Travis's only tort claim against Honeywell is a claim for respondeat superior, which seeks to hold Honeywell vicariously liable for the conduct of its employee Jakositz. However, Prudential is not named in that claim nor do the parties allege any facts to demonstrate that Jakowitz was an agent of Prudential or has any other relationship to Prudential. There was no claim made against Prudential for tortious interference with the subcontract between Honeywell and Travis. Therefore, factual allegations alleged by Honeywell do not establish a basis for a claim for contribution against Prudential, because Prudential cannot be a joint tortfeasor to any of Travis's claims. Accordingly, Prudential's motion to dismiss Honeywell's claims for indemnification, contribution, unjust enrichment and quantum meruit is GRANTED.

D. Star-Lo's Motion to Dismiss

Star-Lo filed a motion to dismiss Travis's Complaint and Honeywell's cross-claims on the basis that Travis's allegations against Star-Lo are insufficient to support a claim for tortious interference, and Honeywell is not legally entitled to contribution or indemnification from Star-Lo. First, Star-Lo alleges that Travis did not plead sufficient facts to support a cause of action for tortious interference against Star-Lo because

it did not allege specific acts by Star-Lo indicating that Star-Lo interfered with Travis's rights under the contract.

The general rule defining the elements of tortious interference with an existing contract is

> One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Nostrame v. Santiago, 213 N.J. 109, 122 (2013) (quoting Restatement (Second) of Torts § 766 (1979)). The interference with the contract must be intentional and wrongful. Id. The scope of acts that are viewed by the courts as "wrongful" is broad, encompassing various misrepresentations and deceit on the part of the interfering party. Id. at 124 (collating cases). Sneaky or underhanded acts, however, are not considered wrongful. Id. (citing C.R. Bard, Inc. v. Wordtronics Corp., 235 N.J. Super. 168, 174 (Law Div.1989)).

Travis alleges that as a Star-Lo employee, Sciara was able to direct Honeywell to use a specific contractor to complete the work Travis would not complete without prepayment, and that Sciara used his position to force Honeywell to retain Star-Lo. Complaint ¶¶ 86-87. Travis further alleges that Star-Lo and Sciara knew that Honeywell would attempt to back charge the work to Plaintiff and

inflated the cost of the work, causing Travis loss through inflated back charges that Honeywell charged to Travis. Id. at ¶¶ 146-147.

Although Star-Lo argues that these facts could not possibly support a claim for tortious interference with a contract because Travis admitted that the work that was awarded to Star-Lo instead of Travis fell outside the scope of Travis's contract with Honeywell, this assertion is not supported by Travis's pleadings. Throughout its pleadings, Travis maintains that the parties entered into a series of amendments to their agreements that governed the parties' relationship. Complaint ¶ 74 et seq. Travis referred to out-of-scope work as the work, which exceeded Travis's original proposals to Honeywell. Id. at ¶ 74. Travis memorialized each such request in a change order and considered the change order within the scope of the Travis/Honeywell contract. Although, the Court does not make a determination at this time with regard to the scope of the Honeywell/Travis contract, the pleadings clearly reflect that Travis does not allege that Star-Lo tortuously interfered with work that was outside of its contract, because Travis alleges that change orders were within the contract's scope. Notably, Travis did not allege any equitable or quasi-contractual claims in its First Amended Complaint but only asserted breach of contract claims. Specifically, Count III (breach of contract) of Travis's Complaint states that Honeywell breached the contract by withdrawing payments for change orders that were amendments to the

agreements between Travis and Honeywell. Complaint ¶¶ 104-06. Travis further alleges that Sciara, SJP and Star-Lo forced Honeywell to award Start-Lo work that Honeywell would have awarded to Travis absent Star-Lo's interference and that as a result, Travis lost prospective profits and incurred unwarranted back charges. Id. at ¶¶ 147-47. These allegations are sufficient to give rise to a cause of action for tortious interference.

Similarly, Travis's tortious interference claim is not barred by the economic loss doctrine. When a party's entitlement to damages arises from a breach of contract, it is barred from recovering economic losses in tort as well. Spring Motors Distributors, Inc. v. Ford Motor Co., 98 N.J. 555, 581-82 (1985). "The Economic Loss Doctrine is designed to place a check on limitless liability ... and establish clear boundaries between contract and tort law." Werwinski v. Ford Motor Co., 286 F.3d 661, 680 (3d Cir. 2002). Furthermore, "whether a tort claim can be asserted alongside a breach of contract claim depends on whether the tortious conduct is extrinsic to the contract between the parties." State Capital Title & Abstract Co. v. Business Serv., LLC, et al., 646 F. Supp. 2d 668, 676 (D.N.J. 2009)(citation omitted). Here, Travis alleges that Star-Lo, SJP and Sciara conspired and pressured Honeywell to award work to Star-Lo that would have gone to Travis and allegedly induced Honeywell into creating unwarranted back charges. Although Honeywell was not

obligated to award the work to Travis, Travis alleges that based on the parties' representations and contractual relationship that Travis should have been awarded the work for which it was not even considered due to Star-Lo's interference. The Court finds that these alleged facts are sufficient to demonstrate that the tortious conduct was extrinsic to the contract. Thus, Travis's tortious interference claim is not barred by the economic loss doctrine.

Honeywell's indemnification and contribution claims fail for reasons substantially similar to the Court's dismissal of its indemnification and contribution claims against other parties in this action.

An indemnity agreement is interpreted in accordance with general rules of contract construction. Ramos v. Browning Ferris Indus., Inc., 103 N.J. 177 (1986). In determining the meaning of an indemnity provision, the clause "is to be strictly construed and not extended to things other than those therein expressed." Longi v. Raymond-Commerce Corp., 34 N.J. Super. 593, 603 (App. Div. 1955) (citing George M. Brewster & Son, Inc. v. Catalytic Constr. Co., 17 N.J. 20 (1954)). As discussed by the Court above, implied indemnification is available where a special legal relationship between the parties. Port Authority of New York & New Jersey, 222 N.J. Super. at 461. See also Ramos, 103 N.J. at 188-89 ("[A] third party may recover on a theory of implied indemnity from an employer only when a special legal

relationship exists between the employer and the third party, and the liability of the third party is vicarious." (citations omitted)).

Honeywell does not allege that there is an express contractual indemnification obligation. Although Honeywell contracted with Star-Lo for certain work, this contract took place only after its contractual relationship with Travis already ended. Honeywell did not plead a special relationship with Star-Lo and the Court cannot find factual support in any of Honeywell's allegations of an existence of a special relationship. Therefore, there is no basis for an indemnification against Star-Lo as a matter of law.

Honeywell's cross-claim for contribution also fails because Honeywell and Star-Lo are not joint tortfeasors. The only claim asserted against Star-Lo by Travis is a claim for tortious interference, which is not asserted against Honeywell, therefore Honeywell cannot seek contribution for it. Travis does not assert any other claims against Star-Lo. Moreover, Honeywell cannot seek contribution for contractual claims, not sounding in tort. Sattelberger v. Telep, 14 N.J. 353, 364 (1954). Travis's only tort claim against Honeywell is a claim for respondeat superior, which seeks to hold Honeywell vicariously liable for the conduct of its employee Jakositz. However, Star-Lo is not named in that claim nor do the parties allege any factual allegations that could demonstrate that Jakowitz was an agent of Star-Lo or has any other

relationship with Star-Lo. Therefore, while Travis pled enough facts with respect to its tortious interference claim to withstand a motion to dismiss, Honeywell did not plead any factual allegations that could demonstrate that Honeywell and Star-Lo are joint tortfeasors for any of the tort claims asserted by Travis. Star-Lo's motion to dismiss Travis's tortious interference claim is thus DENIED. Star-Lo's motion to dismiss Honeywell's indemnification and contribution claims is GRANTED.

E. Motions to Seal

Prudential filed two separate unopposed motions to seal pursuant to R. 1:38-11. R. 1:38-11 provides that

> (a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
> (b) Good cause to seal a record shall exist when:
> (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
> (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

I. Motion to Seal Prudential's Business Agreement

Here, the document that Prudential seeks to seal is Prudential's business agreement ("Business Agreement"). In its unopposed motion, Prudential argues that the Business Agreement is not publicly available and contains pricing information relevant to the construction of the Project. Br. in Supp. of Mot. to Seal

1. Prudential asserts that the release of the Business Agreement to the public would cause harm to Prudential for disclosing its negotiating practices. Id.

A party seeking to seal a record must show by a preponderance of the evidence that (1) disclosure of the agreement's terms will likely cause a serious and defined injury, and (2) the party's privacy interests substantially outweigh the presumption that court records are to be open for inspection. R. 1:38-11. Further, Rule1:38-11, as amended, did not eliminate the requirement, which predated the rule, that a party seeking to seal a record must demonstrate with specificity the need for secrecy for each document sought to be sealed. See Hammock by Hammock v. Hoffmann-Laroche, 142 N.J. 356, 381-82 (1995). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient." Id.

Here, Prudential did not specify any serious injury that will likely result if the agreement is not sealed. Prudential's sweeping, generalized contentions that the disclosure of the terms of the agreement will cause serious harm because the agreement discloses its negotiating practices, as the agreement contains pricing information about a completed project, are too amorphous and broad to support a finding of a likelihood of a serious injury. The agreement merely shows the pricing and scope of work and

payment, no different from any other contract. Therefore, Prudential's motion to seal the Business Agreement is DENIED.

II. Motion to Seal Email

Prudential also moves to seal an email dated November 13, 2015. Prudential asserts that the November 13, 2015 email was referenced in the previously submitted November 18, 2015 letter from Prudential. Br. in Supp. of Mot. to Seal 1. In Prudential's motion to dismiss Honeywell's cross-claims, Prudential referenced the November 18, 2015 letter agreement. Id. Prudential maintains that the November 13, 2015 email is not publicly available and contains pricing information relevant to the construction of the Project. Id. at 2. Prudential asserts that the release of the November 13, 2015 email would disclose Prudential's negotiating practices, which would cause harm to Prudential. Id. In addition, Prudential claims that the privacy interest of the parties in this proceeding outweigh the public interest in access such document. Id.

Here, for the same reasons as stated above, the Court cannot find a reasonable basis to seal the document. Prudential has not demonstrated how the disclosure of pricing information of this project will cause it serious injury. The email does not contain any trade secrets or proprietary information. Prudential's preference to keep its pricing information confidential does not warrant the record to be sealed under Rule1:38-11. On the facts

provided to the Court, any injury to Prudential is purely speculative. Moreover, because the Court is unpersuaded that disclosing the email would result in a serious injury to Prudential, it cannot determine that Prudential's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection. Accordingly, Prudential's motion to seal the email is DENIED.

For the reasons set forth above, SJP's motion to dismiss Honeywell's cross-claims for contribution and indemnification is GRANTED. Skanska's motion to dismiss Honeywell's cross-claims for breach of contract, declaratory relief, and indemnification and contribution against it is GRANTED. Prudential's motion to dismiss Honeywell's claims for indemnity and contribution, unjust enrichment, and quantum meruit is GRANTED. Star-Lo's motion to dismiss is DENIED as to Travis's tortious interference claim and GRANTED as to Honeywell's indemnification and contribution cross-claims. Prudential's motions to seal email communication and the Business Agreement are DENIED.