

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 24, 2026

CV-25-1166

PAUL CASTRACANE,

Plaintiff,

v

ALEXIUS KASMIER et al.,

Respondents,

and

AMAZON.COM SERVICES LLC,

Appellant.

MEMORANDUM AND ORDER

Calendar Date: August 19, 2026

Before: Garry, P.J., Fisher, Powers and Ryba, JJ.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York City (*Patrick J. Lawless* of counsel), for appellant.

Foti Henry, PLLC, Buffalo (*Daniel K. Cartwright* of counsel), for Alexius Kasmier and another, respondents.

O'Connor, O'Connor, Bresee & First PC, Albany (*Rebecca J. Smyth* of counsel), for CK Properties, LLC, respondent.

Ryba, J.

Appeal from an order of the Supreme Court (Sherri Brooks-Morton, J.), entered June 23, 2025 in Albany County, which, among other things, partially denied a motion by defendant Amazon.com Services LLC to dismiss the cross-claims against it.

Plaintiff, an independent contractor for defendant Amazon.com Services LLC (hereinafter Amazon), commenced this action seeking to recover damages for personal injuries he sustained while delivering a package to the rear entrance of a residence owned by defendant CK Properties, LLC (hereinafter CK Properties) and occupied by defendants Alexius Kasmier and Michael Kasmier (hereinafter collectively referred to as the Kasmiers). Plaintiff alleged that he delivered the package as instructed by Amazon's directions and was returning to his vehicle when two dogs owned by the Kasmiers attacked him in the driveway of the residence. Plaintiff alleged that the dogs were running loose and unsupervised on the property and that he observed no warning signs alerting visitors to the presence of the animals.

The complaint alleged two causes of action sounding in negligence, one against Amazon, and one against the Kasmiers and CK Properties. As against Amazon, plaintiff alleged that it negligently directed him to deliver the package to the *rear* entrance of the residence despite the customer's purported instruction to leave the package at the *front* entrance, thereby exposing him to the dogs that attacked him. Plaintiff further alleged that the Kasmiers and CK Properties were negligent because they had actual or constructive knowledge of the dogs' vicious propensities and failed to take proper precautions to prevent them from attacking plaintiff. In their respective answers to the complaint, the Kasmiers and CK Properties asserted, among other things, cross-claims for contribution and common-law indemnification against Amazon. After issue was joined, Amazon settled plaintiff's claims, obtained a release and requested that the Kasmiers and CK Properties voluntarily discontinue their cross-claims against it. When the Kasmiers and CK Properties declined to discontinue, Amazon moved for an order compelling execution of a stipulation of discontinuance or, alternatively, an order dismissing all cross-claims against it. Supreme Court granted the motion insofar as it sought dismissal of the cross-claims for contribution, but denied the motion with respect to the cross-claims for common-law indemnification. Amazon appeals from so much of the order as denied dismissal of the common-law indemnification claims.

It is well settled that a release executed by an injured party relieves the settling tortfeasor from liability to nonsettling parties for contribution pursuant to CPLR article 14, but does not preclude claims against the settling tortfeasor for common-law indemnification (*see* General Obligations Law § 15-108 [b]; *Koretnicki v Northwoods Concrete, Inc.*, 184 AD3d 993, 994 [3d Dept 2020]). Common-law indemnification is an equitable remedy that permits a party who has been compelled to pay for the negligence of another to recoup the payment from the negligent party (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374-375 [2011]; *Murray Bresky Consultants, Ltd v New York*

Compensation Manager's Inc., 106 AD3d 1255, 1258 [3d Dept 2013]). The remedy is available only to a party who is without fault but is nonetheless held liable by operation of law or by virtue of its relationship to the negligent party (see *McCarthy v Turner Constr., Inc.*, 17 NY3d at 375; *Nusbaum v 1455 Wash. Ave., LLC.*, 240 AD3d 1113, 1115-1116 [3d Dept 2025]). Where the party seeking common-law indemnification is alleged to have committed its own independent acts of negligence, the remedy is not available inasmuch as "a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine" (*Dreyfus v MPCC Corp.*, 124 AD3d 830, 830 [2d Dept 2015] [internal quotation marks and citations omitted]; see *Nusbaum v 1455 Wash. Ave., LLC.*, 240 AD3d at 1115-1116; *Morin v Heritage Bldrs. Group, LLC*, 211 AD3d 1138, 1142-1143 [3d Dept 2022]).

Applying these principles, we conclude that Supreme Court erred in denying Amazon's motion for summary judgment dismissing the cross-claims for common-law indemnification. Here, the complaint alleged that the Kasmiers and CK Properties are liable for their own independent acts of negligence because they failed to confine or otherwise prevent vicious dogs from attacking plaintiff. Under these circumstances, any liability imposed upon the Kasmiers and CK Properties will arise from their own alleged negligence, not from Amazon's conduct (see *McCarthy v Turner Constr., Inc.*, 17 NY3d at 375-377; *O'Toole v Marist Coll.*, 206 AD3d 1106, 1111-1112 [3d Dept 2022]). Notably, the complaint fails to allege that the Kasmiers and CK Properties are vicariously liable for Amazon's negligence in instructing plaintiff to deliver packages to the rear door. As the claimed liability of the Kasmiers and CK Properties is premised upon their own direct negligence and there is no scenario under which they could be held vicariously or statutorily liable for Amazon's conduct, common-law indemnification is not available (see *O'Toole v Marist Coll.*, 206 AD3d at 1111-1112). Amazon was thus entitled to dismissal of the cross-claims for common-law indemnification.

To the extent that the Kasmiers and CK Properties contend that Amazon bears full responsibility for plaintiff's injuries because the incident would not have occurred without Amazon's alleged negligence in providing erroneous delivery instructions, this argument relates to Amazon's degree of fault and does not create the vicarious liability relationship that common-law indemnification requires. The right to common-law indemnification does not arise merely by alleging that another tortfeasor is more culpable or even wholly responsible for the plaintiff's injuries. Rather, the proper remedy lies in General Obligations Law § 15-108, which provides the Kasmiers and CK Properties the opportunity to establish Amazon's negligence at trial and to receive a corresponding

reduction of any verdict against them in an amount attributable to Amazon's equitable share of fault (*see* General Obligations Law § 15-108 [a]).

The parties' remaining contentions have been examined and found to be without merit or otherwise unnecessary to address.

Garry, P.J., Fisher and Powers, JJ., concur.

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as denied the motion by Amazon.com Services LLC for dismissal of the cross-claims for common-law indemnification; said cross-claims are dismissed; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R".

Robert D. Mayberger
Clerk of the Court