

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 25-CV-00394

**Bradford Coolidge et al v. BlackRock Construction, LLC et al**

## ENTRY REGARDING MOTION

Title: Motion to Dismiss Count 1 of the Third-Party Complaint (Motion: 11)  
Filer: Andres Avila  
Filed Date: May 19, 2026

This case concerns Melissa and Bradford Coolidge's purchase of a house and alleged defects in its construction. They have named as defendants Adam Hergenrother in his personal capacity and as trustee of the Adam Hergenrother Family Trust ("Trustee"), the Adam Hergenrother Family Trust ("the Trust"), BlackRock Construction, LLC ("BlackRock"), Hergenrother Realty, Inc. d/b/a Adam Hergenrother Companies, John Higgins, and Artisan Engineering, P.C. Second Am. Compl. ("SAC").

BlackRock and Hergenrother, personally and as Trustee, filed a third-party complaint for contractual indemnity (Count I) and for implied indemnity (Count II) against Jason Decker and Nidecker VT, LLC. Decker and Nidecker have moved to dismiss Count I under Rule 12(b)(6). (Mot. 11). Hergenrother and BlackRock filed separate oppositions to Decker and Nidecker's motion to dismiss. Hergenrother does not oppose the motion to dismiss Nidecker from Count I. BlackRock does. All parties have counsel.

For the reasons that follow, the court grants Mot. 11.

### **I. Third-Party Complaint**

Third-Party Plaintiffs assert the following facts in their complaint against Decker and Nidecker. The court assumes takes the allegations as true for ruling on this motion. See Section II below (outlining applicable legal standard).

The Coolidges describe the construction of their house as "deficient, with numerous material defects." Third-Party Compl. ("TPC") ¶ 10. The Coolidges claim that the house was not built in a workmanlike manner and that the defects violate the implied covenant of habitability. *Id.* ¶¶ 11–12. "On an unknown day in 2022," Hergenrother entered into a Project Manager Agreement ("PMA") with Decker to manage the house's construction. *Id.* ¶ 14. The PMA includes the following language regarding indemnity:

Project Manager shall indemnify, defend and hold harmless Owner and its Affiliates, officers, directors, trustees, employees, agents, servants, successors, and assigns from losses, damages, expenses and claims (including attorneys' fees)

for all claims growing out of the lawful demands of Project Managers, workmen, materialmen and furnishers of machinery, equipment, tools and all supplies incurred in the performance of the Work and for all injury or alleged damage to persons and/or property to the extent resulting from Project Manager or its employees and agents' negligence or reckless or wrongful acts, wherever located or otherwise in connection with Project Manager's performance under this Agreement, except to the extent caused by Owner's gross negligence or reckless or wrongful acts.

Opp., Ex. A § 8(k).<sup>1</sup> The agreement defines "Work" as "the work related to the project . . . including providing all oversight, management, coordination, scheduling, services and other items required to complete the Work," *id.* § 1, and it defines "Owner" as Hergenrother and Adam Hergenrother Companies. Hergenrother signed the PMA in his personal capacity and as principal of Adam Hergenrother Companies. Decker signed the agreement in his personal capacity. Third-Party Plaintiffs assert that the Coolidges' SAC "alleges multiple breaches of workmanship falling within the supervisory responsibilities of the Project Manager." TPC ¶ 16.

Throughout the project, Decker and Nidecker worked at the direction of BlackRock and received payment for their work from BlackRock. TPC ¶ 21. Third-Party Plaintiffs assert that the Coolidges' claims "derive from alleged breaches falling within the scope of work/oversight of the Project Manager, Decker, acting individually and/or in his professional capacity as principal of NiDecker VT, LLC." TPC ¶ 22.

## **II. Discussion**

When a party moves to dismiss a complaint pursuant to V.R.C.P. 12(b)(6), the court "must assume that the facts pleaded in the complaint are true and make all reasonable inferences in the plaintiff's favor." *Montague v. Hundred Acre Homestead, LLC*, 2019 VT 16, ¶ 10, 209 Vt. 514. The court considers whether "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Davis v. American Legion, Dept. of Vt.*, 2014 VT 134, ¶ 12, 198 Vt. 204 (quotation omitted). "The purpose of a motion to dismiss is to test the law of the claim, not the facts which support it." *Powers v. Off. of Child Support*, 173 Vt. 390, 395 (2002). As a result, only "where the plaintiff does not allege a legally cognizable claim, [is] dismissal . . . appropriate." *Montague*, 2019 VT 16, ¶ 11.

"A contract is interpreted foremost to give effect to the parties' intent, which is reflected in the contractual language, if that language is clear." *B & C Mgmt. Vt., Inc. v. John*, 2015 VT 61, ¶ 11, 199 Vt. 202 (citing *R & G Props., Inc. v. Column Fin., Inc.*, 2008 VT 113, ¶ 17, 184 Vt. 494); accord *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 27, 218 Vt. 144 (plain language of contract controls interpretation when language is clear and there is no ambiguity). The court "take[s] the words to represent the parties' intent, and the plain meaning of the language governs [the court's] interpretation of the contract." *Sutton v. Purzycki*, 2022 VT 56, ¶ 37, 217 Vt. 326 (quotation and citation omitted). See also *Hamelin v. Simpson Paper (Vt.) Co.*, 167 Vt. 17, 19 (1997) (applying same rule to indemnities).

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<sup>1</sup> Third-Party Plaintiffs assert the PMA was executed "[o]n an unknown day in 2022." The PMA contains the date "\_\_\_\_ day of September, 2020" just above Hergenrother's and Decker's signatures.

None of the parties asserts that the PMA contains ambiguous language. The court focuses on the language the parties used in the PMA.

No party submitted the complete PMA. The language of the Indemnity Provision suffices to resolve the parties' dispute. As quoted above, Decker agreed to indemnify Hergenrother, Adam Hergenrother Companies, its affiliates, officers, directors, trustees, employees, agents, servants, successors, and assigns for claims: (1) "growing out of the lawful demands of Project Managers, workmen, materialmen and furnishers of machinery, equipment, tools and all supplies incurred in the performance of the Work," and (2) for all injury or alleged damage to persons and/or property to the extent resulting from Project Manager or its employees and agents' negligence or reckless or wrongful acts, wherever located or otherwise in connection with Project Manager's performance under this Agreement[.]" No party has suggested that the Coolidges' claims fall under (1). The court focuses on whether (2) covers their claims.

The TPC arises from the claims the Coolidges have asserted against Hergenrother and BlackRock. A review of the Coolidges' revised SAC filed on June 1 reveals that the Coolidges' claims arise from the house's "substantial material defects" that "include significant structural defects," SAC ¶ 10, and their claim that the house "was not built in a good and workmanlike manner free from material defects," *id.* ¶ 11. The Coolidges recite numerous alleged defects in the house's construction, *id.* ¶¶ 96–97, and assert the following causes of action: rescission, breach of contract, breach of warranty, consumer fraud, fraud, breach of the covenant of good faith and fair dealing, negligent misrepresentation, and concerted action liability. They do not seek damages for injury to any person or personal item resulting from the allegedly defective construction of the home.

The Vermont Supreme Court has held that the installation of inferior quality house shingles does not constitute "property damage." *Down Under Masonry, Inc. v. Peerless Ins. Co.*, 2008 VT 46, ¶ 8, 183 Vt. 619 (mem.). Courts outside of Vermont have concluded that defective construction does not constitute "property damage." See, e.g., *Owners Ins. Co. v. Jim Carr Homebuilder, LLC*, 157 So.3d 148, 155 (Ala. 2014) ("[F]aulty workmanship itself is not property damage[.]"); *Crossmann Comms. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 717 S.E.2d 589, 594 (S.C. 2011) ("[N]egligent or defective construction resulting in damage to otherwise non-defective components may constitute 'property damage,' but the defective construction would not.") (citation omitted). The South Carolina court emphasized "the difference between a claim for the costs of repairing or removing defective work, which is not a claim for 'property damage,' and a claim for the costs of repairing damage caused by the defective work, which is a claim for 'property damage.'" *Crossmann Comms. of N.C., Inc.*, 717 S.E.2d at 594 (quoting other cases). See also *Wm. C. Vick Constr. Co. v. Pa. Nat'l Mut. Ins. Co.*, 52 F. Supp.2d 569, 583 (E.D. N.C. 1999) ("[D]amages based solely on shoddy workmanship (*i.e.*, damages seeking repair costs and/or completion costs) are not "property damage[.]"); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 889 (Fla. 2007) ("[F]aulty workmanship or defective work that has damaged the otherwise nondefective completed project has caused 'physical injury to tangible property,'" but "[i]f there is no damage beyond the faulty workmanship or defective work, then there may be no resulting 'property damage.'"). Neither Hergenrother nor BlackRock

cite any cases in which the term “property damage” includes defective construction or faulty workmanship.

BlackRock cites a case in which an indemnitor promised to indemnify the City for “bodily injury” claims arising from the indemnitor’s use of a City park during a swim meet. *Southwick v. City of Rutland*, 2011 VT 53, 190 Vt. 106. A child injured herself when she fell from playground equipment the City installed and maintained. The Vermont Supreme Court found that the indemnitor had agreed to indemnify the City for the child’s claims even though the indemnitor was not charged with any negligence itself. *Id.* ¶ 7. The Court concluded that the indemnitor “cannot escape the plain language of its agreement with the City.” *Id.*

Based on the decisions cited above, this court concludes that the Indemnity Provision’s clause (2) does not apply. Because the Coolidges have asserted no claims against Hergenrother or BlackRock for injury or damage to persons or to property, “it appears beyond doubt that there exist no facts or circumstances that would entitle [Hergenrother and BlackRock] to relief” based on their contractual indemnity claim. *Davis*, 2014 VT 134, ¶ 12, 198 Vt. 204.<sup>2</sup>

### **III. Order**

For the reasons stated above, the court grants Jason Decker and Nidecker VT, LLC’s motion to dismiss Count I of the Third-Party Complaint (Mot. 11).

Electronically signed pursuant to V.R.E.F. 9(d) on August 11, 2026.

  
Colin Owyang  
Superior Court Judge

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<sup>2</sup> The court does not reach BlackRock’s assertion that it is a third-party beneficiary of the PMA. BlackRock’s Opp. at 2–3.