

Mazzarelli, J.P., DeGrasse, Richter, Feinman, JJ.

14577 S.A. de Obras y Servicios, Copasa, Index 651555/12
Plaintiff-Appellant-Respondent, 651649/13

-against-

The Bank of Nova Scotia, et al.,
Defendants-Respondents-Appellants.

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Cointer Chile, S.A., et al.,
Plaintiffs-Appellants-Respondents,

-against-

The Bank of Nova Scotia, et al.,
Defendants-Respondents-Appellants.

Wilk Auslander LLP, New York (Jay S. Auslander of counsel), for
S.A. de Obras y Servicios, Copasa, appellant-respondent.

Quinn Emanuel Urquhart & Sullivan, LLP, New York (Stephen A.
Broome of counsel), for Cointer Chile, S.A. and Azvi Chile, S.A.,
appellants-respondents.

Shearman & Sterling LLP, New York (Daniel H.R. Laguardia of
counsel), for respondents-appellants.

Order, Supreme Court, New York County (O. Peter Sherwood,
J.), entered June 13, 2014, which, insofar as appealed from,
dismissed plaintiff S.A. De Obras Y Servicios, Copasa's (Copasa)
complaint in its entirety, dismissed plaintiff Cointer Chile,
S.A. and Azvi Chile, S.A. Agencia En Chile's (Cointer) first,
second, and eighth causes of action, denied defendants The Bank
of Nova Scotia and Scotiabank Global Banking and Markets f/k/a

Scotia Capital Inc.'s motion to dismiss Cointer's sixth cause of action and declined to apply a contractual indemnification provision to bar plaintiffs' claims and provide recovery of defendants' attorney's fees, unanimously modified, on the law, to reinstate Copasa's complaint and Cointer's first cause of action, and otherwise affirmed, without costs.

At this stage of the litigation, prior to key depositions being held, it cannot be determined whether any "outrageous acts of folly" were involved (*see Hartford Ins. Co. v Holmes Protection Group*, 250 AD2d 526, 528 [1st Dept 1998]). Accordingly, the contract-based claims for gross negligence should not have been dismissed.

The motion court properly found that the indemnification provision, on its face, expressly contemplates third-party litigation without clearly implying that the parties intended the provision to apply to intra-party claims (*see Wells Fargo Bank N.A. v Webster Bus. Credit Corp.*, 113 AD3d 513, 516 [1st Dept 2014], *lv denied* 23 NY3d 902 [2014]).

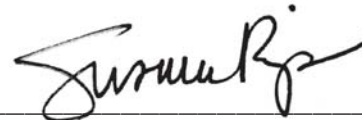
The court properly declined to dismiss Cointer's sixth cause of action. Issues of fact exist as to whether the parties reached a binding preliminary contract giving rise to a duty to

negotiate in good faith, and, if so, whether Scotiabank breached it (see *SNC, Ltd. v Kamine Eng'g & Mech. Contr. Co.*, 238 AD2d 146 [1st Dept 1997]).

We have considered the parties' remaining arguments and find them unavailing.

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

ENTERED: MARCH 19, 2015

A handwritten signature in black ink, appearing to read "Susan R.", is written above a horizontal line.

CLERK