

**ING Communications Inc. v 152-156 Realty Assoc.,  
LLC**

2012 NY Slip Op 30086(U)

January 13, 2012

Supreme Court, New York County

Docket Number: 112767/2006

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE  
Justice

PART 10

Index Number : 112767/2006  
**ING COMMUNICATIONS**  
vs.  
**152-156 REALTY ASSOCIATES**  
SEQUENCE NUMBER : 003  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 003

Motion to/for § 3212  
\_\_\_\_\_  
No(s) \_\_\_\_\_  
\_\_\_\_\_  
No(s) \_\_\_\_\_  
\_\_\_\_\_  
No(s) \_\_\_\_\_  
**FILED**

upon the foregoing papers, it is ordered that this motion is

JAN 17 2012

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

*ready for trial*

Dated: January 13, 2012

[Signature], J.S.C.  
HON. JUDITH J. GISCHE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: .....  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 10**

-----X  
ING Communications Inc.,

Plaintiff (s),

**-against-**

152-156 Realty Associates, LLC and  
AR Vays Contracting Corp.

Defendant (s).  
-----X

AR Vays Contracting Corp.,

Third Party Plaintiff,

**-against-**

International Geotechnical  
Structural Laboratories Inc. Corp.,  
Scarano Architect, PLLC a/k/a  
Scarano & Associates,

Third Party Defendants.  
-----X

**DECISION/ ORDER**

Index No.: 112767/06

Seq. No.: 003

**PRESENT:**

Hon. Judith J. Gische  
J.S.C.

Third Party

Index No.: 590423/09

**FILED**

**JAN 17 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Scarano n/m (3212) w/AWV affirm, exhs .....	1
AR Vays opp w/DDS affirm, DAV affid .....	2
Scarano reply w/AWV affirm, exhs .....	3
Steno minutes 11/10/11 .....	4

*Upon the foregoing papers, the decision and order of the court is as follows:*

**GISCHE J.:**

The court has before it a motion for summary judgment. Issue has been joined,

discovery is completed and the note of issue was filed. Since this motion is timely, summary judgment relief is available and the motion will be decided on the merits ((CPLR § 3212; Brill v. City of New York, 2 N.Y.3d 648 [2004]). This action and the action bearing the caption New Hampshire Insurance Company a/s/o ING Communications, Inc. v. 152-156 Realty Associates, LLC, Supreme Court, New York County Index No. 116383/07 ("New Hampshire action") are related cases that were, by prior amended order, consolidated for joint trial only.

Thus far, defendants 152-156 Realty Associates LLC ("152-156 Realty") and AR Vays Contracting Corp ("Vays") have moved for summary judgment in each of these actions. Each of those motions was denied. The reasons for why the court denied those motions are set forth in the court's prior order in this action dated January 6, 2012 and the court's decision dated September 21, 2011 in the New Hampshire action. Although though those decisions were made prior to Scarano bringing this motion (and the motions at bar were argued before and submitted after the court rendered decision in the New Hampshire action), none of the parties have moved to amplify this record or modify their arguments in connection with the motion at bar.

Presently, Scarano Architect PLLC a/k/a Scarano & Associates ("Scarano"), a third party defendant, seeks summary judgment dismissing Vays' third party complaint against it for common law indemnification and "judgment over." Scarano denies it had or otherwise assumed any responsibility for the construction or excavation work at the building located at 1725 Lexington Avenue, New York, New York, owned by defendant 152-156 Realty. Vays' is 152-156 Realty's contractor, a co-defendant in the main action

brought by ING Communications, Inc. ("ING"), the owner of 1727 Lexington Avenue, New York, New York. ING alleges that the defendants engaged in construction activity at 1725 Lexington ("Vays project") that caused significant structural damage to the ING building. Though due proof of service has been filed showing that International Geotechnical Structural Laboratories Inc., Corp. ("Geotechnical") was served with this motion, it has not filed any opposition thereto with the court.

### **Facts and Background**

Unless otherwise provided, the following facts have been established in the record before this court:

A critical issue in this and the New Hampshire actions is the settlement reached by ING and defendants 152-156 Realty and Vays in March 2005. That settlement agreement made March 24, 2005 and the subsequent release by ING on March 29, 2005, were raised as a defense by 152-156 Realty and Vays in the main action at bar and in the New Hampshire action. Briefly, 152-156 and Vays have raised the defense that they have no liability for ING's property damage claim because the March 2005 settlement and release was of "all" claims ING had against them and that the subsequent damage to ING's building was directly related to the work done pre-release. This court has already decided in each action that the settlement agreement and release do not bar ING and New Hampshire from proceeding against the defendants on post-settlement/post-release claims. Thus, the issue presented by the motion at bar is whether 1) Scarano can be held responsible (and must indemnify Vays) for its negligent acts that are alleged to have occurred before the release and 2) whether Scarano was

negligent after April 2005. To prevail on this motion, Scarano must prove that it was not negligent after the release or that any negligent acts by it took place before the release and are, therefore, not a part of this action because ING is only seeking post release (i.e. April 2005 forward) damages.

Vays is a contractor and affiliated entity of 152-156 Realty, the owner of 1725 Lexington Avenue. Both companies have Fred Vays as their principal. Mr. Vays is himself an engineer. Vays was hired by 152-156 Realty as the contractor for its renovation project at 1725 Lexington Avenue ("Vays project"). Mr. Vays, as principal of non-party "Future Development & Construction Corp" ("Future"), entered into a written agreement with Scarano an architectural firm. The agreement, made December 6, 2001 ("Scarano agreement), identifies Future as the owner of the building located at 1725 Lexington Avenue. The only signed copy of this agreement that has been located by the parties is signed by Robert Scarano, the principal of Scarano Architects. Apparently both sides agree that there is no actual written contract between Scarano and Vays for the Vays project, but it is undisputed that Scarano was the architect and prepared drawings for the Vays project. The drawings dated July 15, 2002 contain notations that both sides rely on, including "administrative notes." Among these administrative notes are the following notations:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE NEW YORK CITY BUILDING CODE.
2. THE ARCHITECT OF RECORD HAS NOT BEEN RETAINED FOR ANY FIELD SUPERVISION OR INSPECTION; HIS RESPONSIBILITY IS LIMITED TO ACCURACY OF THE PLANS, UNLESS OTHERWISE INDICATED BY APPLICATIONS.
4. PRIOR TO THE START OF ANY CONSTRUCTION, CONTRACTOR IS REQUIRED TO CHECK AND VERIFY ALL CONDITIONS AND DIMENSIONS AT JOB SITE AND DIMENSIONS OF PLANS. CONTRACTOR TO REPORT ANY DISCREPANCIES TO THE ARCHITECT OR ENGINEER IMMEDIATELY.

- [\* 6]
7. AT LEAST 24 HOURS WRITTEN NOTICE SHALL BE GIVEN BY THE OWNER AND/OR CONTRACTORS TO THE COMMISSIONER PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORK AND 72 HOUR WRITTEN NOTICE TO BE GIVEN ARCHITECT OR ENGINEER FOR CONTROLLED INSPECTIONS.
  8. FIVE (5) DAYS PRIOR WRITTEN NOTICE OF PERMIT APPLICATION SHALL BE GIVEN TO OWNER OF ALL ADJOINING LOTS, BUILDINGS, AND SERVICE FACILITIES WHICH MAY BE AFFECTED BY THE FOUNDATION WORK OR EARTH WORK OPERATIONS.
  15. PROTECT ALL ADJACENT PROPERTIES. PROPERLY SHORE, UNDERPIN AND MAKE SAFE ALL EXISTING CONDITIONS BEFORE PROCEEDING WITH ANY PART OF THE WORK.
  16. THE CONTRACTOR IS RESPONSIBLE FOR THE METHODS AND MEANS OF CONSTRUCTION AND FOR SITE SECURITY AND SAFETY.

The drawings also contain "demolition and protection notes" which include the following notations:

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO ADJACENT PROPERTY.
10. CONTRACTOR WILL TAKE PRECAUTIONS TO GUARD AGAINST MOVEMENT, SETTLEMENT, DAMAGE, OR STREET PASSAGES, BE LIABLE FOR ANY SUCH DAMAGE (*sic*) DOES ACCIDENTLY OCCUR, CONTRACTOR SHALL REPAIR PROMPTLY AT NO COST TO OWNER.

The "Underpinning Wall Detail" dated August 14, 2002, was prepared by the structural engineer for the Vays Project ("Krupnik"). Krupnik was apparently retained by Scarano for the project, but no written contract with Krupnik is provided either. In the underpinning notes, it states that "THE CONTRACTOR, PRIOR TO COMMENCEMENT OF WORK, SHALL EXAMINE ADJOINING PROPERTY AND STRUCTURE. SHOULD ANY CONDITIONS BE UNCOVERED WHICH PREVENT THE PROPER EXECUTION OF THE WORK, THE ENGINEER IS TO BE NOTIFIED."

After certain cracks were observed in ING's building in 2004, Scarano prepared a "Shoring Plan" dated September 9, 2004. Following the collapse of the building located

at 1723 Lexington, DOB issued a stop work order in November 2004. ING brought a lawsuit against 152-156 Realty and Vays. That lawsuit was later settled pursuant to the March 2005 settlement agreement and release between ING and the defendants. Following the stop work order, certain underpinning work was done by Vays and/or Geotechnical to shore up the debilitated building. In January 2005, after the work was completed, Scarano notified DOB of the completion in a letter dated January 5, 2005. DOB lifted its stop work order and Vays and/or Geotechnical recommenced work on the Vays project. Mr. Vays testified at his EBT that no further underpinning work was done after the underpinning was completed. Vays claims, however, that Scarano's drawings were defective, which is why the problems arose in the first place with ING's buildings.

ING's engineer ("VanDerostyne") provides his sworn affidavit in support of Vays' opposition to Scarano's motion. He recaps some of the work that was done in 2004 on the Vays project and refers to plaintiff's (ING's) expert's affidavit, a copy of which is not provided to the court. Like Mr. Vays, VanDerostyne states that no additional underpinning work was done after ING's prior action against Vays was settled. He opines that although Geotechnical installed 53 helical piles, this installation caused no vibration and could not have caused the structural damage alleged by ING.

According to VanDerostyne, the damages ING seeks to recover from Vays in this case are actually for damages already satisfied by the prior settlement agreement, for which ING has released Vays. The basis for VanDerostyne's opinion, that Scarano's structural designs and underpinning details were deficient (and Scarano was negligent) is that they provide "very little detail regarding the depth of the underpinning, the size of the vertical support or the specifics of the support..."

Although Scarano denies it had a contract with Vays, it also relies on that contract to show that it did not have nor did it assume any responsibility for construction and/or demolition work on the Vays project, even if it was hired by a related entity. In relevant part, the Scarano contract provides as follows:

Architectural Services Shall Include:

1. Preparation of preliminary design sketches in accordance with the Owner's written program & Architects input.
2. Preparation of construction documents in accordance with the preliminary schematics approved by the Owner including architectural and all engineering services necessary to complete the project not limited to structural, mechanical, plumbing, electrical & sprinkler.
3. Preparation, filing and approval of applications and construction documents required by the N.Y.C. Department of Buildings.
4. \* Preparation, filing and obtaining initial construction work permit from the N.Y.C. Department of Buildings.
5. \*\* Preparation, filing and approval of amendments required for final survey.
6. Preparation and filing of Final Certificate of Occupancy applications.
7. Preparation of amendments to conform to as-built field conditions, if required.
8. Controlled inspections for firestopping and structural stability.
9. Architect shall maintain professional insurance and shall provide construction lender proof of coverage if so required.

\*All required insurance forms to be supplied by the Owner's General Contractor at Architect's request.

\*\* Final survey, concrete reports, drywall reports, test borings and all other required documentation to be supplied by Owner to Architect for filing. All information supplied must be consistent with approved architectural plans to be considered valid.

The Scarano contract also provides that:

this Agreement is consummated on the plans and applications, procedures and processing required by the NYC Department of Buildings, NYC Tax Department and NYC Department of Environmental Protections.

Scarano denies that it falsified or in any way misled DOB into lifting its stop work order. In a letter to Vays dated August 22, 2004, before the settlement agreement,

Robert Scarano, principal of Scarano, wrote to Mr. Vays, stating the following:

Re: Proposed Construction @  
1725 Lexington Avenue  
New York, New York  
Project # 21301-1725

I have read all reports concerning the construction of the above referenced building, and its resulting alleged damages to the neighboring properties at 1727/1729 Lexington Avenue. After the alteration and construction of over 500 buildings in the metropolitan area, it is my professional opinion that the vertical and horizontal cracking and damages at the neighboring buildings are a direct result of the lack of maintenance, age and fatigue of this structure. All precautionary work of underpinning, bracing and shoring is being completed in a workmanlike fashion which caused no additional damages (sic) to those which pre-existed prior [to] the start of our building... Every attempt is being made to be sure that these tenuous conditions have not been aggravated by our construction work. To this date all underpinning and shoring is being completed without incident and the existing defects at 1727 Lexington (cracking in the side wall) have been repaired... It is my opinion that work should be immediately re-commenced to prevent any possible future damages which could result from the site being left in an open condition and then make the existing building unsafe.

Scarano contends that its responsibilities were strictly limited to providing Vays with architectural services, on terms set forth in various notations on the drawings it

prepared before the release. To the extent that Vays claims that Scarano had or assumed an obligation to do a controlled inspection of any of the underpinning work performed by Vays or its subcontractor, Scarano denies it ever received any prior written notice that underpinning work was about to be performed. Thus, Scarano contends it examined the reports of the underpinning work previously done, before the release, and found them satisfactory.

Alternatively, Scarano argues that even if Vays did notify it of imminent underpinning work, or Scarano waived such notice by sending the letter dated August 22, 2004, the underpinning work was completed before the prior action by ING was settled and, therefore, Vays has not identified any negligent acts by Scarano after March 29, 2005. Thus, Scarano contends that it was not negligent after the settlement was reached and there being no issue about post-March 2005 underpinning, Scarano cannot be held liable to Vays for such work.

The dispute about "notice" revolves around New York City Administrative Code section 27-195. ("Admin Code § 27-195") Admin Code § 27-195 sets forth certain notice requirements applicable to situations where work requiring "controlled inspections" is about to take place. Whereas Admin Code § 27-195<sup>1</sup> requires that a party seeking to do certain types of work notify DOB and the person responsible for doing a controlled inspection, Directive 44 is notice to "Adjoining Property Owners Concerning Foundation Work or Earthwork Operations – C26-112.3 New Building Code." The letter that

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<sup>1</sup>DOB shall have 24 hours prior written notice of any work "on an item of construction requiring controlled inspection..." Admin Code § 27-195 also requires that "all persons responsible for such controlled inspection shall be notified in writing at least [72] hours prior to such commencement."

Scarano sent to the owner of 1727 Lexington was that "we intend to excavate on a property adjacent to yours. Work will be performed in conjunction with the construction of the new building at 1725 Lexington Avenue, New York, New York 10029." Thus, Scarano contends it was either Vays or Geotechnical that was required to notify the architect of work requiring a "controlled inspection" - - not the other way around - and that the notice to the owner of 1727, pursuant to Directive 44, does not relieve Vays of its independent obligation to comply with Admin Code § 27-195.

Scarano argues that it is entitled to summary judgment on Vays' 4<sup>th</sup> cause of action against it because it is for strict liability, a cause of action not recognized by the courts of this state. The facts in the complaint supporting this cause of action is that Scarano negligently prepared the designs and/or drawings for the Vays project and/or negligently performed whatever tests and inspections that were necessary. Vays does not address this branch of Scarano's motion.

With respect to claims by Vays, that Scarano was negligent in failing to obtain the permission of the department of transportation ("MTA") for the project, Scarano denies that it had or undertook any obligation to file plans with or obtain permission from MTA for Vays. According to Mr. Scarano, any approvals by MTA of above-ground work would have been something the contractor, not Scarano, would have been aware of and responsible for. According to Mr. Scarano, "we don't file any drawings with [the MTA]."

Other arguments raised by Vays in opposition to Scarano's motion is that there is no affidavit by a person with knowledge of the facts and the 3<sup>rd</sup> party complaint was not provided. Examining Exhibit "C," it appears that Scarano provided the 3<sup>rd</sup> party complaint and answer in the New Hampshire action.

## Discussion

A movant seeking summary judgment in its favor must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. " Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985). The evidentiary proof tendered, however, must be in admissible form. Friends of Animals v. Assoc. Fur Manufacturers, 46 N.Y.2d 1065 (1979). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

Vays' procedural argument as to why Scarano's motion must be denied is rejected. Although Scarano apparently annexed the wrong 3<sup>rd</sup> party complaint and answer to its moving papers, there is no prejudice. Vays has addressed all arguments on the merits and the 3<sup>rd</sup> party complaint in this action and the 3<sup>rd</sup> party complaint in the New Hampshire action are indistinct.

Although a motion for summary judgment "shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions..." the term "affidavit" does not have the crabbed definition Vays ascribes. Pursuant to CPLR § 105, a verified pleading "may be utilized as an affidavit whenever the latter is required." Frequently motions for summary judgment are supported by sworn deposition transcripts as they are evidence in admissible form, satisfying the evidentiary requirements of CPLR § 3212 (CPLR §§ 3116 [a] and 3212). This is because deposition statements are sworn statements that have the same force and effect as having been made in court. Scarano's motion - - and Vays' opposition - - is

supported by deposition transcripts of the parties' principals (see Morchik v. Trinity School, 257 A.D.2d 534 [1<sup>st</sup> Dept 1999]), persons whom otherwise would have been expected to provide their sworn affidavits (Palumbo v. Innovative Communications Concepts, Inc., 175 Misc.2d 156 [Sup Ct N.Y. Co. 1997] *aff'd* 251 A.D.2d 246 [1998]). Given these circumstances, the court has decided to proceed to the merits of this motion.

Vays' first and second causes of action are based on allegations that the 3<sup>rd</sup> party defendants were negligent in operating maintaining and controlling the premises and that they created a dangerous condition by failing to properly supervise, control and inspect the work. It is also claimed that the 3<sup>rd</sup> party defendants failed to provide proper protection and tools and improperly operated equipment.

Although the Scarano agreement is between different parties, it is for the same project, identified as No. 21301-1725 and the drawings provided by the parties bear this project number as well. Both sides refers to these drawings in support and opposition to the motion before the court. Scarano has made a prima facie showing that, based on the totality of this record, it did not have nor assume any responsibility to perform or supervise the performance of construction activities at the Vays project. Scarano was hired solely to provide architectural services. This is evident from the notes on the drawings. Therefore, Scarano is entitled to summary judgment on the 1<sup>st</sup> and 2<sup>nd</sup> causes of action which have no apparent applicability to its responsibilities on this project. In opposition, Vays has failed to come forward with any issue of fact to defeat the motion. Having proved it is entitled to summary judgment, dismissing the 1<sup>st</sup> and 2<sup>nd</sup> causes of action against it, Scarano's motion is granted. Those claims and any cross

claims related to the 1<sup>st</sup> and 2<sup>nd</sup> causes of action are hereby severed and dismissed as against the Scarano defendants only, but continue as to Geotechnical which has not moved or appeared on this motion.

The 3<sup>rd</sup> cause of action asserted by Vays against Scarano (and Geotechnical) is that Scarano was negligent in the performance of its work (architectural malpractice) because Scarano failed to prepare proper plans and specifications that conformed to the professional standards of the community and failed to engage proper professionals in conjunction with their duties. It is also alleged that the 3<sup>rd</sup> party defendants failed to issue "adequate warning and instructions in connection with their duties.

The court has already decided that ING can proceed with its claims in this action because they are for post-settlement and release property damage. Vays litigated that issue in both this and the New Hampshire action (see prior orders dated 1/6/12 in this action and 9/21/11 in the New Hampshire action). Therefore, Vays cannot pursue a claim over against Scarano based upon its negligent acts, if the negligence took place prior to the March 29, 2005 release. Although Scarano is not a party to the March 24, 2005 settlement agreement, nor is the release for Scarano's benefit, the two basic requirements for invoking the equitable principle of collateral estoppel are satisfied: (1) the identical issue was necessarily decided in another proceeding (the New Hampshire action), it is decisive of the present action, and (2) defendant Vay had a full and fair opportunity to contest that issue in the other proceeding (D'Arata v. New York Cent. Mut. Fire Ins. Co., 76 N.Y.2d 659 [1990]).

The issue having been necessarily decided in this action as well would be the law of the case (Avalon v. Coronet Properties Co., 16 AD3d 209 [1<sup>st</sup> Dept 2005]).

Applying these legal principles, the drawings, actions, statements, etc., by Scarano that are alleged to be deficient, insufficient or otherwise negligent, all pre-date the settlement and release and are, therefore, non-actionable in this case. Vays has failed to come forward with any triable issue that Scarano was negligent after the date of the release. Therefore, Scarano is entitled to summary judgment dismissing the 3<sup>rd</sup> cause of action and related cross claims against it. The 3<sup>rd</sup> cause of action continues as to Geotechnical.

The 4<sup>th</sup> cause of action, for strict liability based upon the negligent performance of architectural services, is not addressed by Vays. In relevant part, this cause of action states that the 3<sup>rd</sup> party defendants "manufactured, designed and distributed design plans and specifications that were defective; that it failed to perform proper tests and inspections that improper instructions and inadequate warnings were given of which were substantial factors in causing the damage to plaintiff." Scarano has provided case law to support its argument, that New York does not recognize a cause of action in strict products liability for damages allegedly resulting from negligent performance of architectural services because there is no implied warranty of perfect results (Queensbury Union Free School Dist. v. Jim Walter Corp., 91 Misc.2d 804 [Sup Ct., Warren Co. 1977]). Therefore, Scarano's motion to dismiss this cause of action and all cross claims against its arising therefrom is granted and those claims are hereby dismissed.

Further claims by Vays, that Scarano undertook but failed to, obtain MTA permission for above ground work have absolutely no factual support in this record. Therefore, to the extent that Vays has asserted such a claim it is dismissed as well as

are any cross claims related to it.

There being no claims remaining against Scarano, the clerk shall enter judgment in favor of Scarano, dismissing the 3<sup>rd</sup> party complaint it and all cross claims in this action. The claims against the other defendants shall continue.

**Conclusion**

In accordance with the foregoing,

*It is hereby*

**ORDERED** that the motion by 3<sup>rd</sup> party defendant Scarano Architect, PLLC a/k/a Scarano & Associates for summary judgment is granted; the third party complaint against Scarano Architect, PLLC a/k/a Scarano & Associates and all cross claims arising from those claims, are hereby severed and dismissed; and it is further

**ORDERED** that the clerk shall enter judgment in favor of 3<sup>rd</sup> party defendant Scarano Architect, PLLC a/k/a Scarano & Associates, against 3<sup>rd</sup> party plaintiff A.R. Vays Contracting Corp.; and it is further

**ORDERED** that the 3<sup>rd</sup> party complaint shall continue as to the remaining defendants; and it is further

**ORDERED** that this case is ready to be tried because the note of issue has been filed; Scarano shall serve a copy of this decision/order upon the office of trial support no later than THIRTY (30) DAYS hereof so that this case can be scheduled for trial; and it is further

**ORDERED** that any relief requested but not specifically addressed is hereby denied; and it is further

**ORDERED** that this constitutes the decision and order of the court.


Dated: New York, New York  
January 13, 2012

So Ordered:

**FILED**

**JAN 17 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

  
\_\_\_\_\_  
Hon. Judith J. Gische, JSC