

**Board of Mgrs. on Behalf of the Unit Owners of the
322 W. 57th St. Condominium v Leardon Boiler
Works, Inc.**

2014 NY Slip Op 31543(U)

June 16, 2014

Sup Ct, NY County

Docket Number: 150762/2014

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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THE BOARD OF MANAGERS ON BEHALF OF THE UNIT
OWNERS OF THE 322 WEST 57TH STREET
CONDOMINIUM,

Plaintiff,

Index No. 150762/2014
Motion Seq. No. 001

-against-

LEARDON BOILER WORKS, INC., RITE WAY TANK
MAINTENANCE CORP., ROSE ASSOCIATES, INC., HESS
CORPORATION, PETROLEUM SERVICES, INC., AND
LAWLESS AND MANGIONE ARCHITECTS & ENGINEERS,
D.P.C. (A/K/A LAWLESS AND MANGIONE ARCHITECTS
& ENGINEERS LLP),

Defendants.

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HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

This action arises from an oil spill of more than 8,000 gallons of petroleum under a condominium building located at 322 W. 57th Street in New York City (the “premises”). Plaintiff, The Board of Managers on behalf of the unit owners of the 322 West 57th Street Condominium (“plaintiff”), seeks to recover for damages and costs in the investigation, remediation and removal of the discharged oil.

Defendant Hess Corporation moves pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss the complaint for failure to state a cause of action, and on the ground that its defense to the claims is founded upon documentary evidence.

Factual Background

The premises contains four 20,000-gallon above ground storage tanks (“ASTs”) in the

sub-basement level of the premises.

In order to phase out of "Number 6" oil in favor of cleaner burning fuel, plaintiff's then building manager, defendant Rose Associates, Inc. ("Rose"), hired defendant Leardon Boiler Works, Inc. ("Leardon") to convert the boiler system pursuant to specifications developed by defendant Lawless and Mangione Architects & Engineers ("Lawless"). Leardon, in turn, hired defendant Rite Way Tank Maintenance Corp. ("Rite Way") to cut open, clean, and weld close all cuts made to the fill lines for each AST.

After Rite Way advised that work on one of the tanks ("Tank 1") was complete, Rose contacted Hess to deliver 8,000 gallons of "Number 4" fuel to Tank 1. Hess, in turn, had defendant Petroleum Services Inc. ("PSI") to deliver the fuel.

After arriving to the premises on October 15, 2012, PSI commenced to fuel Tank 1. However, because the Fill Line for Tank 1 was left disconnected, approximately 8,000 gallons of fuel did not reach Tank 1. And, due to the disconnection, no "whistle" sounded to warn that oil was not reaching the Tank, in accordance with industry's "No whistle, No Fill" policy. Therefore, the oil spilled into the underground vault. Since Number 4 fuel had a lower viscosity, and upgrades to the underground vault were not recommended by Lawless, the oil soaked through the concrete walls and floor of the underground tank vault, and escaped to the gravel layer under the concrete floor slab at the property and the sub-slab tile drain system and associated sump pits.

Thereafter, the New York State Department of Environmental Conservation ("NYSDEC") ordered plaintiff to clean up the spill, and served plaintiff with a proposed Order on Consent on August 7, 2013 alleging violations and seeking fines related to the discharge.

Plaintiff allegedly incurred more than \$3 million in costs and damages, paid a \$40,000 fine issued by the NYSDEC related to plaintiff's failure to have a secondary containment of its fuel tanks, and remediation is still ongoing at additional expense.

Consequently, and as relevant herein, plaintiff seeks damages under, *inter alia*, Navigation Law and the doctrine of respondeat superior/principal agency, and for common law indemnification, restitution, negligence, and liability.

Hess now moves pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss the complaint for failure to state a cause of action, and on the ground that its defense to the claims is founded upon documentary evidence.

Hess contends that the first two causes of action brought under Navigation Law fail because the complaint indicates that plaintiff is not a person "who is not responsible for the discharge" as required to assert a claim thereunder. Plaintiff acknowledges that the NYSDEC issued plaintiff violations for the spill (Complaint ¶68), and that plaintiff paid a fine for its failure to have a secondary containment system for its fuel oil tank (Complaint ¶72). The third claim for common law indemnification also fails because nothing in the complaint indicates that plaintiff's liability is premised solely on strict liability, or that it is free from negligence, as required to assert such claim.

The fourth claim for restitution fails based on the Transportation Agreement. Hess contends that restitution is an equitable remedy to prevent enrichment to one party unjustly at the expense of another, and is precluded where there is an agreement between the parties. Under the Transportation Agreement, PSI is responsible for damages caused by its deliveries. It would be unjust and against equity and good conscience to transfer the burden for plaintiff's damages to

Hess, when Hess would never bear responsibility for them under the Transportation Agreement. Thus, whereas other parties may have received a benefit from plaintiff bearing the costs to investigate and remediate the spill, the same cannot be said of Hess, who contractually precluded itself from bearing any liability for deliveries under the Transportation Agreement. Therefore, the documentary evidence of such Agreement precludes a claim of unjust enrichment, necessary to support the restitution claim.

Furthermore, the eighth and eleventh causes of action fail to state claims for negligence and respondeat superior, respectively, because plaintiff failed to allege the requisite facts that PSI is an agent of Hess. In addition, the Transportation Agreement demonstrates that there is no principal-agent relationship between Hess and PSI, as required to state such claims. The complaint does not allege that Hess delivered and pumped the fuel, but alleges negligence based on Hess' failure to direct and supervise PSI as its agent. Yet, the Transportation Agreement belies such allegations, and does not require Hess to control or supervise PSI. Thus, dismissal pursuant to CPLR 3211(a)(1) is warranted.

Plaintiff opposes dismissal, arguing that it sufficiently stated claims under the Navigation Laws, which permit claims to be made by "any" party, whether negligent, strictly liable, or otherwise, to recover remediation costs. In any event, under caselaw, a "faultless discharger" held responsible solely because of its ownership of the subject property, should not be precluded from pursuing the Navigation Law claims, and plaintiff alleges that it contributed in no way to the discharge. And, the Consent Order issued by the NYSDEC states that it is for Departmental use only, and is not to be deemed an admission of liability in any third-party proceeding. Similarly, assuming the truth of the allegation that plaintiff did not contribute to or cause the

discharge, plaintiff's liability could only be statutory, arising from its duty as landowner. Thus, the common law indemnification claim is adequately stated.

The fourth cause of action for restitution is adequately stated, because plaintiff, due to an immediate necessity to protect the public, acted to fulfill a duty owed by Hess, and as such, Hess was unjustly enriched by plaintiff's actions. Further, the Transportation Agreement does not provide Hess with a defense to plaintiff's claim, as it does not govern the relationship between plaintiff and Hess; it governs the relationship between Hess and PSI. Restitution is an applicable remedy to require Hess to share in the costs plaintiff incurred, in the absence of any governing agreement between such parties. And, as to plaintiff's negligence and respondeat superior claims, the Transportation Agreement indicates that Hess exercises a significant degree of direction and control over the training and manner of delivery of oil by PSI, consistent with a principal-agent relationship. Plaintiff argues that since it hired Hess for the oil delivery, and received an invoice from Hess for the delivery, and the delivery was performed by PSI under Hess' direction and control, vicarious liability for PSI's acts will attach. Nor does Hess claim any deficiency in these claims. Thus, dismissal of the eighth and eleventh claims is unwarranted.

Lardon adopts plaintiff's arguments, and adds that dismissal is premature at this pleading stage. Hess' motion did not expressly seek dismissal of Lardon's cross-claims. Discovery is necessary to ascertain facts related to the complaint and Lardon's cross-claims.

In reply, Hess adds that plaintiff still fails to make out a Navigation Law claim because the allegations in the Complaint, when deemed as true, establish that plaintiff was negligent in failing to possess the necessary secondary containment system, causing the oil to spread to the adjacent property. For the same reason, plaintiff cannot seek common law indemnification.

And, as to the restitution claim, nothing in the complaint identifies direct acts or omissions by Hess as to the manner in which oil spill occurred, so as to cause Hess to benefit from plaintiff's clean up activities. And, the Transportation Agreement expressly identifies PSI as an independent contractor, and the caselaw cited by plaintiff to the contrary involve agreements and documents materially distinguishable from the Transportation Agreement herein.

In a sur-reply, plaintiff adds that the express provision that PSI is an independent contractor to Hess is antithetical to the degree of control which Hess exercised over PSI's work, and thus, the Transportation Agreement cannot be relied upon as documentary evidence.

Discussion

Pursuant to CPLR 3211(a)(1), a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "a defense is founded upon documentary evidence." Such a motion may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law" (*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Intern.*, 80 AD3d 448, 914 NYS2d 145 [1st Dept 2011] *citing Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]). Where a written agreement unambiguously contradicts the allegations of a breach of contract cause of action, the contract itself constitutes documentary evidence warranting dismissal of the complaint, pursuant to CPLR 3211(a)(1), regardless of any extrinsic evidence or self-serving allegations offered by the plaintiff (*Prichard v 164 Ludlow Corp.*, 14 Misc 3d 1202, 831 NYS2d 362 [Supreme Court, New York County 2006] *citing 150 Broadway N.Y. Assoc., L.P. v Bodner*, 14 AD3d 1 [1st Dept 2004]).

On a motion to dismiss made pursuant to CPLR 3211(a)(7), the court must "accept the

facts as alleged in the complaint as true, accord plaintiffs “the benefit of every possible favorable inference,” and “determine only whether the facts as alleged fit into any cognizable legal theory” (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, 960 NYS2d 404 [1st Dept 2013]); *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972, 638 NE2d 511 [1994]). However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not” presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437, 948 NYS2d 583 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81, 692 NYS2d 304 [1st Dept 1999], *affd* 94 NY2d 659, 709 NYS2d 861, 731 NE2d 577 [2000]; *Kliebert v McKoan*, 228 AD2d 232, 643 NYS2d 114 [1st Dept], *lv denied* 89 NY2d 802, 653 NYS2d 279, 675 NE2d 1232 [1996], and the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275, 401 NYS2d 182, 372 NE2d 17 [1977]; *see also Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511 [1994]; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150, 730 NYS2d 48 [1st Dept 2001]; *WFB Telecom., Inc. v NYNEX Corp.*, 188 AD2d 257, 259, 590 NYS2d 460 [1st Dept], *lv denied* 81 NY2d 709, 599 NYS2d 804, 616 NE2d 159 [1993]). “In deciding such a preanswer motion, the court is not authorized to assess the relative merits of the complaint’s allegations against the defendant’s contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims” (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

Navigation Law (first and second causes of action)

Navigation Law § 181(1) provides that “[a]ny person who has discharged petroleum” is

strictly liable, “without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, as defined in this section.” Navigation Law § 181(1) imposes liability on the owner of a system from which a discharge occurred in the absence of evidence that the owner caused or contributed to the discharge” (*Matter of White v Regan*, 171 AD2d 197, 199–200, 575 NYS2d 375, lv denied 79 N.Y.2d 754, 581 NYS2d 281, 589 N.E.2d 1263).

However, Navigation Law § 181(5) provides: “Any claim by any injured person for the costs of cleanup and removal and direct and indirect damages based on the strict liability imposed by this section may be brought directly against the person who has discharged the petroleum” Yet, a claim may only be maintained by a person “who is not responsible for the discharge” (Definitions, Navigation Law § 172 [3] (“‘Claim’ means, for purposes of part three of this article . . . any claim by an injured person, *who is not responsible for the discharge*, seeking compensation for cleanup and removal costs incurred or damages sustained as a result of a petroleum discharge”). “Discharge” is defined as “any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum” (Navigation Law § 172 [8]).

The Court of Appeals held, in *White v Long* (85 NY2d 564, 568-569, 650 NE2d 836 [1995]), that “[a]lthough even faultless owners of contaminated lands have been deemed “dischargers” for purposes of their own section 181(1) liability, where they have not caused or contributed to (and thus are not “responsible for”) the discharge, they should not be precluded from suing those who have actually caused or contributed to such damage. To preclude reimbursement in that situation would significantly diminish the reach of section 181(5).”

The Court of Appeals later stated in *State of New York v Green* (96 N.Y.2d 403 [2001]), that “Navigation Law § 181[5] allows a faultless landowner to seek contribution from the actual discharger, even though the landowner itself is liable as a discharger under section 181(1).” (see also, *Falls Bridge Development, LLC v Dioguardi Enterprises, Inc.*, 22 Misc.3d 1115(A), 880 NYS2d 872 (Table) [Supreme Court Onondoga County 2008] (while a person who “is responsible for the discharge” may not sue under Navigation Law § 181(5), a property owner could maintain a contribution claim under Navigation Law § 181(5), “as an ‘injured’ person if the contamination was not the fault of the property owner”)).

Inasmuch as plaintiff’s complaint alleges that plaintiff was in the process of converting its boiler system to comply with new rules, and that *Lawless failed to notify plaintiff of the need to upgrade the tanks to hold the new grade compliant fuel*, plaintiff states a private cause of action against the “actual” discharger of the oil which lead to the subject contamination.

Hess’ claim that according to the “four corners” of the complaint, plaintiff has been “pursued by NYSDEC for alleged violations for the Spill” and that plaintiff paid a fine for failure to have a secondary containment, is insufficient to establish that the complaint fails to state a cause of action (see *Falls Bridge Development, LLC v Dioguardi Enterprises, Inc.*, *supra*) [deeming Falls Bridge a “faultless landowner,” where Falls Bridge “was merely cleaning up” underground storage tanks “that were left on the property,” and there was no evidence that Falls Bridge caused any environmental contamination during the removal of these storage tanks]]. These allegations, even if true, do not show that the plaintiff was “responsible for” the contamination as a matter of law. Therefore, dismissal of the first and second causes of action for failure to state a cause of action is denied.

Hess argues that dismissal pursuant to CPLR 3211(a)(1) based the Transportation Agreement between the parties is warranted.

Common Law Indemnification

As Hess correctly argues, “implied indemnity permits one held vicariously liable solely on account of the negligence of another to shift the entire burden of the loss to the actual wrongdoer (*17 Vista Fee Assoc. v Teachers Ins. & Annuity Assn. of Am.*, citing *Mas v Two Bridges Assocs.*, 75 NY2d 680, 690; *Guzman v Haven Plaza Hous. Dev. Fund Co.*, 69 NY2d 559, 567-568; *Trustees of Columbia Univ. v Mitchell/Giurgola Assocs.*, 109 AD2d 449). Thus, “a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of the doctrine [of indemnification]” (*17 Vista Fee Assoc.*, citing *Trustees of Columbia Univ. v Mitchell/Giurgola Assocs.*, *supra*, at 453). As such, “Common-law indemnification requires proof not only that the proposed indemnitor's negligence contributed to the causation of the accident, but also that the party seeking indemnity was free from negligence” (*Martins v Little 40 Worth Associates, Inc.*, 72 AD3d 483, 899 NYS2d 30 [1st Dept 2010] citing *Correia v Professional Data Mgt.*, 259 AD2d 60, 65, 693 NYS2d 596 [1999]; *Espinoza v Federated Dept Stores, Inc.*, 73 AD3d 599, 904 NYS2d 3 [1st Dept 2010]).

Based on the above rationale, it cannot be said that plaintiff failed to state a claim for common law indemnification, on the mere ground that NYSDEC issued violations to plaintiff for the reasons stated in the Consent Order. The allegations of the complaint do not constitute any admission or acknowledgment by plaintiff that it was responsible in some manner for the contamination.

Only once “it is established that the property owner caused or contributed to [or was responsible as a matter of law for] the spill,” will plaintiff be precluded from seeking indemnification from another discharger” (*Sweet v Texaco, Inc.*, 67 AD3d 1322, 890 NYS2d 233 [4th Dept 2009]). Therefore, dismissal of the third cause of action for common law indemnification for failure to state a cause of action is unwarranted.

Restitution

To state a claim for restitution under the circumstances herein, plaintiff must allege that “it performed the defendants' duty by supplying things or services that “were immediately necessary to satisfy the requirements of public decency, health, or safety” (*New York v Hickey's Carting, Inc.*, 380 F.Supp.2d 108 [EDNY 2005] citing *City of New York v Lead Industries Ass'n, Inc.*, 222 AD2d 119, 644 NYS2d 919 [1st Dept 1996]). Here, the complaint alleges that plaintiff performed remediation work (a duty Hess was obligated to undertake), at great expense, for the oil contamination caused by Hess’s negligence in providing and supplying oil to the premises. It cannot be disputed that the remediation work at issue was performed for the public health and safety. Thus, assuming the allegations as true, Hess received a benefit through plaintiff’s remediation efforts and performance of obligations belonging to Hess.

Contrary to Hess’ contention, the Transportation Agreement between it and PSI does not establish a defense to the restitution claim. Hess’s claim ignores the caselaw that permits a claim for restitution in cases in which a party undertakes to remediate a contamination site that should have been performed by another legally obligated party. And, the caselaw Hess cites for the proposition that an agreement precludes a claim for unjust enrichment is inapplicable, since

plaintiff was not a party to the Transportation Agreement and such Agreement does not govern the relationship between the plaintiff and Hess (*see e.g., Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 838 NYS2d 585 [2d Dept 2007] (plaintiff’s unjust enrichment claim for moneys owed was governed by either plaintiff’s exclusive real estate brokerage agreement with the property owner and by plaintiff’s oral agreement with the listing agent who received payment from the property owner)).

As such, the Transportation Agreement does not conclusively establish a defense as a matter of law.

Negligence and Respondeat Superior

“Underlying the doctrine of vicarious liability, which is sometimes referred to as respondeat superior, is the notion of control. The person in a position to exercise some general authority or control over the wrongdoer must do so or bear the consequences” (*Nationwide Mut. Ins. Co. v Castle Oil Corp.*, 40 Misc. 3d 1238(A), 977 NYS2d 668 (Table) [Sup. Court, Westchester County 2013]). The following relationships have been determined to be united in interest for torts committed within the scope of the relationship—partners and co-partners, employers (masters) and employees (servants), business corporations and their employees, principals and agents (*Nationwide Mut. Ins. Co. v Castle Oil Corp.*, *supra*).

“[A] defendant who employs an independent contractor to perform services that the defendant has undertaken to perform, is liable for the negligence of the independent contractor” (*Nationwide Mut. Ins. Co. v Castle Oil Corp.*, *supra*, citing *Mduba v Benedictine Hosp.*, 52 AD2d 450, 453 [3d Dept 1976]). “Under the ostensible agency doctrine, ‘[o]ne who employs an

independent contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or [its] servants' is liable for the negligence of the contractor in supplying such services, to the same extent as though the employer were supplying them itself" (*Nationwide Mut. Ins. Co. v Castle Oil Corp.*, *supra*, citing *Miles v R & M Appliance Sales*, 26 N.Y.2d 451, 454, 311 NYS2d 491 [1970], quoting Restatement, 2d, Torts § 429 and *Mondello v New York Blood Center—Greater New York Blood Program*, 80 N.Y.2d 219, 229 [1992]). "To succeed on a respondeat superior theory, a plaintiff must assert that the agent was acting 'in furtherance of the [principal's] business and within the scope of employment" (*Parlato v Equitable Life Assur. Soc. of U.S.*, 299 AD2d 108, 749 NYS2d 216 [1st Dept 2002]).

Here, in its eighth cause of action for negligence, plaintiff essentially alleges that Hess had a duty to exercise reasonable care in filling plaintiff's delivery order, and failed to properly oversee and supervise the proper delivery of the oil "by its agent, PSI" PSI failed to recognize that the Fill Tank was not connected to tank before pumping oil into it, neglected to monitor the delivery to sure that the petroleum was reaching Tank 1, and failed to stop its flow (§131).

In its eleventh cause of action for respondeat superior, plaintiff alleges that PSI pumped fuel oil into Tank 1 without verifying that the Fuel Line was properly connected or that Tank 1 had available capacity to receive fuel oil, and failed to stop the flow of oil that was not reaching the tank . . . (§147). Hess allegedly retained supervision and control over the manner in which PSI delivered the fuel to the premises, and thus, is liable "as a principal for the conduct of its agent" (§151).

In opposition, plaintiff submits an invoice for the subject delivery from Hess, as opposed to PSI.

Therefore, contrary to Hess' claim, plaintiff sufficiently alleged facts indicating that PSI is an agent of Hess to support its negligence and respondeat superior claims.

Further, the Transportation Agreement does not refute the allegations as a matter of law. Paragraph 5 of the Transportation Agreement, Hess and PSI agreed that PSI is

“an independent contractor of Hess” and neither PSI nor its employee “will be deemed to be an employee, agent, or representative of Hess. Hess will have no control or supervision of [PSI] or its employees [PSI] will have no authority to act for or bind Hess, except as specifically agreed to in writing signed by Hess.”

This recitation “is not effective as a disclaimer of an agency relationship” (*Gulf Ins. Co. v Transatlantic Reinsurance Co.*, 69 AD3d 71, 886 NYS2d 133 [1st Dept 2009]). The “court is not bound by the disclaimer of partnership, joint venture or agency between the parties in determining their true relationship *Gulf Ins. Co.*, *supra* citing *Rubenstein v Small*, 273 AD 102, 75 NYS2d 483 [1st Dept 1947]). Further, an issue exists as to whether the Transportation Agreement required Hess to maintain a sufficient level of supervision and control over the manner in which PSI performed its delivery services for Hess. Particularly, all PSI drivers who deliver Hess' fuel under the Agreement must be “approved by the distribution department after being individually instructed by the respective Terminal Superintendent,” and follow the outlined “Pre-Loading,” “Loading,” “Bottom Loading,” “After Loading,” and “Discharging” instructions and techniques during “Station Arrival” and “Arrival” in the course of delivery of Hess' fuel. As pointed out by plaintiff, the Transportation Agreement requires PSI driver to “contact the Terminal Superintendent” for instructions if experiencing “any difficulty in loading or

unloading,” (Transportation Agreement, p. 6); “contact Hess Station Manager or Hess Terminal Management” if certain apparatuses are not accessible; (p. 8); contact Hess to receive instructions in the event of “Station Contamination Cross-Drops” (p. 10).

Therefore, contrary to Hess’ contention, the Transportation Agreement does not constitute sufficient documentary evidence to establish that PSI was not an “agent” under Hess’ supervision and control. Consequently, dismissal based on documentary evidence is unwarranted.

Conclusion

Therefore, based on the foregoing, it is hereby

ORDERED that the motion by Hess Corporation pursuant to CPLR 3211(a)(1) and (a)(7) to dismiss the complaint for failure to state a cause of action, and on the ground that its defense to the claims is founded upon documentary evidence is denied; and it is further

ORDERED that Hess Corporation shall serve and file its Answer within 20 days of service of notice of entry of this decision; and it is further

ORDERED that Hess Corporation shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: June 16, 2014



Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMOAD