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ORIGINAL

SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA

JUSTICE

----------X PART 6

SUSAN B. EISNER and ARY D. ROSENBAUM,

INDEX NO. 1714/14

Plaintiffs,

MOTION DATE: 06/30/14

-against- SEQUENCE NO. 01, 04, 05, 06

CUSUMANO CONSTRUCTION, INC., RICK CUSUMANO and VINCENT CUSUMANO, as principals and owners of CUSUMANO CONSTRUCTION, INC., and in their individual capacities,

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Amended Notice of Motion to Dismiss, Affs. & Exs(Seq. 01)..... 1
Defendants' Memorandum of Law(Seq.01)..... 2
Reply Affirmation, Affs. & Exs(Seq.01)..... 3
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Defendants, Cusumano Construction, Inc., Rick Cusumano and Vincent Cusumano, move, for an Order:

A. [Mot. Seq. 001] pursuant to CPLR 3211(a)(1), (5) and (7), dismissing the plaintiffs' complaint in its entirety.

B. [Mot. Seq. 006] pursuant to CPLR 2004 and CPLR 3012(d), extending the defendants' time to respond to the complaint, or to open any default that may exist with respect to defendants' response to the complaint.

Plaintiffs, Susan B. Eisner and Ary D. Rosenbaum, move, for an Order:

A. [Mot. Seq. 004] pursuant to CPLR 3025(b), granting them leave to amend their original complaint.

B. [Mot. Seq. 005] (1) pursuant to New York Rules of Professional Conduct Rule 1.18, disqualifying defendants' counsel, on the grounds that the plaintiffs had been prospective clients of counsel relative to the instant matter; (2) pursuant to CPLR 3215 granting them a default judgment against the defendants for their failure to timely submit responsive pleadings to the summons and verified complaint; and (3) pursuant to 22 NYCRR §130-1.1, for an Order awarding sanctions on the grounds that the defendants filed untimely motions.

The motions are determined as herein set forth below.

This action stems from plaintiffs' dissatisfaction with the construction work performed by defendants Cusumano Construction, Inc. ("CCI") and its principals Rick Cusumano and Vincent Cusumano, president and vice-president, respectively. Pursuant to two written contracts, known as the "bathroom contract" and the "expansion contract," dated March 8, 2011 (amended May 31, 2011) and April 30, 2012 (amended September 15, 2012 and November 4, 2012), the defendants performed construction renovation work to the plaintiffs' home located in Oceanside, New York. Plaintiffs herein advance the following causes of action in their (original) complaint: (1) negligence (based upon the improper electrical and exhaust work performed in the bathroom and a severed telephone line in the master bedroom); (2) negligence (based upon the improper renovation work involving the expansion of the front entry of the residence to incorporate, among other things, a mud room); (3) improper gutting of a full bathroom without the plaintiffs' knowledge or consent; (4) breach of (expansion) contract; and (5) violations of the General Business Law §§349-350 through the commission of various deceptive acts.

Plaintiffs[1] commenced this action and served the summons and verified complaint on or about February 20, 2014.[2] The defendants' requested an extension of time to respond to the

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[1] Plaintiffs are attorneys and initially represented themselves, *pro se*, in this litigation. They subsequently retained counsel, namely "Newman Stehn, LLP."

[2] Defendant Cusumano Construction, Inc. was personally served on its registered agent for service of process on February 21, 2014 (Cross Motion [Seq. 004], Ex. C).

Vincent Cusumano was personally served on March 17, 2014 (*Id*).

Rick Cusumano was served by substituted service, filing of which was completed on March 3, 2014 (*Id*). Pursuant to CPLR 308(2) however service was complete 10 days later, on March 13, 2014. Pursuant to CPLR 320, Rick Cusumano was required to respond to the complaint within 30 days thereafter. Thus, Rick Cusumano had until Monday April 14, 2014 to respond to the complaint.

pleadings. This request was however declined by the plaintiffs on March 17, 2014. Subsequently, on April 9, 2014, the defendants filed a pre-answer motion to dismiss to the complaint. Thereafter, defendants noticed that page 2 of the motion papers was missing from their original submission; as a result, the defendants, on May 12, 2014, served an "amended" motion to dismiss the complaint which was identical to the original motion papers, but now complete with the second page.

Due apparently to their failure to "timely" submit responsive pleadings to the Summons and Verified Complaint, plaintiffs herein seek a default judgment against the defendants. The plaintiffs argue that the defendants' amended notice of motion constituted a withdrawal of the earlier motion. They argue that as "amended" motion was unaccompanied by any request to extend the time to respond to the pleadings, the plaintiffs' motion for a default judgment against the defendants should be granted. This Court disagrees and herewith denies the plaintiffs' application for a default judgment.

The motion to dismiss was served shortly after the defendants were required to serve a response to the complaint. The plaintiffs' argument that the amended motion to dismiss should be rejected as untimely is unpersuasive given the fact that the amended motion was identical to the original motion except that it was now complete with page two (*Rivera v. Glen Oaks Vil. Owners, Inc.*, 29 AD3d 560, 561 [2nd Dept. 2006]; *see also, Lennard v. Khan*, 69 AD3d 812 [2nd Dept. 2010]; *Kitkas v. Windsor Place Corp.*, 49 AD3d 607 [2nd Dept. 2008]).

Furthermore, the original motion to dismiss was timely regarding the individual defendant, Rick Cusumano, whose time to answer had yet to expire. Moreover, the delay of the other defendants in responding to the complaint was minimal – i.e., 2 days for Vincent Cusumano and 27 days for CCI. Finally, there is no evidence on this record that the delay of Vincent Cusumano and CCI was either willful or that the plaintiffs herein were prejudiced as a result of the otherwise negligible delay (CPLR 2004; CPLR 3012[d]). The law not only permits a brief non-willful delay in responding to a complaint to be excused, but also permits that the plaintiff be required to accept the late response pursuant to CPLR 2004 and 3012(d) without the defendant having to demonstrate an excusable default and a meritorious defense, particularly where, as here, the plaintiffs fail to demonstrate any prejudice as a result of the minimal delay (*Darlind Constr., Inc. v. Prism Solar Tech., Inc.*, 109 AD3d 783 [2nd Dept. 2013]; *Trimble v. SAS Taxi Co., Inc.*, 8 AD3d 557, 558 [2nd Dept. 2004]).

Under these circumstances, and given the existence of a potentially meritorious defense to the action and the public policy favoring the resolution of cases on the merits, any "default" by the defendants in appearing in this action, is herewith excused (CPLR §§ 2004, 3012[d]; *Zeccola & Selinger, LLC v. Horowitz*, 88 AD3d 992, 993 [2nd Dept. 2011]; *Feder v. Eline Capital Corp.*, 80 AD3d 554, 555 [2nd Dept. 2011]). The plaintiffs' application for a default judgment is denied in its entirety and the defendants' application, pursuant to CPLR§ 2004 and CPLR §3012(d), extending their time to respond to the complaint, or to open any default that may exist with respect to defendants' response to the complaint is granted. Accordingly, the Court will consider the defendants' "amended" motion to dismiss the complaint (*Trimble v. SAS Taxi Co., Inc.*, *supra*).

The defendants' motion to dismiss the plaintiffs' complaint is countered with the plaintiffs' cross motion for leave to amend their complaint "to clarify and expand upon the allegations set forth in the summons and complaint." While the filing of an amended pleading does not automatically abate a motion to dismiss that is addressed to the original pleading (*Livadiotakis v. Tzitzikalakis*, 302 AD2d 369, 370 [2nd Dept. 2003]), many of defendants' challenges to the original complaint apply equally to the amended complaint, plaintiffs have formally cross-moved for leave to serve the amended complaint and defendants' proffer opposition specific to the complaint as amended. In view of same the Court accordingly will address defendants' motion to dismiss in the context of the amended complaint (see *DiPasquale v. Sec. Mut. Life Ins. Co.*, 293 AD2d 394 [1st Dept 2002]; *Sage Realty Corp. v. Proskauer Rose LLP*, 251 AD2d 35, 38 [1st Dept. 1998]; 5 New York Civil Practice [Weinstein, Korn & Miller]: CPLR P 3025.07).

In their amended complaint plaintiffs again denominate five causes of action, this time as follows: first - negligence (based upon unauthorized demolition work performed in an area of the house not covered by either contract; second - breach of contract (based upon improper renovation work under the signed contracts; third - violation of GBL §349 [deceptive acts] (based upon defendants unauthorized use of the "NARI' logo); fourth - violation of GBL §350 [false advertising] (also based upon defendants unauthorized use of the "NARI' logo); and fifth - fraudulent inducement ((also based upon defendants unauthorized use of the "NARI' logo).

A motion to dismiss a complaint pursuant to CPLR § 3211(a)(1) may be granted only if the documentary evidence submitted by the defendant utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (*Goshen v Mutual*

Life Insurance Co. of NY, 98 NY2d 314, 326 [2002]; *Basalel v Youni Gems Corporation*, 95 AD3d 914, 915 [2d Dept 2012]; *First Keystone Consultants, Inc. v DDR Construction Services*, 74 AD3d 1135 [2d Dept 2010]). In order for evidence to qualify as "documentary," it must be unambiguous, authentic, and undeniable (*Fontanetta v John Doe* 1, 73 AD3d 78, 84–86 [2d Dept 2010]). Here, defendants identify various portions of the contracts in support of their documentary evidence defense - the provisions of paragraph 22 which require notice and an opportunity to cure before contract termination and the execution of the contract by and on behalf of the corporate defendant CCI only. The authenticity and accepted nature of the documents relied upon is not at issue; their applicability, however, is.

The notice to cure provisions are solely applicable to plaintiffs' second cause of action as they establish a condition precedent to termination by the homeowner. Plaintiffs' first cause of action complains of work for which no contract exists and no authorization was given. Their third, fourth and fifth causes of action involve circumstances leading to execution of said contracts, not its termination or breach.

It is not disputed that plaintiffs did not comply with the formal requirements established by paragraph 22, to wit, notice sent by certified mail to CCI identifying objections to "the work performed or the materials used" and allowing CCI "a reasonable time to correct" same, the failure of which "shall constitute a waiver, for all purposes and for all time, of any objection whatsoever with respect to this agreement or the work, labor and materials ...". A contractual termination clause will be enforced as written and the failure to do so will preclude suit for breach of contract (*A. S. Rampell, Inc. v. Hyster Co.*, 3 NY2d 369, 382 [1957]; *MCC Dev. Corp. v Perla*, 81 AD3d 474 [1st Dept 2011]). While an aggrieved party will be relieved from the performance of a condition precedent to termination once it becomes clear that the other party will not live up to the contract, thereby rendering a notice to cure a futile act (*J. Petrocelli Constr., Inc. v. Realm Elec. Contrs., Inc.*, 15 AD3d 444, 447 [2nd Dept 2005]), here there exists no evidence to establish the futility of such a notice. The text messages relied upon by plaintiffs, when read in total, convey a willingness by defendants to return to the jobsite.

Plaintiffs' second cause of action is accordingly dismissed.

Insofar as defendants seek dismissal of plaintiffs' complaint as against the individual defendants on the grounds that the contract was only entered into by corporate defendant CCI, the

Court again notes that plaintiffs' first cause of action, sounding in negligence, alleges the unauthorized demolition of areas in plaintiffs' home for which there existed no contract. The contract is not thereby implicated in defendants' alleged wrongdoing. Regarding the third, fourth and fifth causes of action, these shall also stand as against the individual defendants consistent with this Court's finding, *infra*, that plaintiffs have alleged sufficient facts to withstand CPLR 3211(a)(7) dismissal of their attempt to pierce the corporate veil.

Defendants also seek dismissal of plaintiffs' complaint pursuant to CPLR § 3211 (a) (5) as barred by the doctrines of res judicata and collateral estoppel as plaintiffs had filed a complaint with the Nassau County Office of Consumer Affairs ("OCA") against all three defendants herein alleging the same purported breaches and conduct in the within complaint, including but not limited to CCI's purported unauthorized use of the NARI logo. As the OCA conducted an evidentiary hearing, made findings of fact and adjudicated the plaintiffs' claims on the merits, resulting in "fines against the defendants totaling $2,750.00" (Complaint, ¶¶95-97), defendants contend that plaintiffs may not relitigate these issues a second time.

Res judicata prevents a party from relitigating a claim which has previously been decided on its merits (*American Ins. Co. v. Messinger*, 43 NY2d 184 [1977]). "[I]t should be made clear that the doctrines of res judicata and collateral estoppel are applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies when rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals employing procedures substantially similar to those used in a court of law" (*Ryan v. New York Telephone Co.*, 62 NY2d 494, 499 [1984] [citation omitted]). "[S]uch determinations, when final, become conclusive and binding on the courts" (*Bernstein v. Birch Wathen School*, 71 AD2d 129, 132 [1st Dept. 1979] *aff'd* 51 NY2d 932 [1980]; *see also*, *O'Gorman v. Journal News Westchester*, 2 AD3d 815 [2nd Dept. 2003]) but only where the parties were given a full and fair opportunity to contest the matter (*Hughes v. Gibson Courier Services Corp.*, 218 AD2d 684 [2nd Dept. 1995]; *Frybergh v. Kouffman*, 145 AD2d 529 [2nd Dept. 1988]).

Here, the May 3, 2013 correspondence scheduling the OCA hearing and its subsequent adjournment by letter dated May 20, 2013 at CCI's request was from OCA to said defendant only. The plaintiffs were not privy to said notices and defendants neither allege nor establish any participation by plaintiffs in the subsequent OCA hearing. Moreover, there appears no privity of

interest between OCA and the plaintiffs as the OCA proceeding did not involve any attempt to recover compensatory damages by or on behalf of plaintiffs, only adjudication of fines and/or license suspension (see OCA correspondence dated May 3, 2013). Under such circumstances an adjudication by a consumer affairs agency regarding a home improvement contractor should not collaterally estop the complaining homeowners from pursuing their own litigation *(Tirino v GLC Construction, Inc.*, 21 Misc3d 1116(A), 873 NYS2d 238 [Dist. Court, Suffolk Co. 2008]; see also *Ma v Peters Construction Group, Inc.*, 30 Misc3d 1202(A), 958 NYS2d 646 [Sup. Court Queens Co. 2010]).

Dismissal pursuant to CPLR 3211(a)(5) is denied.

The sole criterion on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7) is whether the pleading states a cause of action. If, from its four corners there are factual allegations which, taken together, manifest any cause of action cognizable at law, a motion for dismissal will fail (*Kopelowitz & Co., Inc. v Mann*, 83 AD3d 793, 796 -97 [2d Dept 2011] citing *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Hense v Baxter*, 79 AD3d 814 [2d Dept 2010]). The complaint must be construed liberally, the factual allegations deemed to be true, and the nonmoving party granted the benefit of every possible favorable inference (Id. citing *Leon v Martinez*, 84 NY2d at 87, supra; *Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010]). Whether the plaintiff can ultimately establish their allegations is not part of the calculus in determining a motion to dismiss. (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11 (2005); *see also, Sokol v. Leader*, supra).

On the other hand, bare legal conclusions devoid of factual predicate are not presumed to be true, nor are they accorded every favorable inference (see *Morris v Morris*, 306 AD2d 449 [2d Dept 2003]; *Doria v Masucci*, 230 AD2d 764, 765 [2d Dept 1996]; *Breytman v Olinville Realty*, LLC, 54 AD3d 703, 704 [2d Dept 2008]).

The Court has reviewed the plaintiffs' amended complaint and all of the submissions of the parties hereto. At this early stage in the litigation, considering the pleadings in a light most favorable to plaintiffs and allowing plaintiffs the benefit of every possible inference, the amended complaint sufficiently sets forth causes of action relating to their claims of negligence (first cause of action) and violations of GBL §§349 and 350 (third and fourth causes of action) and fraudulent inducement (fifth cause of action).

Moreover, although not enumerated as a distinct cause of action, plaintiffs clearly predicate their claims against the individual defendants upon alleged acts amounting to "an abuse or perversion of the corporate form" so as to allow piecing of the corporate veil (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc,* 16 NY3d 775 [2011]). The plaintiffs' allegations in the amended complaint including the claims that defendants Rick and Vincent Cusumano "routinely and regularly demanded duplicate checks for payments to [CCI]", "routinely and regularly modified drafts paid by plaintiffs to [CCI], adding their initials or names to the checks", "routinely and regularly commingled said checks with their personal bank accounts", and "routinely and regularly deposited corporate payments to [CCI] into their personal bank accounts" are sufficiently specific to support a claim to pierce the corporate veil (*see Millennium Constr., LLC v. Loupolover*, 44 AD3d 1016 [2nd Dept 2007]).

Finally, the plaintiffs' motion, pursuant to New York Rules of Professional Conduct Rule 1.18, disqualifying the defendants' law firm of Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP (herein referred to as "Forchelli" or "defense counsel"), on the grounds that the plaintiffs were prospective clients of defense counsel relative to the instant matter is denied.

It is well established that the right to be represented by counsel of one's choice is "a valued right [and] any restrictions must be carefully scrutinized" (*Ullmann–Schneider v. Lacher & Lovell–Taylor PC*, 110 AD3d 469, 469–70 [1st Dept. 2013] *quoting S & S Hotel Ventures Ltd. Partnership v. 777 S.H. Corp.*, 69 NY2d 437, 443 [1987]). Moreover, "in the context of an ongoing lawsuit, disqualification ... can [create a] strategic advantage of one party over another." Id. The Court of Appeals has long recognized that "motions to disqualify are frequently used as an offensive tactic, inflicting hardship on the current client and delay upon the courts. Such motions result in a loss of time and money, even if they are eventually denied. This Court and others have expressed concern that such disqualification motions may be used frivolously as a litigation tactic when there is no real concern that a confidence has been abused" (*Solow v. W.R. Grace & Co.*, 83 NY2d 303, 310 [1994]). For these reasons, the courts require that the "movant must meet a heavy burden of showing that disqualification is warranted" (*see also, Ullmann–Schneider v. Lacher & Lovell–Taylor PC, supra* at 470).

However, the right to choose one's attorney is not absolute (*Matter of Abrams*, 62 NY2d 183, 196 [1984]). Even where no attorney-client relationship exists between the applicant and the law firm, disqualification is warranted when an attorney violates his "fiduciary obligation to preserve the

confidential secrets of prospective clients" pursuant to Rule 1.18 of the New York Rules of Professional Conduct (*Sullivan v. Cangelosi*, 84 AD3d 1486, 1487 [3rd Dept. 2011]).

Rule 1.18 [22NYCRR §1200], which addresses a lawyer's duties to prospective clients, provides:

> (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a "prospective client."
>
> (b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
>
> (c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).
>
> (d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:
>
> > (1) both the affected client and the prospective client have given informed consent, confirmed in writing; or
> >
> > (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
> >
> > > (i) the firm acts promptly and reasonably to notify, as appropriate, lawyers and non-lawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;
> > >
> > > (ii) the firm implements effective screening procedures to prevent the flow of information about the matter between the disqualified lawyer and the others in the firm;
> > >
> > > (iii) the disqualified lawyer is apportioned no part of the fee therefrom; and
> > >
> > > (iv) written notice is promptly given to the prospective client; and

(3) a reasonable lawyer would conclude that the law firm will be able to provide competent and diligent representation in the matter.

Plaintiffs herein claim that they initially sought representation in connection with the defendants' alleged wrongful conduct, including the filing of a false mechanic's lien, on plaintiffs' property on January 13, 2014. They claim that, in this context, they engaged in multiple conversations by way of telephone and email with the defense counsel's predecessor law firm, Agovino & Asselta in April 2013. Plaintiff, Susan Eisner, herself an attorney, states in her affirmation in support that she engaged in multiple conversations and communications with defense counsel's partner, David Loglisci, providing him with specific information regarding the construction agreements at bar, and discussing with him information including strategy, damages, and materials details of the very construction at issue in this matter. Plaintiffs insist that they and defense counsel formed a relationship as "prospective clients" and therefore defense counsel's representation of the defendants herein constitutes parties materially adverse to plaintiffs in connection with precisely the same transactions that were the subject to the consultations with defense counsel by plaintiffs. Given that defense counsel has never sought plaintiffs' informed consent to waive the instant conflict, the plaintiffs seek to have defense counsel law firm disqualified.

Initially it is noted that the unsworn affirmation of plaintiff Susan B. Eisner is entirely inadmissible herein and has no evidentiary value. Although the plaintiff is an attorney, she is not permitted to submit an affirmation in lieu of a sworn affidavit because she is a party to this action (*Slavenberg Corp. v. Opus Apparel, Inc.*, 53 NY2d 799, 801 [1981]; *Nazario v. Ciafone*, 65 AD3d 1240, 1241 [2nd Dept. 2009]).

Moreover, the affirmation of plaintiffs' counsel has no probative value because it is not based upon personal knowledge (*Shickler v. Cary,* 59 AD3d 700 [2nd Dept. 2009]).

After carefully scrutinizing the allegations herein, this Court concludes that the plaintiffs have not met their "heavy burden" of establishing a "significant harm" caused by Forchelli's representation of the defendants herein. As noted above, Rule 1.18 prohibits a lawyer from representing "a client with interests materially adverse to those of a prospective client in the same or substantially related matter <u>if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter</u>...". There has been no demonstration by the plaintiffs herein that defense counsel Forchelli received any information from plaintiffs "that

could be significantly harmful" to them. To the contrary it appears that the emails referenced and relied upon by plaintiffs involved nothing more than basic background information, information that is attached to their own complaint and matters of public record such as CCI's mechanic's lien and plaintiffs' complaint to the OCA. There is nothing in the emails that could be harmful, much less significantly harmful, to the plaintiffs.

Disqualification of defendants' counsel is accordingly denied.

Finally, plaintiffs' motion, pursuant to 22 NYCRR §130-1.1, for an Order awarding sanctions on the grounds that the defendants filed untimely motions is also denied. Frivolous conduct, in part, is that which is "completely without merit in law and cannot be supported by a reasonable extension, modifications or reversal of existing law" as set forth in 22 NYCRR 130–1.1(c)(1). Since it is within the sound discretion of this Court to award sanctions (*Wagner v. Goldberg*, 293 AD2d 527 [2nd Dept. 2002]), the Court declines to exercise its discretion to award sanctions here.

The parties' remaining contentions have been considered by this Court and do not warrant discussion.

In sum, the action continues as plead in the amended complaint except that the second cause of action for breach of contract is dismissed. Current counsel may continue to represent their respective clients.

All applications not specifically addressed are herewith denied.

No party may bring further motion practice without prior approval of the Court.

Defendants shall serve an answer to the amended complaint within ten (10) days of service of a copy of this Order with notice of entry (CPLR § 3211(f)).

Further, **plaintiff is directed** to serve a copy of this order upon the Differentiated Case Management Part ("DCM") Case Coordinator of the Nassau County Supreme Court within thirty (30) days of the date of this Order. The parties shall appear for a Preliminary Conference on **October 15, 2014, at 9:30 A.M.** in the DCM Part, Nassau County Supreme Court, to schedule all discovery proceedings.

This constitutes the decision and Order of this Court.

Dated: August 20, 2014

Anthony L. Parga, J.S.C.