

Rivera v Muss Dev., LLC
2015 NY Slip Op 30768(U)
May 11, 2015
Supreme Court, New York County
Docket Number: 111065/2010
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ

PART 13

Justice

EMILIO RIVERA,

Plaintiff,

-against-

INDEX NO. 111065/2010
MOTION DATE 04-22-2015
MOTION SEQ. NO. 005
MOTION CAL. NO.

MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, FLUSHING TOWN CENTER III, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., DONALDSON ACOUSTICS CO., INC., MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC, FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC

Defendants.

MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, FLUSHING TOWN CENTER III, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., DONALDSON ACOUSTICS CO., INC., MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC, FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC

Third-Party Plaintiffs,

-against-

URBAN POWER AND LIGHTING, INC.,

Third-Party Defendant.

The following papers, numbered 1 to 13 were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1-8

Answering Affidavits — Exhibits _____

9-10,

Replying Affidavits _____

11-13

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is ORDERED, that defendants' motion for summary judgment dismissing plaintiff's Labor Law SECTIONS 200, 240(1), and 241(6) claims is granted, the claims for common law negligence are dismissed as against defendants MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS

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

CORPORATION, DONALDSON ACOUSTICS CO., INC., FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC's, but summary judgment dismissing the common law negligence claims as against defendants FLUSHING TOWN CENTER III, LP, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., and MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC is denied, defendants' FLUSHING TOWN CENTER III, LP, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, and MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC.'s motion for summary judgment on its Third-Party contractual indemnification claim is conditionally granted, Third-Party defendant URBAN POWER AND LIGHTING, INC.'s motion for summary judgment dismissing the common law claims for negligence is granted.

Plaintiff alleges that he sustained injuries on June 7, 2010 at 40-22 College Point Boulevard, Queens, New York (herein "Project") while in the course of his employment with third-party defendant Urban Power and Lighting, Inc. (herein "Urban"). Defendant Flushing Town Center III, LP (herein "Flushing LP") was the owner of the Project, defendant Muss Brooklyn Development Corp (herein "MQDC") was the original construction manager for the Project and was later replaced by Tishman Construction Corporation of New York (herein "Tishman NY") as the construction manager. Urban was hired as an electrical subcontractor for the project.

Plaintiff alleges that he was walking through an open corridor on the ground floor of the Project in order to get materials. Plaintiff claims that a piece of sheetrock struck him as he walked through an area where a sheetrock wall was being demolished by defendant-subcontractor Donaldson Interiors, Inc. (herein "Donaldson").

Plaintiff testified that only Urban controlled his work (see Emilio Rivera EBT, Pg. 41). On the date of the accident, plaintiff, at the instruction of his Superintendent Mike Kourklumelis, took a metal cart and went to a gang box to gather materials (see Kourklumelis EBT, Pg. 57-60). Plaintiff and his apprentice walked through a corridor where Donaldson was performing demolition of a sheetrock wall covering an entrance to a commercial location. The Donaldson workers were working approximately 10 to 15 feet above the work area and were throwing sheetrock debris towards garbage bins below (see Plaintiff's Opp. Papers, Exhibit A). After gathering materials from the gang box, plaintiff and his apprentice walked back through the same corridor where Donaldson was working. Plaintiff alleges that he was walking in front of his apprentice, yelled "heads up", and was hit by a piece of sheetrock (Id., at 65 - 78). Plaintiff further alleges that he was dazed, does not remember being struck by the piece of sheetrock, or being taken to Kourklumelis' shanty. Plaintiff remembers waking up in Kourklumelis' shanty and being told by Kourklumelis that he was hit by a piece of sheetrock (Id., at 80, 108 - 109). Plaintiff then took a cab with his apprentice, went to the hospital, and was treated (Id., at 93-94). Plaintiff does not remember the name of his apprentice and has not spoken to the apprentice since the date of the accident.

James Rossiter testified on behalf of Urban. Rossiter stated that Urban is not out of business, but at the time of the accident, Urban only had one employee; Rossiter (Rossiter EBT, Pg. 9). Urban did not renew its commercial lease where its offices were located, and Rossiter left all of the company's records with a mechanic - Angel - for storage (Id., at 16). Angel subsequently remodeled his auto body shop and the records were lost (Id.). However, Rossiter retained some records relating to the Project and accident reports (Id., at 40-41, 44-45). During discovery Rossiter provided the accident report taken approximately 15 minutes after plaintiffs's accident, and the incident report, taken approximately 24 hours after plaintiffs's accident (Id.; see Plaintiff's Opp. Papers, Exhibit C). The reports state that the work area beneath Donaldson's demolition was not "cautioned off" (Id.).

Cosmo Marino testified on behalf of Donaldson. Marino states that he personally cautioned off the work area where plaintiff's accident occurred (see Marino EBT, Pg. 25-26) after being told to do so by his foreman, Rob Busking (Id., at 34). Marino also stated that there were other means of reaching the gang box besides walking through the cautioned off work area (Id., at 26). Only Donaldson was performing demolition in the work area where plaintiff's accident occurred at the time of his accident. Neither Marino (Id., at 27), Michael Cinnamon - construction manager for Muss Development, LLC - (Cinnamon EBT, Pg. 49), Rossiter, nor Anthony Falzone - Electrical Superintendent for Tishman NY - saw plaintiff's accident.

Plaintiff commenced this action by summons and complaint asserting causes of action for negligence as well as claims for violations of Labor Law §§ 200, 240(1), and 241(6) against the defendants in the main action (collectively known herein as "Defendants"). The Defendants commenced a third-party action against Urban asserting claims for common law indemnification and contribution, contractual indemnification, and breach of contract for failing to procure insurance coverage.

Defendants now move under Motion Sequence 005 for summary judgment dismissing the Complaint. Defendants argue that plaintiff was the sole proximate cause of his injuries by knowingly entering a demolition work area; the Labor Law § 200 claim fails because Defendants neither directed nor controlled the work of plaintiff; Labor Law § 240(1) does not apply here because the piece of sheetrock was not being hoisted at the time it allegedly struck plaintiff nor did it fall because of the absence or inadequacy of a safety device; that the Industrial Codes cited by plaintiff are not applicable to the facts of this case and are not sufficiently specific to predicate a violation of Labor Law § 241(6).

Defendants also move for summary judgment as to the third-party claim for contractual indemnification asserted by Flushing, MQDC and Tishman NY. Defendants' last contention is to dismiss the Complaint as asserted against all Defendants except for the owner, general contractor, and/or construction manager of the Project. Specifically, Defendants seek dismissal of defendants Muss Development, LLC, Onex Real Estate Partners, LP, Flushing LLC, Related Companies, LP, AFC2, LLC, Sky View Parc Residential

Condominium Tower Three, Tishman Construction Corporation, Tishman Interiors Corporation, Donaldson Interiors, Inc., Donaldson Acoustics Co., Inc., and Allied Flushing Development, LLC because they were neither the owner, general contractors, nor construction managers for the Project.

Urban moves under Motion Sequence 006 for summary judgment dismissing the Labor Law claims directly asserted against Defendants in the main action and for summary judgment dismissing the common law claims asserted against Urban arguing that plaintiff did not suffer a grave injury as required under Workers' Compensation Law § 11. Plaintiff does not oppose dismissal of the common law claims asserted against Urban.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (*Klein v. City of New York*, 81 N.Y. 2d 833, 652 N.Y.S. 2d 723 [1996]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Amatulli v. Delhi Constr. Corp.*, 77 N.Y. 2d 525, 569 N.Y.S. 2d 337 [1999]).

Labor Law §240(1) imposes strict liability on "owners, contractors, and their agents" when they fail to provide adequate safety equipment and that failure causes a worker's injury in a gravity-related accident (*Fabrizi v. 1095 Ave. Of the Ams., L.L.C.*, 22 N.Y.3d 658, 664-665, 8 N.E.3d 791, 985 N.Y.S.2d 416 [2014]). Labor Law §240(1) applies when an object upon which the force of gravity is applied is material being hoisted or a load that required securing for the purpose of carrying out plaintiff's undertaking (*Garcia v. DPA Wallace Ave. I, LLC*, 101 A.D.3d 415, 955 N.Y.S.2d 320 [1st Dept., 2012] citing to *Narducci v. Manhasset Bay Assoc.*, 96 N.Y. 2d 259, 268 -269, 750 N.E. 2d, 1085, 727 N.Y.S. 2d 37 [2001]). Labor Law §240(1) "does not apply simply because an object fell and injured a worker; 'a plaintiff must show that the object fell ... because of the absence or inadequacy of a safety device [emphasis supplied] of the kind enumerated in the statute" (*Fabrizi v. 1095 Ave. Of the Ams., L.L.C.*, 22 N.Y.3d 658, 664, 8 N.E.3d 791, 985 N.Y.S.2d 416 [2014]). citing to *Narducci v. Manhasset Bay Assoc.*, 96 N.Y. 2d 259, 750 N.E. 2d, 1085, 727 N.Y.S. 2d 37 [2001]).

It is undisputed that Donaldson's employees were conducting sheetrock demolition work approximately 10 to 15 feet above the work area where plaintiff's accident occurred. Donaldson's employees were taking the sheetrock debris and intentionally throwing it into containers on the ground floor within the work area. Although the proof presented does not establish that plaintiff was the sole proximate cause of the injuries, Labor Law § 240 (1) is inapplicable here. The sheetrock debris "was not a material being hoisted or a load that required securing for the purposes of the undertaking at the time it fell, and thus Labor Law § 240 (1) does not apply. This was not a situation where a hoisting or securing device of the kind enumerated in the statute would have been necessary or even expected" (*Roberts v. GE*, 97 N.Y.2d 737, 738 768 N.E.2d 1127, 742 N.Y.S.2d 188 [2002]; see *Solano v City of New York*, 77 A.D.3d 571, 909 N.Y.S.2d 357 [1st Dept., 2010]). Summary judgment dismissing plaintiff's cause of action for violation of Labor Law § 240(1) is granted.

Labor Law § 241(6) "requires owners and contractors to provide reasonable and adequate protection and safety for workers and to comply with specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v. Curtis-Palmer Hydro-Electric Co.*, 81 N.Y.2d 494, 501-502, 601 N.Y.S.2d 49, 618 N.E.2d 82 [1993]). This duty is nondelegable and "to the extent that plaintiff has asserted a viable claim under Labor Law § 241(6), he need not show that defendants exercised supervision or control over his worksite in order to establish his right of recovery" (*Id.* at 502). " § 241(6) imposes a nondelegable duty upon an owner or general contractor to respond in damages for injuries sustained due to another party's negligence in failing to conduct their construction, demolition or excavation operations so as to provide for the reasonable and adequate protection of the persons employed therein" (*Rizzuto v. L.A. Wenger Contracting Co., Inc.*, 91 N.Y.2d 343, at 350, 670 N.Y.S.2d 816, 693 N.E.2d 1068 [1998]).

Plaintiff only opposes dismissal of Industrial Codes section 23-1.7(a)(2) and § 23-2.1(b). Plaintiff has not previously pled violation of this Industrial Code § 23-3.3, but improperly asserts § 23-3.3 in his opposition papers (see *Moving Papers*, Exhibit C, PP 20). § 23-2.1(b) "does not sufficiently set forth a specific standard of conduct as opposed to a general reiteration of common-law principles for its violation to qualify as a predicate for a Labor Law § 241 (6) cause of action" (*Mendoza v. Marche Libre Assocs.*, 256 A.D.2d 133, 681 N.Y.S.2d 517, 518 [1st Dept., 1998]; *Quinlan v. City of New York*, 293 A.D.2d 262, 739 N.Y.S.2d 706 [1st Dept., 2002]).

"12 NYCRR 23-1.7(a)(2) requires that [w]here persons are lawfully frequenting areas exposed to falling material or objects but wherein employees are not required to work or pass, such exposed areas shall be provided with barricades, fencing or the equivalent in compliance with this Part (rule) to prevent inadvertent entry into such areas. Clearly, this section of the code requires barricades to cordon off areas for the safety of those not required to work within the sectioned-off area. Since the very area where plaintiff was required to work was the area where he was injured, he was required to perform his work therein and no barricades were thus required. Accordingly, no rational view of the evidence proffered by plaintiff established a violation of Labor Law § 241 (6)" (*Griffin v Clinton Green S., LLC*, 98 A.D.3d 41, 49-50, 948 N.Y.S.2d 8, 13-14 [1st Dept. 2012]).

The Industrial Code sections relied upon by plaintiff are inapplicable to this case. Summary judgment in favor of Defendants dismissing the Labor Law § 241(6) claim is granted.

Labor Law § 200 "codifies the common law duty of an owner or employer to provide employees with a safe place to work" (*Jock v. Fien*, 80 NY2d 965, 590 NYS2d 878, 605 NE2d 365 [1992]). Labor Law § 200 requires "that the party to be charged with that obligation have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition" (*Rizzuto v. L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 352, 693 N.E.2d 1068, 670 N.Y.S.2d 816 [1998] citing to, *Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 311, 317, 429 N.E.2d 805, 445 N.Y.S.2d 127 [1981]).

“Claims for personal injury under the statute and the common law fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed. Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it. Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work” (Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 144, 950 N.Y.S.2d 35 [1st Dept., 2012]).

“It is settled law that where the alleged defect or dangerous condition arises from the contractor’s methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under [Labor Law § 200]” (Lombardi v. Stout, 80 N.Y.2d 290, 295, 590 N.Y.S.2d 55, 604 N.E.2d 117 [1992]). “General supervisory authority is insufficient to constitute supervisory control; it must be demonstrated that the contractor controlled the manner in which the plaintiff performed his or her work, i.e., how the injury-producing work was performed” (Hughes v. Tishman Constr. Corp., 40 A.D.3d 305, 306, 836 N.Y.S.2d 86, 89 [1st Dept., 2007]).

The deposition testimony establishes that Donaldson was the party controlling the matter and means of the injury-producing work at the time of the accident. Of the Defendants and third-party defendant, only Flushing LP, MQDC, Tishman NY, Donaldson, and Urban had general supervisory control. However, only Donaldson controlled the means by which the demolition took place and had specific authority over the demolition. Dismissal of the Labor Law § 200 as against Defendants and Urban is granted.

Although Michael Cinnamon testified that he was at the Project daily during the normal work hours of 7am to 6pm and would periodically walk the work site (see Michael Cinnamon EBT, Pg. 44), and Anthony Falzone testified that he was at the Project daily from 7am to 4pm and would routinely perform a walk-through of the Project (see Anthony Falzone EBT, Pg. 30), both Cinnamon and Falzone testified that neither men directed the means and method of Donaldson’s work. Plaintiff contends that the Defendants knew or should have known of the demolition work being conducted by Donaldson at the Project. Specifically, MQDC and Tishman NY were responsible for coordinating the work being performed at the Project among all of the trades. Plaintiff further contends that MQDC and Tishman NY knew or should have known that the area beneath the demolition area was allegedly unbaricaded and/or taped off thereby creating a dangerous condition. Dismissal of plaintiff’s common law negligence claim is denied as against MQDC, Tishman NY, and Donaldson, granted as against the remaining defendants.

Flushing LP, MQDC and Tishman NY also move for summary judgment on their claim against Urban for contractual indemnification. Article 9 of the contract entered into by Urban and MQDC (herein “Contract”) states that:

To the extent permitted by law, Subcontractor shall indemnify, defend, save and hold the Owner, Developer, Lender, Construction Manager, and Architect ... harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever (including attorney's fees and disbursements) which arise out of or are connected with, or are claimed to arise out of or be connected with:

- 1) The performance of the Work by the Subcontractor, or any act or omission of Subcontractor (or its subcontractors of any tier);
- 2) Any accident or occurrence which happens, or is alleged to have happened, in or about the place where the Work is being performed or in the vicinity thereof ... (see Moving Papers, Exhibit G., Pg. 11).

The Contract clearly and unambiguously states the intention of the indemnification provision was for Urban to defend and indemnify Defendants for claims of personal injury arising out of or connected with the performance of work by Urban. Flushing LP, MQDC and Tishman NY as owner and construction managers are entitled to summary judgment granting them contractual indemnification. However, there has not been a final determination as to liability against and of the Defendants or Urban. Therefore, summary judgment in favor of Flushing LP, MQDC and Tishman NY is conditionally granted.

Accordingly, it is ORDERED, that defendants' MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, FLUSHING TOWN CENTER III, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., DONALDSON ACOUSTICS CO., INC., MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC, FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC's motion for summary judgment dismissing plaintiff's causes of action for violations of Labor Law Labor Law §§ 200, 240(1), and 241(6) is granted , and it is further,

ORDERED, that defendants' MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, DONALDSON ACOUSTICS CO., INC., FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC's motion for summary judgment dismissing plaintiff's causes of action for common law negligence is granted, and it is further,

ORDERED, that defendants' FLUSHING TOWN CENTER III, LP, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., and MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC's motion for summary judgment dismissing plaintiff's cause of action for common law negligence is denied, and it is further,

ORDERED, that the causes of action for violations of Labor Law Labor Law §§ 200, 240(1), and 241(6) as against all defendants are hereby severed and dismissed, and it is further,

ORDERED, that the cause of action for common law negligence as asserted against defendants MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, DONALDSON ACOUSTICS CO., INC., FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC's are hereby severed and dismissed, and it is further,

ORDERED, that defendants' FLUSHING TOWN CENTER III, LP, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, and MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC's are hereby entitled to conditional contractual indemnity by Third-Party defendant URBAN POWER AND LIGHTING, INC. pending a determination of liability of the primary action, and it is further,

ORDERED, that Third-Party Defendant URBAN POWER AND LIGHTING, INC.'s motion for summary judgment dismissing all common law claims is granted, plaintiff's common law claims asserted against Third-Party Defendant URBAN POWER AND LIGHTING, INC. Are hereby severed and dismissed, and it is further,

ORDERED, that the caption in this action is amended as follows:

EMILIO RIVERA,

Plaintiff,

-against-

FLUSHING TOWN CENTER III, LP, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC,

Defendants.

MUSS DEVELOPMENT, LLC, ONEX REAL ESTATE PARTNERS, LP, FLUSHING TOWN CENTER III, LP, THE RELATED COMPANIES, LP, AFC2, LLC, SKY VIEW PARC RESIDENTIAL CONDOMINIUM TOWER THREE, TISHMAN CONSTRUCTION CORPORATION, AND TISHMAN INTERIORS CORPORATION, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, DONALDSON INTERIORS, INC., DONALDSON ACOUSTICS CO., INC., MUSS BROOKLYN DEVELOPMENT CORP. a/k/a MQDC., INC, FLUSHING TOWN CENTER III, LLC, and ALLIED FLUSHING DEVELOPMENT, LLC

Third-Party Plaintiffs,

-against-

URBAN POWER AND LIGHTING, INC.,


Third-Party Defendant.

, and it is further,


ORDERED, that the moving parties under Motion Sequence 005 and 006 serve the parties with a copy of this Order with Notice of Entry within 20 days from the date of this Order, and upon the General Clerk's Office (Room 119) and upon the County Clerk (Room 141B), who are directed to amend the caption and the court's records accordingly, and it is further,

ORDERED, that the Clerk of the Court is Directed to enter judgment accordingly.

MANUEL J. MENDEZ

Enter:  **J.S.C.**

Dated: May 11, 2015



MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE