

Suponya v Sr. Louise Demarillac Corp.

2018 NY Slip Op 30983(U)

May 18, 2018

Supreme Court, New York County

Docket Number: 150730/13

Judge: Carol R. Edmead

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

-----X
ANNA SUPONYA as m/n/g of infant ARTHUR
STEVENS, and ANNA SUPONYA, individually

Plaintiffs,

-against-

SR. LOUISE DEMARILLAC CORPORATION, ST.
VINCENT HOUSING DEVELOPMENT FUND
COMPANY, INC., STANAN MANAGEMENT
CORP., STANAN REALTY, LLC, and
MONADNOCK CONSTRUCTION, INC.,

Defendants.

-----X
ST. VINCENT'S HOUSING DEVELOPMENT
FUND COMPANY, INC., and STANAN
MANAGEMENT CORP.,

Third-party Plaintiffs,

-against-

SCHUMAN, LICHTENSTEIN, CLAMAN, EFRON
ARCHITECTS, LLP, SLCE ARCHITECTS, LLP and
MONADNOCK CONSTRUCTION, INC.,

Third-party Defendants.

-----X
ST. VINCENT'S HOUSING DEVELOPMENT
FUND COMPANY, INC., and STANAN
MANAGEMENT CORP.,

Second Third-party Plaintiffs,

-against-

SCHUMAN, LITCTENSTEIN, CLAMAN, EFRON
ARCHITECTS, SLCE ARCHITECTS, LLP,

Second Third-party Defendants.

Index No. 150730/13
Motion Seq. Nos. 005, 006,
and 007

DECISION AND ORDER

-----X
MONADNOCK CONSTRUCTION, INC.,

Third Third-party Plaintiff,

-against-

SCHUMAN, LICHTENSTEIN, CLAMAN, EFRON
ARCHITECTS, SLCE ARCHITECTS, LLP,

Third Third-party Defendants.

-----X
CAROL R. EDMEAD, J.S.C.:

In a case involving a two year old child’s fall from a stairwell, defendant/third-party defendant/third third-party plaintiff Monadnock Construction, Inc. (Monadnock) moves, pursuant to CPLR 3212, for summary judgment dismissing all claims and cross claims as against it (motion seq. No. 005). Third-party defendant/second third-party defendant/third third-party defendant SLCE Architects, LLP i/s/h/a Schuman, Lichtenstein, Claman, Efron Architects (SLCE) also move for summary judgment dismissing all claims as against it (motion seq. No. 006). Defendants/third-party plaintiffs/second third-party plaintiffs St. Vincent’s Housing Fund Company, Inc. (St. Vincent’s) and Stanan Management Corp. (Stanan) also move for summary judgment dismissing all claims, cross claims and counterclaims as against them (motion seq. No. 007). The motions are consolidated for disposition.

BACKGROUND

On December 10, 2011, plaintiff Anna Suponya (Suponya) went, along with her husband and their two-year old son, to St. Elizabeth’s Manor, a retirement home in Staten Island. Suponya’s father, Anatoly Gorobets (Gorobets), had recently moved into the retirement home and his daughter brought her family to visit Gorobets, and to hang curtains in his new apartment. Gorobets, who lives on the second floor of the retirement home, took his grandson to the

building's north stairwell.¹ After remaining in the apartment, for approximately 15 minutes, Suponya went to look for her son and her father. She “found him on the first floor where the staircases are, laying down” (Suponya tr at 23). Suponya testified further that the boy's grandfather was standing over him and that he was “unconscious” (*id.*). Suponya clarified her use of that term clarify that she did not mean that the boy was in a coma, but that he was “lethargic,” and responding to only painful stimuli and vigorous touch. And then he would wake up crying for a second and then he would go back to a state of obtundance” (*id.*).²

Gorobets testified that the boy had wanted to walk from the second floor stairwell to the fourth floor stairwell (Gorobets tr at 32). The subject stairwell has two parallel horizontal handrails—one approximately 34 inches above the step and the other 17 inches above the step—but the stairwell had no vertical balusters. As Gorobets and the boy were making their way back down the stairs, the boy allegedly slipped, on the stairwell between the second and third floors and fell, underneath both handrails to the landing below (*id.* at 36, 39-43).

The building was constructed over ten years before the subject accident. Monadnock was the general contractor on the project, while SLCE served as the architect. St. Vincent's owns the subject building and Stanan is the management company in charge of its upkeep.

DISCUSSION

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the “cause of action . . . has no merit” (CPLR §3212[b]) sufficient to warrant the court as a matter of law to direct judgment in its favor (*Friedman v BHL Realty Corp.*, 83 AD3d 510, 922 NYS2d 293 [1st Dept 2011]; *Winegrad v New*

¹ The building has two stairwells, the north and west stairwells.

² Obtundation is a medical term defined as a “state of condition characterized by a reduced level of consciousness with diminished responsiveness to stimuli (typically at a level between lethargy and stupor)” (<http://www.oed.com/view/Entry/235940?redirectedFrom=obtundation#eid>).

York Univ. Med. Ctr., 64 NY2d 851, 853, 487 NYS2d 316 [1985]). Thus, the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient “evidentiary proof in admissible form” to demonstrate the absence of any material issues of fact (*Madeline D’Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012] citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572 [1986] and *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR §3212 [b]; *Madeline D’Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v Steward M. Muller Constr. Co.*, 46 NY2d 276, 281-82, 413 NYS2d 309 [1978]; *Carroll v Radoniqi*, 105 AD3d 493, 963 NYS2d 97 [1st Dept 2013]). The opponent “must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist,” and the “issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief” (*American Motorists Ins. Co. v Salvatore*, 102 AD2d 342, 476 NYS2d 897 [1st Dept 1984]; see also, *Armstrong v Sensormatic/ADT*, 100 AD3d 492, 954 NYS2d 53 [1st Dept 2012]).

Monadnock (motion seq. No. 005)

Monadnock, the general contractor involved in the nursing home’s construction, argues that plaintiff’s negligence claim against it must be dismissed. More specifically, Monadnock argues that it has no duty to plaintiff.

To establish negligence, a plaintiff is required to prove: “the existence of a duty, that is, a standard of reasonable conduct in relation to the risk of reasonably foreseeable harm; a breach of that duty and that such breach was a substantial cause of the resulting injury” (*Baptiste v New York City Tr. Auth.*, 28 AD3d 385, 386 [1st Dept 2006] citing, *inter alia*, *Palsgraf v Long Is. R.R. Co.*, 248 NY 339 [1928] [other citation omitted]). The default rule is that contractors, such as Monadnock, do not have duties to third-parties, as “[a] contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third-party” (*Espinal v Melville Snow Contractors*, 98 NY2d 136, 138 [2002]). However, there are, as the Court in *Espinal* noted, three exceptions; that is,

“three situations in which a party who enters a contract to render services may be said to have assumed a duty of care—and thus be potentially liable in tort—to the third persons: 1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launches a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting parties duties; and (3) where the contracting party has entirely displaced the other party’s duty to maintain the premises safely”

(*id.* at 140).

Monadnock argues that none of the *Espinal*’s exceptions are applicable to it. The latter two exceptions, detrimental reliance and displacement of duty, are plainly not applicable to Monadnock. As to the third exception, launching an instrument of harm, Monadnock argues that it is not applicable, as it simply carried out SLCE’s architectural drawings.

Monadnock cites to *Gee v City of New York*, where the Appellate Division, Second Department held that “[a] builder or contractor is justified in relying upon the plans and specifications which he has contracted to follow unless they are so apparently defective that an ordinary builder of ordinary prudence would be put upon notice that the work was dangerous and likely to cause injury” (304 AD2d 615, 616 [2d 2003]).

Monadnock submits the deposition testimony of Gregory Bauso (Bauso), Monadnock's project manager for the construction of the subject building. As the construction of the building took place in 1999-2000, Bauso's recollection of the project was not complete. For example, he could not remember who Monadnock subcontracted with to install the railings under which the infant plaintiff fell (Bauso tr at 48). Bauso testified that he could not recall any deviations from SLCE's architectural plans during the construction of the subject stairwell (*id.* at 56-57). Bauso also testified that a Certificate of Occupancy was issued by the New York City Department of Buildings (DOB), which, Bauso noted, is only done after the DOB "inspects the construction of the work after it's completed to verify that it complies with codes" (*id.* at 51).

In opposition, plaintiffs argue that there are questions of fact with respect to all three *Espinal* exceptions. As to displacement of the duty to maintain the premises safely, plaintiff submits the contract between Monadnock and St. Vincent's, which contains a scope of contract provision which states that Monadnock "shall furnish all of the materials and perform all the work ... shown on, and in accordance with, the Drawings and specifications" (Monadnock/St. Vincent's contract, Article 1). Plaintiffs also point to another provision of the contract, "Requirements of Contractor," which provides that Monadnock "shall ... comply with all applicable codes, laws, ordinances, rules and regulations," and requires Monadnock to "promptly notify the Architect in writing" if it "observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinance, rules or regulations or protective covenants" (*id.*, Article 5 [A] and [B]).

However, as noted above, this *Espinal* exception plainly does not apply, as the duties conferred on Monadnock by its contract with St. Vincent's do not entirely displace St. Vincent's obligation to maintain its building safely. Conversely, Monadnock, whose work on the premises

ceased more than ten year's before the subject accident, does not have an ongoing duty to maintain the building safely. To hold otherwise would produce an absurd result that would hold a general contractors responsible for each dangerous condition, like a spill of water, that appears in a nursing home that it completed work on years before. Accordingly, there is no issue of fact as to whether Monadnock entirely displaced St. Vincent's duty to maintain the building safely.

While plaintiffs argue that Monadnock fails to make a *prima facie* showing of entitlement to judgment as to the "detrimental reliance" *Espinal* exception, they make no argument that they relied on Monadnock's continued performance of its contractual obligations. As the contract between Monadnock and St. Vincent's was executed and fully performed more than a decade before the subject accident, there can be no showing of detrimental reliance here and there is no question of fact as to whether this *Espinal* exception is applicable.

As to the exception for launching an instrument of harm, plaintiffs make a more robust argument that a question of fact remains. Plaintiffs straddle the question of whether SLCE's specifications required Monadnock to use non-slip paint. Plaintiffs argue that if the contract did have such a requirement, then Monadnock launched an instrument of harm by failing to use such paint; if the plans did not, then plaintiffs argue that Monadnock launched an instrument of harm by not apprising SLCE, the architect, that the plans were defective by failing to require non-slip paint. Plaintiffs also argue that Monadnock launched an instrument of harm by carrying out plans for a stairwell that lacked balusters.

In support, plaintiffs submit an affidavit from Stanley Fein (Fein), an engineer. As to non-slip paint, Fein states that he did an inspection of the stairs on April 18, 2012, or approximately five months after the subject incident (Fein aff, ¶ 4). Fein opined that "[t]he subject steps were painted with a high gloss enamel paint without sand in the paint" (*id.*, ¶ 7).

Using a tribometer, Fein found that the “steps had a measured coefficient of friction in the dry condition of 0.46 parallel to the stairway and 0.34 transverse to the stairway” (*id.* at 8). Fein added that the American Society for Testing and Materials (ASTM) “states that a surface having a static coefficient of friction of 0.5 or greater is considered to have adequate slip resistance” (*id.*, ¶ 10 citing ASTM § D02047-04 [3.1.5]). Thus, Fein concludes that “[t]he 0.46 and 0.34 slip resistance did not meet the minimum requirements and was in violation of good and accepted safety engineering standards” (*id.*, ¶ 11).

“Additionally,” Fein states, “NYC Building Code § 27-375 (h) [formerly § C26-604.7 added LL 76/1968 § 1]) required and requires that treads be built of or surfaced with nonskid materials” (*id.*, ¶ 11). Fein then concludes that, as “[t]he treads here were painted with high gloss enamel paint without any addition of sand, and had no nonskid materials on them,” the stairwell was “in violation of this building Code provision as well as good and accepted safety engineering standards” (*id.*).

As to the horizontal handrails, Fein writes that “good and accepted engineering practices” that were “codified in 2008 at § 1012.3 of the New York Building Construction Code required that open guards have balusters or ornamental patterns such that a 4 inch diameter sphere could not pass through any opening to a height of 34 inches” (*id.*, ¶ 13). Fein concludes that “the absence of such was a violation of the good and accepted engineering safety practices in existence since 1979 and as of the date of the accident on December 10, 2011” (*id.*). Fein’s claim that the standards were in place since 1979 derives from a reference to “National Bureau of Standards for the U.S. Department of Commerce,” which, Fein writes, in a not quite grammatical footnote: “published its findings in May 1979 providing at 2.3.9 Openings in Handrail Supports (For Children)” (*id.*, ¶ 11 n 1).

In reply, Monadnock again argues that it cannot have launched an instrument of harm as it did not deviate from SLCE's plans. No party has provided any evidence to the contrary. While plaintiffs suggest that Monadnock may have veered from SLCE's plans, they provide no evidence to support this supposition. Thus, under *Gee v City of New York*, Monadnock can only be liable, or considered to have launched an instrument of harm if SLCE's plans were so apparently defective "that an ordinary builder of ordinary prudence would be put upon notice that the work was dangerous and likely to cause injury" (304 AD2d 615, 616 [2d 2003]). Here, without reaching the question of whether the stairs constituted a dangerous condition, the court finds, as a matter of law, that the designs were not so apparently defective that an ordinary builder would be on notice that following the plans would likely cause injury. This conclusion is supported by the fact that the plans were approved the DOB.

St. Vincent's and Stanan submit a partial opposition to Monadnock's motion for summary judgment. While arguing that no defects or dangerous conditions were present on the subject stairwell, St. Vincent's and Stanan contend that, if the court finds a question of fact as to whether there were, then they are entitled to conditional summary judgment as to common-law indemnification. That is, St. Vincent's and Stanan argue that, if there is a defect, Monadnock launched it through its role as general contractor during construction. This application is procedurally defective, and must be denied, as St. Vincent's and Stanan fail to move or cross-move for such relief. Moreover, the court has already found that Monadnock did not have a duty to plaintiff, as it did not launch an instrument of harm.

As it was not actively at fault, Monadnock cannot be liable in negligence, or for common-law indemnification or contribution, as it was not actively at fault (*see McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374-375 [2011]; *Godoy v Abamaster of Miami*, 302 AD2d

57, 61 [2nd Dept 2003]). Accordingly, Monadnock's motion must be granted and all claims and cross claims as against it must be dismissed.

SLCE (motion seq. No. 006)

SLCE, the architectural firm on the subject project, moves for summary judgment dismissing all claims as against it. Plaintiff has no claims against SLCE. The various third-party claims against SLCE are for contribution and indemnification. Additionally, Monadnock has a claim against SLCE for breach of warranty.

As to contractual indemnification, SLCE notes that there is no indemnification provision in the contract between St. Vincent's and itself. Moreover, Saky Yakas, the managing partner of SLCE, testified that there was no contract between Monadnock and SLCE on the subject project (Yakas tr at 19). No party submits an indemnification provision relating to SLCE. Thus, all claims for contractual indemnification against SLCE must be dismissed.

As to contribution and common-law indemnification, SLCE argues that it did not depart from the standard of care in its design of the subject staircases. In support, SLCE submits an affidavit from James Anzalone, an architect. Anzalone opines that "SLCE's design for the interior staircase was fully consistent with the architectural standard of care" (Anzalone aff, dated February 8, 2018, ¶ 9).

Anzalone further opines that dimensions of the staircase design conformed to standards mandated by the 1968 Building Code of the City of New York (the '68 Code):

A review of SLCE's plans confirms that the risers on the subject staircase were designed to be 7 ½ inches high, which is less than 7 ¾ inch maximum height mandated by [the '68 Code]. The treads were designed to be 9 ½ inches deep, not including the one-inch nosing, which is equal to the 9 ½ inch tread requirement of Section 27-375 (Table 6-4) of the '68 Code. These dimensions meet or exceed the '68 Code requirements and were consistent with the legal standard of care for architects in 1999, when SLCE drawings were submitted for DOB approval. SLCE's design called for two handrails: one at 34 inches above the nosing of the

treads and a second, intermediate rail at 17 inches above the nosing of the treads. This exceeds the requirement of the '68 Code, which required a single handrail between 30 and 34 inches above the nosing, and was consistent with the local standard of care for architects in 1999

(*id.*, ¶¶ 4-5).

As to the issue of friction on the stairs, Anzalone writes that “[a]t the time of SLCE’s design for the subject property in 1999, there was no Building Code requirement, requiring a certain minimum coefficient of friction for stairs” (*id.*, ¶ 7). Nevertheless, Anzalone notes that “SLCE’s specifications mandated a paint that was specially designed for floors and decks. As plaintiff points out, the paint manufacturer recommends adding powdered pumice for slip resistance” (*id.*, ¶ 8).

As to the lack of balusters, Anzalone refers to plaintiff’s expert, Fein, as “Stein,” and notes that “Mr. Stein states that the National Bureau of Standards for the U.S. Department of Commerce published findings regarding openings for handrail supports in May 1979, and that the 2008 Building Code required balusters or ornamental patters for open guards” (*id.*, ¶ 6). Despite this, Anzalone opines that “these 1979 ‘findings’ were not part of the '68 Code, nor were they part of the accepted local standard of care of architects in 1999” (*id.*).

Anzalone’s affidavit makes a *prima facie* showing that SLCE did not depart from the architectural standard of care. Plaintiff does not have any claims against SLCE and Fein’s affidavit does not offer any specific opinions about SLCE’s plans. None of the parties with claims against SLCE provide an expert affidavit opining that SLCE departed from the architectural standard of care. As such, neither Monadnock nor St. Vincent’s and Stanan, all of whom oppose SLCE’s motion, raise an issue of fact as to whether SLCE departed from architectural standard of care. As SLCE has made an unrebutted showing that it was not

negligent, it is entitled to dismissal of all claims for common-law indemnification and contribution as against it.

As to Monadnock's claim for breach of warranty against it, SLCE argues that Monadnock cannot recover under this cause of action, as warranties are limited to the sale of goods. In support, SLCE cites to *Gutarts v Fox*, which hold that "there is no cause of action for breach of warranty where the defendant has only provided a service" (104 AD3d 457, 459 [1st Dept 2013]). Monadnock abandons this claim by failing, in opposition, to mention it (*see Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014] [failure to address claims indicates an intention to abandon them as bases of liability]). As this is the last remaining claim against SLCE, it is entitled to dismissal of all claims as against it.

St. Vincent's and Stanan (motion seq. No. 007)

St. Vincent's and Stanan argue that all claims and cross claims as against them should be dismissed, as the subject stairwell complies with all New York City Building Code requirements. In support of this position, St. Vincent's and Stanan submit an affidavit from David Doddridge (Doddridge), the principle of a consulting firm, who conducted an inspection of the subject stairwell on October 23, 2017. Based on the inspection, Doddridge opines that the subject stairwell "was code compliant and that the slip-resistance of the stair treads exceeded industry standards" (Doddridge aff, ¶ 3).

As to the issue of the stairwell's structure, Doddridge opines that "[t]he handrails and stair treads on the subject stairwell comply with code requirements" (*id.*, ¶ 6). With respect to the issue of friction on the stairs, Doddridge states:

"the industry standards require a dry static coefficient of .50 or greater for walkways that are normally dry and free of contaminant. I measured the dry static coefficient of the area where Plaintiff fell and determined it to be 0.73 (front to

back), 0.78 (left to right), and .80 (right to left), all which are significantly above the minimum standards required for a safe walking surface”

(*id.*, ¶ 5).

Clearly, these friction measurements conflict with the ones that Fein had done more than five years before Doddridge, which found the stairs were below the .50 industry standard. Fein, in his affidavit, refers to this discrepancy:

“Mr. Doddridge’s readings of the coefficient of friction as they existed on his inspection on October 23, 2017, almost six years after the accident and five and a half years after my inspection would have been significantly higher than existed on the date of the accident. The photographs attached to Mr. Doddridge’s report evidence a more rough surface than when I viewed it on April 18, 2012 and when the infant fell on December 10, 2011. Five and a half years of human trafficking on the steps combined with the presumed repeated washing would wear down the high gloss enamel paint initially used, exposing the naturally porous concrete with better traction, increasing the coefficient of friction readings”

(Fein aff, ¶¶ 20-22).

Here, plainly, there is an issue of fact as to whether the stairs, at the time of the accident, had a lower friction coefficient than is industry standard, as articulated by the ASTM. St. Vincent’s and Stanan argue that, even assuming a dangerous condition was present, they are entitled to summary judgment as plaintiffs cannot provide evidence that it caused the infant to fall.

St. Vincent’s and Stanan cite to *Goldfischer v Great Atl. & Pac. Tea Co., Inc.* for the proposition that the inability to identify the cause of an accident is fatal to a negligence claim (63 AD3d 575 [1st Dept 2009]). In *Godfischer*, the First Department affirmed dismissal of personal injury action where the plaintiff was “[u]naware of what caused her to fall” and “merely surmised that it was caused by the bump in the rubber floor mat that she observed for the first time after she fell” (*id.* at 575). St. Vincent’s and Stanan cite to *Kane v Estia Greek Rest., Inc.*,

which held that “[e]ven if an expert alludes to potential defects on a stairway, the plaintiff still must establish that the slip and fall was connected to the supposed defect, absent which summary judgment is appropriate” (4 AD3d 189, 190 [1st Dept 2004]).

St. Vincent’s and Stanan maintain that plaintiffs’ testimony lacks any evidence as to causation. Specifically, St. Vincent’s characterize Gorobets testimony as lacking any statement that plaintiff slipped. In opposition, however, plaintiffs refer directly to Gorobets testimony:

Q: Did there come a time when you were going from the third floor to the second floor walking down the steps that Arthur fell?

A: He slipped and fell.

(Gorobets tr at 35).

Additionally, Gorobets testified that “[T]here were two steps left before the turn and on the second step he slipped and fell down” (*id.* at 36) and that “[t]he left foot slipped” (*id.* at 40). St. Vincent’s and Stanan have mischaracterized Gorobets’s testimony. He testified that plaintiff slipped. Here, there is a question of fact as to whether the friction coefficient was below industry standards and there also is a question of fact as to whether this alleged dangerous condition caused plaintiff to slip.³ As these questions of material fact remain, St. Vincent’s and Stanan’s motion seeking dismissal of all claims and cross claims must be denied.

CONCLUSION

Accordingly, it is

ORDERED that defendants/third-party plaintiffs/second third-party plaintiffs St. Vincent’s Housing Fund Company, Inc. and Stanan Management Corp.’s motion for summary judgment dismissing all claims, cross claims and counterclaims as against them (motion seq. No. 007) is denied; and it is further

³ Similarly, there is a question of fact as to constructive notice, although the issue of notice was not a focus of St. Vincent’s and Stanan’s moving papers.

ORDERED that defendant/third-part defendant/third third-party plaintiff Monadnock Construction, Inc.'s (Monadnock) motion for summary judgment dismissing all claims and cross claims as against it (motion seq. No. 005) is granted; and it is further

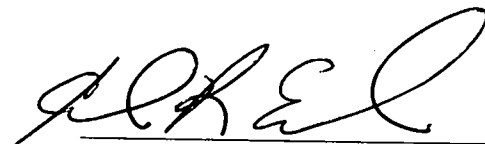
ORDERED third-party defendant/second third-party defendant/third third-party defendant SLCE Architects, LLP i/s/h/a Schuman, Lichtenstein, Claman, Efron Architects' motion for summary judgment dismissing all claims as against it (motion seq. No. 006) is granted; and it is further

ORDERED that the Clerk is to enter judgement accordingly and the action is to continue against the remaining defendants; and it is further

ORDERED that counsel for Monadnock is to serve a copy of the decision along with notice of entry upon all parties within 10 days of entry.

Dated: May 18, 2018

ENTER:



Hon. Carol Robinson Edmead, JSC
HON. CAROL R. EDMED
J.S.C.