

Kolakowski v 10839 Assoc.
2019 NY Slip Op 30755(U)
March 26, 2019
Supreme Court, New York County
Docket Number: 160201/2013
Judge: Kelly A. O'Neill Levy
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**KELLY O'NEILL LEVY
JSC**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19**

-----X

ANDRZEJ KOLAKOWSKI,

Plaintiff,

- v -

10839 ASSOCIATES and JOSEPH P. DAY REALTY CORP.,

Defendants.

INDEX NO. 160201/2013

MOTION DATE 12/12/2018

MOTION SEQ. NO. 001, 002

DECISION AND ORDER

-----X

10839 ASSOCIATES and JOSEPH P. DAY REALTY CORP.,

Third-Party Plaintiffs,

- v -

AMERICAN PIPE & TANK LINING CO., INC., AMERICAN
CONTRACTING CO., INC., and MANHATTAN COOLING
TOWERS, INC.,

Third-Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 111, 122, 124, 127, 129, 130

were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 96, 108, 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 125, 128

were read on this motion to/for SUMMARY JUDGMENT

HON. KELLY O'NEILL LEVY:

Motion sequence numbers 001 and 002 are hereby consolidated for disposition.

This is a Labor Law action where the plaintiff slipped and fell while working on a roof.

Defendants/third-party plaintiffs 10839 Associates (hereinafter, 10839) and Joseph P.

Day Realty Corp. (hereinafter, Joseph P. Day) move (mot. seq. 001) for an order, pursuant to

CPLR § 3212, (1) granting defendants summary judgment dismissing plaintiff Andrzej

Kolakowski's complaint and all cross-claims arising therefrom and (2) granting defendants summary judgment on their contractual indemnity claim against third-party defendants American Pipe & Tank Lining Co., Inc. (hereinafter, American Pipe), American Contracting Co., Inc. (hereinafter, American Contracting), and Manhattan Cooling Towers, Inc. (hereinafter, Manhattan Cooling Towers) as well as against non-party New York Wood Tank Inc. (hereinafter, New York Wood Tank). Third-party defendants partially oppose as to the branch of the motion seeking contractual indemnity against third-party defendants. Plaintiff opposes and cross-moves (mot. seq. 001) for an order, pursuant to CPLR § 3212, granting plaintiff partial summary judgment against 10839 on liability for the Labor Law § 240(1) claim. Defendants oppose the cross-motion.

Third-party defendants move (mot. seq. 002) for an order, pursuant to CPLR § 3212, (1) granting summary judgment in their favor and dismissing the third-party complaint and (2) granting third-party defendants summary judgment on their claims against defendants/third-party plaintiffs. Plaintiff and defendants/third-party plaintiffs oppose.

BACKGROUND

On January 28, 2013, plaintiff Andrzej Kolakowski slipped and fell while working on the roof of a residential building located at 108 West 39th Street in Manhattan (hereinafter, the building). 10839 was the owner of the building and Joseph P. Day was the managing agent of the building.

Plaintiff was employed by New York Wood Tank Company (hereinafter, New York Wood Tank) as a mechanic and a foreman for the installation and maintenance of wood tanks [Deposition of Andrzej Kolakowski (ex. H to the Toomey aff.) at 12-13]. He testified that American Pipe is the parent company of New York Wood Tank and both companies have the

same owner and occupy the same space (*id.* at 29-30). He stated that American Contracting and Manhattan Cooling Towers also have the same owner and occupy the same space (*id.* at 31-32). He would only receive assignments from Steven Silver, the owner of American Pipe (*id.* at 26, 33). He would only interact with Michael Keane, the superintendent of the building, to determine the issues with the wood tanks on the roof, but it was ultimately plaintiff's responsibility to determine how the work would be performed (*id.* at 34-35, 234-235).

On the morning of the accident, plaintiff was directed to go to the building to repair a frozen pump line (*id.* at 39-40). Plaintiff worked at the building during the week prior to the accident to replace some pipes and repair the tank (*id.* at 53). When he arrived at the building, Mr. Keane told him that the pipe inside the wood tank on the roof, which he had repaired in the previous week, had frozen (*id.* at 86-87). Mr. Keane took plaintiff and his helper, Waldemar Myszhowski, to the lower roof and then left the roof area (*id.* at 89). Plaintiff intended to use a torch to defrost the pipe (*id.* at 245-246).

Plaintiff climbed a permanently affixed ladder from the lower roof to the upper roof, where the wood tanks were located (*id.* at 94). Once he reached the upper roof, he side-stepped to the right for about 10-15 steps, while holding onto a metal beam in front of him with both hands, and then he slipped on ice, lost his balance, and fell backwards down to the lower roof (*id.* at 94-97). He was on the upper roof for about 10-15 seconds before he fell (*id.* at 94).

Michael Keane, the superintendent of the building, testified that Joseph P. Day was his employer and is the managing agent of the building [Deposition of Michael Keane (ex. I to the Toomey aff.) at 7-8]. He had never seen workers use safety harnesses on the roof of the building (*id.* at 32). There were approximately three feet between the water towers and the edge of the upper roof where plaintiff fell (*id.* at 52). On the day of the accident, plaintiff told him that he

stepped on the gutter and lost his balance (*id.* at 43). Mr. Keane testified that he did not give plaintiff instructions as to what he was to do or how to do it (*id.* at 45). He confirmed that plaintiff came to the building on the day of the accident to continue the work from the previous week (*id.* at 63).

Steven Silver, the owner of American Pipe, testified that American Pipe builds, cleans, repairs, and replaces wood and steel tanks [Deposition of Steven Silver (ex. J to the Toomey aff.) at 8]. He confirmed that plaintiff was an employee of New York Wood Tank, but he did work for both New York Wood Tank and American Pipe (*id.* at 9-10). Plaintiff was his wood tank foreman (*id.* at 10). His company purchased two safety harnesses for plaintiff to keep in his company van at all times (*id.* at 30). He said that he specifically asked his workers to wear their safety equipment almost every day (*id.* at 30-31). He contends that there were many places for plaintiff to tie off his safety harness on the roof of the building (*id.* at 31). When he asked plaintiff if he was tied off at the time of the accident, plaintiff responded in the negative (*id.* at 39). Plaintiff had mentioned to him that there was snow on the roof at the time of the accident (*id.* at 43). On January 31, 2013, Mr. Silver signed an Indemnity Agreement with Joseph P. Day (hereinafter, the Indemnity Agreement) [Indemnity Agreement (ex. K to the Toomey aff.)]. The Indemnity Agreement was not backdated to a date prior to the accident (*id.*).

Mr. Silver submitted an affidavit in which he confirms that American Pipe is the parent company of New York Wood Tank, which was formed specifically to act as a payroll company [Affidavit of Steven Silver (ex. H to the Hoskinson aff.) at ¶ 3]. He attests that he is also the owner of American Contracting and Manhattan Cooling Towers, and that neither of those companies had any connection with plaintiff's job at the building (*id.* at ¶ 5). American Contracting is a plumbing company and Manhattan Cooling Towers works on cooling towers,

not on wood tanks (*id.*). Mr. Silver never told plaintiff that he did not need a safety harness (*id.* at ¶ 8). After the accident, he found two safety harnesses in plaintiff's work van (*id.* at ¶ 11).

In a Worker's Compensation Board Post-Accident Report, New York Wood Tank confirmed that plaintiff slipped on ice on the roof of the building while working on water tank repairs [Employer's Report of Work-Related Injury/Illness (ex. 5 to the Peregman aff.)].

The invoice for American Pipe's work at the building indicates that the work was performed on January 23, 24, 25, 28, and 31 of 2013 [Invoice (ex. 3 to the Peregman aff.)].

DISCUSSION

On a summary judgment motion, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that material factual issues exist. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment is issue-finding, rather than making credibility determinations or factual findings. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 (2012).

Labor Law § 240(1) Claim

Defendants/third-party plaintiffs move for summary judgment and dismissal of the Labor Law § 240(1) claim. Plaintiff also cross-moves for partial summary judgment against 10839 on this claim.

Labor Law § 240(1), also known as the Scaffold Law (*Ryan v. Morse Diesel*, 98 A.D.2d 615, 615 [1st Dep't 1983]), provides, in relevant part:

“All contractors and owners and their agents . . . in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.”

“Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold . . . or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” *John v. Baharestani*, 281 A.D.2d 114, 118 (1st Dep't 2001) (quoting *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 501 [1993]).

“Not every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein.”

Narducci v. Manhasset Bay Assoc., 96 N.Y.2d 259, 267 (2001); *Hill v. Stahl*, 49 A.D.3d 438, 442 (1st Dep't 2008); *Buckley v. Columbia Grammar & Preparatory*, 44 A.D.3d 263, 267 (1st Dep't 2007). To prevail on a Labor Law § 240(1) claim, the plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff's injuries. *Blake v. Neighborhood Hous. Servs. of N.Y. City*, 1 N.Y.3d 280, 287 (2003); *Felker v. Corning Inc.*, 90 N.Y.2d 219, 224-225 (1997); *Torres v. Monroe Coll.*, 12 A.D.3d 261, 262 (1st Dep't 2004).

Defendants/third-party plaintiffs assert that plaintiff was performing routine maintenance at the time of his accident, and thus was not performing work under the purview of the Labor Law. Plaintiff was in fact performing repair work at the building at the time of his accident. The

invoice provides that American Pipe was working on repairs on the wood tanks at the building for several days prior to the accident and on the day of the accident (Invoice). All the work was billed under the same invoice. Repair work is specifically enumerated in Labor Law § 240(1) as one of the protected forms of labor. Thus, plaintiff's work is protected under the purview of the Labor Law.

Defendants/third-party plaintiffs assert that plaintiff did not use the safety equipment available which had been provided by his employer and which he had been instructed to use in connection with his work. Plaintiff asserts that Defendants/third-party plaintiffs never gave him instructions to wear a safety harness at the building.

Plaintiff did not use the safety harness which was provided to him by American Pipe and was accessible to him in his work van. There is an issue of fact as to whether plaintiff was asked to use his safety harness for his work at the building and whether plaintiff knew that he was expected to use a harness but chose not to use it. While Mr. Silver stated that he never told plaintiff that he did not need a safety harness (Silver Aff. at ¶ 8), Mr. Silver never explicitly stated that he told plaintiff to wear a safety harness for this job. However, he stated that he generally asked his workers to wear their safety equipment almost every day (Silver tr. at 30-31). Plaintiff did not testify about whether he was ever told to wear a safety harness on the roof of the building. Since it is unclear whether plaintiff was instructed to wear a safety harness for his work at the building, this presents a triable issue of fact that precludes summary judgment on this claim. Thus, the court denies the branch of defendants/third-party plaintiffs' motion seeking dismissal of the Labor Law § 240(1) claim. The court also denies plaintiff's cross-motion for partial summary judgment on this claim.

Labor Law § 200 and Common-Law Negligence Claims

Defendants/third-party plaintiffs move for summary judgment and dismissal of the Labor Law § 200 and common-law negligence claims.

Labor Law § 200 is a “codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work’ [citation omitted].” *Cruz v. Toscano*, 269 A.D.2d 122, 122 (1st Dep’t 2000); *see also Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 311, 316-317 (1981). Labor Law § 200(1) states, in pertinent part, as follows:

1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons.

There are two distinct standards applicable to Labor Law § 200 cases, depending on whether the accident is the result of the means and methods used by the contractor to do its work, or whether the accident is the result of a dangerous condition. *See McLeod v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 A.D.3d 796, 797-798 (2d Dep’t 2007). “Where an existing defect or dangerous condition caused the injury, liability [under Labor Law § 200] attaches if the owner or general contractor created the condition or had actual or constructive notice of it.” *Cappabianca v. Skanska USA Bldg. Inc.*, 99 A.D.3d 139, 144 (1st Dep’t 2012).

Since plaintiff slipped on ice, this accident was the result of a dangerous condition on the roof of the building. Plaintiff told Mr. Silver that there was snow on the roof of the building at the time of the accident (Silver tr. at 43). This should have put defendants/third-party plaintiffs on notice of a potential dangerous condition on the roof of the building. Defendants/third-party

plaintiffs do not make a prima facie showing of their entitlement to a judgment as a matter of law as they do not present contrary evidence that they did not have actual or constructive notice of the icy and snowy condition on the roof of the building. Thus, defendants/third-party plaintiffs are not entitled to summary judgment on the Labor Law § 200 and common-law negligence claims.

The court denies the branch of defendants/third-party plaintiffs' motion for summary judgment seeking dismissal of the Labor Law § 200 and common-law negligence claims.

Labor Law § 241(6) Claim

Defendants/third-party plaintiffs move for summary judgment and dismissal of the Labor Law § 241(6) claim. Nowhere in their affirmation in support of their motion do they mention Labor Law § 241(6), and therefore, they have failed to make their prima facie showing of their entitlement to a judgment as a matter of law. Thus, the court denies the branch of defendants/third-party plaintiffs' motion seeking dismissal of the Labor Law § 241(6) claim.

Contractual Indemnity Claim

Defendants/third-party plaintiffs move for summary judgment on their contractual indemnity claim against third-party defendants and non-party New York Wood Tank. Third-party defendants also move for summary judgment and dismissal of the contractual indemnity claim against them.

As a preliminary matter, New York Wood Tank is not a party in this matter and there are no claims against it. Therefore, defendants/third-party plaintiffs cannot move for summary judgment against New York Wood Tank.

Defendants/third-party plaintiffs assert that they are entitled to contractual indemnification, pursuant to the Indemnity Agreement, as the accident was related to plaintiff's

work. Third-party defendants assert that they do not owe defendants/third-party plaintiffs indemnification because the Indemnity Agreement was not entered until three days after the accident.

Workers' Compensation Law § 11 states:

“For purposes of this section the terms “indemnity” and “contribution” shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.” Workers' Compensation Law § 11.

Dismissal of a contractual indemnification claim is proper where there was no indemnification agreement in existence at the time of the accident and nothing indicates that the terms and conditions of the agreement were to have a retroactive effect. *Vail v. 1333 Broadway Associates, L.L.C.*, 105 A.D.3d 636, 637 (1st Dep't 2013); *Regno v. City of New York*, 88 A.D.3d 610, 610 (1st Dep't 2011); *Castellon v. Reinsberg*, 82 A.D.3d 635, 636-637 (1st Dep't 2011); *Temmel v. 1515 Broadway Assoc., L.P.*, 18 A.D.3d 364, 365-366 (1st Dep't 2011); *Ferri v. 63 Madison Assoc.*, 280 A.D.2d 419, 420 (1st Dep't 2001).

The Indemnity Agreement was entered on January 31, 2013 and the accident occurred on January 28, 2013. There is no evidence or specific language in the agreement indicating that the parties intended for the Indemnity Agreement to have a retroactive effect.

Thus, the court denies the branch of defendants/third-party plaintiffs' motion for summary judgment on their contractual indemnity claim. The court grants the branch of third-party defendants' motion for summary judgment seeking dismissal of the contractual indemnity claim against them, and the court dismisses same.

Common-Law Indemnification and Contribution Claims

Third-party defendants move for summary judgment and dismissal of defendants/third-party plaintiffs' common-law indemnification and contribution claims against them. Third-party defendants also move for summary judgment on their common-law indemnification and contribution cross-claims against defendants/third-party plaintiffs.

As a preliminary matter, while a branch of third-party defendants' motion seeks summary judgment on third-party defendants' claims against defendants/third-party plaintiffs, this branch of the motion is not supported or argued in the accompanying affirmation or memorandum of law. Third-party defendants are not entitled to summary judgment on their cross-claims against third-party plaintiffs. Thus, the court denies the branch of third-party defendants' motion seeking summary judgment on their cross-claims against third-party plaintiffs.

"To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident.'" *Perri v. Gilbert Johnson Enters., Ltd.*, 14 A.D.3d 681, 684-685 (2d Dep't 2005), quoting *Correia v. Professional Data Management, Inc.*, 259 A.D.2d 60, 65 (1st Dep't 1999); see also *Martins v. Little 40 Worth Assoc., Inc.*, 72 A.D.3d 483, 484 (1st Dep't 2010).

Third-party defendants assert that American Pipe qualifies as plaintiff's special employer.

"A special employee is one who is transferred, for a limited time of whatever duration, to the service of another." *Warner v. Continuum Health Care Partners, Inc.*, 99 A.D.3d 636, 636 (1st Dep't 2012). Among the factors considered in determining whether a special employment

arrangement exists are (1) who controls and directs the manner, details, and ultimate result of the employee's work, (2) who pays the employee's wages, (3) who furnishes the employee's equipment, (4) who has the right to hire and discharge the employee, and (5) whether the work being performed was in furtherance of the special employer's or the general employer's business. *Gonzalez v. ARI Fleet, LT*, 83 A.D.3d 891, 892-893 (2d Dep't 2011) (internal citations omitted). If a corporation is an alter ego of the plaintiff's employer, then workers' compensation is the plaintiff's exclusive remedy against the corporation. *Romano v. Curry Auto Group*, 301 A.D.2d 509, 510 (2d Dep't 2003) (internal citations omitted); *Haines v. Verazzano of Dutchess, LLC*, 130 A.D.3d 871, 872 (2d Dep't 2015). "A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity." *Quizhpe v. Luvin Constr. Corp.*, 103 A.D.3d 618, 619 (2d Dep't 2013). "When an employee elects to receive workers' compensation benefits from his general employer, a special employer is shielded from any action at law commenced by the employee." *Villanueva v. Southeast Grand St. Guild Hous. Dev. Fund Co., Inc.*, 37 A.D.3d 155, 156 (1st Dep't 2007); see Workers' Compensation Law § 29(6); see also *Thompson v. Grumman Aerospace Corp.*, 78 N.Y.2d 553, 557 (1991).

Here, plaintiff's employer is non-party New York Wood Tank, but American Pipe, the parent company of New York Wood Tank, is plaintiff's special employer. Steven Silver, the owner of American Pipe, testified that plaintiff was an employee of New York Wood Tank, but he did work for both New York Wood Tank and American Pipe (Silver tr. at 9-10). Mr. Silver also submitted an affidavit in which he confirms that American Pipe is the parent company of New York Wood Tank, which was formed specifically to act as a payroll company (Steven Silver aff. at ¶ 3). New York Wood Tank was a wholly owned subsidiary of American Pipe and

both companies have their offices in the same space (Plaintiff tr. at 29-30; Silver tr. at 7-8; Silver aff. at ¶ 2-3). American Pipe issued the invoice for plaintiff's work (Silver aff. at ex. 1).

American Pipe furnished the equipment and materials for the job, including the safety harnesses (Silver tr. at 30). Therefore, American Pipe qualifies as plaintiff's special employer. Since plaintiff received workers' compensation benefits from New York Wood Tank, American Pipe, as plaintiff's special employer, is shielded from any action at law commenced by plaintiff.

Thus, the court grants the branch of third-party defendants' motion for summary judgment seeking to dismiss the third-party complaint as against American Pipe and dismisses same.

American Contracting and Manhattan Cooling Towers

Third-party defendants assert that American Contracting and Manhattan Cooling Towers had no connection to plaintiff's work on the day of the accident.

Steven Silver, the owner of American Pipe, American Contracting, and Manhattan Cooling Towers submitted an affidavit attesting that neither American Contracting nor Manhattan Cooling Towers had any connection with plaintiff's job at the building (Silver aff. at ¶ 5). This position is uncontested. American Contracting conducted plumbing work and Manhattan Cooling Towers worked on cooling towers, not on wood tanks. American Contracting and Manhattan Cooling Towers are not proper parties to this matter.

Thus, the court grants the branch of third-party defendants' motion seeking to dismiss the third-party complaint as against American Contracting and Manhattan Cooling Towers and dismisses same.

The court has considered the remainder of the arguments and finds them to be without merit.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED, that the branch of defendants/third-party plaintiffs 10839 Associates and Joseph P. Day Realty Corp.'s motion (mot. seq. 001) for an order, pursuant to CPLR § 3212, granting defendants summary judgment dismissing plaintiff Andrzej Kolakowski's complaint and all cross-claims arising therefrom is denied; and it is further

ORDERED, that the branch of defendants/third-party plaintiffs 10839 Associates and Joseph P. Day Realty Corp.'s motion (mot. seq. 001) for an order, pursuant to CPLR § 3212, granting defendants summary judgment on their contractual indemnity claim against third-party defendants American Pipe & Tank Lining Co., Inc., American Contracting Co., Inc., and Manhattan Cooling Towers, Inc. as well as against non-party New York Wood Tank Inc. is denied; and it is further

ORDERED, that plaintiff Andrzej Kolakowski's cross-motion (mot. seq. 001) for an order, pursuant to CPLR § 3212, granting plaintiff partial summary judgment against 10839 on liability for the Labor Law § 240(1) claim is denied; and it is further

ORDERED, that the branch of third-party defendants American Pipe & Tank Lining Co., Inc., American Contracting Co., Inc., and Manhattan Cooling Towers, Inc.'s motion (mot. seq. 002) for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the third-party complaint is granted; and it is further

ORDERED, that the branch of third-party defendants American Pipe & Tank Lining Co., Inc., American Contracting Co., Inc., and Manhattan Cooling Towers, Inc.'s motion (mot. seq. 002) for an order, pursuant to CPLR § 3212, granting third-party defendants summary

judgment on their claims against defendants/third-party plaintiffs 10839 Associates and Joseph

P. Day Realty Corp. is denied; and it is further

ORDERED, that the third-party complaint is hereby dismissed; and it is further

ORDERED, that the remainder of this action shall continue.

This constitutes the decision and order of the court.

3/26/19
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

KELLY O'NEILL LEVY
JSC

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE