City of New York v Siemens AG
2019 NY Slip Op 31947(U)
July 3, 2019
Supreme Court, New York County
Docket Number: 100303/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 11
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CITY OF NEW YORK, INDEX NO. 100303/13

Plaintiff,

ex rel. JOSEPH LERMAN,

Plaintiff-Relator

-against-

SIEMENS AG, SIEMENS ELECTRICAL LLC, and
EJ ELECTRICAL INSTALLATION COMPANY,

Defendants.
--X
JOAN A. MADDEN, J.:

In this *qui tam* action, the City of New York ("the City") moves, by order to show cause, for an order pursuant to State Finance Law § 190(5)(b) dismissing the first count of the First Amended Complaint alleging violations of State Finance Law § 189. Plaintiff/Relator Joseph Lerman ("the Relator") opposes the motion or, in the alternative, seeks to stay its determination pending discovery.

<u>Background</u>

This action relates to a contract between the City and defendant Siemens Electrical, LLC ("Siemens") for work at the Croton Water Filtration Plant ("Croton Plant") project ("the Project"), which is designed as one large water filtration plant consisting of two smaller filtration plants, known as Plant A and Plant B. The Relator was hired by defendant EJ Electrical Installation Company ("EJ"), an electrical and communications contractor, in October 2010.

Siemens, an electrical engineering and manufacturing company, retained EJ as a subcontractor. The Relator was a Project Manager/Engineer who was responsible for identifying any electrical violations or other problems resulting from the prior contractor's work.

The Relator commenced this action in 2013 under the *qui tam* provisions of the New York State False Claims Act (NYFCA). The original complaint asserted two counts alleging violations of State Finance Law § 189, relating to the submission of false claims, and § 191, for retaliation. With regard to the first count for violation of § 189, the complaint alleged, *inter alia*, that false claims were made with respect to representations that the work performed complied with the New York City Electrical Code ("NYCEC" or "the Code"), and that the electrical work performed at the Croton Plant would provide the redundancy to permit Plant A to shut down while Plant B remained operable in accordance with contract provisions regarding redundancy. It further alleged that upon his inspection, the Relator "discovered that all service lines-for both Plant A and Plant B-were running through pull boxes[1] where the service feeders were unsegregated and the wiring/conduits for Plant A were intermingled with wiring/conduits for Plant B at juncture points..." (Original Complaint ¶'s 57-58). It also alleged that these defects, which related only to pull boxes housing 5000 volt (5kV) cables, "creates a dangerous environment to operated in, especially when contractors neglect to follow the [NYCEC]." (Id ¶ 61).

After the State of New York and the City[2] declined to intervene, the Relator opted to

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[1]Pull boxes are "juncture points through which long electrical wires/conduits run to make the pulling of wire easier" (Id ¶ 56).

[2]Notwithstanding that the City declined to intervene, by Stipulation so-ordered by the court on September 21, 2018, the City, the State and the Relator agreed to amend the caption to

continue the action, and the complaint and certain other documents were unsealed by order dated July 1, 2016. Siemens then moved to dismiss the complaint, and EJ cross moved to dismiss the first count of the complaint. The City and the State each submitted briefs addressing the motion and cross motion.[3] In its brief addressing the motion and cross motion, the City argued that the first count of the complaint was subject to dismissal as it failed to allege a violation of the NYCEC.

By decision and order dated January 22, 2018, the court found that Relator failed to allege a violation of the NYCEC, and, in particular, NYCEC § 300.3 (C)(1)(a)[4] or (C)(2),[5]concerning barriers between electrical systems.[6] However, the court denied the motion and cross motion to

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name the City as a plaintiff "to facilitate the efiling of papers by the City and Relator in connection with the [instant] Motion."

[3]By order dated May 17, 2017, this court granted the separate requests by the City and State to submit briefs addressing the motion and cross motion.

[4]Section 300.3(C)(1) provides that:

(1) 600 Volts, Nominal or Less. Conductors of circuits rated 600 volts, nominal or less, ac circuits, and dc circuits shall be permitted to occupy the same equipment wiring enclosure, cable or raceway. All conductors shall have an insulation rating equal to at least the maximum circuit voltage applied to any conductor within the enclosure, cable, or raceway.

[5]Section 300.3(C)(2) provides that:

(2) Over 600 Volts. Nominal. Conductors of circuits rated over 600 volts, nominal, shall not occupy the same equipment, wiring, enclosure, cable, or raceway with conductors of circuits rated 600 volts, nominal or less unless otherwise permitted by C(2)(a) through (C)(2)(e)(which Relator asserts are not applicable).

[6]The Relator conceded that NYCEC § 300.3(C)(1), which pertains to circuits 600 volts or less, was not violated since the cables at issue were 5,000 volts. The court also found that an amendment under § 300.3(C)(1) relied on by the Relator requiring barriers to be provided to isolate conductors when the system exceeded 250 volts was inapplicable since its placement as a subsection of § 300.3(C)(1) meant that it pertained only to circuits 600 volts or less. As for §

dismiss the first count to the extent it stated a claim based on the theory that defendants breached "the contractual requirements related to the design of the electrical system to ensure redundancy of Plant A and Plant B."

In the meantime, while the motion and cross motion to dismiss were pending, the Relator served a motion to amend. On or about March 19, 2018, the Relator served a draft amended complaint. On April 5, 2018, oral argument was held on Relator's motion to amend and Realtor's counsel acknowledged that he only served the proposed amended complaint but had never filed it. The Realtor agreed to withdraw the motion to amend, and to file and serve what the court designated as a First Amended Complaint consistent with the court's January 22, 2018 decision and order.

The first count of the First Amended Complaint is based on allegations that defendants made false representations that the work performed was in compliance with the Administrative Code of the City of New York and the Rules of the City of New York, including NYCEC, and that defendants falsely represented that the electrical work performed at the facility would provide the Croton Plant with redundancy to allow part of the plant to shut down while the remaining part remained operable. As in the original complaint, the allegations of false claims are based on the Relator's allegations that electrical system at the Croton Plant did not comply with electrical code requirements or the contractual redundancy requirements underlying the design of the Croton Plant as neither permitted "high voltage cables...from different circuits [to be] installed in the same enclosure" (First Amended Complaint ¶ 116). The cables at issue are alleged to be "located with the 5kV feeders connected to the output of the service switchgear

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300.3(C)(2), the court found that it was inapplicable as it pertained to circumstances where high voltage cable (600 volts or more) were allowed to occupy the same equipment as low voltage cable (i.e. 600 volts or less).

systems [which are] the outputs of four MVS (i.e. medium voltage switch gear units)[7]" (Id).

It is alleged that the high voltage installation at the Croton Plaint "did not conform with the New York City Administrative Code because Siemens failed to file with the Electrical Advisory Board to get approval for commingling of the high voltage circuits within a single pull box in violation of RCNY § 34-05" (Id ¶ 119). It is further alleged that the installation did not conform with NYCEC § 708.10(b), concerning critical operation power systems,§ 700.12(D), concerning emergency power systems, and 408.60(E)(2), concerning minimum capacity of certain busbars (components that can be used to conduct electricity through switchboards and other types of equipment)[8] (Id ¶'s 82-84, 120, 121).

The City now moves for dismissal of the first count, pursuant to State Finance Law § 190(5)(b)(i), which provides for dismissal of a *qui tam* action upon motion by the government "notwithstanding the objection of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard." In support of its motion, the City relies on two lines of federal cases interpreting the provision of the Federal False Claim Act ("FCA") (31 USC § 3730(2)(2)(A) which is analogous to section 190(5)(b)(I) of the NYFCA. See United States ex rel. Sequuoia Orange Co. v. Baird-Neece Packing Corp., 151 F3d 1139 (9th Cir 1998), cert denied 525 US 1067 (1999)(holding that dismissal is appropriate as long as the government's decision to dismiss is rationally related to a valid government purpose, and the Relator fails to demonstrate fraud on the court, arbitrariness or illegality); Swift v. United States, 318 F Supp3d 250 [DC Cir], cert denied 539 US 994

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[7] The units are identified as MVS-1A, MVS-1B, MVS-2A, and MVS 2B.

[8]The First Amended Complaint refers to NYCEC § 300.3 but does not specifically allege a violation of the section.

(2003)(holding that the government has "unfettered" discretion to dismiss *qui tam* actions, notwithstanding the objections of the Realtor, absent a showing of fraud on the court or similar exceptional circumstances).

The City argues that under either line of federal precedent, the first count of the First Amended Complaint should be dismissed as the allegations are insufficient to support a claim for violation of State Finance Law § 189, based on either a violation of the NYCEC or other requirements or for breach of contract based on the electrical design of the Croton Plant. The City asserts that before it declined to intervene, it conducted an investigation which included interviewing personnel and reviewing documents of the Department of Environmental Protection ("DEP") and the Department of Buildings ("DOB"), and determined that the pull box installation at the Project that are the subject of the Relator's complaint did violate the New York City Electrical Code ("NYCEC"). The City also contends that, under these circumstances, dismissal is appropriate to conserve the resources of three City agencies involved in the litigation, that is DEP, which oversaw the work, DOB, which enforces the electrical code, and the Law Department which is responsible for litigating the action.[9]

In support of its position that the NYCEC violations alleged in the First Amended Complaint do not provide a basis for a § 189 claim under NYFCA, the City submits the affidavit of Mathher Abbassi, the Administrative Engineer for Technical Affairs and Code Development

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[9]The City also points out that before the qui tam action, there was considerable litigation between the City and Siemens, including one in which the City decided to proceed with New York False Claims Act claims based on Siemens' conduct, which conduct Siemens admitted in connection with a deferred prosecution agreement with the New York County District Attorney. This litigation was eventually settled.

at DOB, a licensed engineer with twenty years of experience, and who is the Chair of the New York City Electrical Code Revision and Interpretation Committee. With respect to the the alleged violation of NYCEC § 708.10, which pertains to "critical operations power systems (COPS)" serving any "designated critical operations area" within a given facility, Mr. Abbassi states that the provision, and Article 708 generally, do not apply since the Croton Plant has not received a COPS designation from DEP. The City also submits the affidavit of Arne Fareth of DEP, who confirms that the Croton Plant did not receive the COPS designation.

As for NYCEC § 700.12(D), Mr. Abbassi states that Article 700 of the NYCEC applies "to emergency systems intended to supply, distribute and control electricity for illumination and power essential for safety and human life [and that]... § 700.12(D), imposes certain restrictions on such emergency systems that are fed by an addition service utility such as Con Edison." He states that because the emergency systems at the Croton Plant are not fed by an additional service utility, such as Con Edison, § 700.12(D) does not apply.

With regard to NYCEC § 408.60(E)(2), according to Mr. Abbassi, this provision "makes certain types of busbars, (components that can be used to conduct electricity through switchboards and other types of equipment), subject to the minimum ampacity thresholds set forth in § 230.42." He states that "this section does not bear on the co-mingling of cables in pull boxes."

In opposition, the Relator argues that it would be premature to dismiss the § 189 claim count before discovery has been conducted, which would, inter alia, enable it to determine if any contractual provisions were violated based on the Croton Plant's design. In addition, the Relator argues that as the City did not move to dismiss until after it declined to intervene and the

complaint was unsealed, the court should apply the rational basis test in Sequuoia Orange Co., supra, and that, under this test, the action is not subject to dismissal in light of evidence that there was an violation of the NYCEC and a lack of redundancy based on the electrical design of the Croton Plant.

With respect to the City's position that violations of the NYCEC alleged in the First Amended Complaint are inapplicable, the Relator concedes that "the electrical code does not directly govern high tension, or high voltage, electrical installations.[10]" As for allegations that approval of the Electrical Advisory Board ("the Board") was required under RCNY § 34-05, the Relator acknowledges that in connection with a separate motion Siemens has submitted an approval letter from the Board dated March 18, 2009 ("the Approval Letter"),which approved the drawings for the electrical system equipment at the Project.

The Relator, argues, however, that Board Approval has not been obtained under RCNY § 34-05 as such approval is conditioned in the letter on satisfaction of Con Edison's Blue Book requirements based on a statement in the Approval Letter that Con Edison should be contacted regarding such requirements. The Relator argues that the Con Edison Blue Book standards have

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[10]The Relator submits a "preliminary report" dated October 11, 2012, from an expert, Thomas Boehly, Ph.D, a forensic engineer, who opines that the routing of service conductors for the two plants through a single electrical box violated NYCEC § 300.3(C)(1)(a). However, as noted by the City, and as found by the court's decision and order dated January 22, 2018, this section, which pertains to conductors rated 600 volts or less, is not applicable to the 5000 volt cables at issue here, and in fact, Relator does not argue otherwise in connection with this motion. The Relator also submits the affidavit of William Mari, a license Master Electrician, and an Assistant Superintendent for the New Tappan-Zee Project. While Mr. Mari opines that the high voltage feeder cable may not occupy the same pull box, and that NYCEC provisions cited in the First Amended Complaint were violated, this affidavit which is dated August 30, 2017, does not address the statements in Mr. Abbassi's affidavit that the violations are inapplicable to the Project and/or irrelevant to the allegations regarding the lack of segregation in the pull boxes.

not been met based on the commingled cables since under Con Edison's specification EO-2022, Section 5.11.1,[11] that commingled conductors not only had to be segregated, but also separated a minimum of 20 feet, which was not the case at the Croton Plant.

In reply, the City asserts that the purported violation based on the Con Edison Blue Book standards does not provide a basis for a viable claim, and in support of this assertion, the City submits Mr. Abbassi's supplemental affidavit. Mr. Abbassi states that "[i]n the course of approving applications for electrical installations, it is common for the ... Board to advise applicants to contact Con Edison regarding Blue Book requirements where such requirements may be applicable [and that]... [his] understanding is that Con Edison will not turn on power to a facility unless it is satisfied, through its own inspections, that the installation complies with applicable Con Edison requirements and specifications."

With respect to the specification at issue, EO-2022, Section 5.11.1, he states that while this section addresses "Primary Service Feeder separation outside the Customer's substation .i.e. on the utility side of the substation," the Relator's inquiry to DOB's advisory board regarding the segregation of electrical cable, concerned "the co-mingling of certain cables at points downstream from the medium voltage switchgear units (MVSs)...[which] are on the customer

[11]Con Edison's specification EO-2022 Section 5.11.1 provides.
5.11.1 Primary Service Feeder separation outside the Customer's substation:

5.11.1.1 For all contingency areas, primary service feeders shall be segregated such that no more than one feeder band (two primary service feeders) shall be installed on a common pole, or within the same ductbank or manhole.

5.11.1.2 A minimum of twenty feet shall separate feeder bands regardless of the contingency

side of the substation and, therefore, do not fall within the ambit of Section 5.11.1 of Con Edison's Template for High Tension Technical Specification."

The City also submits an affidavit of Maxim Klavansky, who has been the Chief of Power and Mechanical Support Division of DEP since 2007, who states with regard to compliance Con Edison's specifications that:

> Con Edison brought four service feeders to manholes at the property line outside the Croton plant. Under the CRO-312-E2 contract, Siemens was responsible for running feeders from these property line manholes into the service switchgear inside the substation at the plant. This work was performed based on applicable specifications, including Con Edison requirements, and drawings approved by DEP's design engineer. Con Edison received detailed drawings and other information concerning the work under the CRO-312-E2 contract, to the extent the work implicated Con Edison specifications including EO-2022, pertaining to high tension service. Con Edison conducted multiple inspections of the work to ensure compliance with its specifications. After completion of the relevant work under the CRO-312-E2 contract, and following its inspections, Con Edison turned on the power to the Croton plant. Con Edison would not have taken this step unless the work met Con Edison's specifications.

With respect to the commingling of cables, Mr, Klavansky states that "[t]here is no commingling of cables above the level of the MVSs, [i.e. four medium voltage switch gear units]."[12] "The MVSs feed electricity to individual raw and treated water pumps and secondary unit substations (SUSs). The MVSs include overcurrent devices that can shut off power to the pumps, and SUSs [and] there are several overcurrent devices above each MVS." He further states that "to the extent certain cables fed from the MVSs (i.e., downstream of the MVSs) are commingled within junction boxes, such commingling is permissible under the CRO-312-E2

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[12]Attached to Mr. Klavansky's affidavit is a copy of the "one-line diagram" depicting the main substation and, below the substation, four MVSs. which is an exhibit to the First Amended Complaint.

contract." He also states that "the Relator's complaints about commingling have come to the attention of in-house engineers at DEP, DEP's outside design engineer, and regulators at the [DOB], all of which (among others) have found that the commingling complies with applicable requirements and specifications."

Discussion

State Finance Law § 190(5), provides that when the government declines to intervene in a *qui tam* civil action, the person bringing the qui tam action "shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subdivision." Section § 190(5)(b)(I) provides, in relevant part that:

> If the action involves damages sustained by a local government but not the state, then the local government may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion.[13]

While it appears there is no New York precedent interpreting NYFCA § 190(5)(b)(I), federal law regarding the parallel federal provision, FCA § 3730(c)(2)(A),[14] is appropriately examined to interpret this section of the NYFCA. See State of New York ex rel. Seiden v Utica First Ins. Co., 96 AD3d 67, 71 (1st Dept), lv denied 19 NY3d 810 (2012)(noting that "[New York's False Claims Act] follows the Federal False Claims Act ["FCA"][31 USC § 3729 *et seq.*]

[13]Here, it is undisputed that the Relator was giving an opportunity to be heard during oral argument on the City's motion to dismiss.

[14]The FCA, like the NYFCA, permits the qui tam plaintiff to continue the action if the government declines to intervene (FCA § 3730(c)). However, that right is subject to the limitations in paragraph which provides, inter alia, that "[t]he Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion."

and therefore it is appropriate to look toward federal law when interpreting the New York act").

Federal case law has adopted two approaches to the issue of the government's right to dismiss a *qui tam* action over a relator's objections. In United States ex rel., Sequuoia Orange Co. v. Baird-Neece Packing Corp., 151 F3d at 1145, the Ninth Circuit adopted the rational relation test, which requires the government to identify a valid purpose for dismissing the action and a rational relationship between the dismissal and that purpose. To meet this standard, the government need not produce evidence in support of its reasons for seeking dismissal but only to provide "plausible" or "arguable" reasons supporting its decision. See Ridenour v. Kaiser-Hill Co., 397 F3d 925, 937 (10th Cir. 2005)(internal citation and quotation omitted.) Once the government makes this showing, the burden shifts to the relator to show that the decision to dismiss was "fraudulent, illegal or arbitrary and capricious." Sequuoia Orange Co. v. Baird-Neece Packing Corp., 151 F3d at 114.

In Swift v. United States, 218 F3d at 251-253, the D.C. Circuit, finding that the power of the government to dismiss was broader than standard adopted in Sequuoia Orange Co , held that under FCA § 3730(c)(2)(A), the government has "an unfettered right to dismiss" qui tam actions, and "the presumption is that decisions not to prosecute are unreviewable...except where there is a showing of fraud on the court." The court explained that the purpose of the hearing requiring under § 3730(c)(2)(A) 'is simply to give the relator a formal opportunity to convince the government not to end the case." Id at 253.

Notably, both standards are deferential to the government's decision to dismiss in light of its authority over *qui tam* actions which are brought in the name of the government to redress injuries sustained by government and not the relator. See Sequuoia Orange Co , 151 F3d at 1143

(noting the government's broad authority over *qui tam* actions even after it decides not to intervene); Swift, 218 F3d at-253 ("the decision whether to bring an action on behalf of the United States is ...a decision committed to the government's absolute discretion"); see also, Certain Underwriters of Lloyd's London Subscribing to Policy No. QK0903325 v. Huron Consulting Group, 127 AD3d 663, 664 (1st Dept), lv denied 26 NY3d 913 (2015)(even when the government declines to intervene in a *qui tam* action, the government "remains the real party in interest in such an action")(internal citations and quotations omitted).

Here, the court need not decide which standard applies, as the City has satisfied the requirements of stricter rational relationship standard by showing that its decision to seek dismissal of the Relator's § 189 claim, was based on the tenuous merit of such claim and its interest in conserving the resources of three City agencies. See e.g. Sequuoia Orange Co., 151 F3d at 1146 (holding that the district court "properly noted that the government can legitimately consider the burden imposed on the taxpayers by its litigation, and that, even if the relators were to litigate the FCA claims, the government would continue to incur enormous internal staff costs"); United States ex rel. Stevens v. State of Vt. Agency of Natural Res., 162 F3d 195 (2d Cir.1998) rev'd on other grounds, 529 U.S. 765 (2000)(stating in dicta, that "the district court need only find that the government's decision to dismiss a qui tam suit, even a meritorious one, is supported by a valid governmental purpose that is not arbitrary or irrational and has some rational relation to the dismissal")(internal citation and quotation omitted); United States ex rel Piacentile v. Amgen Inc., 2013 WL 5460640, *3 (ED NY 2013)(the government was entitled to dismissal of qui tam complaint based on "its preference to avoid expending further resources on this action," and when, in the course of its investigation "the government determined that

Relators' claims were unsupportable").[15]

With respect to the merit of the § 189, the court notes that the City has investigated the allegations asserted in the Relator's original complaint and First Amended Complaint that the electrical system at the Croton Plant violated the NYCEC, and has provided affidavits attesting to the compliance with applicable Code requirements. Specifically, with respect to the Code provisions cited in the First Amended Complaint at issue here, the City provides affidavit that NYCEC § 708.10(b), concerning critical operation power systems ("COPS") does not apply since the Croton Plant did not receive a COPS designation from DEP; that § 700.12(D), concerning emergency power systems has no application since the Croton Plant is not fed by an additional service facility, and that 408.60(E)(2), concerning minimum capacity of certain busbars, does not bear on the commingling of cable or pull boxes. As for the contract requirements, the Klavansky affidavit submitted by the City states that the only commingling of cables is at four medium voltage switch gear units and that such commingling with overcurrent devices that can shut off power is permissible under the contract.

In his opposition, the Relator, by not addressing the opinions in the City's affidavits that the Code provisions cited in the First Amended Complaint are inapplicable, implicitly concedes this issue. With respect to the Relator's assertions regarding noncompliance with Con Edison Blue Book requirements as required by the Electrical Board Approval Letter, the supplemental affidavit of Mr. Abbassi, explains that these requirements refer to equipment outside the

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[15]The Relator cites United States v. Academy Mortgage Corp., 2018 WL 3208157 (ND Cal. 2018), to argue that the City has failed to establish a rational basis for dismissal of the complaint. However, that case is not dispositive here since, unlike in instant action, the Relator in that case provided evidence that the government had not conducted a legitimate investigation of the allegations underlying the *qui tam* action prior to seeking its dismissal.

customer's substation and the cables implicated are within the substation.[16]

As the City has shown that a rational basis for dismissal of the first count, the burden shifts to the Relator to show the decision to dismiss was "fraudulent, illegal or arbitrary and capricious." Sequuoia Orange Co. v. Baird-Neece Packing Corp., 151 F3d at 114. Here, the Relator has not met this burden. While the Relator argues that the dismissal of the first count will not preclude the City's expanding expenses on this action as the second count for retaliation will still be litigated such argument does not demonstrated that the City's decision to dismiss the first count is for other than for a legitimate purpose.

Accordingly, the City's motion to dismiss the first count seeking to recover under § 189 of the State Finance Law is granted.

Conclusion

In view of the above, it is

ORDERED that the City's motion to dismiss the first count of the First Amended Complaint is granted; and it is further

ORDERED that the First Amended Complaint is dismissed in its entirety as against defendants Siemens AG and Siemens Electrical LLC;[17] and it is further

ORDERED that the caption is amended to read as follows:

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[16]In reaching this conclusion, the court makes no determination regarding the potential effect of the commingling of cables, as asserted herein, on the issue of redundancy.

[17]In its decision and order dated January 22, 2018, the court dismissed count two against Siemens on the ground that as Siemens was not the Relator's employer, a claim against it for retaliation under State Finance Law § 191 was not viable.

CITY OF NEW YORK,
Plaintiff,
ex rel. JOSEPH LERMAN
Plaintiff-Relator,
-against-
EJ ELECTRIC INSTALLATION COMPANY,
Defendant

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and it is further

ORDERED that within 20 days of efiling of this order, the City of New York shall serve a copy of this order with notice of entry upon the Clerk of the Court (room 141B) and upon the Clerk of the General Clerk's Office (room 119), who are directed to amend their records to reflect such change in the caption herein; and it is

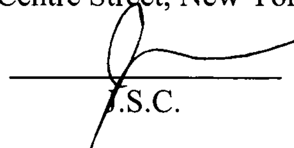
ORDERED that such service on the County Clerk and the Clerk of the General Clerk's office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (**www.nycourts.gov**/supctmanh).

ORDERED that the second count is severed and continues as against defendant EJ Electrical Installation Company; and it is further

ORDERED that defendant EJ Electrical Installation Company is directed to serve an answer within 20 days of efiling of this order; and it is further

ORDERED that the remaining parties shall appear for a preliminary conference on August 22, 2019 at 11 am in Part 11, room 351, 60 Centre Street, New York, NY.

DATED: ~~June~~ , 2019
July 3, 2019



J.S.C.

HON. JOAN A. MADDEN
J.S.C