

Grandelli v City of New York
2019 NY Slip Op 32856(U)
September 24, 2019
Supreme Court, New York County
Docket Number: 160013/2018
Judge: Julio Rodriguez, III
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JULIO RODRIGUEZ, III PART IAS MOTION 62EFM
Justice

-----X
INDEX NO. 160013/2018
LOUIS GRANDELLI, as Administrator of Estate of Ariel Erlj,
deceased, MOTION DATE 06/19/2019
MOTION SEQ. NO. 001
Plaintiff,

- v -

THE CITY OF NEW YORK, HUDSON RIVER PARK
TRUST, NEW YORK CITY DEPARTMENT OF PARKS AND
RECREATION, NEW YORK CITY DEPARTMENT OF
TRANSPORTATION, HOME DEPOT U.S.A., INC.

**DECISION + ORDER ON
MOTION**

Defendant:
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for Consolidate and Dismiss

Defendant Home Depot U.S.A., Inc. (Home Depot) moves for an order: (1) pursuant to CPLR 602, consolidating the above captioned index number (Index No. 160013/2018) with the additional index numbers for complaints based on the same incident that forms the basis of plaintiff's claims; and (2) pursuant to CPLR 3211 (a)(1), (a)(7), and (c), dismissing plaintiffs' complaints and all cross claims with prejudice. Defendant Hudson River Park Trust (Hudson River) cross-moves for an order, pursuant to CPLR 602, consolidating 18 personal injury and wrongful death cases arising out of the subject incident for joint discovery and trial.

BACKGROUND

This action arises out of the October 31, 2017 terrorist attack in lower Manhattan in which Sayfullo Saipov (Saipov) drove a pickup truck into a crowd of bicyclists and pedestrians on the Hudson River Park bike path on the lower west side of Manhattan (the Bicycle Path), killing 8 people and injuring 11 others. Saipov rented the truck from defendant Home Depot U.S.A., Inc.'s (Home Depot) facility in Passaic, NJ. He drove it to the site of the incident immediately thereafter, unlawfully driving the truck south along the Bicycle Path in the area between West Houston Street and Chambers Street. He struck and killed Mr. Ariel Erlj and 7 others, and seriously injured 11

others, including children on a school bus traveling west on Chambers Street. This action, along with 18 essentially identical ones, was brought against the City of New York, New York City Department of Parks and Recreation, New York City Department of Transportation (collectively, the City Defendants) for negligence in the ownership, maintenance, operation and control of the Bicycle Path, and against Home Depot for negligent entrustment of a motor vehicle.

Plaintiff asserts that Home Depot was negligent in entrusting the pickup truck to Saipov in that it failed to notice red flags as set forth in various law enforcement publications as to how to identify customers who were renting trucks to use to commit terrorist attacks (exhibit A to affirmation of Anthony H. Gair in partial opposition [plaintiff's affirm in opp], complaint, ¶ 72). Plaintiff also alleges that Home Depot was negligent in failing to implement rules, regulations, and policies for their employees to follow when renting trucks for the purpose of identifying customers who were renting the trucks for a criminal purpose (*id.*, ¶ 71). Finally, the complaint alleges that Saipov had been convicted of numerous infractions of the Vehicle and Traffic Laws of several states, that Home Depot knew or should have known of Saipov's driving record and/or convictions, and that, based on that information, it should have reasonably anticipated that Saipov's driving would likely result in injury to others. Based on these allegations, plaintiff alleges that Home Depot knew or should have known that Saipov intended to use the truck to carry out a terrorist attack.

In its motion, Home Depot seeks consolidation of Mr. Erlij's action with the following 15 complaints: *Juan Pablo Trevisan v The City of New York et al.*, Index No. 160036/2018; *KL, an infant, by her mother and natural guardian, Yan Zhuang and Yan Zhuang, individually v The City of New York et al.*, Index No. 160040/2018; *Marion Van-Reeth, et al. v The City of New York et al.*, Index No. 160035/2018; *Martin Marro v The City of New York et al.*, Index No. 160033/2018; *Ivan Brajkovic v The City of New York et al.*, Index No. 160032/2018; *Guillermo Banchini v The City of New York et al.*, Index No. 160030/2018; *Ariel Benvenuto v The City of New York et al.*, Index No. 160028/2018; *Monica Missio, as Administratrix of Estate of Nicholas Francis Cleves v The City of New York et al.*, Index No. 160027/2018; *Louis Grandelli, as Administrator of Estate of Alejandro Damian Pagnucco v The City of New York et al.*, Index No. 160026/2018; *Louis Grandelli, as Administrator of Estate of Hernan Mendoza*, Index No. 160023/2018; *Louis Grandelli, as Administrator of Estate of Ann-Laure Elisabeth Lena Decadt a/k/a Ann-Laure Decadt et al. v The City of New York et al.*, Index No. 160016/2018; *Louis Grandelli, as Administrator of Estate of Diego Enrique Angelini v The City of New York et al.*, Index No. 160015/2018; *Louis Grandelli, as Administrator of Estate of Hernan Ferruchi v The City of New York et al.*, Index No. 160014/2018; *Mezac Chosson v The City of New York et al.*, Index No. 159866/2018; *Sandra Hagen v The City of New York et al.*, Index No. 150146/2019 (exhibit A annexed to affirmation of David Pollack in support [Home Depot's motion]). Home Depot urges that these actions involve common questions of law and fact since they all involve the same incident and basically identical allegations against defendants. It urges that consolidation will avoid unnecessary multiplicity of action and serve judicial economy. It proposes a caption for the consolidated cases as *In re Hudson River Greenway Bicycle Path Litigation*, under Index No. 160013/2018.

On the branch of its motion to dismiss, Home Depot asserts that the claims against it must be dismissed for failure to state a claim and based on documentary evidence. It argues that

plaintiffs fail to allege any specific conduct or characteristic that would have placed Home Depot on notice that Saipov was unfit to rent or drive the truck and that he intended to use it to commit the attack. It also urges that it complied with all legal requirements for renting the truck to him, submitting copies of Saipov's driving abstract (official driving violation record), Home Depot's company policy, Saipov's rental agreement, and FBI bulletins regarding potential indicators of terrorist/criminal activity (exhibits B, C, D, and E to Home Depot's motion). Finally, it contends that Saipov's conduct was a superseding cause of the attack which severed any nexus between its own actions and the attack.

Hudson River cross moves to consolidate two additional cases: *James Drake as Administrator of Estate of Darren Drake et al v The City of New York et al*, Index No. 161138/2018; and *Marierose Charles v The City of New York et al*, Index No. 157402/2018 (exhibit B17-18 annexed to affirmation of James P. Connors in support of cross motion [Hudson River cross motion]), which also arise out of the same incident but in which Home Depot is not a defendant. It similarly argues that the cases all have common issues of law and fact, but it proposes a different consolidated caption name of: *In re October 31, 2017 Terrorist Attack/Route 9A-Lower Manhattan*.

DISCUSSION

The branch of the motion and the cross motion to consolidate are granted, and the 18 complaints are consolidated in the caption: *In re October 31, 2017 Terrorist Attack/ Lower Manhattan Litigation*, Consolidated Index No. 160013/2018.

Pursuant to CPLR 602 (a), where actions involving common questions of law or fact are pending before the court, the court may order the cases consolidated or a joint trial on all or some of the matters in issue, or make such other orders regarding the proceedings, in order to avoid unnecessary costs or delay. Such a motion is subject to the trial court's discretion, and should be granted absent a showing of prejudice to a substantial right by the party opposing consolidation (*see Oboku v New York City Tr. Auth.*, 141 AD3d 708, 709 [2d Dept 2016]).

Here, it is undisputed that all of these actions involve common questions of both fact and law, and that consolidation would avoid unnecessary duplication of proceedings, save costs, and prevent injustice in the case of divergent judgments (*see Oboku v New York City Tr. Auth.*, 141 AD3d at 709; *see also Alizio v Perpignano*, 78 AD3d 1087, 1088 [2d Dept 2010]). The only opposition to the motion is by defendant Leesel Transportation Corp. (Leesel), which is the bus company named in the action entitled *KL, an infant, by her mother and natural guardian, Yan Zhuang and Yan Zhuang, individually v The City of New York et al*, Index No. 160040/2018, involving an injured child on the school bus. Leesel contends that the claim against it only pertains to alleged violations of regulations involving the placement of seatbelts on the passengers on the bus, and that the other cases involve death and injury on the Bicycle Path before Saipov's collision with the bus. Thus, it contends that a jury could be prejudiced against it based on the claims in the other cases, individual issues will predominate, and that the motion is premature since it is pre-discovery (Index No. 160040/2018, NYSCEF Doc. No. 78, affirmation of William H. Gagas ¶¶ 6-7, 16, 21).

Leesel, however, fails to demonstrate prejudice to a substantial right. The predominance of common questions in all the cases, including the one in which Leesel is a defendant, is not overcome by the fact that the various plaintiffs suffered different injuries (*cf Bender v Underwood*, 93 AD2d 747 [1st Dept 1983] [consolidation denied where various plaintiffs were claiming negligence and medical malpractice, and each treatment was separate and distinct with each plaintiff having different medical histories]). Any perceived prejudice against Leesel can be addressed, for example, in jury instructions or by severing of an issue or claim at trial (*see CPLR 603*). The court also notes that the complaint against Leesel is not the only one involving plaintiffs injured on the school bus—both the *Chosson* (Index No. 159866/2018) and *Charles* (Index No. 157402/2018) complaints involved such plaintiffs. Further, since all the actions have been commenced in New York County, there is no issue regarding venue. Therefore, both the motion and cross motion to consolidate are granted, and all 18 cases are consolidated, under one Index No. 160013/2018, and with the consolidated caption: *In Re October 31, 2017 Terrorist Attack/Lower Manhattan*, as consented to by Home Depot (reply affirmation of David Pollack, dated May 23, 2019, ¶ 3).

Furthermore, Home Depot's motion to dismiss (CPLR 3211) is denied with leave to renew after limited discovery on the negligent entrustment claim against it.

On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), “the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Ackerman v New York Hosp. Med. Ctr. of Queens*, 127 AD3d 794, 795 [2d Dept 2015]; *see Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). Dismissal pursuant to CPLR 3211 (a) (1) is warranted only if the documentary evidence submitted conclusively establishes a defense as a matter of law (*Leon v Martinez*, 84 NY2d at 87–88). Under subsection d, where it appears that facts “essential to justify opposition may exist but cannot then be stated, the court may deny the motion” and may order a continuance and permit disclosure (CPLR 3211[d]).

First, Home Depot asserts that plaintiffs' claim against it based on vicarious liability as the owner of the truck is barred by the Graves Amendment. Under New York's Vehicle and Traffic Law (VTL) § 388(1) an owner of a vehicle is liable for death or injuries to persons or property due to negligence in the use or operation of the vehicle by any person using or operating the vehicle with the owner's express or implied permission. The Graves Amendment (49 USC § 30106[a]), regarding leased or rented vehicle safety and responsibility, generally bars an action for vicarious liability against professional renters and lessors that would otherwise be permitted under VTL Law § 388 (*see Byrne v Collins*, 77 AD3d 782, 785 [2d Dept 2010]; *Gluck v Nebgen*, 72 AD3d 1023, 1023 [2d Dept 2010]; *Graham v Dunkley*, 50 AD3d 55 [2d Dept 2008]). Under that provision, where the owner rents or leases the vehicle to another person, the owner would not be vicariously liable for harm that arises out of the use, operation, or possession of the vehicle during the lease period if it is engaged in the business of renting or leasing motor vehicles, and has not committed any negligence or criminal wrongdoing. The Graves Amendment preempts VTL § 388 so long as there is no negligence or criminal wrongdoing by the owner (*id.*). Plaintiffs, however, are alleging that Home Depot was negligent. Thus, the Graves Amendment does not apply.

Home Depot also argues that plaintiffs' negligent entrustment theory fails to state a claim. In order to establish a negligent entrustment claim, a plaintiff must show that the defendant had "some *special knowledge concerning a characteristic or condition peculiar to the [person to whom a particular chattel is given]* which renders [that person's] use of the chattel unreasonably dangerous" (*Monette v Trummer*, 105 AD3d 1328, 1330 [4th Dept], *affd* 22 NY3d 944 [2013] [internal quotation marks omitted]; *see Hull v Pike Co.*, 174 AD3d 1092, 1093 [3d Dept 2019]; *Byrne v Collins*, 77 AD3d at 784; *Cook v Schapiro*, 58 AD3d 664, 666 [2d Dept 2009]). If such knowledge can be imputed to the defendant, then the defendant owes a duty to foreseeable parties to not entrust the chattel to the trustee (*see Earsing v Nelson*, 212 AD2d 66, 70 [4th Dept 1995]; *Splawnik v Di Caprio*, 146 AD2d 333, 335 [3d Dept 1989]). The evaluation of this theory of liability is fact intensive regarding defendant's knowledge about the person to whom the chattel is entrusted (*see Rios v Smith*, 95 NY2d 647, 652-653 [2001]).

"With respect to motor vehicles, an owner may be liable if [they] had control over the vehicle and if [they were] negligent in entrusting [the vehicle] to one who [they] knew, or in the exercise of ordinary care should have known, was incompetent to operate [the vehicle]" (*Graham v Jones*, 147 AD3d 1369, 1371 [4th Dept 2017] [internal quotation marks and citation omitted] [summary judgment denied to car rental company where fact issue raised as to whether rental company had special knowledge that non-renter operator would drive car without a license]). "New York courts have consistently considered the operator's possession vel non of a legally valid New York State driver's license to be relevant to the material issue whether he was competent to be entrusted with an automobile by the owner" (*Calhoun v Allen*, 38 Misc 3d 171, 179 [Sup Ct, Allegany County 2011]; *see also Byrne v Collins*, 77 AD3d at 784; *Weinstein v Cohen*, 179 AD2d 806, 807 [2d Dept 1992]; *Linsalata v. Berry*, 39 Misc 3d 1207(A) * 7 [Sup Ct, Westchester County 2013]). In evaluating the operator's competency, "courts have distinguished between the relevance of license revocations or restrictions for reasons pertaining to the safe operation of vehicles ... and those unrelated to that objective" (*Linsalata v Berry*, 39 Misc 3d 1207(A) * 7 [internal quotation marks and citation omitted]; *see e.g. Martin v Alabama 84 Truck Rental*, 38 AD2d 577, 578 [2d Dept 1971] [license restricted to driving with eyeglasses related to safe operation]; *Conte v Aprea*, 23 AD3d 225, 227 [1st Dept 2005] [license suspended for failure to pay traffic ticket not related to safe operation]).

Here, the claims against Home Depot will turn on Saipov's conduct at the time he rented the truck. While Home Depot insists that plaintiffs needed to lay bare the specifics of such conduct in order to plead the claim, such facts are not known to plaintiffs. In fact, such knowledge is solely in Home Depot's possession. This motion was brought before any discovery, such as depositions of any Home Depot's employees present at the time of the transaction, who would know what Saipov said or how he behaved. While Saipov would have knowledge of the transaction, he is unavailable to plaintiffs due to the criminal proceeding pending against him. Further, it is possible that Home Depot possesses surveillance video and/or recordings capturing the transaction. Therefore, it would be inappropriate to dismiss this claim at this very early stage of this litigation (*see Earsing v Nelson*, 212 AD2d at 69 [affirming denial of motion to dismiss negligent entrustment]; *Splawnik v Di Caprio*, 146 AD2d at 335-336 [refusing to dismiss negligent entrustment claim at preliminary pleading stage]; *Chiapperini v Gander Mtn. Co., Inc.*, 48 Misc 3d 865, 880 [Sup Ct, Monroe County 2014] [CPLR 3211 [a] [7] motion to dismiss denied on negligent entrustment claim at very early stage of litigation]; *see also Anglero v Hanif*, 140 AD3d

905, 906-907 [2d Dept 2016] [CPLR 3211 [a] motion denied where rental company's submissions failed to conclusively establish that it was not negligent in maintaining the vehicle]).

While Home Depot submits Saipov's driving abstract as well as proof of its company rental policy, it does not submit the affidavit of the employees who rented the truck to Saipov or any video of the transaction in support of its motion and in its request to convert this to a summary judgment motion. Plaintiffs allege that there are red flags of suspicious behavior enumerated in FBI Bulletins (exhibit F to plaintiffs' opposition), and a National Sar Initiative Bulletin (exhibit H to plaintiffs' opposition), as well as warnings of terrorists' use of vehicles to run down people in a Department of Homeland Security Bulletin (exhibit G to plaintiffs' opposition), which should inform Home Depot and other rental businesses of the potential behavior to be on the lookout for before entrusting a vehicle. Whether they can establish that these red flags were present when Saipov rented the truck from Home Depot, requires some limited discovery on this particular issue before dismissal on the pleadings can be appropriately evaluated (*see Burke v Yankee Stadium, LLC*, 146 AD3d 720, 721 [1st Dept 2017] [CPLR 3212 motion premature where no depositions had taken place and such discovery was necessary to shed light on outstanding issues]). Contrary to Home Depot's contentions, the documentary evidence of Saipov's driving abstract does not conclusively establish a defense to the claim as a matter of law (*see CPLR 3211[a][1]*; *Bou v Llamaza*, 173 AD3d 575, 575-576 [1st Dept 2019][documentary submissions fail to conclusively establish a defense to allegations of negligence in maintenance, supervision, and ownership of commercially leased vehicle]).

In addition, Home Depot's argument that it complied with statutory and regulatory requirements, and its submission of a copy of Saipov's driver's license, a written rental agreement, and the credit card payment record for the rental, does not demonstrate its entitlement to dismissal at this stage. While these documents may show that it did so comply, the issue turns on Saipov's conduct, which the documents do not address. Moreover, Home Depot failed to submit an affidavit of any employee who could authenticate these documents.

The cases Home Depot relies upon are distinguishable, because they either involve a motion for summary judgment after discovery (*see e.g. Byrne v Collins*, 77 AD3d at 783-784), a motion to dismiss where some discovery was completed (*see e.g. Portnova v Toyota Motor Credit Corp.*, 2013 NY Slip Op 34054[U] [Sup Ct, Queens County 2013]; *Pinkerton v Pinkerton*, 2010 NY Slip Op 30453[U] [Sup Ct, Queens County 2010]; *Muller v Gilliard*, 27 Misc 3d 1231[A] [Sup Ct, Suffolk 2010] [truck leasing company did not entrust the truck to the operator]), or involved a different type of claim (*see e.g. Burrell v Barreiro*, 83 AD3d 984, 985-986 [2d Dept 2011] [negligent entrustment dismissed where defendant title holder of vehicle submitted affidavit of its supervisor employee, showing that it was not involved in decision to lease vehicle to lessee]; *Vedder v Cox*, 18 Misc 3d 1142[A] [Sup Ct, Nassau County 2008] [only basis for plaintiff's claim against rental company was as vehicle owner under VTL § 388, which court found preempted by Graves Amendment]; *see also Calhoun v Allen*, 38 Misc 3d 171 [Sup Ct, Allegany County 2011] [fact issue raised whether rental company's procedure of inspecting physical driver's license for facial validity constituted the exercise of ordinary care on negligent entrustment claim]).

To the extent that Home Depot urges that Saipov's conduct was a superseding cause of plaintiffs' injuries, this issue also may not be resolved as a matter of law on this motion. Generally,

the issue of proximate cause is more appropriately resolved by the trier of fact (*Hull v Pike Co.*, 174 AD3d 1092, 1094 [3d Dept 2019]; *Gonzalez v City of New York*, 133 AD3d 65, 70-71 [1st Dept 2015]; see *Calhoun v Allen*, 38 Misc 3d at 183; cf *Maldonado v Hunts Point Coop. Mkt., Inc.*, 82 AD3d 510 [1st Dept 2011] [security guard boyfriend's intervening acts of shooting plaintiff during a domestic dispute in their home severed any nexus between security company's negligence in supplying him with gun for use only at work, which boyfriend surreptitiously removed from company's premises, and her injuries]). Plaintiffs' assertion that the multitude of prior well-publicized terrorist attacks committed by using a vehicle to injure and kill people makes the subject attack a foreseeable outcome of Home Depot's alleged negligent entrustment, is sufficient to reject Home Depot's request for dismissal based on causation at this early stage of the litigation. Assuming that Home Depot was negligent in renting this truck to Saipov because he raised red flags with his behavior upon renting it, and that, as Home Depot contends, the more immediate cause of the plaintiffs' deaths and injuries on October 31, 2017 was Saipov's deliberate intent to commit a terrorist attack, the court still cannot conclude, as a matter of law, that Home Depot had no causal responsibility for the incident. Home Depot has not shown that, under these circumstances, Saipov's conduct was of a kind that was completely unforeseeable at the time it rented the truck to him (see *Earsing v Nelson*, 212 AD2d at 70).

Accordingly, it is

ORDERED that the branch of the motion of defendant Home Depot U.S.A., Inc., and the cross motion of defendant Hudson River Park Trust to consolidate is granted and the above-captioned action is consolidated in this Court with *Juan Pablo Trevisan v The City of New York et al.*, Index No. 160036/2018; *KL, an infant, by her mother and natural guardian, Yan Zhuang and Yan Zhuang, individually v The City of New York et al.*, Index No. 160040/2018; *Marion Van-Reeth et al. v The City of New York et al.*, Index No. 160035/2018; *Martin Marro v The City of New York et al.*, Index No. 160033/2018; *Ivan Brajkovic v The City of New York et al.*, Index No. 160032/2018; *Guillermo Banchini v The City of New York et al.*, Index No. 160030/2018; *Ariel Benvenuto v The City of New York et al.*, Index No. 160028/2018; *Monica Missio, as Administratrix of Estate of Nicholas Francis Cleves v The City of New York et al.*, Index No. 160027/2018; *Louis Grandelli, as Administrator of Estate of Alejandro Damian Pagnucco v The City of New York et al.*, Index No. 160026/2018; *Louis Grandelli, as Administrator of Estate of Ann-Laure Elisabeth Lena Decadt a/k/a Ann-Laure Decadt et al. v The City of New York et al.*, Index No. 160016/2018; *Louis Grandelli, as Administrator of Estate of Diego Enrique Angelini v The City of New York et al.*, Index No. 160015/2018; *Louis Grandelli, as Administrator of Estate of Hernan Ferruchi v The City of New York et al.*, Index No. 160014/2018; *Mezac Chosson v The City of New York et al.*, Index No. 159866/2018; *Sandra Hagen v The City of New York et al.*, Index No. 150146/2019; *James Drake as Administrator of Estate of Darren Drake et al. v The City of New York et al.*, Index No. 161138/2018; *Marierose Charles v The City of New York et al.*, Index No. 157402/2018; and *Louis Grandelli, as Administrator of Estate of Hernan Mendoza*, Index No. 160023/2018, **under the consolidated Index No. 160013/2018**, and the consolidated action shall bear the following caption:

In re October 31, 2017 Terrorist Attack / Lower Manhattan Litigation,

Louis Grandelli, as Administrator of Estate of Ariel Erij, deceased,
Louis Grandelli, as Administrator of Estate of Hernan Mendoza, deceased,
Louis Grandelli, as Administrator of Estate of Alejandro Damian Pagnucco, deceased,
Louis Grandelli, as Administrator of Estate of Ann-Laure Elisabeth Lena Decadt a/k/a
Ann-Laure Decadt, deceased, Lieve Wyseur, Justine Decadt and Friedel Decadt,
Louis Grandelli, as Administrator of Estate of Hernan Ferruchi, deceased,
Louis Grandelli, as Administrator of Estate of Diego Enrique Angelini, deceased,
Juan Pablo Trevisan,
Monica Missio, as Administratrix of Estate of Nicholas Francis Cleves, deceased,
James Drake, as Administrator of Estate of Darren Drake, deceased, James Drake,
Individually and Barbara Drake, Individually,
KL, an infant, by her mother and natural guardian, Yan Zhuang, and Yan Zhuang,
individually,
Marion Van-Reeth, Aristides Melissas, DM, an infant, by his father and natural guardian,
Aristides Melissas, and TB, an infant, by his father and natural guardian, Miguel Buytaert,
Martin Marro,
Ivan Brajkovic,
Guillermo Banchini,
Ariel Benvenuto,
Marierose Charles,
Mezac Chosson,
Sandra Hagen,

Plaintiffs,

-against-

THE CITY OF NEW YORK, HUDSON RIVER PARK
TRUST, NEW YORK CITY DEPARTMENT OF PARKS
AND RECREATION, NEW YORK CITY DEPARTMENT
OF TRANSPORTATION and HOME DEPOT U.S.A., INC.,

Defendants,

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the
pleadings in the consolidated actions; and it is further

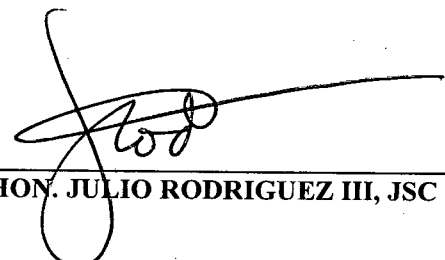
ORDERED that movant Home Depot U.S.A., Inc. is directed to serve a copy of this order
with notice of entry on the County Clerk (Room 141B), who shall consolidate the papers in the
actions hereby consolidated and shall mark the County Clerk records to reflect the consolidation;
and it is further

ORDERED that movant Home Depot U.S.A., Inc. is directed to serve a copy of this order
with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed
to mark the court's records to reflect the consolidation; and it is further

ORDERED that the branch of the motion of Home Depot U.S.A., Inc. to dismiss the complaint is denied with leave to renew after discovery on the limited issue of plaintiffs' negligent entrustment claim against it; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 106, 80 Centre Street, on November 14, 2019, at 2:00 p.m.

September 24, 2019


HON. JULIO RODRIGUEZ III, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	