

Yanko v City of New York

2019 NY Slip Op 33005(U)

September 24, 2019

Supreme Court, Kings County

Docket Number: 506378/14

Judge: Katherine A. Levine

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At an IAS Term, Part 20 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of September, 2019.

24th

P R E S E N T:

HON. KATHERINE A. LEVINE,
Justice.

-----X
ALEXANDER YANKO,

Plaintiff,

- against -

Index No. 506378/14

THE CITY OF NEW YORK AND THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK,

Defendants.

-----X
THE CITY OF NEW YORK,

Third-Party Plaintiff,

- against -

TIME WARNER CABLE, LLC, PROJECT REACH
YOUTH, INC. AND NYU LANGONE MEDICAL
CENTER,

Third-Party Defendants.

-----X
The following papers numbered 1 to 19 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>1-2, 3-4, 5-7, 8-10</u>
Opposing Affidavits (Affirmations) _____	<u>11-16</u>
Reply Affidavits (Affirmations) _____	<u>17-19</u>

Plaintiff, Alexander Yanko (plaintiff or Yanko) moves, pursuant to CPLR 3212, for summary judgment on the issue of liability on his Labor Law § 240 (1) cause of action

against defendants The City of New York (the City) and The Board of Education of the City of New York (the BOE). The City and the BOE cross-move, pursuant to CPLR 3212, for summary judgment dismissing the complaint insofar as asserted against them. Third-party defendant Time Warner Cable, LLC (Time Warner) moves, pursuant to CPLR 1010, to sever the third-party action; to vacate the note of issue and to strike this matter from the Trial Calendar; to dismiss the third-party action pursuant to the court's preliminary conference order dated July 20, 2015 (the PC order), barring impleaders or third-party actions commenced 90 days after the completion of all party depositions; and extending its time to move for summary judgment. Third-party defendant NYU Langone Medical Center (NYU) moves to dismiss the third-party action pursuant to the court's PC order or, in the alternative, to vacate the note of issue, to strike this matter from the Trial Calendar, and to allow it to conduct full discovery; and to extend its time to move for summary judgment after it has conducted discovery.

Facts and Procedural History

Plaintiff testified at his General Municipal Law § 50-h hearing and at his deposition that he was a field technician employed by Time Warner, the internet provider for John Jay High School. On the morning of the accident, plaintiff had been instructed to perform work at the high school which involved re-wiring to provide better internet service, namely drilling a hole into the wall on the outside of the building, removing an old cable, which was too small, and enlarging the existing hole with a drill to accommodate the installation of a new, thicker cable. The purpose of the job was to bring cable, which was affixed to and wrapped

around the entire building, from the outside of the building to the inside of the building.¹ To perform the work, plaintiff needed to use a ladder to reach the area where he had to drill, as well as a hammer drill to drill through the outside wall of the building, which was either less than 18 inches of concrete (deposition) or three to four feet of concrete (50-h hearing).

After reading his instructions for the job on his laptop computer, plaintiff and his coworker reported to the school, and plaintiff presented his identification to a security officer, who wrote down his name and asked him where he was going. Plaintiff gave the security officer the name of a woman who was his contact person at the school. Shortly afterward, the head custodian of the school escorted plaintiff and his coworker to a room which required rewiring. After surveying the room, plaintiff and his coworker walked outside.

Plaintiff, who is six-foot six inches tall, leaned a four-foot ladder against the outside of the building where he had to drill the hole in order to run the cable into the school. The feet of the ladder were made of rubber and were resting either fully or partially on metal grating. Plaintiff inspected the grate before he placed the ladder and the grate did not have any “defects or wobbles or conditions.” Both the grate and the wall where the ladder was placed were dry.

For approximately ten minutes before the accident, plaintiff had been standing on the ladder’s third step, which was two feet from the ground, drilling a hole through the concrete

¹Plaintiff also testified that he was instructed to pull “RG 11 cable” from the point of entry to the equipment at the high school, and to remove old, existing cable. The RG11 cable was twice the thickness of the cable he was going to replace.

wall with a 30-pound hammer drill and an 18-inch drill bit. The area where plaintiff was drilling was nine feet from the ground, and he had chosen to drill in this location because there was a smaller hole already there.

After plaintiff finished drilling, he placed his left hand on the wall so he could remove the drill from the wall with his right hand. He then pulled the drill completely from the wall and started lowering the drill with his left hand so he could descend the ladder while holding the drill downward. Both of his feet were on the third step of the ladder. At this moment, the feet of the ladder moved or slid out, away from the building, the ladder “came straight down,” and fell to the ground, and plaintiff fell down also, on top of the ladder.

On December 21, 2017, plaintiff filed his note of issue and certificate of readiness after depositions and discovery were completed. On January 4, 2018, plaintiff moved for summary judgment on his Labor Law § 240 (1) cause of action. However, on January 30, 2018, the City/BOE filed the third-party complaint, a little more than one year after the last party deposition was completed, and almost four years after the accident occurred, seeking contractual and common-law indemnification and contribution. Third-party defendants Time Warner and NYU then moved for the relief set forth above.

Motions for Severance/Dismissal/Vacatur

Time Warner moves to sever the third-party action and/or to vacate the note of issue and strike the action from the trial calendar and/or dismiss the third-party action, and to extend its time to move for summary judgment. Time Warner notes in this regard that discovery has not yet been conducted in the third-party action, and that the City knew of the

facts underlying the third-party action and delayed its filing, causing it prejudice. In particular, Time Warner argues that the extensive delay in commencing the third-party action prejudiced its ability to fully defend itself and assert rights available to it against other parties who might be responsible for creating or allowing any allegedly (dangerous) condition, and who would potentially be required to indemnify it. Time Warner also contends that since plaintiff's accident and the commencement of the main action, third-party defendants may have lost records relevant to the accident. In addition, it posits that employees knowledgeable about the accident may have retired or left its employ. Under these circumstances, Time Warner argues that severance of the third-party action, if not its outright dismissal, is warranted.

Time Warner further contends that if it had been timely and properly joined, it would have been able to investigate the matter and would have had standing to oppose plaintiff's summary judgment motion. Further, Time Warner asserts that the main action will be unduly delayed and prejudiced if the third-party action is not severed. It also contends that given the extensive discovery which has already been conducted, and in view of its own need to serve demands, receive responses thereto, and to conduct investigations and depositions, it cannot be expected to obtain the discovery it needs quickly. Finally, Time Warner asserts that if the court does not sever the third-party action, the note of issue should be vacated and the matter should be stricken from the trial calender because the third-party action was only recently commenced and third-party discovery has not yet begun.

Time Warner also moves to dismiss the third-party action because it was commenced in violation of the court's PC order barring impleaders or third-party actions commenced 90 days after the last deposition was completed. If the third-party action is not severed or dismissed, Time Warner seeks to extend its time to move for summary judgment.

NYU moves to dismiss the third-party action or, in the alternative, to vacate the note of issue and strike the matter from the trial calendar, and to extend its time to move for summary judgment. In this regard, NYU asserts that the City/BOE's late filing of the third-party action violated the court's PC order and caused it extreme prejudice in its investigation and defense of the action "related to an accident that occurred more than four years ago." NYU also argues that the City inexplicably filed its own motion for summary judgment only two months after it commenced the third-party action, in which it argues that it cannot be found liable to plaintiff. Assuming this is the case, NYU asserts that "the new parties are necessary to this action and therefore the third-party complaint should be dismissed." Finally, NYU contends that, in the alternative, the note of issue should be vacated and the case stricken from the trial calendar since it has had no opportunity to conduct its own discovery.² In that event, it also seeks an extension of its time to move for summary judgment.

²With respect to NYU's involvement in this matter, the third-party complaint alleges that NYU was conducting business at the high school and "the public sidewalks appurtenant thereto" (§7); controlled, operated, and maintained the high school, "including the public sidewalk located in front of and abutting the premises" (§§ 10, 13, 16); and had a duty to maintain the high school, "including the public sidewalk located in front of and abutting [the high school] in a reasonably safe condition" (§22). Moreover, in his reply to NYU's motion, plaintiff's counsel identifies NYU as the City's "tenant."

Plaintiff opposes those branches of Time Warner's motion for severance/dismissal/vacatur and those branches of NYU's motion for dismissal/vacatur, making the same arguments. Plaintiff asserts that while the City delayed in commencing the third-party action, Time Warner and NYU's involvement in the third-party action may encourage a settlement, and therefore it would be unfair to him if the third-party action were severed based on matters beyond his control. With regard to vacating the note of issue, plaintiff asserts that Time Warner and NYU's motions to vacate were untimely since they were made more than 20 days after the note of issue was filed and 26 days (Time Warner) and four months (NYU) after the third-party action was commenced. In addition, plaintiff argues that vacating the note of issue would severely prejudice him and cause unnecessary delay, and that in any event, the court may order additional discovery without vacating the note of issue. Lastly, plaintiff does not oppose those branches of Time Warner and NYU's motions for an extension of time to move for summary judgment.

The City opposes Time Warner and NYU's collective motions for severance/dismissal. With respect to those branches of their motions to dismiss, the City asserts that these third-party defendants cannot rely on the PC order as a basis for dismissal because they were not parties to the action when the order was made. As to NYU only, the City also notes that dismissal is not the proper remedy for violation of this type of PC order.

With respect to Time Warner only as it relates to that branch of their motion to sever, the City asserts that Time Warner fails to articulate how it would be prejudiced absent

severance; that in the interest of judicial economy, the third-party action should not be severed because the main action and third-party action involve common legal and factual issues, which require consistency of verdicts; and that it would be prejudiced if the matter were severed because its defense involves Time Warner, which is in exclusive possession of relevant documents, and which trained plaintiff and provided the materials used by plaintiff which resulted in his injury.

Discussion

CPLR 603 permits a court to sever claims “[i]n furtherance of convenience or to avoid prejudice” (*Isidore Margel Trust Mitzi Zank Trustee v Mt. Hawley Ins. Co.*, 155 AD3d 618, 619 [2d Dept 2017]). “CPLR 1010 affords the court with discretionary authority to sever or dismiss a third-party action without prejudice where the controversy ‘will unduly delay the determination of the main action or prejudice the substantial rights of any party’” (*Gomez v City of New York*, 78 AD3d 482 [1st Dept 2010], quoting CPLR 1010; see *Williams v Property Servs.*, 78 AD3d 482 [1st Dept 2004]). “[S]everance is inappropriate where there are common factual and legal issues and the interests of judicial economy and consistency of verdicts will be served by having a single trial” (*Zili v City of New York*, 105 AD3d 949, 950 [2d Dept 2013]). “It is preferable to try related actions together, in order to avoid a waste of judicial resources and the risk of inconsistent verdicts” (*Williams v Property Servs., LLC*, 6 AD3d 255, 256 [1st Dept 2004]). Moreover, “[d]elay in commencing the third-party action, by itself, does not necessarily warrant severance” (*Jones v New York City Health and Hospitals Corp.*, 2017 NY Slip Op 31929 [U], *10 [Sup Ct, Bronx County 2017], citing

Nielsen v New York State Dormitory Auth., 84 AD3d 519 [1st Dept 2011]; *Escourse v City of New York*, 27 AD3d 319 [1st Dept 2006]). “The grant or denial of a request for severance is a matter of judicial discretion” (*Zili*, 105 AD3d at 950). “[T]his discretion should be exercised sparingly” (*id.*, quoting *Shanley v Callanan Indus.*, 54 NY2d 52, 57 [1981]).

On the other hand, “[w]here the record indicates that a third-party plaintiff knowingly and deliberately delayed in commencing the third-party action, the Supreme Court acts within its discretion to dismiss the third-party complaint” (*Soto v CBS Corp.*, 157 AD3d 740, 741 [2d Dept 2018]; *Marroquin v American Express Co.*, 2014 NY Slip Op 32045 [U], *5-6 [Sup Ct, NY County 2014], citing *Ramos v City of New York*, 30 AD3d 201 [1st Dept 2006] [“Where a defendant unduly delays bringing a third-party action, discovery is substantially completed in the main action, and the third-party defendant is prevented from conducting its own meaningful discovery, severing of the action is warranted”]).

Those branches of the motions of Time Warner and NYU for severance/dismissal and dismissal, respectively, are denied³, and those branches of their motions to vacate the note of issue and to extend their time to move for summary judgment are granted. Time Warner and NYU have failed to establish that a single trial would result in prejudice to a substantial right (CPLR 1010; *Zawadzki v 903 E. 51st St., LLC*, 80 AD3d 606, 608 [2d Dept 2011] [emphasis added])[the court properly denied that branch of fourth-party defendant’s cross motion which was to sever the fourth-party action from the main action, and granted that

³Regarding dismissal related to the PC order, a delay in commencing a third-party action that violates a PC order is not a basis for dismissal (*Singh v City of New York*, 294 AD2d 422, 423 [2d Dept 2002]).

branch of fourth-party plaintiff's motion which was, in effect, *to join for trial the issue of damages in the main action and the issue of contractual indemnification in the fourth-party action*). Moreover, since plaintiff opposes severance, and welcomes the inclusion of Time Warner and NYU as third-party defendants, "the court may afford third-party defendant the opportunity to complete discovery without causing undue delay of the trial of the main action or otherwise prejudicing the substantial rights of any party" (*Cadena v Ditmas Management Corp.*, 2014 NY Slip Op 33542 [U], *5 [Sup Ct, Queens County 2014]). Specifically, in vacating the note of issue, the third-party defendants will be permitted sufficient time to obtain the discovery they require. No party will be prejudiced by the extension of discovery.

Furthermore, the City/BOE would suffer prejudice if this matter were severed inasmuch as their defense involves Time Warner, which exclusively possesses the relevant evidence, is the plaintiff's employer, trained him, and provided him the materials which were involved in his accident. Stated otherwise, there is potential prejudice to the City/BOE if the third-party action is not tried with the main action (*see Lieberman v Guerra*, 2011 NY Slip Op 33394 [U], *5 [Sup Ct, Nassau County 2011]).

In order to minimize any prejudice to any of the parties, the third-party defendants are directed to serve any outstanding requests for disclosure, including notices for deposition, within 30 days after service of a copy of this order with notice of entry (*Cadena*, 2014 NY Slip Op 33542 [U], *6 [Sup Ct, Queens County 2014]). All discovery is to be completed on or before December 31, 2019. Third-party defendants' time to move for summary judgment

is extended until 60 days after discovery is complete. At the appropriate time, a trial will proceed on the issue of damages.

Labor Law 240 (1) and 241 (6)⁴

“Labor Law § 240 (1) imposes a nondelegable duty upon owners and general contractors to provide safety devices to protect workers from elevation-related risks” (*Salinas v 64 Jefferson Apts., LLC*, 170 AD3d 1216, 1222 [2d Dept 2019] [internal citations and quotation marks omitted]). “To prevail on a Labor Law § 240 (1) cause of action, a plaintiff must establish that the statute was violated and that the violation was a proximate cause of his or her injuries” (*Gomez v Kitchen & Bath by Linda Burkhardt, Inc.*, 170 AD3d 967, 968 [2d Dept 2019] [internal citations and quotation marks omitted]). In a ladder-fall case, a plaintiff makes a prima facie showing of judgment as a matter of law by establishing that the ladder on which he or she was working collapsed, moved, or shifted for no apparent reason,

⁴These causes of action will determine whether defendants will be liable “solely by virtue of statute without regard to any party’s actual negligence or relative fault,” namely based solely upon vicarious liability. Hence, the court may consider these causes of action without the risk of inconsistent verdicts in this action and the third-party action (*see generally Jones v N.Y.C. Health & Hosps. Corp.*, 2017 NY Slip Op 31929 [U], *7 [Sup Ct, Bronx County 2014]). Moreover, CPLR 3212 (e) permits the court to grant summary judgment “as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just” (CPLR 3212 [e]). Time Warner opposes plaintiff’s motion and argues that it cannot be bound by it. Specifically, it argues that it is prejudiced because it had no opportunity to defend itself because it was impleaded after the filing of the note of issue and service of plaintiff’s motion, and did not have the opportunity to engage in discovery. Also, in its motion to sever, Time Warner argues that had it been timely impleaded, it would have had standing to oppose plaintiff’s motion. However, these positions are inconsistent with Time Warner’s motion for severance, i.e if the third-party action were severed, Time Warner would not have the opportunity to oppose plaintiff’s motion. Moreover, no where does Time Warner indicate that it would oppose plaintiff’s motion if the third-party action were not severed. Notably, in its opposition, Time Warner does not oppose plaintiff’s motion on the merits. In any event, given the facts of this case, Time Warner’s claim of prejudice is unsubstantiated.

causing him or her to fall (*Vicuna v Vista Woods, LLC*, 168 AD3d 1124, 1125 [2d Dept 2019]; *Cabrera v Arrow Steel Window Corp.*, 163 AD3d 758, 759-760 [2d Dept 2018]; *Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept 2004]).

Plaintiff demonstrated his prima facie entitlement to judgment as a matter of law on the issue of liability under Labor Law § 240 (1) when he testified that the ladder on which he was standing moved or slide out, away from the building against which it was leaning, “came straight down,” and fell to the ground, causing plaintiff to fall down on top of it (*DeSerio v City of New York*, 171 AD3d 867, 868 [2d Dept 2019]; *Gomez*, 170 AD3d at 967 [internal citations and quotation marks omitted]).

In support of their cross motion to dismiss plaintiff’s Labor Law §§ 240 (1) and 241 (6) causes of action, and in opposition to plaintiff’s motion for summary judgment on his Labor Law § 240 (1) cause of action, defendants have failed to make a prima facie showing entitling them to summary judgment on these causes of action and have failed to raise a triable issue of fact in opposition to plaintiff’s motion.

First, defendants argue that they may not be held liable under Labor Law § 240 (1) because they did not authorize or control plaintiff’s injury-producing work, which was being performed without their knowledge. However, an owner can be held liable under Labor Law § 240 (1) even though it had no notice of, or control over, the injury producing work (*Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 335 [2008]). In particular, the Court of Appeals in *Sanatass* held that “section 240 (1) applied to all owners regardless of whether the property was leased out and controlled by another entity or whether the owner had the

means to protect the worker” (*id.* at 340). Defendants’ reliance upon *Abbatiello v Lancaster Studio Assoc.* (3 NY3d 46 [2004]) is misplaced. *Abbatiello* held that a building owner was not liable under Labor Law § 240 (1) for injuries a cable repair technician suffered in part because a tenant had called for the technician to perform a repair at the building unbeknownst to the owner. Here, based on the depositions of the plaintiff and the City’s witness, the City was aware of plaintiff’s presence at the building and the work he and his coworker were going to perform.

Defendants next argue that plaintiff was not making a significant physical change to a building or structure, as required under Labor Law § 240 (1). However, plaintiff’s work of drilling through 18 inches of concrete wall in order to enlarge a hole to accommodate the installation of thicker cable constitutes “altering” the building within the meaning of Labor Law § 240 (1) (*Joblon v Solow*, 91 NY2d 457, 461 [1998]; *see also LaGiudice v Sleepy’s Inc.*, 67 AD3d 969 [2d Dept 2009]).

Defendants next argue that Labor Law § 241 (6) is not applicable because plaintiff was not engaged in constructing, demolishing, or doing any excavating work on the building (*see* Labor Law 241 [6]). However, “courts have generally held that the scope of Labor Law § 241 (6) is governed by 12 NYCRR 23-1.4 (b) (13), which defines construction work expansively” (*Moreira v Ponzo*, 131 AD3d 1025, 1027 [2d Dept 2015] [internal citations and quotation marks omitted]). In particular, “under that regulation, construction work consists of ‘[a]ll work of the types performed in the construction, erection, alteration, repair, maintenance, painting or moving of buildings or other structures, whether or not such work

is performed in proximate relation to a specific building or other structure” (*id.*, quoting 12 NYCRR 23-1.4 [b] [13]). Here, inasmuch as plaintiff was engaged in an activity that constituted alteration, “the provisions of Labor Law § 241 (6) are . . . applicable to the facts of this case” (*id.*).

Lastly, relying again upon *Abbateello*, defendants argue that the City is not an “owner” as defined by the Court of Appeals within the meaning of Labor Law § 241 (6). “Labor Law § 240 (1) and § 241 (6) impose liability on all owners, without regard to encumbrances, and [they’re] duty to provide safe working conditions is nondelegable regardless of control” (*Ferreira v Village of Kings Point*, 68 AD3d 1048, 1050 [2d Dept 2009], quoting *Gordon v Eastern Ry. Supply*, 82 NY2d 555, 560 [1993]). “Although there must be ‘some nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest’ (*Abbateello v Lancaster Studio Assoc.*, 3 NY3d 46, 51 [] [2004]), the burden placed upon a defendant seeking summary judgment on the ground that it is not an owner is a heavy one” (*id.*, citing *Sanatass*, 10 NY3d at 341-342). Here, the City’s conclusory assertions, made by its counsel, that there was no nexus between the City and plaintiff by either contract, lease or easement is insufficient to satisfy its burden for summary judgment dismissing plaintiff’s Labor Law § 241 (6) claim (*id.*; cf. *Barone v 1116 Ave. H Realty, LLC*, 151 AD3d 928, 929 [2d Dept 2017]; *Wicks v Leemilt's Petroleum, Inc.*, 103 AD3d 793, 796 [2d Dept 2013]). Notably, although the City concedes that it owns the school (notice of cross motion, affirmation in opposition, ¶29), it fails to explain its relationship with third-party defendant PRY, the entity which placed the service call with Time Warner,

merely referring to PRY as “a non-profit/non-city entity operating within the School” (*id.* at ¶15), and “a non-profit operating out of the building” (affirmation in reply, ¶11). Further, “although the [City] presented un rebutted evidence that it had no control over the repair project occurring on its property, such a showing is not sufficient to remove it from the Labor Law § 240 (1) definition of ‘owner’” (*id.*, citing, among others, *Sanatass*, 10 NY3d at 341-342; *Coleman v City of New York*, 91 NY2d 821, 822-823 [1997]; *Celestine v City of New York*, 59 NY2d 938 [1983], *affg* 86 AD2d 592, 593 [1982]). Accordingly, the City did not satisfy its prima facie burden of demonstrating that it is not liable as an owner under Labor Law § 241 (6) [or Labor Law 240 [1]].

Therefore, that branch of defendants’ motion for summary judgment dismissing plaintiff’s Labor Law §§ 240 (1) and 241 (6) causes of action is denied., and plaintiff’s motion for summary judgment on his Labor Law § 240 (1) cause of action is granted.

Labor Law § 200/Common-Law Negligence

Defendants also move to dismiss plaintiffs’ Labor Law § 200/common-law negligence causes of action. In opposition, plaintiffs assert that they do not oppose that portion of defendants’ motion to dismiss their Labor Law § 200 claim, in effect withdrawing that cause of action. Under the circumstances, defendants’ motion to dismiss plaintiff’s Labor Law § 200/common-law negligence⁵ cause of action is granted (*Riccio v NHT Owners, LLC*, 79

⁵Although plaintiff did not withdraw his common-law negligence claim against defendants, “by failing to address this issue in his brief, any argument is deemed abandoned with respect thereto” (*Wiley v Marjam Supply Co., Inc.*, 166 AD3d 1106, 1109 [3d Dept 2018], *lv denied* 33 NY3d 908 [2019]).

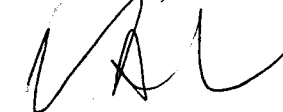
AD3d 998, 999 [2d Dept 2010] ["Before the trial, the plaintiff withdrew his causes of action alleging common-law negligence and violations of Labor Law §§ 200 and 241 (6)"]".

In summary, plaintiffs' motion for summary judgment on his Labor Law § 240 (1) cause of action is granted. Defendants' cross motion for summary judgment to dismiss plaintiff's complaint is granted to the extent of dismissing plaintiffs' Labor Law § 200/common-law negligence causes of action. The motions of Time Warner and NYU are granted to the extent of vacating the note of issue and extending their time to move for summary judgment until 60 days after discovery in the third-arty action is complete. The third-party defendants are directed to serve any outstanding requests for disclosure, including notices for deposition, within 30 days after service of a copy of this order with notice of entry. All discovery is to be completed on or before December 31, 2019. At the appropriate time, a trial will proceed on the issue of damages.

*① New CDCCP Conference
On 1/28/20 . New NOI: 2/28/20*

This constitutes the decision and order of the court.

ENTER,



J. S. C.
HON. KATHERINE A. LEVINE
JUSTICE SUPREME COURT

2019 OCT -9 AM 8:17

(10/8/19)
KINGS COUNTY CLERK
FILED
[Signature]