

Coerts v Eriora Corp.
2020 NY Slip Op 34409(U)
May 18, 2020
Supreme Court, Rockland County
Docket Number: 31857/2016
Judge: Robert M. Berliner
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
KATHY COERTS,

Plaintiff,

-against-

ERIORA CORP., KWANG KIL MOON, SUN OK
MOON, ELIAS TSIONIS, GEORGE TZOULAFIS,

Defendants.

-----X
BERLINER, J.

****CORRECTED****
DECISION & ORDER

Index No. 31857/2016
Order Date May 18, 2020
Motion Seq. 3, 4

The following papers were read on (1) this Notice of Cross Motion by plaintiff for an Order pursuant to CPLR 3126 striking the answer of defendants Elias Tsionis and George Tzoulafis for alleged discovery violations (Motion Sequence #3); and (2) this Notice of Motion by defendants Elias Tsionis and George Tzoulafis for an Order pursuant to CPLR 3212 dismissing this action as against them and/or staying discovery pending determination (Motion Sequence #4):

- Notice of Cross Motion (#3), Aff in Support / Opposition, Exh. A
- Defs' Aff in Reply / Opposition, Exh. A
- Notice of Motion (#4), Aff in Support, Exhs. A-M
- Pl's Aff in Opposition (#4), Exh. A
- Defs' Aff in Reply
- NYSCEF File

Upon the foregoing papers, and all prior papers and proceedings in this action, the motions are consolidated for purposes of decision and are determined as follows:

Plaintiff commenced this personal injury action by summons and complaint each respectively filed on May 25, 2016, alleging that she sustained bone fractures on May 29, 2013, as a result of a trip and fall on an uneven surface of a parking lot appurtenant to the real property located at 62-76 Route 303 in the Town of Orangetown, New York. In March 2017, defendants Elias Tsionis and George Tzoulafis (hereinafter "moving defendants") served an answer denying ownership and

control of the subject property, and asserting cross claims against the other defendants for contractual and common law indemnity and contribution, and for breach of lease. With their answer, moving defendants propounded discovery demands on plaintiff. The record does not demonstrate that any of the co-defendants answered plaintiff's complaint or moving defendants' cross claims, or otherwise joined issue.

Four days later, moving defendants' insurance carrier was the subject of an Order to Show Cause in a liquidation proceeding, bringing on a motion to stay all actions involving the carrier's insureds (*see In re Vullo [Castlepoint Natl. Ins. Co.]*, Index No. 153214/2017 [Sup Ct NY Co 2017]) (hereinafter "Liquidation Proceeding"). In the Liquidation Proceeding, the Court (Kennedy, J.) granted such stay pending final adjudication (NYSCEF Doc. 12). Three months later, the Court (Schechter, J.) finally determined the Liquidation Proceeding, and the stay of this action thereafter was lifted (NYSCEF Doc. 21).

Approximately nine months later, in April 2018, moving defendants brought a CPLR 3124-3126 motion to compel plaintiff to comply with discovery demands served with their answer or, in the alternative, to dismiss this action on grounds of discovery noncompliance. This Court (Berliner, J.) held a conference on the record on June 7, 2018, at which the Court ordered plaintiff to provide moving defendants with medical authorizations within 14 days; appear for a deposition on September 5, 2018; and appear for an independent medical examination by October 19, 2018 (NYSCEF Doc. 45). The Court further ordered plaintiff to file a Note of Issue and Certificate of Readiness by December 7, 2018, and set a summary judgment motion deadline 60 days after the filing of the Note of Issue (*see id.*). On that basis, the discovery motion was marked withdrawn.

Plaintiff did file the Note of Issue and Certificate of Readiness, and numerous additional conferences ensued before this Court. Plaintiff appeared for a deposition in February 2019, and moving defendants' deposition was further adjourned on consent until March 2019. Before the adjourn date of the defense depositions, however, moving defendants brought this CPLR 3212 motion to dismiss plaintiff's action, on grounds that moving defendants did not own or control the subject property on the date of the alleged incident (Motion Sequence #2). Plaintiff cross moved pursuant to CPLR 3126 to strike moving defendants' answer on grounds of their failure to appear for depositions (Motion Sequence #3). Moving defendants then brought another CPLR 3212 motion seeking the same relief (Motion Sequence #4), the sole distinction between the two motions being

what moving defendants' counsel denominated as an inadvertently omitted party affidavit.

During the pendency of these motions, the joined parties stipulated to adjourn the return date. Thereafter, the covid-19 public health crisis necessitated the issuance of administrative orders that delayed determination of these applications. This Court (Berliner, J.) then directed moving defendants to withdraw the first of their two motions (Motion Sequence #2), which was marked withdrawn except to the extent that papers thereon remain relevant to the determination of the remaining motions. Those remaining motions now come forward for decision.

Party Contentions

Moving defendants continue to assert their consistent position throughout this litigation that they did not own, manage or control the subject premises at the time of the alleged incident. In support thereof, moving defendants aver that they did, in fact, own that property until January 12, 2005, when they sold it to non-parties subject to a note and mortgage that moving defendants themselves held and recorded in the Office of the Rockland County Clerk on January 24, 2005. Moving defendants continue that approximately 14 months later, Eriora Corp., and Kwang Kil Moon and Sun Ok Moon (hereinafter "personal co-defendants"), purchased the subject property from those non-parties pursuant to an assignment and assumption agreement, which also was recorded in the Office of the Rockland County Clerk on August 11, 2006. The 2006 assignment and assumption agreement preserved moving defendants' status as holders of the first mortgage on the subject property.

Moving defendants continue that on or about April 1, 2010, yet another non-party loaned \$800,000 to Eriora. Despite moving defendants' underlying note and mortgage, Eriora extended to that non-party a purportedly senior mortgage securing the subject property, and this putative mortgage also was recorded in th Office of the Rockland County Clerk. In 2011, Eriora and the personal co-defendants defaulted on moving defendants' underlying note and mortgage. Upon such mortgage default, in June 2011 moving defendants brought a foreclosure action against Eriora and the personal co-defendants (*see Tsionis v Eriora Corp., et al.*, Index No. 30126/2011 [Sup Ct Rockland Co 2011]) (hereinafter "Foreclosure Action").

In the Foreclosure Action, by Decision and Order entered March 6, 2012, this Court (Alfieri, J.) declared invalid the non-party mortgage on the subject property, entered judgment against Eriora

and the personal co-defendants, and appointed Victor Vitale as referee to sell the subject property for the benefit of the first mortgage lienholders (*i.e.* moving defendants in the instant action) (*see* NYSCEF Doc. 61). The Court also directed that moving defendants (*i.e.* plaintiffs in the Foreclosure Action) immediately –

“be permitted to reenter and retake the [subject] premises, and to collect all rents therefrom, in accordance with the terms of the Note, Mortgage, and Assignment of Leases and Rent[,] until such time as the judicial sale may take place” (*id.*).

The non-party that putatively held the invalidated mortgage on the subject property filed a notice of appeal from the final adjudication of the Foreclosure Action (NYSCEF Doc. 37). On December 3, 2014, the Appellate Division reversed on procedural grounds as to entry of judgment against the appealing party only (*i.e.* a non-party in this action) (*see Tsionis v Eriora Corp.*, 123 AD3d 694 [2d Dept 2014]). Despite remittal and a post-appeal third-party complaint, the Foreclosure Action has not substantively progressed since 2015.¹

Meanwhile, during the pendency of the Foreclosure Action appeal, the referee held a foreclosure auction on March 21, 2013, at which moving defendants were the highest bidders. Moving defendants aver that, ostensibly due to the pending appeal in the Foreclosure Action, the referee did not execute and tender to them a referee’s deed until May 5, 2014. As purchasers of the subject property, moving defendants recorded the referee’s deed the Office of the Rockland County Clerk on June 9, 2014.

In further support hereof, moving defendants produce what they denominate as the referee’s deed for the sale of the subject property (NYSCEF Doc. 39). That instrument bears a crossed-out typewritten date of May 8, 2013, and a handwritten and initialed date of May 5, 2014 (NYSCEF Doc. 39). The notarial attestation on the instrument reflects the same crossed-out typewritten execution date, and the same handwritten and initialed date, as the alleged deed itself (*see id.*).

¹In addition to the Foreclosure Action, the non-party lender also commenced a separate action to foreclose on the mortgage on the subject property that allegedly secured the \$800,000 loan to Eriora. That action joined all defendants in the instant action (*see Yong v Eriora Corp., et al.*, Index No. 34480/2012 [Sup Ct Rockland Co 2012]). By Decision and Order entered November 30, 2012, this Court (Alfieri, J.) dismissed that action and cancelled the related notice of pendency on the subject property. No appeal was taken from that separate order of dismissal.

Critically for the instant action, plaintiff's complaint alleges that the trip and fall occurred on May 29, 2013 – more than two months after the foreclosure auction, but nearly a year before the date on which, moving defendants contend, the referee executed and tendered the referee's deed of sale. For this reason, moving defendants' central argument is that on the date of plaintiff's alleged injury, moving defendants did not own the subject property and therefore owed plaintiff no duty of care. Accordingly, they conclude that plaintiff's action must be dismissed as against them as a matter of law (*see* Moving Defs' Aff in Support [NYSCEF Doc. 51], at 7).

In opposition, plaintiff relies on the referee's report of sale, dated May 8, 2013, that the referee filed with this Court in the Foreclosure Action. The referee's report of sale attests, among other things, that as of such date, "I have executed and delivered to said purchaser [*sic*], Elias Tsionis and George Tzoulafis, a good and sufficient deed of conveyance of the premises so sold" (NYSCEF Doc. 38, at ¶ 4). The referee's report of sale to this Court also detailed the terms of sale, including the date of sale and purchase price; attests that there was no surplus money; and requests that the Court discharge the referee from further duties pursuant to the Decision and Order appointing him (*see id.*).

Plaintiff contends that the factual discrepancy between the date of sale memorialized in the referee's report to this Court, and the date moving defendants assert to be the date of the referee's deed, creates a triable issue of material fact as to who owned the subject property on the date of the incident. Accordingly, plaintiff argues that this record militates against CPLR 3212 dismissal.

Plaintiff also argues that the referee's deed of sale itself creates a triable issue of material fact about ownership of the subject property on the alleged date of plaintiff's injury. Plaintiff points to its typed date of conveyance – May 8, 2013, matching the referee's report of sale and occurring three weeks before the alleged date of plaintiff's injury. Plaintiff asserts that the circumstances of the handwritten alterations to the proffered referee's deed also raise triable issues of fact ripe for discovery, and thus further weigh against dismissal on this record.

Plaintiff separately argues that the 2012 Decision and Order of this Court (Alfieri, J.) in the Foreclosure Action awarded moving defendants, as holders of the mortgage on the subject property, the right to re-enter, take and control that property as of the date thereof. Because such Decision and Order predated the alleged incident by over a year, plaintiff contends that moving defendants were then *de facto* owners of the subject property, or at least possessed such incidents of control as

to accrue to them a duty of care to plaintiff (*see* Pl's Mem in Opposition [NYSCEF Doc. 44], at 3-4).

In turn, plaintiff asserts that she is entitled to depose defendants as to what steps, if any, they took to secure the subject property against hazards between the date of the 2012 Foreclosure Action determination and the time of plaintiff's injury. Plaintiff having noticed such deposition and defendants repeatedly having refused to comply despite multiple court conferences, plaintiff cross moves pursuant to CPLR 3126 for an Order striking moving defendants' answer on that basis.

Moving defendants reply that the referee's report of sale did not effectuate transfer of the property to moving defendants, and that only transfer of the deed could achieve that result as a matter of law, and thus moving defendants remain entitled to summary judgment dismissing this action. Moving defendants further reply that even if the action is not dismissed on that basis, plaintiff's discovery motion is procedurally defective pursuant to Rule 202.7(c) because plaintiff did not confer with moving defendants' counsel or file an affirmation of good faith requisite to a discovery motion. In any event, moving defendants assert that defendants' depositions were adjourned on consent to March 7, 2019, and that moving defendants' sooner motion for summary judgment automatically stayed all remaining discovery pursuant to CPLR 3214(b). Moving defendants therefore conclude that plaintiff's cross motion should be denied.

Analysis

As a prefatory matter, this Court observes that no joined party substantially addresses the failure of Eriora Corp. and the personal co-defendants to answer plaintiff's complaint or moving defendants' cross claims. As to Eriora Corp., this Court finds that plaintiff's 2016 affidavit of service on the Secretary of State (NYSCEF Doc. 3) evidences good and sufficient service pursuant to CPLR 311(a)(1) and BCL 306(b)(1). Nearly four years later even excepting the brief 2017 stay during the Liquidation Proceeding, neither plaintiff (on its complaint) nor moving defendants (on their cross claims) sought default judgment against Eriora. As there appears in the record no "sufficient cause" for their collective failure to move against Eriora, and as the joined parties themselves do not so much as mention this difficulty, this Court deems the action abandoned as against Eriora. Accordingly, on this Court's own initiative pursuant to CPLR 3215(c), this action is dismissed as against Eriora and all cross claims against it will be discontinued.

As to the personal co-defendants, however, this Court is not satisfied that good and sufficient

service was effected on them. As to plaintiff's complaint, plaintiff's affidavits of service attest only to "nail and mail" service (NYSCEF Docs. 5-8). However, the affidavits of service attest only to three attempted contacts during a single 52-hour period in September 2016 at one address and two attempted contacts at a nearly contemporaneous 36-hour period at another address. Based on these minimal process server efforts, this Court is not satisfied that plaintiff undertook sufficient due diligence as CPLR 308(4) requires before resorting to "nail and mail" service. Moreover, the process server does not attest – and the record does not otherwise demonstrate – that the mailings complied with the substantive requirements of CPLR 308(4).

Plaintiff's cross motion is denied as procedurally defective, without prejudice to a further such motion. Moving defendants are correct that plaintiff failed to comply with Rule 202.7(c), and plaintiff did not dispute this contention in reply to moving defendants' opposition. While this Court's repeated conferences should have been more than sufficient to ensure the timely conduct of all remaining discovery, this Court was unaware at the time of plaintiff's discovery motion that defendants' depositions had not yet occurred. Moreover, plaintiff does not meaningfully contest moving defendants' procedural challenge to her discovery motion. Under these circumstances, this Court sees no basis to deem the Rule 202.7(c) condition precedent satisfied, and plaintiff's cross motion therefore is denied.

Turning to moving defendants' dismissal application, a CPLR 3212 summary judgment movant must tender evidentiary proof in admissible form sufficient to show that there remains no reasonably disputable triable issue of material fact such that judgment should be directed in its favor as a matter of law (*see e.g. Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003], *citing Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Only upon the movant's sufficient prima facie showing does the burden shift to the respondent to rebut such showing (*see id.*). If the respondent then adduces record evidence or other materials that create any triable issue of material fact – giving the party adverse to the motion the benefit of every reasonable favorable inference – then summary judgment must be denied (*see id.*).

It also is well-settled that in opposition to a CPLR article 32 dismissal motion, a plaintiff is entitled to liberal construction of its pleadings and every favorable inference arising therefrom and from the record on that application (*see 511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Dismissal must be denied

if from the pleadings' four corners "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Jennifer Realty*, 98 NY2d at 152, *quoting Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001]; *Guggenheim v Ginsburg*, 43 NY2d 268, 275 [1977]). Thus, a complaint or cause of action is legally sufficient "if the court determines that a plaintiff would be entitled to relief on any reasonable view of the facts stated" (*Dee v Rakower*, 112 AD3d 204, 207, *citing Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 318 [1995]). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus" (*id.*, *quoting EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

Moving defendants carried their prima facie burden by offering the referee's deed of sale apparently dated and executed after the date that plaintiff's complaint alleged as the day of injury. Moving defendants therefore are entitled to assert, and satisfactorily assert for this purpose, that they therefore owed no duty to plaintiff as owner of the property at the time of injury. Accordingly, the burden shifts to plaintiff to rebut that showing by raising a triable issue of material fact.

Plaintiff amply carried that burden on any of several alternative theories, especially given the liberality to which plaintiff is entitled on this application.

First, moving defendants do not dispute that the March 6, 2012, Decision and Order of this Court in the Foreclosure Action memorialized moving defendants' rights – as holders of the validated senior lien on the subject property – immediately to "reenter and retake the [subject] premises ... until such time as the judicial sale may take place." Thus, even if moving defendants are correct that a post-sale delay in execution and tender of the referee's deed thereby delayed the effectiveness of their outright purchase of the subject property until long after plaintiff sustained her alleged injury, moving defendants do not dispute that they held certain rights and duties as mortgage holders post-foreclosure notwithstanding any delay or defect in the referee's deed. This result is especially manifest given that the non-answering co-defendants here also were defendants in the Foreclosure Action, which extinguished their rights and responsibilities as to the subject property upon moving defendants' own application as plaintiffs in that same action.²

²While the Appellate Division reversed and remitted in the Foreclosure Action – a twist that no party on these applications raised to the Court – the Appellate Division did so only as to a non-party. Nothing in the Appellate Division proceedings altered the balance of rights, duties and equities as between the other parties to that action – and no party hereto argues otherwise.

Against that procedural and substantive backdrop, this Court observes that “an action to foreclose a mortgage is equitable in nature and triggers the equitable powers of this Court” (*PHH Mortgage Corp. v Hepburn*, 128 AD3d 659, 661 [2d Dept 2015]; *Norstar Bank v Morabito*, 201 AD2d 545, 546 [2d Dept 1994], following *Notey v Darien Constr. Corp.*, 41 NY2d 1055 [1977]). “Once equity is invoked, this Court’s power is as broad as equity and justice require” (*Hepburn*, 128 AD3d at 661; *Morabito*, 201 AD2d at 546; *Ripley v Int’l Rys. of Central Am.*, 8 AD2d 310, 328 [1st Dept 1959], *affd* 8 NY2d 430 [1960]).

Moving defendants having invoked this Court’s equitable powers in the Foreclosure Action, and having received the benefit of the remedies they sought before this Court in equity, this Court notes the equities appurtenant to those outcomes. While the instant negligence action does not sound in equity, moving defendants cannot evade the reality that their own Foreclosure Action necessarily sought to wrest control of the subject property – and in fact successfully did so. Thus, moving defendants cannot equitably wield the sword of the Foreclosure Action in which they vindicated their first mortgage and obtained from this Court the immediate right to “reenter and retake” the subject premises pending judicial sale, then disclaim all resulting rights to the property as a shield against potential liability for subsequent injury arising from that property.

Plaintiff’s foregoing demonstration rebuts moving defendants’ prima facie showing that they owed plaintiff no duty of care as of the alleged date of injury. Moving defendants also offer no record evidence that they satisfied this duty of care. Indeed, moving defendants assert only that they owed no such duty of care as of the date of injury: they do not argue that they satisfied such duty. Thus, plaintiff is correct that she is entitled to depose moving defendants to explore, among other things, whether they satisfied their duty of care as holders of the subject property pending completion of the judicial sale – the very remedy that moving defendants sought in the Foreclosure Action. Accordingly, moving defendants’ motion is denied (*see* CPLR 3212[f]).

In the alternative – and independent of moving defendants’ legal and equitable position as

As such, and especially given that the Appellate Division itself declined the invitation to award relief to a non-appealing party, the Appellate Division proceedings do not affect, for purposes of this proceeding in this action, so much of the 2012 Decision and Order as granted plaintiffs in that action – and moving defendants in this action – an immediate right to re-enter and take the subject premises pending judicial sale.

holders pending judicial sale pursuant to the Decision and Order in the Foreclosure Action – this Court agrees that a triable issue of material fact exists as to the date on which the transfer upon judicial sale actually occurred. While a handwritten and initialed adjustment to typed language on an instrument is by no means inherently invalidating, here the record presents a facial conflict between the referee’s deed and the referee’s report of sale that alone is sufficient to deny moving defendants summary judgment on this record. This Court further observes that no party adduced an affidavit or deposition testimony from the referee, or from the notary on the referee’s deed, that might shed light on the date on which moving defendants’ argument so pivotally relies. As such, key questions of fact remain open on this record, and accordingly moving defendants’ dismissal motion must be denied on that basis.

This Court is constrained to note that the foregoing record raises potentially serious prudential issues that this Court is duty-bound to address. On moving defendants’ theory of this case, the referee’s 2013 report of sale – attesting that the referee tendered a deed of sale, and requesting this Court’s discharge fully a year before the day that moving defendants assert as the date of the referee’s deed – would constitute a materially false filing with this Court in the Foreclosure Action. On plaintiff’s theory of this case, the handwritten alterations in the referee’s deed that reflect a 2014 execution date appear to raise their own substantial concerns. While there may well exist a reasonable above-board explanation for the foregoing, the record and arguments herein squarely present questions that this Court insists must be answered. This Court further observes that the Appellate Division reversal and remittal in the Foreclosure Action would seem not to explain the foregoing because that determination was dated December 3, 2014 – well after all of the 2013 and 2014 dates that the referee’s report of sale and referee’s deed appear to implicate. Because the justice who presided in the Foreclosure Action has retired from the bench, and because the material questions raised herein appear relevant if not pivotal to the proper adjudication of this action, the obligation lies with this Court to untangle these prudential issues. This Court will address those issues directly.

This Court has considered the parties’ other contentions not expressly addressed herein and finds them to lack merit or to be moot in light of the foregoing. Accordingly it is hereby

ORDERED that moving defendants’ first dismissal motion (Motion Sequence #2) is marked withdrawn; and it is further

ORDERED that plaintiff’s cross motion pursuant to CPLR 3126 to strike moving defendants’ answer (Motion Sequence #3) is denied without prejudice; provided that plaintiff’s counsel is admonished not to bring a further discovery motion in this Court except in strict compliance with the Uniform Rules of Supreme and County Court in relation thereto, and that future violation thereof may result in the imposition of penalties in accordance with law; and it is further

ORDERED that moving defendants’ motion pursuant to CPLR 3212 to dismiss this action against them (Motion Sequence #4) is denied; and it is further

ORDERED that on this Court’s own initiative pursuant to CPLR 3215(c), this action is dismissed as against non-answering defendant Eriora Corp., and all cross claims against such non-answering defendant are discontinued; and it is further

ORDERED that the caption in this action is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
KATHY COERTS,

Plaintiff,

-against-

Index No. 31857/2016

ELIAS TSIONIS, GEORGE TZOULAFIS,
KWANG KIL MOON, SUN OK MOON,

Defendants.

-----X
and it is further

ORDERED that counsel for all joined parties will appear for a conference before this Court at **9:30 a.m. on Thursday, June 11, 2020**, in Room 1 of this Courthouse, or by digital means if so directed by this Court pursuant to then-applicable public health directives; and it is further

ORDERED that in view of this Court’s multiple prior conferences in this matter, and the prudential issues described herein:

(1) counsel for all joined parties will appear at the conference scheduled herein with actual authority to fully dispose of this action, and will have immediate telephonic or video access to their respective principals also having full authority to dispose of this action;

(2) counsel to all joined parties will be fully versed in the complex procedural history of all actions between the parties involving the subject property;

(3) appearing counsel will be prepared to address any questions this Court may have, in accordance with law, concerning the referee's report of sale and referee's deed as enumerated herein;

(4) unless a stipulation of settlement is entered on the record at such conference, all party discovery will be completed by August 12, 2020, and all nonparty discovery will be completed by September 30, 2020;

(5) the above discovery deadlines will be strictly applied absent compelling need and prior judicial consent; and

(6) prior to the conference, all appearing counsel shall make maximum effort to agree to a specific discovery schedule consistent herewith; and it is further

ORDERED that within five days hereof, counsel for plaintiff shall serve this Decision and Order, with Notice of Entry hereof, on counsel for moving defendants by NYSCEF, and on non-appearing defendants by U.S. Mail at each of their respective addresses as to which plaintiff's affidavits of service attested to attempted service, and by such date shall file by NYSCEF an affirmation of such service.

The foregoing constitutes the Decision and Order of this Court.

Dated: New City, New York
May 18, 2020


HON. ROBERT M. BERLINER, J.S.C.

To: All counsel via NYSCEF