

**Messina v Motorola Solutions, Inc.**

2020 NY Slip Op 35672(U)

October 22, 2020

Supreme Court, Bronx County

Docket Number: Index No. 36374/2017

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

THOMAS MESSINA,

Index No.: 36374/2017

Plaintiff,

- against -

MOTOROLA SOLUTIONS, INC., CUSHMAN &  
WAKEFIELD INC., TRACTEL, INC., THE CITY OF  
NEW YORK, THE NEW YORK CITY POLICE  
DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW  
YORK CITY (FDNY), NEW YORK DEPARTMENT OF  
INFORMATION TECHNOLOGY &  
TELECOMMUNICATIONS (NYCDOITT), THE NEW  
YORK CITY DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES (NYCDCAS), THE  
PUBLIC SAFETY ANSWERING CENTER II ("PSAC II")  
HUTCH METRO CENTER I, LLC, HUTCH  
MANAGEMENT, LLC, HUTCH REALTY  
PARTNERS, LLC, TISHMAN CONSTRUCTION  
CORPORATION, TISHMAN TECHNOLOGIES  
CORPORATION, TISHMAN CONSTRUCTION  
CORPORATION OF NEW YORK,  
HUTCH 40 MANAGER LLC, HUTCH 40 LLC,  
SIMONE DEVELOPMENT COMPANY, L.L.C., and  
SIMONE DEVELOPMENT CORPORATION,

Defendants.

**DECISION AND ORDER**

MOTOROLA SOLUTIONS, INC.,

Third-Party Plaintiff,

- against -

H&L ELECTRIC, INC.,

Third-Party Defendant.

	Papers Numbered
Defendants THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT (NYPD),	1, 2, 3

THE NEW YORK CITY POLICE DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW YORK CITY (FDNY), NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS (NYCDOITT), THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES' (NYCDCAS) Notice of Motion, Affirmation, Exhibits	
Plaintiff's Affirmation in Opposition, Exhibits	4, 5
Affirmation in Reply, Exhibits	6, 7

Upon the enumerated papers, Defendants' motion to dismiss Plaintiff's complaint and all cross-claims as against THE NEW YORK CITY POLICE DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW YORK CITY (FDNY), NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS (NYCDOITT), and THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES (NYCDCAS) is granted, in accordance with the annexed decision and order.

**Dated: 10/22/2020**



Hon.  
**LUCINDO SUAREZ, J.S.C.**  
**LUCINDO SUAREZ, J.S.C.**

- |   |   |  |
|---|---|--|
| <b>Check one:</b>                                     | <b>Motion is:</b>                           | <b>Check if appropriate:</b>                   |
| <input type="checkbox"/> Case Disposed in Entirety    | <input checked="" type="checkbox"/> Granted | <input type="checkbox"/> Schedule Appearance   |
| <input checked="" type="checkbox"/> Case Still Active | <input type="checkbox"/> Denied             | <input type="checkbox"/> Settle Order          |
|   | <input type="checkbox"/> GIP                | <input type="checkbox"/> Fiduciary Appointment |
|   | <input type="checkbox"/> Other              | <input type="checkbox"/> Submit Order          |
|   |   | <input type="checkbox"/> Referee Appointment   |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seq. #4

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THOMAS MESSINA,

Index No.: 36374/2017

Plaintiff,

- against -

MOTOROLA SOLUTIONS, INC., CUSHMAN &  
WAKEFIELD INC., TRACTEL, INC., THE CITY OF  
NEW YORK, THE NEW YORK CITY POLICE  
DEPARTMENT (NYPD), FIRE DEPARTMENT OF NEW  
YORK CITY (FDNY), NEW YORK DEPARTMENT OF  
INFORMATION TECHNOLOGY &  
TELECOMMUNICATIONS (NYCDOITT), THE NEW  
YORK CITY DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES (NYCDCAS), THE  
PUBLIC SAFETY ANSWERING CENTER II ("PSAC II")  
HUTCH METRO CENTER I, LLC, HUTCH  
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PARTNERS, LLC, TISHMAN CONSTRUCTION  
CORPORATION, TISHMAN TECHNOLOGIES  
CORPORATION, TISHMAN CONSTRUCTION  
CORPORATION OF NEW YORK,  
HUTCH 40 MANAGER LLC, HUTCH 40 LLC,  
SIMONE DEVELOPMENT COMPANY, L.L.C., and  
SIMONE DEVELOPMENT CORPORATION,

Defendants.

**DECISION AND ORDER**

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MOTOROLA SOLUTIONS, INC.,

Third-Party Plaintiff,

- against -

H&L ELECTRIC, INC.,

Third-Party Defendant.

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PRESENT: Hon. Lucindo Suarez

The issue in Defendants THE NEW YORK CITY POLICE DEPARTMENT (“NYPD”), FIRE DEPARTMENT OF NEW YORK CITY (“FDNY”), NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS (“NYCDOITT”), and THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES (“NYCDCAS”) hereinafter, “City Agencies” (collectively “Defendants”) is whether any issues of fact exist as to whether Defendants are suable entities pursuant to Section 396 of the New York City Charter. This court finds there are no triable issues of fact.

The New York City Charter, Chapter 17, Section 396, states, in pertinent part, that, “[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York, and not in that of any agency, except where otherwise provided by law.”

Defendants argue section 396 of the New York City Charter applies only to the named City Agency Defendants. Further, Defendants posit that Plaintiff does not allege a specific cause of action as permitted by the New York City Charter, that would permit said named Defendants to be sued as prescribed by law. Lastly, Defendants provide sufficient case law to establish each named Defendant is in fact, an agency of the City of New York.

Plaintiff does not dispute that the New York City Charter applies. Instead, he argues that Defendants failed to provide any case law that the New York City Charter applies or that the exception applies. However, this court notes that Plaintiff did not proffer any evidence to raise triable issues of fact. He did not provide this court with evidence or law to indicate that any of his causes of action would apply to the exception provision of the New York City Charter. Furthermore, this court notes there were no other opposition papers to this motion filed by any other party.


As such, this court finds that City Agency Defendants adequately demonstrated their entitlement to have the instant action including all cross-claims dismissed against them. They sufficiently established each named Defendant is an agency within the meaning of the law and furthermore established that the named Defendants are not amenable to being sued. *See Matter of Carpenter v. New York City Hous. Auth.*, 146 A.D.3d 674, 44 N.Y.S.3d 906 (1st Dep't 2017).

Accordingly, it is

ORDERED, that Plaintiff's complaint and all cross-claims against THE NEW YORK CITY POLICE DEPARTMENT ("NYPD"), FIRE DEPARTMENT OF NEW YORK CITY ("FDNY"), NEW YORK DEPARTMENT OF INFORMATION TECHNOLOGY & TELECOMMUNICATIONS ("NYCDOITT"), and THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES ("NYCDCAS") are dismissed.

This constitutes the decision and order of the court.

Dated: October 22, 2020



Lucindo Suarez, J.S.C.  
**LUCINDO SUAREZ, J.S.C.**