

**Robinson v Great Performances Artists as
Waitresses, Inc.**

2021 NY Slip Op 31680(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 152469/2018

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY

PART IAS MOTION 23EFM

Justice

-----X

INDEX NO. 152469/2018

BARRY ROBINSON, VINCENT SETTECASI,

**MOTION DATE September 19,
2019**

Plaintiff,

MOTION SEQ. NO. 002

- v -

GREAT PERFORMANCES ARTISTS AS WAITRESSES,
INC., LIZ NEUMARK, DEAN MARTINUS, LINDA ABBEY,

**DECISION + ORDER ON
MOTION**

Defendant.

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GREAT PERFORMANCES ARTISTS AS WAITRESSES, INC.,
LIZ NEUMARK, DEAN MARTINUS, LINDA ABBEY

Third-Party
Index No. 595973/2018

Plaintiff,

-against-

KENSINGTON EVENTS, INC., TOP SHELF STAFFING, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54,
55, 56, 57, 59

were read on this motion to/for JUDGMENT – DISMISSAL3RDPARTYCOMPLAINT.

In this class action seeking unpaid wages pursuant to New York Labor Law Section 196-d, third-party defendant Kensington Events, Inc. (Kensington) moves, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss the third-party complaint (motion sequence no. 2). In its motion, Kensington essentially argues that it never agreed to indemnify defendants/third party plaintiffs for defendants' violations of New York State Labor Law § 196-d. Furthermore, even if it had made such an agreement, it would be void and unenforceable.

Background

As alleged in the complaint, defendant/third party plaintiff Great Performances/Artists as Waitresses, Inc. (Great Performances), located in New York, has catered events in and around New York City and its surrounding areas. Additionally, as set forth in the complaint, defendant Lizbeth Neumark is the Chief Executive Officer of Great Performances, defendant Dean Martinus is the President of Great Performances, and defendant Linda Abbey is the Vice-President of Great Performances. Further, according to the complaint, plaintiff Barry Robinson (Robinson) worked for defendants in various food and service capacities from 2013 at defendants' catered events, including but not limited to a Bloomberg LLP event in July 2013 and an event at Ellis Island in May 2015. The complaint also alleges that plaintiff Vincent Settecase (Settecase) worked for defendants in various food and service capacities from approximately 2012 through 2013 at defendants' catered events, including but not limited to an event at Jazz Lincoln Center in November 2012 and the July 2013 Bloomberg LLP event. As set forth in the third-party complaint, Kensington provided staff to Great Performances.

This action was commenced on or about March 20, 2018, and, according to the complaint, the action was brought pursuant to New York Labor Law (New York Labor Law) § 190 et seq., Labor Law § 196-d, and 12 New York Codes, Rules and Regulations (NYCRR) Part 146 to recover “unlawfully withheld and retained portions of gratuities provided to service employees, including but not limited to those collected as Mandatory Charges” (NYSCEF Doc. No. 40, paragraph 67) from “[p]laintiff and other similarly situated persons who presently or formerly performed work for Defendants as service employees, including such workers as wait staff, waiters, servers, captains, bussers, bartenders, food runners, bridal attendants, and in

various other related customarily-tipped trades, at Defendants' catered events held in the State of New York" (NYSCEF Doc. No. 40, paragraph 27).

In the complaint, plaintiffs allege that Robinson was recruited to perform work for defendants through a staffing agency. They further allege that during defendants' catered events, Robinson's work was directed by defendants' employees, including Great Performances' employees Kyle Schanzer and Jenny Baughman. For example, at the July 2013 Bloomberg Event, Robinson and other employees recruited by third party staffing agencies were instructed to sign in and out with employees of Great Performances and were advised "you are working for GP" (NYSCEF Doc. No. 40, paragraph 46).

Plaintiffs further allege that Settecesi was recruited to perform work for defendants through a staffing agency and worked as a catering service worker at catered events, including an event at Jazz at Lincoln Center in or around November 2012 and an event held for Bloomberg LLP in or around July 2013. According to the complaint, Settecesi was directed by employees of Great Performances at defendants' catered events and was told to represent himself as working for Great Performances (NYSCEF Doc. No. 40, paragraph 49).

The main allegation in the complaint is that defendants charge a fee to their clients that is not passed along to plaintiffs. Specifically, plaintiffs allege that defendants assess a mandatory charge (Mandatory Charge) for catered events. Plaintiffs further allege that this mandatory charge is not a charge for food, beverages, lodging, or other specified materials, but that defendants provided customers with other documents, such as contracts, bills, and invoices that convey a Mandatory Charge. The complaint alleges: "Defendants utilize the same standard forms for numerous catered events that contained a mandatory service charge on it - without disclaiming that the Mandatory Charge was not a gratuity and would not be distributed to the

staff. Reasonable patrons would have understood the Mandatory Charge to be in the nature of a gratuity” (NYSCEF Doc. No. 40, paragraphs 43-44). Plaintiffs allege that Defendants violated 12 NYCRR Part 146 (otherwise known as the “Hospitality Wage Order”) and the New York Labor Law by collecting and retaining mandatory service charges without properly advising its customers that the service charge was not a gratuity paid to its service staff.

Great Performances moved to dismiss the complaint against it and on October 18, 2018, the court denied that motion, noting that:

The Court has found that the review of the complaint reveals that it sufficiently pleads an employment relationship with defendants and a New York Labor Law § 196-d claim based upon defendants' mandatory charge for staff. Plaintiffs' complaint alleges that defendants exercise the requisite control to substantiate an employee relationship in that defendants had substantial control of the named plaintiffs and putative class members' working conditions and over the unlawful policies and practices alleged herein, and that defendants exercised dominion and control over the service workers, indicative of an employee relationship. Defendants have failed to supply sufficient documentary evidence which would warrant dismissal on this ground. The complaint at bar sufficiently meets the pleading standard to support the claims made therein and such is not dismissed. (NYSCEF Doc. No. 75).

On or about December 4, 2018, defendants/third-party plaintiffs commenced this third-party action wherein Great Performances alleges, as set forth generally above, that on April 7, 2015, it entered into a vendor agreement with Kensington for Kensington to provide its workers and individuals to staff catered Great Performances events (Kensington Vendor Agreement).

The third-party complaint contains one cause of action, seeking indemnification.

According to the third-party complaint, Great Performances contracted with Kensington and another company, Top Shelf Staffing LLC (Top Shelf), to supply it with various food service staffers on an as-needed event-by-event basis. Great Performances alleged that Kensington supplied staffing workers to Great Performances since about June 2013, pursuant to a written agreement. During the relevant time period, since 2012, Top Shelf provided workers to staff

events and executed an Agreement with Great Performances. According to Great Performances, the Vendor Agreements executed by Great Performances and Kensington and Top Shelf provide that the staffing agency is the employer of the staff provided.

The Kensington Vendor Agreement provides in pertinent part that:

To the fullest extent of the law, you will indemnify, defend and hold harmless GP and its affiliates, officers, partners, employees and agents, against all claims, losses, damages, liabilities and related expenses (including reasonable attorney's fees) brought by any of your officers, partners, employees and agents and any third party arising from or connected with the Services, to the extent that the claims, losses, damages, liabilities or related expenses (including reasonable attorney's fees) are due to your negligence or willful misconduct. To the fullest extent of the law, you will indemnify, defend and hold harmless GP and its affiliates, officers, partners, employees and agents, against all claims, losses, damages, liabilities and related expenses, (including reasonable attorney's fees) brought by any employee or independent contractor hired by you for any claims for wages and violations of the wage and hour federal and state laws, including, but not limited to, laws pertaining to overtime wages.

(NYSCEF Doc. No. 43, p. 27, paragraph 2).

From about April 2015, Kensington provided staff to Great Performances pursuant to the Kensington Vendor Agreement. Great Performances further alleged that the Kensington Vendor Agreement provides for indemnification of Great Performances by Kensington "for any and all losses, including reasonable attorneys' fees, that they might sustain in connection with Plaintiff's Class Action Complaint" (NYSCEF Doc. No. 42, paragraph 16).

On January 31, 2019, Kensington filed a motion to dismiss the Third-Party Complaint pursuant to CPLR 3211(a) (1) and (7). (NYSCEF Doc. No. 38).

Discussion

The Legal Standard for a Motion to Dismiss

In deciding a motion to dismiss for failure to state a cause of action, the court must accept all allegations in the complaint as true (*Allianz Underwriters Ins. Co. v. Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dep't 2004]). "It is well settled that a court, when deciding whether to grant a motion to dismiss pursuant to CPLR 3211, must take the allegations asserted within a plaintiff's

complaint as true and accord plaintiff the benefit of every possible inference, determining only whether the facts as alleged fit within any cognizable legal theory” (*Samiento v World Yacht, Inc.*, 10 NY3d 70, 79 [2008]). The complaint must be liberally construed, viewed in the light most favorable to the plaintiff, and the plaintiff must be given the benefit of all reasonable inferences (*Allianz Underwriters Ins. Co.*, 13 AD3d at 174). The court determines “only whether the facts as alleged fit within any cognizable legal theory” *Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted]). “The criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*id.* at 88 [internal quotation marks and citation omitted]).

Kensington’s Motion to Dismiss

Kensington now moves to dismiss the third-party action on two grounds. On the first ground, Kensington argues that there is no right of contribution or indemnification for employers found liable under New York Labor Law § 196-d whether contractual or otherwise. New York Labor Law section 196-d, “Gratuities,” provides:

No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee.

Kensington argues that “for at least twenty (20) years it has been the law in the Second Circuit that there is no right of contribution or indemnification for employers found liable under the Fair Labor Standards Act (FLSA)” (memorandum of law in support at 4, citing *Herman v RSR Sec. Servs.*, 172 F3d 132, 144 [2d Cir 1999]). Since *Herman*, courts in that circuit have

expanded that concept to further hold that contractual provisions by a third party to indemnify an employer for an FLSA violation are not enforceable (*id.* at 4, citing *Gustafson v. Bell Atl. Corp.*, 171 F Supp2d 311, 327 [SD NY 2001]).

Kensington further relies on the decision in *Gustafson* for the proposition that a defendant employer may not evade this prohibition by attempting to seek the same relief under a different label (such as breach of contract) (NYSCEF Doc. No. 46, at p. 5 citing *Gustafson*, 171 F Supp2d at 327-28). Kensington supports this argument by offering the public policy for this rule: “The reasoning for these decisions is quite obvious; “[a]llowing indemnification in cases such as this would permit employers to contract away their obligations under the FLSA, a result that flouts the purpose of the statute” (*id.* at 4 quoting *Gustafson*, 171 F Supp2d at 327).

Kensington further argues that the Kensington Vendor Agreement was intended to indemnify Great Performances from negligence or misconduct by Kensington, not negligence or misconduct by Great Performances. According to Kensington:

Clearly, the indemnification clause in the Kensington Vendor Agreement was intended to indemnify Great Performances from negligence or misconduct by Kensington, not negligence or misconduct by Great Performances. The indemnification language clearly represents this intent. The additional language that specifically addresses wage claims, wage and hour law violations, over time wage claims, and tax withholding clearly were inserted so as to specifically ensure that Kensington was paying its own employees (and withholding their taxes) appropriately under the law and that Great Performances would not be held financially responsible for Kensington's negligent or intentional misapplication of laws as they relate to employee wages, tax withholding and other similar concerns. (NYSCEF Doc. No. 46, at pp.11-12).

In its opposition, and with respect to the indemnification clause, Great Performances argues that the Kensington Vendor Agreement's broad and unambiguous language requiring Kensington to indemnify Great Performances for all claims, losses and damages in connection with any claim alleging a violation of state or federal wage, hour and tip laws, permits it to

receive and seek indemnification. Specifically, Great Performances argues that based on this language, it has plainly stated a claim for indemnification for plaintiffs' claims, pursuant to New York Labor Law § 196-d.

In its submission, Great Performances agrees that the precedent set by the federal courts, whether or not applicable here, stands for the limited proposition that “there is no right of contribution or indemnification for employers found liable under the FLSA” (memorandum of law in opposition at 9 quoting *Herman*, 172 F 3d at 144 and citing to *Fernandez*, 2014 WL 12778829, at *6 (“employers who are found liable for FLSA violations have no right to seek contribution or indemnification”) and *Gustafson*, 171 F Supp2d at 327). Yet, Great Performances argues that New York case law upholds the proposition that claims pursuant to the New York Labor Law may be subject to indemnification. For this proposition, Great Performances cites to two state court cases: *Boxer v Lee*, 2017 NY Slip Op 32550 [U] WL 6025526, at *5 (Sup Ct, NY County, 2017) (defendant obligated to indemnify plaintiff owner of a restaurant for FLSA and New York Labor Law claims, which were “encompassed by the various indemnification provisions of th[e] agreements between the parties) and *Membrives v HHC TRS FP Portfolio LLC*, 2017 WL 10410390 NY Slip Op 32922 [U] (Sup Ct Nassau County 2017) (staffing company that agreed to indemnify Hyatt hotel for “all claims arising from the services performed by [the staffing company], including claims by employees” was not a necessary party to New York Labor Law § 196-d action brought by employee against Hyatt because Hyatt “need simply notify [the staffing company] of the present action in order to bind [the staffing company] by the judgment”).

Great Performances additionally informs the court that there are federal cases that stand for the proposition that indemnification for employers found liable under the FLSA is

permissible, citing to federal cases in the Second Circuit that have held that claims arising under the FLSA and/or New York Labor Law are subject to indemnification (see, e.g., *Paganas v Total Maintenance Solution, LLC*, 220 F Supp3d 247 ([ED NY 2016] (Weinstein, J.) [vacated and remanded on separate grounds]); *Amaya v Garden City Irrigation, Inc.*, 2011 WL 564721 [ED NY Feb. 15, 2011], No. 03-CV-281 (FB) (RML)); *Bogosian v All Am. Concessions*, 2011 WL 4460362 [ED NY Sept. 26, 2011] No. 06-CV-1663 (RMM) (RML)).

Finally, Great Performances argues that Kensington's motion must be denied because there has not yet been a determination that Great Performances is an "employer" for the purposes of New York Labor Law § 196-d. According to Great Performances, the determination of whether Great Performances and/or Kensington were "employers" for purposes of New York Labor Law § 196-d presents a complex question of fact unsuitable for disposition at the pleadings stage, citing *Allen v So-Clear Beverages, LLC*, No. 650823/2016 2017 WL 6316311, No. 650823/2016 at *5 ([Sup Ct, NY County 2017 [(whether defendant "was plaintiff's employer is an issue of fact")]).

On reply, and with respect to this last point, Kensington argues that Great Performances' status as an employer "is irrelevant to the decision at hand" (Kensington reply memorandum at 12). Kensington argues: "[e]ssentially, if it turns out that Third Party Plaintiff is not an 'employer' for N.Y. Labor Law § 196-d purposes, then there is no claim against Third Party Plaintiff, and thus, no claim for indemnification against [Kensington]. However, if [Great Performances] is an 'employer' for N.Y. Labor Law § 196-d purposes, then the case law previously cited by Kensington which stands for the proposition that an employer is not entitled to contractual indemnification for a N.Y. Labor Law § 196-d claim would apply. In either

circumstance, there is no valid indemnification claim against Kensington” (NYSCEF Doc. No. 77, at p. 12).

The court finds that Kensington is correct on this point and for the following reasons grants Kensington’s motion to dismiss. According to both federal and state case law, the rule is that there is no right of contribution or indemnification for employers found liable under the FLSA and the New York Labor Law provisions. The Fourth Department in *Delphi Healthcare PLLC v Petrella Phillips LLP*, 158 AD3d 1329 [4th Dept 2018], honored the precedent set forth by the Second Circuit in *Herman*, with respect to the indemnification of an employer for FLSA and New York Labor Law claims, and applied it in the state court.

In *Delphi Healthcare*, plaintiffs commenced an action, alleging accounting malpractice and breach of contract, on the grounds that they had hired defendants as their accountants, in part to ensure that plaintiffs were in compliance with the overtime compensation and wage notice requirements set forth in the Federal Fair Labor Standards Act (FLSA) and New York Labor Law. Plaintiffs therein alleged that defendants failed to provide the agreed upon services, which resulted in a class action lawsuit being commenced against plaintiffs in federal court on behalf of plaintiffs' current and former employees. Plaintiffs sought indemnification from defendants, for which the Court granted defendants’ motion to dismiss. For this finding, the Fourth Department adopted the lineage of federal cases on this issue, including *Herman* and *Gustafson*, to hold:

[d]efendants contend that Supreme Court should have granted their motion in its entirety because the remaining causes of action and classes of damages constitute requests for indemnification, which are barred by the FLSA. It is well established that ‘there is no right of contribution or indemnity for employers found liable under the FLSA’ (*Herman v RSR Sec. Servs. Ltd.*, 172 F.3d 132, 144 [2d Cir 1999]), and the FLSA preempts any conflicting provisions of state labor laws, including those of New York (*see id.*) A party may not avoid this bar on indemnity by seeking indemnification damages through other legal theories (*see Lyle v Food Lion, Inc.*, 954 F.2d 984, 987 [4th Cir1992]; *Flores v Mamma Lombardis of Holbrook, Inc.*, 942 FSupp2d 274, 278 [E.D.N.Y.2013]; *Gustafson v Bell Atl. Corp.*, 171 F Supp2d 311, 328 [S.D.N.Y.2001]).

(*id.* at 1329-1330).

Furthermore, subsequent decisions by district courts in the Second Circuit have followed *Herman* and extended its reasoning to contractual indemnification claims, as well as indemnification claims for liability under the New York Labor Law (see, e.g., *Gustafson*, 171 F Supp. 2d at 328 [SD NY 2001]); *Holt v Animation Collective, Inc.*, 2014 WL 1413548, *3 [SD NY Apr. 10, 2014, No. 13-Civ.-2552 (KBF)]; *Garcia v Cloister Apt. Corp.*, 2018 WL 1353274, *2 [SD NY 2018], No.16-CV-5542 (LTS); *Araujo v Macaire*, 2020 WL 1816189 *8 [SD NY April 10, 2020, 16-Civ-9934 (KNF)].

Additionally, it is of no consequence that Kensington might be a co-employer with respect to the question of indemnification, since the court in *Gustafson* stated: “[e]ven assuming JAG [the moving party] were found culpable for FLSA violations as plaintiff’s “co-employer,” the right to indemnification is still absent”. (*id.* at 3280).

In its decision in *Garcia*, the court followed the precedent set forth in *Herman*, holding that there is “no right of contribution or indemnification for employers found liable under the FLSA” and noted that subsequent decisions in this circuit have followed *Herman* and extended its reasoning to contractual indemnification claims, as well as indemnification claims for liability under the New York Labor Law citing *Gustafson* and *Holt*, 2014 WL 1413548, at *3 (rejecting indemnification claim under the New York Labor Law).

In *Araujo v Macaire*, decided on April 10, 2020, the Southern District cited several decisions from the Eastern and Southern Districts that have expanded the Circuit’s reasoning in *Herman*, holding that the New York Labor Law, which is similar to the FLSA, also cannot support contribution or indemnification claims (*Araujo*, 2020 WL 1816189 at *8 [SD NY April 10, 2020]). Further, the Court held that the New York Labor Law’s bar on contribution and

indemnification claims extends to attempts to utilize New York common law or other contracts and agreements as the source of contribution or indemnification, when the underlying claim is based on the New York Labor Law (*id.*).

With respect to the three EDNY decisions that Great Performances' cites to support the proposition that indemnification is appropriate here, the court in *Garcia* states:

The Court acknowledges that at least three courts in this circuit have enforced contractual indemnification claims against employers who are liable under FLSA, but discerns no principled reason justifying a departure from Second Circuit precedent or the prevailing law in this circuit from those cases, which do not discuss *Herman* at all" See *Bogosian*, 2011 WL 4460362, at *3-4; *Amaya*, 2011 WL 564721, at *5; *Paganas*, 220 F. Supp. 3d 247, 263. (*Garcia*, 2018 WL 1353274, *3).

Thus, well established precedent holds that employers have no right to seek indemnification for a claim pursuant to the New York Labor Law. This court agrees that where employers can contract away their obligations under the statutes, enacted to protect employees, it would undermine an employer's willingness to comply with their obligations under those laws. For this principle, the court relies on the Fourth Department's decision in *Delphi Healthcare*, as well as the decisions from the federal bench, including *Herman* and *Gustafson*. This principle is applicable even where the right to indemnification is set forth clearly in an agreement between the parties.

The court next addresses the questions raised concerning Great Performances' status as an employer. While acknowledging that this is a fact question that has not yet been determined in this action, the court finds it is not necessary to make this determination to grant Kensington's motion to dismiss. If there is a finding that Great Performances is an employer, within the meaning contemplated pursuant to Labor Law Article 6 § 190(2), Labor Law Article 19 § 651(5), 12 NYCRR § 146-3.2, as alleged in the complaint, Great Performances, as an employer,

has no right to indemnification from Kensington for any claim under the Labor Law.

Accordingly, in that instance, as outlined above, the claim against Kensington would be dismissed. Likewise, in the event of a determination that Great Performances is not an employer of the plaintiffs in this action, the claim against Great Performances would be without merit (*see Samiento v World Yacht, Inc.*, 10 NY3d at 70).

A finding that Great Performances is not the “employer,” pursuant to the New York Labor Law, as alleged in the complaint, would undermine plaintiffs’ Section 196-d claim, leaving it without merit, thereby obviating Great Performances’ need for indemnification from Kensington. The employer/employee relationship is key to a Section 196-d claim. The Court in *Samiento* noted that the drafters of this section “sought to end ‘unfair and deceptive practices’ of an employer retaining money paid by a patron ‘under the impression that he is giving it to the employee, not to the employer’” (*id.* at 79, fn 4 citing Mem. of Indus Commr, June 6, 1968, Bill Jacket, L. 1968, ch. 1007 at 4).

In *Bynog v Cipriani Group, Inc.*, the Court found that the primary issue before it was whether plaintiffs, professional banquet waiters, were entitled to recover, pursuant to Labor Law § 196-d, certain payments, alleged to be gratuities, made as part of catering contracts and held that because plaintiffs were independent contractors and not employees of the defendants, they could not recover payments under New York Labor Law Section 196-d (*Bynog*, 1 NY3d 193, 196 [2003]). Finally, in *Bynog*, the Court of Appeals noted that Section 196-d is set forth under Article 6 of the Labor Law, which governs the “employer’s payment of wages and benefits to employees” (*Bynog*, 1 NY3d at 198). The *Bynog* Court continued: “[t]he parties agree that the critical inquiry in determining whether an employment relationship exists pertains to the degree of control exercised by the purported employer over the results produced or the means used to

achieve the results” (*id.*). Thus, a finding that Great Performances is not an “employer” under the definition set forth in the Labor Law would render plaintiffs’ claim without merit.

Consequently, either finding, concerning Great Performances’ status as an employer here, would undermine its indemnification claim against Kensington. Thus, even though the court agrees that such an inquiry must be made with respect to plaintiffs’ claims against Great Performances, there is no reason why such an inquiry would mandate keeping Kensington in this action. Accordingly, Kensington’s motion to dismiss is granted. In accordance with the foregoing, it is,

ORDERED that the motion of third-party defendant Kensington Events, Inc., to dismiss the complaint pursuant to CPLR 3211(a) (1) and (a) (7) (motion sequence 002) herein is granted and the third-party complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said third-party defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

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

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

4/27/2020
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE