

Khorassani v Zaccaria
2021 NY Slip Op 33197(U)
March 18, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2017-3486
Judge: Christopher E. Cahill
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ULSTER

MOHAMMAD KHORASSANI and
160 NEW PALTZ, LLC,

Plaintiff,

**AMENDED
Decision and Order
Index No. EF2017-3486**

-against-

JOSEPH ZACCARIA and
ROSEMARIE ZACCARIA,

Defendants.

Supreme Court, Ulster County
Motion Return Date: September 30, 2020
RJI No. 55-18-00920

Present: Christopher E. Cahill, JSC

Appearances: **YOUNG SOMMER LLC**
Attorneys for Plaintiffs
Executive Woods
5 Palisades Drive
Albany, New York 12205
By: Joseph F. Castiglione, Esq.

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Attorneys for Defendants
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White Plains, New York 10601
By: Nicholas M. Ward-Willis

Cahill, J.:

This action concerns property located at 158-160 Main Street, New Paltz, New York (hereinafter “the Property”). Plaintiff 160 New Paltz, LLC purchased the Property from Defendant Joseph Zaccaria and Rosemarie Zaccaria in 2016. Plaintiff Mohammad Khorassani is the sole member of 160 New Paltz LLC.

Background Information and Procedural History

By summons and complaint filed on November 30, 2017, 160 New Paltz LLC and Mohammad Khorassani (collectively referred to as “160 NP”) commenced an action against defendants pursuant to Navigation Law § 181 (5), alleging that there was a discharge of petroleum on the Property when defendants owned it. Specifically, 160 NP alleges that it purchased the Property from defendants pursuant to a contract of sale, which closed in October 2016. 160 NP alleges that defendants owned the Property for approximately 30 years prior to the sale. It alleges that the parties agreed to a sale price of \$1,050,000.00 for the Property and an additional payment of \$350,000.00 to defendants.

160 NP’s Allegations

160 NP alleges that, prior to closing on the Contract, defendants informed Mr. Khorassani that (1) there were three underground storage tanks (“USTs”) at the Property, and (2) the USTs were used as part of defendants’ prior gasoline service station business on the Property. 160 NP alleges that it retained an excavating company in July 2017 to remove the three USTs and, during excavation, the company encountered “historic petroleum impacted native soil” on the Property. 160 NP alleges “[i]t was determined that the impacted soils related to a historic petroleum release at the Property that occurred during [d]efendants’ ownership and/or use of the Property,” well before 160 NP acquired the Property. It alleges that defendants did not disclose the historic USTs located on the Property, the petroleum spill from those USTs, or that the USTs “had been removed during defendants’ ownership and operation of the gasoline station or that contaminated soils had been left in the ground where the historic USTs had been situated.”

160 NP alleges it contacted the New York State Department of Environmental Conservation (“NYSDEC”) to report the petroleum-impacted soils. It alleges that the NYSDEC directed 160 NP to remediate the impacted soils. 160 NP alleges that, as part of the remediation, it retained consultants to test soil samples and groundwater. It also alleges that the test results showed “the soil and groundwater had been impacted by a historic petroleum release occurring at the Property from the area of the undisclosed historic USTs before 160 LLC acquired the Property.” 160 NP alleges that defendant Joseph Zaccaria visited the Property during the remediation, telling one of the excavator employees that (1) he had previously removed USTs from the Property; (2) the petroleum residual 160 NP discovered related to prior, historic USTs and his removal of them; and (3) hazardous substances and petroleum product were released to the subsurface of the Property from the historic USTs and defendants’ gas station operation.

160 NP asserts only one cause of action in the complaint based on Navigation Law § 181 (5). In support of its cause of action, 160 NP alleges (1) “a discharge of petroleum occurred on the Property during [d]efendants’ ownership of Property that was related to [d]efendants’ ownership and/or use of the Property,” or, in the alternative, “a discharge of petroleum existed on the Property during [d]efendants’ ownership of the Property.” 160 NP alleges (1) defendants failed to remediate the prior petroleum discharge; and (2) at the time of the Contract, defendants knew the petroleum contamination related to the prior petroleum discharge. Notably, 160 NP alleges it “had no prior ownership, control or use of the Property until [it] acquired the Property under [the Contract], [and] had no involvement with the prior discharge of petroleum occurring during [d]efendants’ ownership and use of the Property.” 160 NP alleges it paid

approximately \$160,000 in cleanup and remedial costs, and incurred “additional damages resulting from additional cleanup and remedial costs that may be required by the NYSDEC to remediate the Property and address the historic petroleum discharge.” 160 NP also seeks recovery for attorneys’ fees and litigation costs.

Plaintiff’s Summary Judgment Motion

After joinder of issue, 160 NP moved for summary judgment pursuant to CPLR 3212, seeking \$109,571.90 in damages it allegedly paid to remediate the petroleum-contaminated soil. 160 NP contended that the discharge on the Property occurred over a 30-year period when defendants owned the Property and operated a gas station. In opposition, defendants relied on their attorney’s affirmation in which defendants’ attorney argued that a prior property owner has no obligation to indemnify a subsequent property owner for environmental cleanup costs where the parties have expressly and contractually acknowledged the potential liability of the prior owner for petroleum-related damage. Defendants relied on the Contract’s rider between the parties concerning the 160 NP’s agreement to purchase the Property in “as is” condition.

This court concluded that 160 NP met its burden in support of the summary judgment motion by submitting evidence demonstrating “defendants operated a gas station with three USTs for thirty (30) years, and . . . [160 NP] had not yet used the property. . . .” This court also concluded that defendants had not met their burden because their reliance on the Contract’s “as is” provision was misplaced. This court reasoned that “it is well settled that a so-called ‘as is’ clause in a land contract does not preclude a cause of action based on the strict liability imposed by the Navigation Law for prohibited petroleum discharges. . . .”

Defendants' Motion to Vacate

Several months thereafter, defendants moved for an order vacating the October 18, 2019 Decision and Order pursuant to CPLR 5015 (a) (3), claiming 160 NP procured summary judgment based on fraud and misrepresentation. The crux of the alleged misrepresentation is Mr. Khorassani's claim that he had not operated the Property before the sale in 2017. In support of the motion, defendants contended (1) Mr. Khorassani operated a gas station at the Property since the early 1990s as a manager, lessor, and owner; (2) Mr. Khorassani is not an innocent purchaser; (3) defendants have not operated a gas station at the Property since 1992; (4) Mr. Khorassani was the owner and president of non-party Hudson Service Management, Inc.; (5) Hudson leased the premises and operated a gas station at the Property since 1996; (6) 160 NP paid for the remediation costs and removal of USTs at the Property and the installation of new tanks at the Property; (7) defendants entered into a lease agreement requiring Hudson to remediate the Property for any petroleum spills and install new USTs; (8) Hudson admitted in an agreement and stipulation in 2009 that it was defendants' tenant and operated a gas station mini mart at the Property; (9) Mr. Khorassani signed the agreement and stipulation as Hudson's president; and (10) Mr. Khorassani owns 160 NP, which is the successor-in-interest to Hudson under the lease agreement. Defendants claimed that 160 NP did not disclose its affiliation and the 1996 lease agreement provisions with Hudson to this court.

In opposition, 160 NP contended that defendants (1) presented this court with the same arguments in support of the prior summary judgment motion as it did in support of

the vacatur motion, (2) defendants failed to support those same arguments with evidence, and (3) mischaracterized the facts in this matter.

This court granted defendants' motion and vacated the Decision and Order, noting that Mr. Khorassani submitted an affidavit in support of the summary judgment motion, referring to third parties generically and failing to disclose that he and Hudson were those third parties that operated a gas station at the Property for over 20 years. This court also pointed out that 160 NP's expert submitted an affidavit in support of the summary judgment motion in which she stated, "Mr. Khorassani bought the site in 2017 and did not operate it before that time." This court stated,

"Based on those statements and other facts, this court awarded the plaintiff summary judgment finding the 'plaintiff has not yet used the property for any purpose.' The court now finds that the plaintiff is not the innocent purchaser he previously portrayed. After a review of the record and the submissions presented, the court hereby grants the motion to vacate the prior Order, Decision and Judgment of this court If the full record had been presented on the prior motion the court would have denied summary judgment as there are many questions of fact that cannot be determined as a matter of law."

Defendants' Motion to Dismiss the Complaint

Defendants now move to dismiss the complaint pursuant to CPLR 3211 (a) (7). Even though the parties rely on affidavits and other documentary evidence, they do not seek conversion of the motion to dismiss to a summary judgment motion. Furthermore, defendants' motion papers are clear that they are relying solely on CPLR 3211 (a) (7).

Defendants contend that neither 160 NP nor Mr. Khorassani has standing in this action because Mr. Khorassani's affidavits show Hudson, not 160 NP, paid for the remediation. Defendants argue that Mr. Khorassani's affidavits flatly contradict 160 NP's allegations that it sustained direct and indirect damages from the petroleum discharge on

the Property. Defendants also argue that, even assuming 160 NP and Mr. Khorassani have standing to bring their claim, they cannot recover damages because they are not “faultless parties” under the Navigation Law.

In opposition, 160 NP argues that Mr. Khorassani is the sole owner of 160 NP and Hudson and, therefore, any money those companies paid for remediation constitutes lost profits to him. 160 NP also contends that Mr. Khorassani was unaware of the contamination prior to purchasing the Property and, if he had known about the contamination and cost to remediate it, he would not have agreed to the price he paid for the Property. It also argues that “the situation of Hudson having a claim for cleanup costs against 160 LLC as the innocent landowner” is resolved because 160 NP and Hudson signed an “Assignment & Assumption of Costs & Lease Amendment” a month after defendants made this motion. Finally, 160 NP argues it has standing to seek damages for the remediation costs because Hudson can commence an action seeking contribution from 160 NP.

In further support of the motion, defendants argue that 160 NP’s allegations concern only its claim for remediation costs for the petroleum discharge, not lost profits. Defendants point out that 160 NP does not plead that it sustained damages by agreeing to a sale price without first knowing about the alleged contamination. Defendants also point out that the “Assignment & Assumption of Costs & Lease Amendment” does not establish 160 NP’s standing because (1) it cannot confer standing retroactively, and (2) the Assignment did not transfer Hudson’s ownership of its claims.

For the following reasons, this court denies defendants’ motion to dismiss as to 160 NP and grants the motion to dismiss as to Mr. Khorassani.

Analysis & Decision

CPLR 3211 (a) (7) states, “A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: . . . the pleading fails to state a cause of action.” “On a motion to dismiss pursuant to CPLR 3211 (a) (7), the pleading is to be afforded a liberal construction . . .” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). The court accepts “the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory . . .” (*id.* at 88). “[A]llegations consisting of bare legal conclusions, as well as factual claims flatly contradicted by the record, are not entitled to any such consideration” (*Gertler v Goodgold*, 107 AD2d 481, 484 [1st Dept 1985], *aff’d* 68 NY2d 946 [1985]). The criterion on a CPLR 3211 (a) (7) motion is “whether the proponent of the pleading has a cause of action, not whether he has state one” (*Leon*, 84 NY2d at 88 [quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)]); *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]).

“The grounds for dismissal under CPLR 3211 (a) (7) are strictly limited; the court is not allowed to render a determination upon a thorough review of the relevant facts adduced by both parties, but rather is substantially constrained in its review, examining only the plaintiff’s pleadings and affidavits” (*Carr v Wegmans Food Markets, Inc.*, 182 AD3d 667 [3d Dept 2020][citing *Rovello v Orofino Realty Co.*, 40 NY2d at 635) & *Sokol v Leader*, 74 AD3d 1180, 1181 (2d Dept 2014)]. “[A] court resolving a motion to dismiss for failure to state a claim cannot base the determination upon submissions by the defendant – without regard to how compelling claims made in submissions may appear (*Carr*, 182 AD3d 667). The party opposing a CPLR 3211 (a) (7) motion “is allowed a

remedy not available to the party seeking dismissal; the court ‘may freely consider affidavits submitted by the plaintiff to remedy defects in the complaint (*id.*).

160 NP seeks direct and indirect damages under the Navigation Law. Navigation Law § 181 (1) provides that “[a]ny person who has discharged petroleum” is strictly liable, “without regard to fault, for all cleanup and removal costs and all direct and indirect damages.” Navigation Law § 181 (5) provides: “Any claim by any injured person for the costs of cleanup and removal and direct and indirect damages based on the strict liability imposed by this section may be brought directly against the person who has discharged the petroleum.”

A person can maintain a claim pursuant to the Navigation Law only when he or she “is not responsible for the discharge” (Navigation Law § 172 [3]). “Discharge” is defined as an “action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum” (Navigation Law § 172 [8]). The Court of Appeals held, in *White v Long* (85 NY2d 564 [1985]), that while a person who “is responsible for the discharge” may not bring a claim under Navigation Law § 181 (5), the owner of the property at which petroleum has been released may have a claim under the Navigation Law provided such person did not cause or contribute to the contamination (*id.* at 568-569). Once it is established that the property owner caused or contributed to the spill, the property owner will be precluded from seeking indemnification from another discharger (*see id.* at 181).

In this case, 160 NP alleges that an excavation company it hired after the purchase of the Property uncovered historic petroleum-contaminated soil and groundwater. 160 NP further alleges (1) the contractor concluded that the impacted soils and groundwater related to petroleum discharge occurring well before 160 NP purchased the Property, (2)

defendants had not disclosed to 160 NP the petroleum discharge and that the contaminated soils had been left in the ground, and (3) Defendant Joseph Zaccaria made various statements admitting the petroleum the contractor recovered was related to a petroleum that occurred during his operation of the Property in the 1980s. It alleges “Defendant Joseph Zaccaria admitted to the contractor . . . that there had been USTs in the ground during [d]efendants’ historic ownership and/or operation of the gasoline service station, and that hazardous substances/petroleum product constituents had been released to the subsurface from the prior existing USTs and operations at the Property.”

160 NP also alleges it “had no prior ownership, control or use of the Property until [it] acquired the Property under [the Contract],” and was not involved with the discharge. 160 NP alleges it paid approximately \$160,000 in cleanup and remedial costs of the petroleum discharge. It alleges that 160 NP is entitled to damages under Navigation Law § 181 for (1) \$160,000 plus interest, and damages resulting from additional cleanup and remedial costs that NYSDEC may require to remediate the property, and (2) attorneys’ fees and litigation costs.

Standing

160 NP concedes in its motion papers that Hudson, not 160 NP, paid for the remediation. The affidavit Mr. Khorassani submitted in opposition to the motion to vacate supports this fact. The motion papers and affidavit flatly contradict 160 NP’s allegations that it sustained damages for the remediation costs. Mr. Khorassani’s sworn statements show that neither he nor 160 NP can establish standing stemming from the remediation costs Hudson incurred. Moreover, Mr. Khorassani’s allegations that he is the sole operator of Hudson and 160 NP have no impact on the standing issue. He does

not allege any facts to support this court piercing the corporate veil or that the owner of a closely-held corporation has standing to seek damages for the alleged losses of the corporation (*see, e.g., Uribe v Merchants Bank of New York*, 239 AD2d 128, 128 [1st Dept 1997], *aff'd* 91 NY2d 336 [1998][noting that a plaintiff may not bring an action in his individual capacity to recover for the wrongdoing done to a corporation]).

Despite the foregoing, 160 NP establishes its standing in two ways. First, 160 NP argues that it has sustained damages by paying more for the Property than it would have had defendants disclosed the contamination prior to the sale of the Property. Defendants correctly contend that 160 NP's claim is not stated in its complaint; however, well-settled law allows this court to refer to affidavits to remedy the defect in 160 NP's allegations on incurring indirect damages (*see Carr*, 182 AD3d 667). Mr. Khorassani stated in his affidavits in opposition to defendants' motion to vacate that, if he had known about the petroleum discharge prior to the sale of the Property, he would not have paid the sale price he paid. This allegation of lost profits constitutes indirect damages and establishes 160 NP's standing in this action (*see e.g., AMCO Intern., Inc. v Long Island Railroad Co.*, 302 AD2d 338, 340 [2d Dept 2003][recognizing a lost profits damages claim within the context of the Navigation Law § 181 (1)]).

Second, as previously stated, 160 NP alleges in the complaint that it has incurred attorney's fees and litigation costs in commencing and litigating this action pursuant to the Navigation Law. Attorney's fees and litigation costs constitute indirect costs in an action pursuant to Navigation Law (*see e.g., Strand v Neglia*, 232 AD2d 907, 909 [3d Dept 1996]). Therefore, this court rejects defendants' standing argument as it applies to 160 NP.

Mr. Khorassani has not stated a cause of action on his own behalf in the complaint or affidavits. As previously noted, well-settled case law holds that an individual, even in a closely-held corporation, cannot assert a cause of action to recover wrongdoing done to a corporation (*Uribe v Merchants Bank of New York*, 239 AD2d at 128). 160 NP does not allege any facts to support a cause of action to recover damages for any wrongdoing done to Mr. Khorassani in his individual capacity. In fact, Mr. Khorassani states in his affidavits that he is claiming damages based on wrongdoing to Hudson and 160 NP as the corporations' sole operator. Therefore, Mr. Khorassani has not demonstrated his standing in this action pursuant to Navigation Law § 181. Accordingly, this court grants that portion of defendants' motion to dismiss as it applies to Mr. Khorassani.

160 NP's Navigation Law § 181 (5) Cause of Action

This court concludes that 160 NP states a cause of action pursuant to Navigation Law § 181 (1) & (5). It alleges in the complaint that, after purchasing the Property, excavation uncovered that a prior petroleum discharge impacted soil and groundwater on the Property. 160 NP also alleges it was determined that the petroleum spill occurred during defendants' ownership and use of the Property. It alleges that damage concerning "historic petroleum impacted native soil" on the Property from the discharge happened well before 160 NP purchased the property. 160 NP alleges it had no prior ownership, control or use of the Property until 160 NP purchased it. It also alleges that 160 NP had no involvement with the prior discharge of petroleum occurring during defendants' ownership and use of the Property. 160 NP alleges that defendant Joseph Zaccaria told an excavation contractor which 160 NP hired that (1) he had previously removed USTs from the Property, (2) the historic petroleum residual which 160 NP discovered related to

those USTs and Mr. Zaccaria's removal of them during defendants' ownership and operation of a gasoline service station, and (3) hazardous substances had been released to the subsurface of the Property from the prior USTs. 160 NP alleges it did not know about the historic contamination of the Property until the excavation contractor it hired uncovered the contaminated soil and groundwater.

160 NP alleges that the petroleum-related substances in the soil were at concentrations above applicable New York State regulatory standards. It alleges that Mr. Khorassani contacted the NYSDEC to report the petroleum-impacted soil, and the NYSDEC directed 160 NP to remediate the Property. 160 NP alleges it sustained indirect damages for attorneys' fees and litigation costs and lost profits for paying a higher price for the Property than it would have if Mr. Khorassani knew about the soil and groundwater contamination prior to the sale.

The foregoing allegations state that defendants were responsible for the discharge of petroleum on the Property, and that 160 NP did not contribute to the contamination. The allegations state that 160 NP is strictly liable for the cleanup and removal of the petroleum on the Property as its owner but that 160 NP is not a "discharger" as defined in the Navigation Law. Therefore, 160 NP states a cause of action under the Navigation Law § 181 (5).

This court rejects 160 NP's arguments that, based on its assignment agreement with Hudson, 160 NP has standing to seek the remediation costs Hudson incurred. Defendants point out defects with the agreement that place its enforceability in question. Those factual and legal issues are inappropriate for this court to decide in the context of motion to dismiss pursuant to CPLR 3211 (a) (7).

This court also rejects defendants' argument that an indemnity provision in an alleged lease between defendants and non-party Dutchess Oil, Inc. undermines 160 NP's Navigation Law §181 (5) claim. Defendants argue that the lease provision demonstrates that 160 NP is not an innocent purchaser of the Property for purposes of liability under the Navigation Law. Neither the affidavit of defendants' attorney, nor the lease itself flatly contradict 160 NP's allegations that it was not a landowner or discharger when the alleged soil and groundwater contamination occurred. 160 NP points out that (1) the lease upon which defendants' rely is not signed by 160 NP or Mr. Khorasanni, (2) Mr. Khorasanni was merely an employee of Dutchess when the lease was signed, and (3) neither Hudson nor Mr. Khorasanni expressly assumed the lease. Thus, this court's resolution of factual and legal issues concerning the lease's indemnity provision and whether 160 NP is an innocent purchaser is inappropriate within the context of a motion to dismiss pursuant to CPLR 3211 (a) (7).

Defendants' Motion for Sanctions

Defendants seek sanctions against 160 NP in the form of attorney's fees pursuant to 22 NYCRR 130-1.1. They argue that Mr. Khorassani made material factual statements that were false in support of 160 NP's summary judgment motion. In particular, defendants argue that 160 NP advances false allegations that (1) 160 NP and Mr. Khorassani were innocent parties who had not contributed to the discharge of petroleum on the Property; (2) Mr. Khorassani had not previously operated a gas station on the Property; (3) Mr. Khorasanni spent money to remediate historical contamination discovered on the Property; and (4) until they acquired the Property on October 4, 2016, 160 NP and Mr. Khorassani had no involvement whatsoever in the operation of a gas

station on the Property. In support of their sanctions request, defendants rely on this court’s statement in the May 15, 2020 Decision and Order that “the plaintiff is not the innocent purchaser he previously portrayed” and this court’s grant of vacatur of the October 16, 2019 Decision and Order pursuant to CPLR 5015 (a) (3). In further support of their sanctions motion, defendants argue that 160 NP has refused to remove the allegations in the complaint that it, as opposed to Hudson, incurred damages for the remediation of the petroleum discharge. Defendants argue that it has shown the allegations are false and that 160 NP’s refusal to withdraw them constitutes frivolous conduct. This court denies this branch of defendants’ motion for the following the reasons:

Rule 130-1.1 states, in relevant part:

(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct as defined in this Part.

* * *

(c) For purposes of this Part, conduct is frivolous if: . . .
 (3) it asserts material factual statements that are false.
 Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

As an initial point, defendants mischaracterize this court’s statement that “the plaintiff is not the innocent purchaser he previously portrayed” as a finding or holding in the October 16, 2019 Decision and Order. It is not. In the October 16, 2019 Decision and

Order, this court also wrote, “If the full record had been presented on the prior motion, the court would have denied summary judgment as there are many questions of fact that cannot be determined as a matter of law.” The “innocent purchaser” statement is this court’s recognition that defendants presented arguments, within the context of a Navigation Law cause of action, that raise issues of fact on Mr. Khorassani’s ownership, control, or use of the Property prior to 160 NP’s purchase of it. This court accepts 160 NP’s contention that their prior argument in support of summary judgment was framed within the context of whether it was a “discharger” for purposes of liability under the Navigation Law. Thus, this court’s vacatur of the October 16, 2019 Decision and Order does not support a finding of frivolous conduct to justify awarding sanctions.

This court also rejects defendants’ second ground in support of its request for sanctions. As discussed above, 160 NP states a cause of action under the Navigation Law for direct and indirect damages. Moreover, 160 NP advances colorable arguments in support of its claim that 160 NP and Mr. Khorassani have standing to seek damages for the remediation of the Property. Even though this court rejects some of those arguments, as discussed above, 160 NP’s continued pressing of those arguments does not constitute frivolous conduct.

The court has reviewed the parties remaining contentions and concludes they either lack merit or are unpersuasive given the court’s determination (*Hubbard v County of Madison*, 71 AD3d 1313 [3d Dept 2010]).

ORDERED that the portion of defendants’ motion to dismiss the complaint as to plaintiff Mohammad Khorassani is granted; and it is further

ORDERED that the portion of defendants' motion to dismiss the complaint as to 160 New Paltz LLC is denied; and it is further

ORDERED that defendants' motion for sanctions pursuant to 22 NYCRR 130-1.1 is denied.

This will constitute the Decision and Order of the Court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York
~~February~~ 18, 2021
March

ENTER,


CHRISTOPHER E. CAHILL, JSC

Papers considered:

- 1) Defendants' Notice of Motion to Dismiss Complaint and Award Attorney's Fees dated July 29, 2020;
- 2) Defendants' Affirmation of Nicholas M. Ward-Willis in support of motion with annexed exhibits A-J dated July 29, 2020;
- 3) Plaintiffs' Affirmation of Joseph F. Castiglione in opposition of motion to dismiss with annexed exhibit A dated September 16, 2020; and
- 4) Defendants' Affirmation of Nicholas M. Ward-Willis in further support of motion with annexed exhibit K dated October 7, 2020.