

Hyland v MFM Contr. Corp.

2022 NY Slip Op 34057(U)

November 28, 2022

Supreme Court, New York County

Docket Number: Index No. 160196/2016

Judge: James G. Clynnes

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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. JAMES G. CLYNES PART 22M

Justice

-----X		INDEX NO.	<u>160196/2016</u>
MARTIN HYLAND,			04/09/2020,
	Plaintiff,		04/09/2020,
			04/09/2020,
	- v -	MOTION DATE	<u>04/09/2020</u>
MFM CONTRACTING CORP., PHILMORE G. HUGHES,			002 003 004
CITY OF NEW YORK, TECTONIC ENGINEERING &		MOTION SEQ. NO.	<u>005</u>
SURVEYING CONSULTANTS, P.C.			

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 136, 140, 146, 152, 157, 158, 159, 166, 170, 174, 175, 176

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 137, 141, 147, 153, 154, 155, 156, 167, 171, 177

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 114, 115, 138, 142, 148, 150, 160, 161, 162, 168, 172

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 139, 143, 149, 151, 163, 164, 165, 169, 173, 178, 179, 180, 181, 182, 183

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents and following oral argument the motions by Defendant Tectonic Engineering and Surveying Consultants P.C. (Tectonic) seeking summary judgment and dismissal of the complaint and all cross claims against it (Motion Sequence No. 002); by Defendant MFM Contracting Corp. (MFM) seeking summary judgment and dismissal of the complaint and all cross-claims against it (Motion Sequence No. 003); and by Defendant City of New York (City) seeking summary judgment and dismissal of the complaint and all cross

claims against it (Motion Sequence Numbers 004 and 005) are consolidated and decided as follows:

SUMMARY OF THIS ACTION

The following is a personal injury action in which plaintiff alleges that defendants are liable for negligence, and some defendants are also liable for violations of Labor Law § 241(g) and provisions of the Industrial Code governing Protection of Persons Passing by Construction Sites. See 12 NYCRR § 23-1.33. Plaintiff alleges as follows: On October 29, 2016, plaintiff, a pedestrian, was struck by a vehicle operated by defendant Philmore G. Hughes (Hughes) at the intersection of West 29th Street and Ninth Avenue, New York, New York. At the time of the accident, plaintiff was running while training for a marathon. He crossed the street and approached a construction site. There was no construction work being performed because it was Saturday. There were no traffic control agents or flag persons at the site. Plaintiff claims that he did not know if the site was fully or partially closed off the street.

Plaintiff is suing Hughes for failure to properly operate his vehicle at the time of the accident, whose failure resulted in serious injuries suffered by plaintiff. Plaintiff is suing Tectonic, MFM and City for failure to operate, maintain and manage the construction area in a safe and proper manner. Plaintiff alleges causes of action in common-law negligence and violations of various statutes and regulations, including section 241 (6) of the Labor Law.

STANDARD OF SUMMARY JUDGMENT

“It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues” (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). “The substantive law governing a case dictates what facts are material, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment [citation omitted]” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). “To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor [citation omitted]” (*Kershaw v Hospital for Special Services*, 114 AD3d 75, 81 [1st Dept 2013]). “Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial [citation omitted]” (*Id.* at 82).

TECTONIC'S MOTION (MOTION SEQUENCE NO. 002)

Tectonic moves for summary judgment and dismissal from this action. Tectonic argues that it is not a proper party in this action because: (1) Tectonic owed no duty of due care to plaintiff; (2) Tectonic had no involvement in the construction project, except as an overseer and inspector of the construction work, and its main function was to see that project complied with the terms and specifications of the construction agreement; (3) Tectonic committed no affirmative act of negligence at the time of the accident; and (4) the construction site was open and obvious, and plaintiff's own negligence was the sole proximate cause of the accident.

Among the evidence Tectonic submitted for this motion are the deposition testimony of plaintiff, Hughes and representatives of MFM, City and Tectonic, and a copy of its contract with the City Department of Design and Construction (DDC), as it pertains to the subject construction project.

At his deposition, plaintiff testified that he was running and wearing headphones at the time of the accident. The intersection had moderate traffic. He noticed the construction site at the intersection, which was empty of people. Plaintiff saw a green fabric surrounding a metal fence, which he assumed covered the entire intersection. He could not see through the fabric. At the time of the accident, plaintiff was in the middle of the intersection. He stated that there were no cones surrounding the fence and he could not recall any lines demarcating a crosswalk or any plates on the roadway. The intersection was controlled by a traffic control device that he ignored. Plaintiff admitted that the crosswalk signal was signaling to not cross and a light for traffic travelling on West 29th Street was green when he entered the intersection. Despite observing the signal and light, plaintiff continued to run because he observed some pedestrians and cyclists crossing the intersection. Plaintiff was struck by Hughes' vehicle after passing the metal fence. Before the accident, he had not observed the vehicle allegedly due to the fabric on the fence obstructing his view. However, he noted that he did not look in the direction where the vehicle arrived from. Plaintiff also examined photos of the intersection but could not recall if there were cones present at the time of the accident.

Carlos Mendonca, a superintendent of MFM, the general contractor of the project testified on behalf of MFM. Its role in the project was to install water, sewer and utilities and reconstruct roads, curbs and sidewalks. Mendonca stated that Tectonic was retained by City to oversee the project work. Tectonic generally served as a consultant that conducted inspections for quality

control purposes and for compliance with contract specifications. Mendonca asserted that MFM was responsible for the means and methods of construction, including the maintenance and protection of traffic. Although City oversaw the closures of certain areas on the site, MFM had the discretion as to where to close the street. As a result of partial street closures, crossing guards were placed at the intersection only when work was ongoing (this was a City decision).

Mendonca stated that MFM, pursuant to its contract with City, was responsible for all reasonable safety measures, and that MFM provided its own equipment to put these safety measures in place. He noted that there was green fabric on the fencing, claiming that there were reasons for installing the fabric, including privacy and protection from potential dust and debris from the work entering the fencing.

Hughes, the driver whose vehicle struck plaintiff, testified that on the day of the accident, he was traveling westbound on a one-way street towards the West Side highway when he approached the intersection. He stated that the traffic light at the intersection was green for his direction of travel the entire time he observed it. Hughes stated that he did not see plaintiff prior to plaintiff impacting the passenger side of his vehicle. He recalled the green fabric on the fencing and the lack of activity at the construction site. Unlike plaintiff's testimony, he did not recall seeing anyone else crossing the street prior to the accident. He stated that the construction fencing obscured his vision.

Nitish Tailor, representing City, was the Engineer in Charge of the project. He testified that he had no personal involvement in placing traffic agents on the site. However, he stated that City would not place traffic agents at the intersection unless work was being done. DDC hired Tectonic for the project and when work was being performed, Tectonic engineers would be present at the site. He explained that Tectonic had no authority to place crossing guards or agents on the project. While he stated that Tectonic approved the plans for the placement of signs, Tailor admitted that he lacked knowledge of Tectonic's contract with DDC. He also stated that City's specifications for the project included fabric in the fencing.

Peter Roloff, a resident engineer, testified on behalf of Tectonic. He discussed the functions of Tectonic regarding the construction project. He stated that the hiring of traffic agents was City's responsibility; and that MFM, as general contractor, was responsible for erecting protective barriers around street openings, providing crossing guards, and using

and installing fabric on the metal fencing. Roloff stated that Tectonic did not prepare the plans for the construction project or provide materials for use at the site.

Tectonic submits a copy of its contract with DDC, dated September 18, 2014. Section 6.1.1 of the contract provides, in part, the functions of Tectonic with respect to the construction project: Tectonic, as Engineer, shall “provide all services necessary and required for the inspection, management, coordination and administration of the project so that the required construction work is properly executed, completed in a timely fashion, and conforms to the requirements of the construction contract.”

The contract expressly designates Tectonic as an independent contractor, not an agent of City. Furthermore, section 8.08, Appendix A, provides as follows: “The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor (Tectonic) of the City or its respective officers and employees.”

Tectonic contends that plaintiff is a third party with no legal right to sue it under the circumstances. Tectonic refers to *Espinal v Melville Snow Contractors*, 98 NY2d 136 (2002), which held that imposing tort liability in favor of third parties based solely on a contractual obligation was not proper. In *Espinal*, the Court of Appeals concluded that there could be three exceptions to its ruling. These exceptions were when the allegedly negligent party launched a force or instrument of harm against plaintiff; when plaintiff detrimentally relied upon the allegedly negligent party’s continued performance of contractual duties; and when the allegedly negligent party entirely displaced the other party to the contract with respect to maintaining the premises.

Based on the evidence, Tectonic argues that it has not acted pursuant to any exceptions to the *Espinal* rule. Tectonic contends that it did not create any defective or dangerous condition at the intersection at the time of the accident, thus committing no affirmative act of negligence.

Tectonic also argues that plaintiff was negligent in failing to stop after observing the Don’t Walk signal and green light in favor of the traffic. Plaintiff admitted this during his deposition, along with his failure to see Hughes’ vehicle approaching him. Tectonic argues that had plaintiff been less careless he would have avoided the collision. Tectonic states that as a result, plaintiff’s actions prior to the accident constituted the sole proximate cause of the accident. Tectonic notes that the intersection area where there was fencing surrounding the site was open and obvious to any observer at that time.

Tectonic argues that there are no issues of fact as to its lack of liability in this action and

seeks the granting of its motion.

Plaintiff opposes the motion, arguing that Tectonic was responsible for duties beyond inspection, and was responsible for managing the construction site. According to plaintiff, Tectonic had a duty to maintain a safe premises for pedestrians like him. Plaintiff contends that by allowing the installation of fabric on the fencing of the construction site, Tectonic created a force of instrument of harm. Plaintiff submits an affidavit from a professional engineer, Richard Khorigan, who made of assessment of the area and analyzed the evidence. Khorigan concluded that there was a dangerous condition at the time of the accident and that safety measures should have been present. He addressed the fabric on the fence as a hazard and suggested safety measures, like a traffic enforcement agent to be present there. Plaintiff also contends that more than one proximate cause can exist for an accident and that a jury should be allowed to determine the issue of proximate cause.

In reply, Tectonic contends that its role in the construction project was limited to inspection and it was not involved in producing safety measures to protect pedestrians. Tectonic argues that it complied with its contractual obligations. It denies that its activities resulted in launching a force or instrument of harm.

Plaintiff claims that before the accident, the intersection appeared to be closed, when it allegedly was not, and that the appearance that the intersection was closed contributed to his accident. Plaintiff has not, however, sufficiently alleged what constituted the defective condition. The presence of a green fabric on a metal fence on the premises and plaintiff's allegation that the fabric created the illusion that the fencing sealed off the street, do not sufficiently rise to the level of establishing a dangerous condition. The lack of crossing guards, signs and traffic agents allegedly creating an unsafe condition makes more sense and appears more relevant, though no work was being performed on the day of the accident. It would seem that the purpose of safety measures and supplies on a construction site would be significant while work was being done, since it would be necessary to protect the public from potential safely hazards caused by construction work. Here, there was no work being done and the site was fenced off from the public.

Tectonic is subject to the rule that plaintiff cannot seek tort liability from an independent contractor unless plaintiff can allege one of the *Espinal* exceptions. Plaintiff argues that there is an issue of fact as to whether Tectonic launched a force or instrument of harm against him.

Tectonic has shown that its involvement in the construction was contractually confined to inspecting and overseeing the progress of the project. It is clear that the positioning of crossing guards and traffic agents was not the responsibility of Tectonic. Even if Tectonic's role was to offer suggestions as to safety measures to City, this would not constitute the launching of a force or instrument of harm. Based on the evidence, Tectonic did not create a dangerous condition. At most, it could be liable if it had notice of a dangerous condition and there was a timely opportunity to remedy it. But that has not been shown by plaintiff, even as an issue of fact.

MFM'S MOTION (MOTION SEQUENCE NO. 003)

MFM, the general contractor of the construction project, moves for summary judgment and dismissal on the grounds that it has no duty towards plaintiff; that the Labor Law and Industrial Code claims against it must be dismissed as inappropriate; that plaintiff's actions were in violation of section 1112 (c) of the Vehicle and Traffic Law (VTL), which govern pedestrian control signals; that it did not create a dangerous or defective condition on the premises; and that it acted in compliance with legal and contractual specifications.

MFM relies on the deposition testimony submitted by Tectonic for its motion. MFM also submits documentary evidence, including its construction contract with City. It submits an affidavit from a professional engineer Joseph Caranizzo, who provides an assessment of MFM's activities at the construction site. MFM argues that this evidence proves as a matter of law, that MFM acted in a reasonably safe manner, in accordance with its contract, and did not violate any laws or statutes.

MFM contends that the Labor Law claim must be dismissed because plaintiff is not a covered person entitled to the protection of Labor Law provisions. MFM contends that due to plaintiff's failure to adhere to the traffic laws, by deliberately running against the light, he was in violation of section 1112 (c) of VTL. MFM argues that plaintiff's actions were the proximate cause of the accident.

MFM argues that as an independent contractor, it was not liable to plaintiff with respect to negligence unless it was liable under the *Espinal* exceptions. The one exception which could apply is the application of a force or instrument of harm against plaintiff. MFM denies that it applied such a force or instrument of harm as it avers that there is no evidence that it created a dangerous condition which caused an accident.

In opposition, plaintiff argues that the installation of the fabric on the fencing created a dangerous condition because it misled him into believing that the street was closed. Plaintiff contends that this raises an issue of fact as to whether MFM is liable for negligence. Plaintiff contends that the fact that he crossed against a traffic signal constitutes only a partial proximate cause and that there can be more than a single proximate cause in some situations.

Plaintiff submits a photograph of the crosswalk area, where the fenced-in construction site is located. He contends that at the time of the accident, the fence was covered with the green fabric. Plaintiff claims that the fabric was capable of blocking one's vision, creating an unreasonable risk when one crossed the street.

Plaintiff submits an affidavit from a professional engineer, Richard Khorigan. Based on his assessment of the evidence, he concludes that the construction area was unsafe at the time of the accident, and that MFM, in its capacity as general contractor, should have removed the fabric on the fencing. Moreover, he states that MFM should have provided a traffic enforcement agent at the intersection and installed warning signs to alert pedestrians on possible dangers.

In reply, MFM disputes the findings of plaintiff's engineer as speculative and irrelevant. MFM discusses plaintiff's photograph, contending that it demonstrates no evidence of a defective or dangerous condition. MFM argues that the area was in a safe condition and MFM did not launch a force or instrument of harm on plaintiff.

The court shall dismiss the Labor Law and Industrial Code claims against MFM, since plaintiff has not disputed or responded to MFM's arguments against them. The remaining claim is for common-law negligence.

The court finds that MFM did not launch a force or instrument of harm. After examining the deposition testimony; the documentary evidence, including the construction agreement; the photograph; and the expert affidavit, the court does not see a defective or dangerous condition on the premises. MFM acted pursuant to its contractual specifications. The fabric on the fencing was in fact a safety measure, isolating the public from exposure to the debris and dust resulting from construction work. At the time of the accident, there was no activity. However, there was no indication that the fabric constituted the cause of the accident.

The absence of crossing guards was due to a lack of construction activity on that day. The presence of traffic lights and crosswalk signals constituted a reasonable measure of safety.

THE CITY'S MOTION (MOTION SEQUENCE NUMBERS 004 and 005)

Motion Sequence Number 004, which is an incomplete filing seeking the same relief sought under Motion Sequence Number 005 is permitted to be withdrawn. Under Motion Sequence Number 005, City argues that it is not negligent as a matter of law and that the complaint and all cross claims against it should be dismissed. City contends that the Labor Law claim against it should be dismissed because plaintiff is not a member of the class of individuals protected by the Labor Law's provisions. City avers that plaintiff was not involved in any construction work at the time of the accident. According to City, the Industrial Code claim is also not applicable to plaintiff's situation.

City, relying on the deposition testimony of those representing Tectonic and MFM, claims that these defendants were hired by City as independent contractors who were primarily responsible for the management and development of the construction project. City affirms that Tectonic was the engineering consultant firm contracted to oversee and inspect the work performed on the construction site, and that MFM was the general contractor of the project. City avers that MFM made the decisions as to safety maintenance and protection. City stated that it provided and monitored traffic personnel for the site. Pursuant to its contract, MFM decided on road closures, the positioning of crossing guards and the installation of materials on the fencing. City argues that it had no control over the means and methods of work performed by Tectonic and MFM. Therefore, City argues that if these defendants are liable to plaintiff, City cannot be held vicariously liable as a result.

City argues that it owed no duty of due care to plaintiff. City states that plaintiff has not alleged that it was negligent in hiring or supervising the contractors. Therefore, City claims that it is entitled to summary judgment and dismissal.

In opposition, plaintiff argues that City had a non-delegable duty of due care towards pedestrians like plaintiff and was vicariously liable for the negligence of its contractors. Plaintiff contends that City failed to provide a safe premises and that failure led to the accident. Plaintiff refers to the fabric on the fencing which allegedly rendered the optical illusion of a closed street. Had plaintiff been aware that the street was not actually closed, he avers that he could have avoided the collision with Hughes. Plaintiff also argues that City exacerbated the situation by not providing adequate safeguards like warning signs or other protective measures at the time of the accident.

Plaintiff submits the affidavit of professional engineer Richard Khorigan, who assessed the intersection and examined the evidence. His conclusion is that the area was dangerous for pedestrians like plaintiff. He offers a list of safety measures which City should have or should provide in the future: (1) removal of the fabric from the fencing on the construction site, particularly near the intersection; (2) stationing a traffic enforcement agent at the intersection; and (3) installing warning signs to pedestrians or diverting pedestrians from crossing the street. Plaintiff contends that at least there is an issue of fact as to City's failure to maintain a safe roadway, precluding the granting of its motion.

In reply, City argues that it is not an insurer of safe roadways, and that the installation of traffic lights and a crosswalk sign near the intersection constituted a reasonably safe roadway. City argues that plaintiff was aware of these items prior to his crossing the street, understood that he was crossing against the light and assumed the risk of a possible accident. City contends that plaintiff's actions were the proximate cause of the accident.

City claims that it had no duty to remove the fabric from the fencing, to install crossing guards or to install any additional signage beyond the aforesaid traffic signals. City contends that, as a municipality, it had no special duty to plaintiff. According to City, a special duty can be created: (1) by statute created for the benefit of a particular class of persons; (2) where City exercises positive discretion and control in the face of a known, blatant and dangerous safety violation; or (3) when City voluntarily assumes a duty causing justifiable reliance from others. City argues that this situation does not render a special duty on City's part based on any of the requirements.

City argues that the suggestions raised by plaintiff's engineer represent discretionary actions. According to City, the law renders distinctions between ministerial acts of a municipality, which are mandatory in nature, and discretionary acts, which do not adhere to any existing governing rule. City contends that discretionary acts subject a municipality to legal immunity. Thus, City argues that the installation of crossing guards or extra signage would be discretionary in nature and the failure to utilize such measures does not make City liable to any party.

The court shall dismiss the Labor Law and Industrial Code claims brought against City. Plaintiff has not raised objections to the dismissal and it is obvious that plaintiff, as a person not involved in the construction operations, is not a protected individual (*see Prats v Port Auth.*

of *N.Y. & N.J.*, 100 NY2d 878, 880-881 [2003]). The Industrial Code does not apply to New York City, as it has a population of over one million.

As for common-law negligence, City initially argued that it owed no duty to plaintiff because it was not directly involved in the work performed by MFM and Tectonic, both independent contractors and not agents of City. City cited MFM as largely responsible for providing a safe premises, including setting up safety materials. In opposition, plaintiff argued that City had a non-delegable duty to provide a reasonably safe roadway and pointed out what it should have done to maintain a safe premises at the time of the accident.

In reply, City expanded on why it had no duty to plaintiff, acknowledging that it had a duty to maintain a safe roadway, but insisting that it was not an insurer of plaintiff. City stated that the installation of traffic lights and a crosswalk signal at the intersection provided a sufficient measure of safety. City also stated that plaintiff's deliberate failure to comply when observing the lights and signal was the cause of the subsequent accident. City contended that it acted reasonably at the time, and any further additional safety measures would have been discretionary in nature and not actionable. Moreover, City argued that in the absence of a special duty owed to plaintiff, City had no further responsibility in providing a safe roadway.

The court agrees with City that it is not an insurer of the injured on its roadways (see *Tomassi v Town of Union*, 46 NY2d 91, 94 [1978]). City raises two defenses in its reply, citing *Valdez v City of New York*, 18 NY3d 69 (2011). In that case, the Court of Appeals held that a municipality could avoid liability in a negligence action if plaintiff failed to establish that the municipality had a special duty towards him, or if the municipality established an entitlement to a government function immunity. A special duty meant that the municipality had a special relationship with plaintiff separate from a general relationship with the public, and this relationship could result in legal action. A separate defense, the government function immunity would shield a municipality from litigation if its actions were discretionary in nature (*Valdez* at 73).

City identified the three ways in which plaintiff would be owed a special duty (see *Pelaez v Seide*, 2 NY3d 186, 194 [2004]). These are a statute benefitting a specific class of persons, the positive discretion exercised by City, and a voluntary assumption of a duty resulting in a justifiable reliance from others. In assessing the evidence, plaintiff has not alleged any of these ways. Therefore, plaintiff is precluded from suing City for tort liability here. Moreover, City's government function immunity defense is also applicable. The installation of the traffic light and

crosswalk signal, acknowledged by plaintiff, provided an adequate measure of safety for pedestrians. Any additional safety measures, as suggested by plaintiff's expert engineer, would have been discretionary.

The court finds that City had no vicarious liability regarding the activities of its contractors in this case. As a rule, one who hires an independent contractor may not be held liable for the independent contractor's negligent acts (*see Kleeman v Rheingold*, 81 NY2d 270, 273 [1993]). City was not expressly accused of negligent hiring or supervision of these parties.

Accordingly, it is

ORDERED that the motion of defendants Tectonic Engineering and Surveying Consultants, P.C. for summary judgment in its favor and to dismiss the complaint herein (Motion Sequence Number 002) is granted and the complaint and all cross claims are dismissed in their entirety against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the motion of defendants MFM Contracting Corp. for summary judgment in its favor and to dismiss the complaint herein (Motion Sequence Number 003) is granted and the complaint and all cross claims are dismissed in their entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the motion of defendant City of New York (Motion Sequence Number 004) is permitted to be withdrawn in accordance with the defendant's filing of a motion seeking identical relief (Motion Sequence Number 005) which has been determined by this Decision and Order; and it is further

ORDERED that the motion of defendant City of New York for summary judgment in its favor and to dismiss the complaint and all cross claims herein (Motion Sequence Number 005) is granted and the complaint and all cross claims are dismissed in their entirety as against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed as to the three moving defendants and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissals against the three moving defendants and that all future papers filed with the court shall 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 and the Clerk of the General Clerk’s Office, 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).

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the remainder of this action shall continue.

This constitutes the Decision and Order of the Court.

11/28/2022

DATE

James G. Clynes
JAMES G. CLYNES, J.S.E.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE