SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES **PART** 22M

Justice

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JAIR FREIRE, ANGELA CUCE,

Plaintiff,

- v -

ANTHONY PATE, BIENVENIDO RODRIGUEZ, PLAZA CONSTRUCTION LLC, NAVILLUS TILE, INC.,

Defendants.

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INDEX NO. 156597/2016

MOTION DATE 08/03/2022, 08/03/2022, 08/26/2022

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 106, 108, 109, 110, 111, 112, 125, 128

were read on this motion to/for SUMMARY JUDGMENT (BEFORE JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 107, 113, 114, 115, 116, 117, 122, 126, 127

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 118, 119, 120, 121, 123, 124

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and following oral argument, the following three motions for summary judgment are consolidated for disposition: 1) motion sequence 001, by Pate; 2) motion sequence number 002, by Plaza Construction (Plaza), Navillus Tile Inc. (Navillus), and 45 East 22nd Street Property (45 East); and 3) motion sequence number 003, by Bienvenido Rodriguez. The movants seek dismissal of Freire's and Cuce's amended complaint in Action No. 1, and other claims. Freire and Cuce (plaintiffs) oppose the motions.

Jair Freire and Angela Cuce commenced an action alleging assault against Anthony Pate, Bienvenido Rodriguez, Plaza Construction LLC, and Navillus Tile, Inc. (Action No. 1 – Index No. 156597/16). Bienvenido commenced an action against Freire, Cuce, and 45 East 22nd Street Property LLC (Action No. 2 - Index No. 160775/16); and Pate commenced an action against Freire

and Cuce (Action No. 3 - Index No.: 159721/16). The three actions are joined for discovery and trial (Index No. 156597/16, NYSCEF 61; Index No. 160775/16, NYSCEF 37).

Plaintiffs allege that they were assaulted while driving through a construction site. Plaza was the construction manager, Navillus the concrete superstructure contractor, and 45 East the owner of the project.

The facts recited here derive from plaintiffs' amended complaint and all the party depositions. Plaintiffs are married to each other. On September 24, 2015, Freire's licensed service dog, who was already ill, exhibited weakness and shallow breathing. Plaintiffs put the dog in their car and, with Freire driving, proceeded towards the veterinary hospital for emergency treatment. Construction was being performed on their street. When plaintiffs were going past the construction, Pate and Rodriguez stopped their car. Pate was employed as a flagman by Navillus and Rodriguez was employed by Plaza, as the shop steward for the Teamsters Union on the project. His job was to log in the truck drivers who were delivering materials and report such data to the Union.

Freire alleges that he told Pate and Rodriguez that his dog was not breathing and that it needed immediate medical care. Rodriguez said, "I don't give a f*** about your dog" and slammed the palm of his hand on the hood of plaintiffs' car, leaving a dent. Pate laid his body on the hood of the car on the passenger side. Rodriguez stayed in front of the car with his hands on the hood. Additional construction workers crowded around the car. Pate and Rodriguez were in front of the car, banging on the hood. Freire slowly drove forward causing Rodriguez to move to the left side of the car and Pate to move to the right side of the car. Pate and Rodriguez then kicked the sides of the car leaving dents and marks.

Plaintiffs drove to the veterinary hospital. Upon leaving the hospital, Freire was arrested and taken to a police precinct, where he was charged with leaving the scene of an incident that caused personal injury to another person, not reporting the incident, and reckless driving, pursuant to Vehicle and Traffic Laws (VTL) 600 (2) (a) and (c), and 1212. Freire was issued a desk appearance ticket requiring appearance in criminal court. According to the affidavit of the arresting officer, Freire struck Pate and Rodriguez with his car. Both workers allege injuries and Pate alleges that he was thrown up into the air.

Freire alleges that subsequently Rodriguez harassed and menaced him. On December 4, 2015, while Freire was in front of his residence, Rodriguez and two other men approached

Freire. Rodriguez came within two feet of him and said "I'm gonna (sic) get you." Freire filed a harassment complaint at the police station. Freire further alleges that, on March 16, 2016, while near Freire's residence, Rodriguez came within five inches of him and physically impeded Freire's attempts to move away and said, "I am going to have you arrested like I did before." Freire filed a second harassment complaint.

Freire made several appearances in criminal court. Neither Rodriguez, nor Pate, ever appeared. The charges against Freire were dismissed on August 4, 2016.

Pate and Rodriguez testified that neither one ever met or spoke with the other before or after the incident. Pate testified that he was trained to work as a flagman or flagger and that he had a flagger license (NYSCEF 56, Pate deposition transcript [tr], at 42-43). On the date of the incident, at around 9:00 AM, the flag horn sounded as the crane was lifting a bucket of cement. This signaled to Pate that the bucket was going to travel over the roadway in front of the work site and that he needed to stop traffic. He went out to the street with his orange (or green) vest and stop-sign (*id.*, 94). A car pulled up to him. He was standing at the front of the passenger's side of the car. Pate did not speak to or interact in any way with the occupants of the car and he never touched the car before being hit (*id.*, 53, 57, 97, 98). Pate heard the car "revving" and the front of the car hit his body (*id.*, 46, 48, 102, 103).

Pate points to Freire's deposition testimony that while Freire heard what he believes were punches and kicks to the car (NYSCEF 51, Freire tr at 88-92), he did not actually see any (*id.*, 93-94, 97-98, 165, 170, 174, 182). Pate says that the alleged kicks were likely the sound of Pate's body hitting the car as he fell after being struck by plaintiffs' vehicle. Pate says that he was doing his job as a flagman by trying to stop plaintiffs from driving down the road. Pate says that his purported act of laying his torso on the hood of the car (which he denies) could not, under any scenario, be deemed an assault and that he did not intend to cause an apprehension of imminent bodily contact.

Rodriguez testified that, on the day of the incident, a flagman for Navillus signaled to Rodriguez to cover for him next to Pate (NYSCEF 57, Rodriguez tr, at 52, 53, 190, 194, 196, 205, 206). He took the other flagman's place next to Pate (*id.*, 205-206). Pate told Rodriguez that the driver of the vehicle did not want to stop and that the driver said his dog was dying (*id.*, 72-73, 196-197, 207). Pate and Rodriguez were standing facing the car when Freire said, "you don't give

a -- about my dog and he gassed it" (*id.*, 80, 213-214). "He hit us" (*id.*, 85, 218). Rodriguez never spoke with the car's occupants or touched the car (*id.*, 83, 120).

Rodriguez had a "flag certificate" (*id.*, at 201-202). Before and after the date of the incident, he had flagman duties on the job (*id.*, 204-205) and he was the "co-flagman" (*id.*, 207, 208).

Rodriguez took off time from work because of his injury. After he returned to the construction site in mid-October 2015, Freire "hounded" him every day (*id.*, 101). He attempted to avoid Freire, who continued to walk in Rodriguez's direction for no reason. After one of the many times that Freire sought to provoke Rodriguez, the police questioned Rodriguez. Rodriguez told the police that Freire had screamed at him in the street and that Rodriguez had threatened to have him arrested again.

Raymond Romani, a senior project superintendent employed by Plaza, testified that he was in a building at the construction site at the time of the incident. He did not witness it. He was called to come down to the street and "I just remember somebody saying this guy blew through the flagman and ran over one of the Navillus guys" (NYSCEF 58, Romani tr, at 51). "I believe [Rodriguez] went and saw the doctor the next day or shortly after" (*id.*, 52, 59). Rodriguez said that "they nicked me or they caught me" (*id.*, 112). Romani watched a video of the incident that showed "the car moving forward and I saw an object which was a person on and go over the partial hood of the car and off the side as the car drove through" (*id.*, 92). Romani testified that Plaza retained a safety company to provide safety services at the site (*id.*, 54, 113). The representative of the safety company generated an incident report (*id.*, 113, 117, 118). Romani read the report during his deposition; it stated that someone was "taken to medical facility" (*id.*, 122).

Rong Tan was the Navillus project manager at the site. He testified that Plaza hired Navillus. Tan was there on the day of the incident but did not witness it. He heard about the incident on the jobsite radio (NYSCEF 59, Tan tr, at 34). The radio reported that somebody got hurt on the street (*id.*). When Tan got down to the street, a crowd was around the injured person, who was lying on the roadway (*id.*, 35). An ambulance was there (*id.*, 38). Tan was told that the injured person was the flagman (*id.*, 35).

In his opposing affidavit, Freire states that he did not hit Pate or Rodriguez and that he did not "rev" the engine. He drove forward very slowly. When he moved forward, Pate and Rodriguez moved to the sides of the car. Freire says that, during the incident, other construction workers

were coming towards them and yelling. He and Cuce were very scared. "They could tip our car, drag us from it. I was very worried for my wife's safety and mine for that matter. I didn't know what these individuals were capable of" (NYSCEF 110, ¶ 5). Cuce's affidavit supports Freire's version of events and says that she was in "abject fear for our safety" (NYSCEF 109, ¶ 4).

Against Pate and Rodriguez, plaintiffs assert causes of action for assault. Against Navillus and Plaza, plaintiffs assert causes of action for vicarious liability and negligent hiring. The workers cross-claim against each other for contribution and indemnification. Pate sues Freire and Cuce for negligence. Rodriguez sues 45 East for negligence and violation of Labor Laws and Freire and Cuce for negligence.

Standard for Summary Judgment

Summary judgment is regarded as a drastic remedy because it deprives the litigant of its day in court (*Andre v Pomeroy,* 35 NY2d 361, 364 [1974]). The moving party shows that it is entitled to summary judgment by submitting evidence that shows that there is no material issue of fact that requires determination at a trial (*id.*). If the moving party does not make this showing the motion will be denied, regardless of the opposing papers (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). If the moving party succeeds in making the initial showing, the opponent of the motion must demonstrate the existence of material issues of fact which require a trial of the action (*id.*). In considering a summary judgment motion, the court must consider the evidence in light most favorable to the party opposing the motion (*Ortiz v Varsity Holdings, LLC,* 18 NY3d 335, 339 [2011]).

Pate's and Rodriguez's Motions for Summary Judgment Dismissing the Amended Complaint (motion sequence numbers 001 and 003)

The tort of assault consists of intentional physical conduct that causes the plaintiff to feel imminent apprehension of harmful or offensive contact (*Corcoran v City of New York*, 186 AD3d 1151, 1151 [1st Dept 2020]; *Charkhy v Altman*, 252 AD2d 413, 414 [1st Dept 1998]). "An action for an assault need not involve physical injury, but only a grievous affront or threat to the person of the plaintiff" (*Di Gilio v Burns Intl. Detective Agency*, 46 AD2d 650, 650 [2d Dept 1974]). Therefore, Pate's and Rodriguez's assertions that they did not touch plaintiffs does not mean that there was no assault. To meet their prima facie burden, the alleged assailants must show that they did not exhibit any physical conduct towards plaintiffs that placed the latter in imminent apprehension of harmful contact (*see Marilyn S. v Independent Group Home Living Program, Inc.*,

73 AD3d 892, 894 [2d Dept 2010]). Pate and Rodriguez deny engaging in the alleged conduct and assert that, if they did, their actions did not amount to an assault. Moreover, they say, plaintiffs had the protection of a locked car and both had cell phones. These facts are not determinative of whether plaintiffs were put in fear of imminent injurious or offensive contact. Plaintiffs claim that the employees engaged in the alleged conduct and that they feared for their imminent safety. The parties' different versions create issues of fact as to whether the employees engaged in the complained of conduct and whether such conduct constituted an assault.

The perpetrator of the assault must either intend to inflict the harmful or offensive contact or to put the other person in apprehension of such contact (Restatement [Second] of Torts 32). The actor need not intend to injure the other person or make any kind of contact (*Villanueva v Comparetto,* 180 AD2d 627, 629 [2d Dept 1992]) or be inspired by personal hostility or the desire to offend (Restatement [Second] of Torts 34). Therefore, the employees' allegations that they did not intend to harm plaintiffs does not show that an assault did not take place.

Even where the actor intends merely to put the other in apprehension of bodily contact but does not intend such contact, and the other, although realizing that the actor does not intend to inflict any contact, is nonetheless put in apprehension of the contact, an assault is committed (*id.*, 28). In addition, the assaulted person need not believe that the actor itself will inflict the bodily contact; one person's actions could put the assaulted person in fear of being contacted by another person (*id.*, 25). It is conceivable that the employees' actions could render plaintiffs afraid of imminent harm from either Pate or Rodriguez or both and from the other persons around the car.

Rodriguez argues that words alone cannot constitute an assault, citing to this case (*Carroll v New York Prop. Ins. Underwriting Assn,* 88 AD2d 527, 527 [1st Dept 1092] ["Threats, standing alone, do not constitute an assault"]). This is true "unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person" (Restatement [Second] of Torts 31). In this case, plaintiffs allege that Rodriguez's words were accompanied with slamming his hand on the car and that both defendants kicked the car and that other workers from the site were crowding around the car.

Pate's and Rodriguez's motions to dismiss the assault claim are denied, including the claim that Rodriguez assaulted plaintiff after the incident with the car. Freire alleges being threatened and Rodriguez denies it and says that Freire hounded him. An issue of fact is thus presented.

Since the assault claims remain, the motions to dismiss Pate's and Rodriguez's cross-claims against each other are denied.

Motion by Plaza, Navillus, and 45 East for Summary Judgment Dismissing the Amended Complaint and Rodriguez's claims against 45 East (motions sequence number 002)

Part of motion sequence number 002 seeks dismissal of plaintiffs' claims for negligent hiring and vicarious liability against Plaza and Navillus. The claims are not made against 45 East. The vicarious liability claim is asserted pursuant to the doctrine of respondeat superior. Under this doctrine, an employer is vicariously liable for the tortious acts of its employees that are committed within the scope of employment (*Bowman v State of N.Y.*, 10 AD3d 315, 316 [1st Dept 2004]). In order for an employer to be held vicariously liable for the acts of an employee, the act must be generally foreseeable, a natural incident of the employment, and in furtherance of the employer's business (*RJC Realty Holding Corp. v Republic Franklin Ins. Co.*, 2 NY3d 158, 164 [2004]; *Fauntleroy v EMM Group Holdings LLC,* 133 AD3d 452, 453 [1st Dept 2015]; *Schilt v New York City Tr. Auth.*, 304 AD2d 189, 193 [1st Dept 2003]).

The moving parties argue that, if there was an assault at the construction site, Rodriguez was acting outside of the scope of his employment. However, Rodriguez testified that he sometimes acted as a flagman and that he was doing so on the incident day. It cannot be said as a matter of law that he acted outside the scope of his employment. An employee's action may be within the scope of employment when it is performed while the employee is engaged generally in the business of the employer, or if the act may be reasonably said to be necessary or incidental to such employment (*Maldonado v Allum*, 208 AD3d 470, 471 [2d Dept 2022] [internal citation and quotation marks omitted]). Rodriguez, even if not hired to be a flagman, was engaged in the business of his employer at the time of the incident.

Regarding Pate, the movants' memorandum of law states, "Although Pate may be deemed to have been acting within the scope of his employment at the time of the incident, his act of laying his torso on the hood of the car could not, under any scenario, be deemed an assault . . ." (NYSCEF 37, 5 of 13). This could be taken as a concession that Pate was acting within the scope of his employment. In any case, Pate testified that he was doing his job as a flagman by stopping plaintiffs' car. Both employees' alleged actions could arguably be deemed to be foreseeable and in furtherance of their employers' business. The moving parties do not show that such was not the case.

Respondeat superior does not apply to the alleged assaults by Rodriguez after the incident with the car. He is not alleged to have acted within the scope of his employment.

The claim for negligent hiring and retention concerns Pate only. Plaintiffs allege that Pate has a violent criminal history, and that Plaza and Navillus knew or should have known of his propensity for violence when they hired him and continued his employment as a flagman. The amended complaint alleges that in 2006, Pate pled guilty to kidnapping and coercion and was sentenced to incarceration for five years. In 2012, he pled guilty to assault and received six months probation. In 2013, he pled guilty to assault and received four years probation.

In negligent hiring and negligent retention actions, the employer's negligence is direct, not vicarious, and stems from placing the employee in a position to cause foreseeable harm, harm which the injured party most likely would not have endured had the employer taken reasonable care in deciding whether to hire and retain the employee (*Engelman v Rofe,* 194 AD3d 26, 33 [1st Dept 2021]). An employer may be liable for negligent hiring when it knew or should have known of the employee's propensity to commit injury even if the injury committed was not identical to a prior injury caused by the employee ("*Jane Doe" v Goldweber*, 112 AD3d 446, 447 [1st Dept 2013]). The employer has a duty to do a background check, when it knows or should have known of a prospective employee's criminal or violent propensities or facts that would lead a reasonably careful person to investigate (*Fambro v City of New York*, 205 AD3d 608, 609 [1st Dept 2022]; *KM v Fencers Club, Inc.*, 164 AD3d 891, 893 [2d Dept 2018]). However, when the employer has no such knowledge about a prospective employee, it is under no duty to do a background check (*T.W. v City of New York*, 286 AD2d 243, 245 [1st Dept 2001]; *Yeboah v Snapple, Inc.,* 286 AD2d 204, 205 [1st Dept 2001]).

Tan from Navillus testified that they do not have a practice of checking whether the people they hire have criminal backgrounds (NYSCEF 59, at 30). Tan's superintendent and payroll are responsible for hiring (*id.*, at 27). The employers contend that the claim for negligent hiring should be dismissed because plaintiffs have no evidence that the employers knew or should have known anything about Pate to make them check his background. However, the employers do not present evidence from a person with knowledge who could assert that they did not have any negative facts about Pate upon hiring him. The negligent hiring and retention claim is not dismissed.

45 East, the owner, seeks to dismiss Rodriguez's claims for negligence and violations of Labor Law 200, 240 (1) and 241 (6), which are brought against 45 East only.

Labor Law 200 is a codification of the common-law duty of owners and general contractors to provide workers with a safe place to work (*see Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Claims under Section 200 fall into two categories: "those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed" (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). Where the injury allegedly arose from methods or manner of work, no liability attaches to defendants who do not direct, supervise, or control the manner or method of the injury-producing work (*Lombardi v Stout,* 80 NY2d 290, 295 [1992]). Where dangerous conditions at the work site are alleged, no liability attaches to defendants if they did not create, or have notice of, the dangerous conditions (*Hernandez v Columbus Ctr., LLC*, 50 AD3d 597, 598 [1st Dept 2008]).

The movants correctly state that the record contains no evidence that 45 East had any involvement with the ongoing construction work or the street closure, that it supervised the work, or that it created or had notice of a dangerous condition. The testimony of Pate, Rodriguez, Romani, and Tan make it clear that Navillus was the contractor in charge of the street closure during the concrete pours and that each contractor provided its own flaggers. But Rodriguez states correctly that 45 East does not offer evidence to show that it did not violate Labor Law 200, and that the person moving for summary judgment does not make a prima facie case by merely pointing to the gaps in the opponent's evidence (*see Kolakowski v 10839 Assoc.,* 185 AD3d 427, 428 [1st Dept 2020]; *Piazza v Frank L. Ciminelli Constr. Co., Inc.*, 2 AD3d 1345, 1349 [4th Dept 2003]). 45 East does not offer evidence that it did not supervise or control the work or that it did not have notice of a dangerous condition. The negligence and Labor Law 200 claims are not dismissed.

Labor Law 240 (1), known as the Scaffold Law, imposes on owners and contractors a nondelegable duty to provide safety devices to protect against elevation-related hazards on construction sites, regardless of whether they supervise or control the work (*Ragubir v Gibraltar Mgt. Co., Inc.,* 146 AD3d 563, 564 [1st Dept 2017]). Although the concrete lift required stopping plaintiffs' car on the roadway, the lift is not related in any significant way to the workers' injuries. Rodriguez did not fall from a height; nor did anything fall from a height onto him. His injuries were not brought about by an elevation related hazard.

Labor Law 241 (6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection to workers without regard to direction and control (*Padilla v Frances Schervier Hous. Dev. Fund Corp.*, 303 AD2d 194, 196 [1st Dept 2003]). A claim for violation of 241 (6) must be predicated on the violation of a specific rule of the Industrial Code (*id.*). Rodriguez names Industrial Code Sections 12 NYCRR 23-1.29 (a) and (b) and 23-1.33.

Part 23-1.29 is entitled "Public vehicular traffic." Part (a) provides that whenever construction is taking place over, on, or close to a street, where public vehicular traffic may be hazardous to the persons performing such work, such work area shall be fenced or barricaded to direct public vehicular traffic away from such area, or such traffic shall be controlled by designated persons. In this case, Pate was one of the designated persons whose duty it was to control traffic at the road where the incident occurred. Thus, the regulation was not violated (*see Babcock v Orange & Rockland Util., Inc.*, 179 AD3d 882, 882 [2d Dept 2020]).

Under part (b), "Every designated person authorized to control public vehicular traffic shall be provided with a flag or paddle measuring not less than 18 inches in length and width. Such flag or paddle shall be colored fluorescent red or orange and shall be mounted on a suitable hand staff..." Rodriguez addresses only this part of the rule and not about himself, but about Pate, arguing that there is no evidence that Pate's flag was of the regulation length. No connection is made between the size of Pate's flag and Rodriguez's injuries. Nor does Rodriguez's deposition testimony that he did not have a paddle during the incident establish a link between his lack of a paddle and his injuries (NYSCEF 99, at 208). Nor does he address the fact that Pate was hit, although Pate had a flag. Although this is a motion for summary judgment, because no facts establishing the connection between the violation and the injury have ever been supported with evidence or even alleged, the claim based on Part 23-1.29 (b) is dismissed.

Part 23-1.33 is entitled "Protection of persons passing by construction, demolition or excavation operations" is inapplicable to this case, since it "applies to persons passing by and not to workers, such as [Rodriguez], on a construction site" (*Lawyer v Hoffman,* 275 AD2d 541, 542 [3d Dept 2000]). Also, the regulation is not specific enough to support a claim under Labor Law 241 (6) (*McMahon v Durst*, 224 AD2d 324, 324 [1st Dept 1996]; *Trotman v Boston Props. Inc.*, 59 Misc 3d 1230 [A], 2018 NY Slip Op 50803[U], *5 [Sup Ct, Bronx County 2018]).

The Labor Law 241 (6) claims against 45 East are dismissed.

Conclusion

It is hereby

ORDERED that Motion Sequence Number 001 by Anthony Pate for summary judgment dismissing the complaint in Action No. 1 – Index No. 156597/16 is denied; and it is further

ORDERED that with respect to Motion Sequence Number 002 by Plaza Construction, Inc., Navillus Tile Inc., and 45 East 22nd Street Property LLC for summary judgment, that portion of the motion seeking dismissal of the complaint in Action No. 1 – Index No. 156597/16 is denied; and it is further

ORDERED that the portion of Motion Sequence Number 002 seeking dismissal of the fourth, fifth, sixth, and seventh causes of action in Action No. 2 - Index No. 160775/16 is granted as to the sixth and seventh causes of action which are hereby dismissed, and the motion is otherwise denied; and it is further

ORDERED that Motion Sequence Number 003 by Rodriguez Bienvenido for summary judgment dismissing the complaint in Action No. 1 – Index No. 156597/16 is denied.

This constitutes the Decision and Order of the Court.

10/2/2023
DATE

JAMES G. CLYNES, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE