

Edgeworth v Captain Bill's Rest. & the Bayview House

2024 NY Slip Op 34879(U)

September 16, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 624241/2019

Judge: Joseph A. Santorelli

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX No. 624241/2019
CAL. No. 202301231OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

P R E S E N T :

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 1/18/24 (002)
MOTION DATE 4/25/24 (003)
ADJ. DATE 4/25/24
Mot. Seq. # 002 - MotD
Mot. Seq. # 003 - MD

-----X
KOREEN EDGEWORTH and WILLIAM
EDGEWORTH,

Plaintiffs,

JOHN L. JULIANO, P.C.
Attorney for Plaintiffs
39 Doyle Court
East Northport, New York 11731

- against -

KENNEDYS CMK LLP
Attorney for Defendant Great South Bay
Seafood Company, LLC
570 Lexington Avenue, 8th Floor
New York, New York 10022

CAPTAIN BILL'S RESTAURANT AND THE
BAYVIEW HOUSE, GREAT SOUTH BAY
SEAFOOD COMPANY, LLC, MODICA
ASSOCIATES OF NY 122, LLC, and "XYZ
CORPS 1-5," names being fictitious but intending to
be owner or owners of the premises located at 122
Ocean Avenue, Bay Shore, New York,

Defendants,

MIRANDA SLONE SKLARIN
VERVENIOTIS LLP
Attorney for Defendant/Third-Party Plaintiff
Modica Associates of NY 122, LLC
240 Mineola Boulevard
Mineola, New York 11501

-----X
MODICA ASSOCIATES OF NY 122, LLC,

Third-Party Plaintiff,

LAW OFFICES OF JOHN J. BELLO, JR.
Attorney for Third-Party Defendant
One Pennsylvania Plaza
50th Floor, Suite 5004
New York, New York 10119

- against -

ALL SHORE MARINE CONSTRUCTION, INC.,

Third-Party Defendant.
-----X

Edgeworth v Captain Bill's Rest. & Bayview House
Index No. 624241/2019
Page 2

Upon the following papers read on these motions for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by third-party defendant All Shore Marine Construction, Inc., filed December 8, 2023; Answering Affidavits and supporting papers by plaintiffs, filed April 3, 2024; Answering Affidavits and supporting papers by defendant/third-party plaintiff Modica Associates of NY 122, LLC, filed April 10, 2024; Answering Affidavits and supporting papers by defendant Great South Bay Seafood Company, LLC, filed April 10, 2024; Replying Affidavits and supporting papers by third-party defendant All Shore Marine Construction, Inc., filed April 24, 2024; Notice of Motion/Order to Show Cause and supporting papers by defendant/third-party plaintiff Modica Associates of NY 122, LLC, filed April 23, 2024; Answering Affidavits and supporting papers by plaintiffs, filed April 24, 2024; it is

ORDERED that the motion (seq. 002) by third-party defendant All Shore Marine Construction, Inc. and the motion (seq. 003), improperly denominated as a cross-motion, by defendant/third-party plaintiff Modica Associates of NY 122, LLC are consolidated for purposes of this determination; and it is

ORDERED that the motion by third-party defendant All Shore Marine Construction, Inc. for summary judgment dismissing the third-party complaint and cross-claims against it is granted in part and denied in part; and it is further

ORDERED that the motion, improperly denominated as a cross-motion, by defendant/third-party plaintiff Modica Associates of NY 122, LLC for summary judgment dismissing the complaint and cross-claims against it is denied.

This is an action against, among others, defendant Great South Bay Seafood Company, LLC, incorrectly sued herein as Captain Bill's Restaurant and the Bayview House (hereinafter Great South Bay Seafood) and defendant/third-party plaintiff Modica Associates of NY 122, LLC (hereinafter Modica) to recover damages for personal injuries allegedly sustained by plaintiff Koreen Edgeworth (hereinafter the injured plaintiff) as a result of a trip-and-fall accident, which occurred on October 19, 2019, on the steps leading from the deck to the building at the premises located at 122 Ocean Avenue, in Bay Shore, New York (hereinafter the premises). The owner of the premises, Modica, allegedly leased it to Great South Bay Seafood. The injured plaintiff's spouse, plaintiff William Edgeworth, also sues derivatively for loss of services. Plaintiffs allege that defendants were negligent in, among other things, maintaining the premises and creating a hazardous condition, namely, a "staircase without railings and with beveled edges and uniformly painted yellow steps." Modica brought third-party claims against third-party defendant All Shore Marine Construction, Inc. (hereinafter All Shore), the entity it allegedly hired to renovate the deck and bulkhead, for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance. All Shore interposed cross-claims against Modica for, in part, contractual indemnification and breach of contract for failure to procure insurance.

All Shore now moves for summary judgment dismissing the third-party complaint and cross-claims against it. With regard to the third-party claims for contribution and common-law indemnification, All Shore argues, inter alia, that there is no evidence that it built the subject stair risers, that there was no inherently dangerous condition involved in the accident, and that the injured plaintiff's conduct was the sole proximate cause of her accident. All Shore also argues that it is entitled to summary judgment dismissing the contractual indemnification third-party claim since the contract at issue did not contain an indemnification provision. As to the third-party claim for failure to procure

Edgeworth v Captain Bill's Rest. & Bayview House
Index No. 624241/2019
Page 3

insurance, All Shore argues that its work did not cause or contribute to the accident. In support of its motion, All Shore submits, inter alia, the deposition transcripts of plaintiffs, Kelly Christine Kiernan, Michael Korb, Michael Belford, and Brian Neil.

In opposition to All Shore's motion, plaintiffs argue, among other things, that All Shore failed to include copies of all the pleadings with its motion, and that the affirmation of counsel was the only document submitted in support of its motion. In support of their opposition, plaintiffs submit, in part, the injured plaintiff's affidavit. Great South Bay Seafood also opposes All Shore's motion. Great South Bay Seafood argues, among other things, that there are issues of fact as to whether All Shore created the allegedly dangerous condition. Modica partially opposes the motion contending, among other things, that there are issues of fact as to whether All Shore launched a force or instrument of harm.

Modica "cross-moves" for summary judgment dismissing the complaint and cross-claims against it.¹ The court notes that the attorney affirmation and exhibits referred to in the "notice of cross-motion" do not appear to be electronically filed. Plaintiffs, in opposition, contend that Modica failed to demonstrate good cause for filing its late summary judgment motion, and submit a copy of the court's part rules.

The Court first turns to All Shore's motion. Initially, All Shore's motion was not procedurally defective based on its purported failure to include copies of all the pleadings. "[A] bill of particulars is not a pleading, but just an expansion of one . . ." (*Carroll v Niagara Falls Mem. Med. Ctr.*, 218 AD3d 1373, 1375, 193 NYS3d 579, 583 [4th Dept 2023] [internal quotation marks omitted], quoting *Abbotoy v Kurss*, 52 AD3d 1311, 1312, 860 NYS2d 364, 365 [4th Dept 2008]; *Osgood v KDM Dev Corp.*, 92 AD3d 1222, 1223, 938 NYS2d 397, 399 [4th Dept 2012]). Thus, All Shore's failure to include bills of particulars, standing alone, does not require denial of its motion (*see Osgood v KDM Dev Corp.*, 92 AD3d 1222, 938 NYS2d 397; *see also D'Auria v Kent*, 80 AD3d 956, 915 NYS2d 680 [3d Dept 2011]).

All Shore established its prima facie entitlement to summary judgment dismissing the third-party cause of action for contractual indemnification (*see Safler v Wakefern Food Corp.*, 220 AD3d 956, 199 NYS3d 130; *Debenedetto v Chetrit*, 190 AD3d 933, 140 NYS3d 569 [2d Dept 2021]; *Maltese v Metropolitan Transp. Auth.*, 179 AD3d 780, 118 NYS3d 57 [2d Dept 2020]). A party's right to contractual indemnification "depends upon the specific language of the contract" (*Errazuri v E Food Supermarket, Inc.*, 228 AD3d 732, 734, 734 213 NYS3d 384, 386 [2d Dept 2024], quoting *Alayev v Juster Assoc., LLC*, 122 AD3d 886, 887, 998 NYS2d 83, 85 [2d Dept 2014]; *Alfieri v ABB, Inc.*, 227 AD3d 941, 942, 212 NYS3d 372, 374 [2d Dept 2024]). "The promise to indemnify should not be found

¹ Modica's motion was improperly denominated as a cross-motion as it sought, in part, affirmative relief against plaintiffs, non-moving parties (*see e.g. Hennessey-Diaz v City of New York*, 146 AD3d 419, 44 NYS3d 404 [1st Dept 2017]; *Puella v Georges Units, LLC*, 146 AD3d 561, 46 NYS3d 28 [1st Dept 2017]; *Daramboukas v Samlidis*, 84 AD3d 719, 922 NYS2d 207 [2d Dept 2011]; *Terio v Spodek*, 25 AD3d 781, 809 NYS2d 145 [2d Dept 2006]).

Edgeworth v Captain Bill's Rest. & Bayview House
Index No. 624241/2019
Page 4

unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances” (*Errazuri v E Food Supermarket, Inc.*, 228 AD3d at 734, 734 213 NYS3d at 386, quoting *Alayev v Juster Assoc., LLC*, 122 AD3d at 887, 998 NYS2d at 85; *Alfieri v ABB, Inc.*, 227 AD3d at 942, 212 NYS3d at 374).

Here, All Shore established, prima facie, the absence of a contractual agreement to indemnify Modica (see *Safier v Wakefern Food Corp.*, 220 AD3d 956, 199 NYS3d 130; *Debenedetto v Chetrit*, 190 AD3d 933, 140 NYS3d 569; *Maltese v Metropolitan Transp. Auth.*, 179 AD3d 780, 118 NYS3d 57). At his deposition, All Shore’s president, Brian Neil, identified the contract between All Shore and Modica (hereinafter the contract), which corresponded to All Shore’s work on the deck performed in 2013 and 2014, and which contained no indemnification provision. In opposition, no party raised an issue of fact (see *Safier v Wakefern Food Corp.*, 220 AD3d 956, 199 NYS3d 130; *Debenedetto v Chetrit*, 190 AD3d 933, 140 NYS3d 569; *Maltese v Metropolitan Transp. Auth.*, 179 AD3d 780, 118 NYS3d 57). All Shore’s failure to submit an affidavit or affirmation of someone with personal knowledge was not fatal here (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Flores v Harvest Moon Farm & Orchard*, 206 AD3d 623, 169 NYS3d 134 [2d Dept 2022]). Accordingly, All Shore is entitled to summary judgment dismissing the third-party claim for contractual indemnification.

However, All Shore did not establish its prima facie entitlement to summary judgment dismissing the remaining third-party claims. A party moving for summary judgment dismissing a cause of action for common-law indemnification can demonstrate its prima facie entitlement thereon by establishing that the accident was not due to its own negligence (see *G. F. v Epstein*, 226 AD3d 870, 210 NYS3d 200 [2d Dept 2024]; *Calle v 16th Ave. Grocery, Inc.*, 219 AD3d 450, 194 NYS3d 116 [2d Dept 2023]). Similarly, “a party can establish its prima facie entitlement to judgment as a matter of law dismissing a cause of action for contribution by showing that the work it performed did not cause or contribute to the happening of the accident, or that it did not owe a duty of reasonable care independent of its contractual obligations, or a duty of reasonable care to the plaintiff” (*Flood v Ahern Painting Contrs., Inc.*, 219 AD3d 1408, 1409-1410, 196 NYS3d 140, 141-142 [2d Dept 2023] [internal citation and quotation marks omitted], quoting *Burgos v 14 E. 44 St., LLC*, 203 AD3d 688, 690, 160 NYS3d 628, 629 [2d Dept 2019]).

All Shore failed to establish its prima facie entitlement to summary judgment dismissing the third-party claims for common-law indemnification and contribution since it failed to eliminate triable issues of fact as to, inter alia, whether it created the allegedly dangerous condition that caused the injured plaintiff to fall (see *Camelio v Shady Glen Owners’ Corp.*, 219 AD3d 453, 194 NYS3d 98 [2d Dept 2023]; *Conrad v Global Indus. Servs., Inc.*, 180 AD3d 868, 116 NYS3d 599 [2d Dept 2020]; *Nachamie v County of Nassau*, 147 AD3d 770, 47 NYS3d 58 [2d Dept 2017]). In general, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party (see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 746 NYS2d 120 [2002]; *Abney v Meridian Props., LLC*, 222 AD3d 921, 201 NYS3d 661 [2d Dept 2023]). An exception to the general rule, however, applies “where the contracting party, in failing to exercise reasonable care in the performance of [its]

Edgeworth v Captain Bill's Rest. & Bayview House

Index No. 624241/2019

Page 5

duties, launch[es] a force or instrument of harm” or “creates or exacerbates a dangerous condition” (*Espinal v Melville Snow Contrs.*, 98 NY2d 136 at 140, 142, 746 NYS2d at 123, 125 [internal quotation marks omitted], quoting *H.R. Moch Co. v Rensselaer Water Co.*, 247 NY 160, 168, 159 NE896, 898 [1928]; *Cohen v City of New York*, 209 AD3d 830, 176 NYS3d 303 [2d Dept 2022]). All Shore cannot satisfy its prima facie burden by merely pointing to gaps in its opponents’ proof (see *Cox v Consolidated Edison, Inc.*, 125 AD3d 923, 5 NYS3d 147 [2d Dept 2015]; *St. Paul Travelers Cos. v Joseph Mauro & Son, Inc.*, 93 AD3d 658, 940 NYS2d 123 [2d Dept 2012]; *Rubistello v Bartolini Landscaping, Inc.*, 87 AD3d 1003, 929 NYS2d 298 [2d Dept 2011]).

Although All Shore contends that the drawings relied upon for the project were prepared by another entity hired by Modica, All Shore failed to demonstrate, prima facie, that its work was properly performed in accordance with the plans and specifications provided by the other entity (see *Nachamie v County of Nassau*, 147 AD3d 770, 47 NYS3d 58; *Cusson v Hillier Group, Inc.*, 130 AD3d 1397, 15 NYS3d 267 [3d Dept 2015]; *Petito v City of New York*, 95 AD3d 1095, 944 NYS2d 300 [2d Dept 2012]). Generally, “[a] builder or contractor is justified in relying upon the plans and specifications which [it] has contracted to follow” (*Ryan v Feeney & Sheehan Bldg. Co.*, 239 NY43, 46, 145 NE321, 321-322 [1924]; *Corniel v CCA Civil-Halmar Intl., LLC*, 215 AD3d 731, 732, 187 NYS3d 89, 90 [2d Dept 2023]), “A contractor that performs its work in accordance with contract plans may not be held liable unless those plans are so patently defective as to place a contractor of ordinary prudence on notice that the project, if completed according to the plans, is potentially dangerous” (*Corniel v CCA Civil-Halmar Intl., LLC*, 215 AD3d at 732, 187 NYS3d at 90 [internal quotation marks omitted], quoting *Nichols-Sisson v Windstar Airport Serv., Inc.*, 99 AD3d 770, 772, 952 NYS2d 223, 225 [2d Dept 2012]; *Hodzie v M. Cary, Inc.*, 202 AD3d 1063, 1064, 159 NYS3d 882, 883-884 [2d Dept 2022]). Notably, All Shore does not submit any of the plans or drawings purportedly relied upon or other records regarding the construction of the deck.

The evidence submitted in support of All Shore’s motion also failed to eliminate triable issues of fact as to whether the condition of the steps was open and obvious and not inherently dangerous (see *Matheis v Hunt Country Furniture, Inc.*, 140 AD3d 713, 30 NYS3d 883 [2d Dept 2016]; *Drotar v 60 Sweet Thing, Inc.*, 106 AD3d 426, 964 NYS2d 150 [1st Dept 2013]; *Russo v Frankels Garden City Realty Co.*, 93 AD3d 708, 940 NYS2d 144 [2d Dept 2012]; see also *Roros v Oliva*, 54 AD3d 398, 863 NYS2d 465 [2d Dept 2008]). “[T]here is no duty to protect or warn against conditions that are open and obvious and not inherently dangerous” (*Papetti v City of Long Beach*, 227 AD3d 919, 919, 211 NYS3d 506, 507 [2d Dept 2024], quoting *Johnson v 1451 Assoc., L.P.*, 225 AD3d 752, 753, 207 NYS3d 632, 633 [2d Dept 2024] [internal quotation marks omitted]; *Ochoa-Hoenes v Finkelstein*, 172 AD3d 1080, 1080, 101 NYS3d 81, 82 [2d Dept 2019]). “The issue of whether a condition is open and obvious and not inherently dangerous is case-specific, and usually a question of fact for a jury” (*Kean-Chong v MBA-Vernon Boulevard, LLC*, 228 AD3d 851, 852, 214 NYS3d 116, 117 [2d Dept 2024], quoting *Clayton v Marcy Supermarket & Deli Corp.*, 191 AD3d 842, 843, 138 NYS3d 907, 908 [2d Dept 2021]; *Johnson v 1451 Assoc., L.P.*, 225 AD3d at 753, 207 NYS3d at 633-634). Significantly, the unsworn expert report submitted by All Shore in support of its motion was insufficient to meet its prima facie burden (see CPLR 2106; 3212[b]; *Beier v Giglio*, ___ AD3d ___, 215 NYS3d 527 [2d Dept 2024];

Edgeworth v Captain Bill's Rest. & Bayview House
Index No. 624241/2019
Page 6

see also *Gao v City of New York*, 145 AD3d 939, 43 NYS3d 493 [2d Dept 2016]). Moreover, that the injured plaintiff admittedly did not observe the steps prior to the accident is not dispositive here (see e.g. *Buonchristiano v Fordham Univ.*, 146 AD3d 711, 46 NYS3d 76 [1st Dept 2017]; *Dalton v North Ritz Club*, 147 AD3d 1017, 46 NYS3d 900 [2d Dept 2017]; *Drotar v 60 Sweet Thing, Inc.*, 106 AD3d 426, 964 NYS2d 150).

Additionally, All Shore failed to establish as a matter of law that the injured plaintiff's conduct was the sole proximate cause of her accident (see *Butler v Seitelman*, 90 NY2d 987, 665 NYS2d 620 [1997]; *Reilly v Patchogue Props., Inc.*, 203 AD3d 765, 164 NYS3d 179 [2d Dept 2022]; *Powers v 31 E 31 LLC*, 123 AD3d 421, 998 NYS2d 23 [1st Dept 2014]; cf. *Canela v Audobon Gardens Realty Corp.*, 304 AD2d 702, 759 NYS2d 729 [2d Dept 2003]). An intervening act constitutes a superseding cause sufficient to relieve a defendant of liability if it is "extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct, [that it] may . . . possibly break[] the causal nexus" (*Scurry v New York City Hous. Auth.*, 39 NY3d 443, 455, 190 NYS3d 677, 684 [2023], quoting *Hain v Jamison*, 28 NY3d 524, 529, 46 NYS3d 502, 507 [2016]; *Jones v Saint Rita's R.C. Church*, 187 AD3d 727, 729, 133 NYS3d 40, 42 [2d Dept 2020]). Since issues concerning what is foreseeable and normal may be the subject of varying inferences, the determination of whether an intervening act is foreseeable or extraordinary under the circumstances generally is for the fact finder to resolve (see *Scurry v New York City Hous. Auth.*, 39 NY3d 443, 190 NYS3d 677; *Turturro v City of New York*, 28 NY3d 469, 45 NYS3d 874 [2016]). Although All Shore contends that the injured plaintiff, among other things, consumed two alcoholic beverages prior to the accident, was wearing 2½-inch heels, and was not looking down at the time of the accident, such factors, even if true, do not constitute the kind of unforeseeable or reckless conduct that would be deemed, as a matter of law, to interrupt the causal connection between the accident and its alleged negligence here (see *Butler v Seitelman*, 90 NY2d 987, 665 NYS2d 620; *Reilly v Patchogue Props., Inc.*, 203 AD3d 765, 164 NYS3d 179; *Powers v 31 E 31 LLC*, 123 AD3d 421, 998 NYS2d 23; cf. *Canela v Audobon Gardens Realty Corp.*, 304 AD2d 702, 759 NYS2d 729).

All Shore failed to establish its prima facie entitlement to summary judgment dismissing the third-party claim for failure to procure insurance as well (see *Castillo v Port Auth. of N.Y. & N.J.*, 159 AD3d 792, 72 NYS3d 582 [2d Dept 2018]; *Simmons v Berkshire Equity, LLC*, 149 AD3d 1119, 53 NYS3d 335 [2d Dept 2017]; *Rodriguez v 5432-50 Myrtle Ave., LLC*, 148 AD3d 947, 50 NYS3d 99 [2d Dept 2017]). "A party seeking summary judgment dismissing a cause of action alleging breach of a contractual obligation to procure insurance must establish that it procured the requisite insurance, then the burden shifts to the opposing party to raise a triable issue of fact" (*Titov v V&M Chelsea Prop., LLC*, ___ AD3d ___, ___, 2024 NY Slip Op 04221, *3 [2d Dept 2024]; see *Mazura v Rector, Church, Wardens & Vestrymen of Trinity Church in City of New York*, ___ AD3d ___, 214 NYS3d 476 [2d Dept 2024]).

Here, the contract contained an insurance provision requiring All Shore to provide proof of insurance naming "Capt. Bill's" as an additional insured. All Shore, however, submitted no evidence in support of its motion demonstrating its compliance therewith (see *Castillo v Castillo v Port Auth. of*


Edgeworth v Captain Bill's Rest. & Bayview House
 Index No. 624241/2019
 Page 7

N.Y. & N.J., 159 AD3d 792, 72 NYS3d 582; *Simmons v Berkshire Equity, LLC*, 149 AD3d 1119, 53 NYS3d 335 [2d Dept 2017]; *Rodriguez v 5432-50 Myrtle Ave., LLC*, 148 AD3d 947, 50 NYS3d 99). Rather, once again, All Shore improperly relies upon gaps in its opponents' proof to meet its prima facie burden (*see Cox v Consolidated Edison, Inc.*, 125 AD3d 923, 5 NYS3d 147; *St. Paul Travelers Cos. v Joseph Mauro & Son, Inc.*, 93 AD3d 658, 940 NYS2d 123; *Rubistello v Bartolini Landscaping, Inc.*, 87 AD3d 1003, 929 NYS2d 298). To the extent that it does not appear that any cross-claims are asserted against All Shore, that branch of its motion for summary judgment dismissing the cross-claims against it is denied as moot.

The court now turns to Modica's motion. Pursuant to CPLR 2215, a notice of cross-motion must be served "[a]t least three days prior to the time at which the motion is noticed to be heard, or seven days prior to such time if demand is properly made pursuant to subdivision (b) of rule 2214, a party may serve upon the moving party a notice of cross-motion demanding relief, with or without supporting papers." Here, All Shore's notice of motion demanded that "all answering papers, if any, are required to be served seven (7) days prior to the return date of this motion." The court need not decide whether this was a proper demand pursuant to CPLR 2214 (b) since, in any event, Modica failed to demonstrate that its moving papers were served in compliance with CPLR 2215 (*see Flannery v Goldsmith*, 268 AD2d 267, 701 NYS2d 46 [2d Dept 2000]; *Fortanasce v Meyrowitz*, 141 AD2d 606, 529 NYS2d 993 [2d Dept 1988]). Modica's "notice of cross-motion" was served more than four months after All Shore's motion was made and only two days before the return date. Moreover, as set forth earlier herein, Modica's motion was an improper cross motion with respect to plaintiffs (*see e.g. Hennessey-Diaz v City of New York*, 146 AD3d 419, 44 NYS3d 404; *Puella v Georges Units, LLC*, 146 AD3d 561, 46 NYS3d 28; *Daramboukas v Samlidis*, 84 AD3d 719, 922 NYS2d 207; *Terio v Spodek*, 25 AD3d 781, 809 NYS2d 145), and CPLR 2214 (b) requires such a separate motion be made on at least eight days notice. Accordingly, Modica's motion is denied as procedurally defective.

In light of the foregoing, All Shore's motion is granted in part and denied in part and Modica's motion is denied.

Dated: September 16, 2024


 HON. JOSEPH A. SANTORELLI
 J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION