

Bodhi Bldg., Ltd. v Elmsford Chicken, LLC
2025 NY Slip Op 35366(U)
January 29, 2025
Supreme Court, Westchester County
Docket Number: Index No. 51508/2021
Judge: Janet C. Malone
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
BODHI BUILDING, LTD., d/b/a “YOGASPA”,

Plaintiff,

-against-

ELMSFORD CHICKEN, LLC d/b/a “POPEYE’S
LOUISIANA KITCHEN,” REESE
COMMERCIAL CONSTRUCTION and JIM HAID,²

Defendants.
-----X

MALONE, J.

In this negligence action there are two motions for decision. First is Plaintiff’s motion (Seq. No. 3) to amend its Amended Verified Complaint³ filed January 28, 2022 (NYSCEF Doc. No. 39) to increase the amount of damages being sought (CPLR 3025[b]), and for summary judgment against all Defendants (CPLR 3212). In support, of the motion, Plaintiff submits the Affidavit of Jacqueline Vernon (“Vernon”), principal of Plaintiff with Exhibits A- G; and Memorandum of Law (NYSCEF Doc. Nos. 76-85). Defendants Elmsford Chicken, LLC d/b/a “Popeye’s Louisiana Kitchen” (“Popeye’s”) and Reese Commercial Construction (“Reese”) and Jim Haid (“Haid”) (collectively, the “Construction Defendants”) oppose Plaintiff’s motion (NYSCEF Doc. Nos. 116-124 and 108-115, respectively).

Second, is Defendant Popeye’s motion (Seq. No. 4) to amend its Amended Verified Answer with Affirmative Defenses dated August 3, 2022 (NYSCEF Doc. No. 97) to include a cross-claim for contractual indemnification against the Construction Defendants (CPLR 3025[b]),

¹ This Amended Decision and Order is being issued to clarify the scope of Defendants’ answers, if any, to the Amended Complaint.

²This caption reflects the amendments to the caption approved by the Court. See NYSCEF Doc. Nos. 25 and 73.

³ The Court notes that both the Amended Verified Complaint filed January 28, 2022, and the proposed Amended Verified Complaint are both named “Amended Verified Complaint”.

and for summary judgment against the Construction Defendants on the cross-claim. In support, Popeye's submits the Affidavit of Ed Baksh, Director of Parikh Network ("PN") restaurants, an umbrella company under which Popeye's exists with Exhibits A-M; Statement of Undisputed Facts; Affirmation in Support of Andrew P. Tureaud, Esq.; Affirmation in Reply of Andrew P. Tureaud, Esq. with Exhibit A and Memorandum in Support and in Reply (NYSCEF Doc. Nos. 86-103;130-132). The Construction Defendants opposed Popeye's Motion (NYSCEF Doc. Nos. 112-115).

The motions have been consolidated for purposes of this decision and upon review and consideration of the NYSCEF case file and foregoing documents filed with NYSCEF document numbers 76-103; 108 -124; and 130-132; Plaintiff's motion is granted in part and denied in part; and Defendant Popeye's' motion is denied in its entirety for the reasons set forth below.

Relevant Background

On October 22, 2010, landlord Elmsford Property, LLC ("Elmsford") entered into a lease with Plaintiff Bodhi Building, LTD., d/b/a "YOGASPA" ("Plaintiff" or "YogaSpa") to lease 321 Tarrytown Road, Elmsford, New York (the "premises"), commencing April 1, 2011, for the permitted purpose of holding yoga classes, massage therapies and life coaching and related accessory uses (NYSCEF Doc. No. 119), and terminating on March 31, 2021 (Vernon Deposition [NYSCEF Doc. No. 118] at 17:21-21:22).

Plaintiff's operation of the hot yoga studio and yoga business at the premises business required specialized equipment and facilities to provide a sanitary environment. With Elmsford's consent and at its own cost and expense, Plaintiff installed all the necessary equipment and facilities including an airtight closed cell spray foam insulated ceiling, specially insulated floor tiles, wall-to-wall mirrors, a custom HVAC system and ductwork, and specialized heaters and pipes. Most of this equipment was in the "hot room" at the premises (Vernon Affidavit [NYSCEF Doc. No. 77] at ¶ 3-6; NYSCEF Doc. No. 118 at 12:6-16:11; 17:21-18:4).

In or about March 2020, Plaintiff learned that Reese was performing construction for Popeye's (NYSCEF Doc. Nos. 80, 91), the tenant in the building immediately above the premises known as 323 Tarrytown Road, Elmsford, New York (NYSCEF Doc. No. 77 at ¶8; Popeye's Lease effective April 22, 2019, NYSCEF Doc. Nos. 79, 90); and at Haid's request Plaintiff provided Haid with a copy of the keys and access code to the premises (NYSCEF Doc. No. 77 at

¶¶9-11; NYSCEF Doc. No. 118 at 36:10-37:7; 41:22-43:22; 58:2-60:24), without memorializing Haid's request (NYSCEF Doc. No. 117 at 34:8-36:2).

On or about March 14, 2020, Plaintiff ceased all operations at the premises and remained closed because of the COVID-19 pandemic and New York State Executive Order No. 202.3 (NYSCEF Doc. No. 117 at 64:19-24).

When Vernon returned to the premises, on or about June 17, 2020; she found damage due to the construction work at Popeye's: the ceiling was not sealed in an airtight manner and to the extent it was sealed, it was not done workmanlike quality, leaving protrusions of foam and epoxy; a number of waste pipes and floor waste drains were left extending some two feet from the ceiling; water and sewage leaks from defectively installed waste pipes on the specialized floor tiles and down the walls and mirrors in the hot room; permanent damage to the customized HVAC system caused by construction dust and debris; toxic black mold in the studio; and damaged equipment. This damage rendered the YogaSpa entirely inoperable (NYSCEF Doc. No. 77 at ¶¶15-17; NYSCEF Doc. No. 118 at 68:6-71:8).

On December 17, 2020, Plaintiff hired Cavalry Services ("Cavalry") to conduct an air quality assessment and Calvary estimated that the cost of remediation of the ceiling and replacement of the damaged equipment would be least \$185,000.00 (NYSCEF Doc. No. 77 at ¶¶18-19). On April 19, 2022, Calvary updated its report and estimated damages to be \$1,306,800.00⁴ (*Id.* at ¶¶20, 25; NYSCEF Doc. No. 81).

On February 9, 2021, Plaintiff commenced this action by filing a Summons and Complaint (NYSCEF Doc. No. 92) alleging twelve causes of actions; five against Popeye's for trespass, negligence, intentional tortious damage to property, private nuisance, and fraudulent misrepresentation seeking damages in the amount of \$400,000.00; five against Elmsford and Urstadt Biddle Properties, Inc. ("Urstadt"): fraudulent concealment, aiding and abetting trespass, aiding and abetting tortious damage, aiding and abetting private nuisance; two additional against Elmsford: constructive eviction and breach of contract and one civil conspiracy against all Defendants.

Popeye's appeared and answered on March 12, 2021 with general denials and nineteen affirmative defenses (Answer, NYSCEF Doc. No. 93). On July 11, 2022, Plaintiff motion to

⁴ While the final report reflected damages in the amount of \$1,306,800.00, Plaintiff also alleges additional damages in the amount of \$101,050.00 for replacement of specialized equipment and \$107,183.70 in lost membership fees for a total of \$ 1,515,033.70 in damages.(NYSCEF Doc. No. 77 at ¶¶23, 24, 27).

amend its Complaint to include the Construction Defendants was granted by this Court (Walker, J. [Decision and Order] NYSCEF Doc. No. 95; Amended Verified Complaint, NYSCEF Doc. No. 96). In the Amended Verified Complaint, Plaintiff amended the first five causes of actions of trespass, negligence, intentional tortious damage to property, private nuisance, and fraudulent misrepresentation to include all the Defendants, seeking damages in the amount of \$400,000.00; and withdrew the sixth through twelfth causes of action as against all Defendants.

Popeye's filed an Amended Answer on August 5, 2022, which included general denials and nineteen affirmative defenses but did not include any cross-claims against the Construction Defendants (NYSCEF Doc. No. 97). On September 26, 2022, the Construction Defendants appeared and answered with general denials, thirteen affirmative defenses and a cross-claim against Popeye's (NYSCEF Doc. No. 98).

Discovery was completed and Note of Issue was filed on September 7, 2023 (NYSCEF Doc. No. 75).

Leave to Amend Pleadings

"Leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or unless prejudice or surprise to the opposing party results directly from the delay in seeking leave to amend" *Kruger v EMFT, LLC*, 87 AD3d 717, 718 (2d Dept 2011). "A determination whether to grant such leave is within the Supreme Court's broad discretion, and the exercise of that discretion will not be lightly disturbed" *Thomson v. Watchtower Bible Tract Socy. Of NY, Inc.*, 198 AD 3d 996, 997-998 (2d Dept. 2021). "The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion" *Oppedisano v D'Agostino*, 196 AD3d 497, 498 (2d Dept 2021)(internal citations omitted).

Here, Plaintiff seeks leave to amend the amended complaint with the proposed Second Amended Complaint (NYSCEF Doc. No. 84) solely for the purpose of increasing damages from \$400,000.00 to \$1,515,033.70, based on Cavalry's revised remediation report (NYSCEF Doc. No. 81), as the cost of remediation would total \$1,306,800.00. Plaintiff argues that Defendants will not be prejudiced by the amendment, because there are no new allegations or pleadings other than the revised amount of damages (Memorandum of Law [NYSCEF Doc. No. 85] at pg. 25).

Popeye's and the Construction Defendants oppose the motion because Plaintiff failed to attach a red-lined copy of the proposed amended complaint to the motion (Affirmation in Opposition [NYSCEF Doc. Nos. 108] at ¶¶ 5-7; Memorandum of Law in Opposition [NYSCEF Doc. No. 124] at pgs. 31-32)). Popeye's further contends that the proposed amended complaint does not clearly show the changes or additions to be made to the previous pleading, and that Plaintiff's counsel did not specify the changes to be made (NYSCEF Doc. No. 124 at pgs. 31-32).

While CPLR R. 3025(b) requires any "motion to amend or supplement pleadings [to] be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading"; the plaintiff's failure to include red-lined copy of the proposed amended complaint is a technical defect that this Court, in its discretion may overlook, because the proposed allegations were properly highlighted in the moving papers and easily discernible from a review of the proposed amended complaint. Notably, Plaintiff's memorandum of law specifically refers to paragraphs 38 to 41 of the proposed amended complaint, which are the paragraphs Plaintiff seeks to add. *National Loan Investors, L.P. v New Zion Church of the Apostolic Faith, Inc.*, 213 AD3d 860, 862 (2d Dept 2023)("plaintiff's failure to include a proposed amended complaint as an exhibit to its motion is technical defect, which the court should have overlooked"); *Berkeley Research Group, LLC v FTI Consulting, Inc.*, 157 AD3d 486, 490 (1st Dept 2018)("failure to supply a redlined proposed amended complaint is a technical defect, which the court should have overlooked, since these allegations were properly highlighted in ... counsel's affirmation and moving brief").

While Popeye's argues that the amendment would be prejudicial; Popeye's fails to allege how the amendment would be prejudicial given that Popeye's received a copy of the report during discovery in April 2022 and Popeye's was given an opportunity to depose Cavalry's principal, who wrote the report, and to provide their own witnesses to refute its content. Since Defendants failed to demonstrate prejudice or surprise by the proposed amended complaint, Plaintiff's motion to amend the First Amended Complaint is granted.

Next, Popeye's moves to amend the Amended Verified Answer to add a cross-claim for contractual indemnification against the Construction Defendants based on the indemnity provision of the Construction Contract between PN, the umbrella company under which Popeye's is organized, and Reese; and upon the Court granting leave to amend, moves for summary judgment on its cross-claim for indemnification against the Construction Defendants.

The proposed amended answer is palpably insufficient; it does not allege that Popeye is a third-party beneficiary of the Construction Contract or that Popeye is entitled to enforce the Construction Contract. *Old Crompond Road, LLC v County of Westchester*, 201 AD3d 806, 808 (2d Dept 2022) (A “party asserting rights as a third-party beneficiary must establish (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for [its] benefit and (3) that the benefit to [it] is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate [it] if the benefit is lost”).

Popeye’s argument that the Construction Defendants knew that the Construction Contract between PN and Reese applied to the construction work at issue is unavailing because this conclusory allegation does not alone establish Popeye’s entitlement to enforce the terms of the Construction Contract since Popeye’s fails to show it has any privity with PN or Reese or even that Popeye’s was PN’s successor in interest. Therefore, Popeye’s motion to amend the Amended Answer is denied.

As the Court has denied Popeye’s motion to amend its Amended Answer to include a crossclaim for indemnity, Popeye’s motion for summary judgment on indemnity is also denied.

Accordingly, Defendants are directed file Amended Answers to Plaintiff’s Amended Complaint within twenty days of this Decision and Order, **or not later than January 27, 2025**. *R & G Brenner Income Tax Consultants v. Gilmartin*, 166 A.D.3d 685, 688, 689 (2d Dept. 2018)(“Since an amended complaint supplants the original complaint, it would unduly prejudice a defendant if it were bound by an original answer when the original complaint has no legal effect.”).

Summary Judgment

As an initial matter, Plaintiff’s failure to submit a statement of material facts pursuant to 22 NYCRR § 202.8-g and failure to comply with this Court’s Part Rules regarding page limits does not “compel the [C]ourt to deny [Plaintiff’s] motion” (*Taveras v Incorporated Village of Freeport*, 225 AD3d 822, 823 [2d Dept 2024]).

That said, “[s]ummary judgment is a drastic remedy, to be granted only where the moving party has ‘tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact’ and then only if, upon the moving party’s meeting of this [*prima facie*] burden, the non-moving party fails ‘to establish the existence of material issues of fact which require a trial of the action’”

(*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

As the proponent of its summary judgment motion, Plaintiff must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact.” *Winegrad v. New York University Medical Center*, 64 N.Y.S.2d 851, 853 (1985); *Zuckerman v. City of New York*, 49 N.Y. 2d 557, 562 (1980); see also CPLR 3212. The parties’ competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the non-moving party to establish, through admissible evidence, the existence of disputed issues of material fact for trial. *Zuckerman v. New York*, 49 NY2d at 560. The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead, the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses exist warranting a trial.

Negligence

A “tenant in possession of real property owes a duty to maintain the property in a reasonably safe condition” (*Sweeney v Hoey*, 211 AD3d 1071, 1072 [2d Dept 2022]), “even when the landlord has explicitly agreed in the lease to maintain the premises” (*Gatto v Coinmach Corp.*, 172 AD3d 1176, 1177 [2d Dept 2019]). “In order to hold a property owner [or tenant] liable for a breach of this duty, a plaintiff must prove not only that a defective condition existed and was a proximate cause of his or her injuries, but also that the property owner [or tenant] either created the defective condition or had actual or constructive notice of its existence” *Nunez v. Chase Manhattan Bank*, 155 A.D.3d 641, 643 (2d Dept. 2017).

While Plaintiff has demonstrated that Popeye’s, as an upstairs tenant, owed a common law duty of care to Plaintiff, a tenant of an adjoining premises, to avoid creating a defective condition (See, i.e., *532 Madison Ave. Gourmet Foods, Inc. v Finlandia Ctr., Inc.*, 96 NY2d 280, 290 [2001] [“A landowner who engages in activities that may cause injury to persons on adjoining premises surely owes those persons a duty to take reasonable precautions to avoid injuring them”]), Plaintiff, however, has failed to establish its prima facie burden that Popeye’s owed a duty of care arising

out of its contractual obligations; because Plaintiff failed to submit admissible evidence establishing that the construction work launched an instrument of harm.

Plaintiff argues that Poepye's breached their duty of care by trespassing into the hot room, lobby, dressing rooms and storage areas of the Premises; negligently installing their plumbing lines which caused leaks and construction dust and debris; and negligently failing to cover the ducts, walls, heaters, equipment and floor of the Premises.

In opposition, Popeye's argues that that Plaintiff has not produced any evidence that toxic black mold was present or that any waste or sewage leaked into the Premises and that Cavalry's revised report should be disregarded, because it is inadmissible.

Popeye's further contends that its construction plans were approved by Elmsford and the Village of Elmsford; that the deposition testimony of Robert Reese and Jim Haid establish that the HVAC system was not a highly specialized commercial unit and it was protected during the construction; and that there was no permanent damage done from the construction dust.

Popeye's further argues that Plaintiff's allegation that Defendants failed to use "closed cell insulation" to insulate the plumbing installed in the ceiling of the Premises is not accurate, because the invoice for the installation of the foam insulation indicates that "closed cell foam" was installed.

As proof of negligence, Plaintiff only submitted Vernon's self-serving affidavit, who is not an expert; Cavalry's unsigned unnotarized revised remediation report; photographs evincing the presence of leaks and construction dust and debris, and a Stop Work Order issued by the Village of Elmsford on June 29, 2020.

However, Plaintiff has not submitted any expert opinion to support the claim that Defendants were negligent and that the construction was the proximate cause of its damages. Although Plaintiff submitted Cavalry's revised report, the report cannot be considered, because it has not been sworn to or affirmed to be true under penalty of perjury, and is thus inadmissible (*Mazzola v City of New York*, 32 AD3d 906, 907 [2d Dept 2006]; *Baron v Murray*, 268 AD2d 495, 495 [2d Dept 2000]). Moreover, although the other evidence Plaintiff submitted indicate that there may have been some damage to the Premises, they do not establish causation as a matter of law.

As to the Construction Defendants, a "contractor hired to perform work is generally not liable in tort to a noncontracting third party when he or she breaches a contract and said breach causes injury to that third party. However, the Court of Appeals has identified three exceptions to

the general rule: (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launch[es] a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely" (*Izzo v Proto Constr. & Dev. Corp.*, 81 AD3d 898, 899 [2d Dept 2011]; *Conte v Servisair/Globeground*, 63 AD3d 981, 982 [2d Dept 2009]).

Similarly, Plaintiff failed to submit admissible evidence establishing that the Construction Defendants launched an instrument of harm because Cavalry's revised remediation report is inadmissible, because it is unsworn, unaffirmed, and unsigned. Plaintiff also did not submit an affidavit from an architect, an engineer, or any construction expert to support the claim that Construction Defendants negligently performed their work or failed to follow the construction plans. Moreover, although the photographs submitted by Plaintiff indicate that there may have been some damage to the premises, without an expert's affidavit, Plaintiff does not establish negligence and/or causation as a matter of law. Similarly, the stop work order issued by the Village of Elmsford on June 29, 2020 (NYSCEF Doc. No. 83), without more, fails to establish negligence and/or causation as a matter of law.

Even if Plaintiff met their prima facie burden, there are issues of fact warranting denial of the motion such as whether Defendants breached their duty and whether the breach proximately caused the alleged damage, warranting a denial of the motion. For example, there are issues of fact as to whether Defendants followed the construction plan and specifications in performing their work, whether they appropriately covered the equipment and HVAC system with plastic covering and properly cleaned the Premises, whether mold existed at the Premises, and whether Defendants used the proper foam spray to seal the holes in the ceiling.

Thus, Plaintiff's motion for summary judgment on its negligence cause of action is denied.

Private Nuisance

"The elements of a private nuisance cause of action are: (1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failing to act. [N]ot every annoyance will constitute a nuisance. Nuisance imports a continuous invasion of rights – a pattern

of continuity or recurrence of objectionable conduct” (*Harris v Miranda*, 219 AD3d 1498, 1499 [2d Dept 2023]).

Plaintiff argues that Defendants’ interference was substantial in nature and unreasonable in character because the construction caused substantial damage to its trade fixtures and equipment, effectively depriving it of the use and enjoyment of the premises for the commercial purpose for which it was leased and causing it to incur damages through lost membership fees because Plaintiff was forced to close its business from March 2020, through March 2021.

Plaintiff’s motion for summary judgment must be denied on its cause of action for private nuisance because the conflicting depositions submitted by the parties creates issues of fact as to whether the alleged interference was intentional; whether Plaintiff was advised about the extent of the work involved and whether Defendants had Plaintiff’s consent to do any construction work beyond the front door entrance of the Premises as Plaintiff alleges.

While Vernon testified that Haid only advised that the construction work would only be at the entrance to the studio and that she only gave Haid limited access to the premises when she gave him her key (NYSCEF Doc. No. 118 at 58:2-69:11); Haid’s testified that prior to the commencement of the work in May 2020, he showed Plaintiff the construction drawings which depicted the construction plan, that he discussed the entirety of the construction plans with Plaintiff prior to performing any work in the premises, that he walked with Vernon through the premises and showed her where the work would be completed including taking pictures of the areas where the work would be performed, including areas outside of the entrance, such as the hot room, that Plaintiff gave Haid consent to perform work in the hot room, and that Plaintiff gave them the keys and her access code to the premises to perform the work (Haid Deposition [NYSCEF Doc. No. 117] at 34:17-36:23; NYSCEF Doc. No. 123).

There are also issues of fact as to whether the construction interference was substantial in nature and whether it was unreasonable in character; and whether it caused interference with Plaintiff’s business since it was already closed due to COVID-19. Additionally, the extent of the damage to Plaintiff’s business is disputed by the parties.

Thus, Plaintiff’s motion for summary judgment on its cause of action for private nuisance is denied.

Trespass

Similarly, Plaintiff's motion for summary judgment on its trespass cause of action must be denied given the conflicting testimony whether Defendants had Plaintiff's consent to do any construction work beyond the front door entrance of the Premises. (*Wlody v Birch Family Services, Inc.*, 210 AD3d 1036, 1037 [2d Dept 2022])("The elements of a cause of action sounding in trespass are an intentional entry onto the land of another without justification or permission or a refusal to leave after permission has been granted but thereafter withdrawn").

To the extent relief requested is not addressed, it is deemed denied.

Accordingly, it is hereby

ORDERED, that Plaintiff's motion (Seq. No. 3) to amend the Amended Complaint filed January 28, 2022, is granted, and it is further

ORDERED, that Plaintiff's motion (Seq. No. 3) for summary judgment is denied; and it is further

ORDERED, that the Plaintiff's proposed Amended Complaint (NYSCEF Doc. No. 84) is deemed filed and served; and it is further

ORDERED, that Defendants shall serve and file their **amended** answers, if any, **limited to responding to the amount of damages being sought in the Amended Complaint** via NYSCEF no later than **January 31, 2025**; and it is further

ORDERED, that Defendant Elmsford Chicken, LLC d/b/a "Popeye's Louisiana Kitchen's motion (Motion Seq. No. 4) to amend its Amended Verified Answer, is denied in its entirety; and it is further

ORDERED, that uploading this **Amended** Decision and Motion to NYSCEF shall be sufficient service on the parties; and it is further

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ORDERED that the parties shall appear for an in-person settlement conference on **February 3, 2025, at 11:30am in Courtroom 1401** before the Hon. Janet C. Malone, J.S.C. at the Westchester County Supreme Court located at 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York

The foregoing constitutes the **Amended** Decision and Order of this Court.

Dated: White Plains, New York
January 29, 2025

ENTER:



HON. JANET C. MALONE, J.S.C.