Perez v G&L Popian, Inc.
2025 NY Slip Op 35371(U)
January 22, 2025
Supreme Court, Westchester County
Docket Number: Index No 58605/2020
Judge: David S. Zuckerman
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DISPO MOTION SEQ NOS. 4, 5, 6, & 7

To commence the 30 day statutory time period 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

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MARTIN PEREZ,

Plaintiff,

DECISION/ORDER

Index No:
58605/2020

-against -

G&L POPIAN, INC. and ION POPIAN,

Defendants.

----------X

ION POPIAN,

Third-Party Plaintiff,

-against-

C. ANTUNES IRON WORKS, INC.,

Third-Party Defendant.

----------X

G&L POPIAN, INC.,

Second Third-Party Plaintiff,

-against-

C. ANTUNES IRON WORKS, INC., STIRLING INSURANCE SERVICES, LLC and SCOTT R. KIRTLAND,

Second Third-Party Defendants.

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ZUCKERMAN, J.

In this negligence/labor Law action, the papers denominated Documents 1 through 295 in NYSCEF were considered in connection with these four motions. In Motion Sequence Number 4, Defendant/Third-Party Plaintiff Ion Popian ("Popian") moves for

> "(a) an Order pursuant to CPLR §3212 granting Defendant ION POPIAN summary judgment, dismissing Plaintiff's complaint and all claims, cross-claims and counter-claims against ION POPIAN; and
>
> (b) an Order pursuant to CPLR § 8303-a and NYCRR 130-1.1 granting Defendant ION POPIAN an award of legal fees and costs in connection with drafting the instant motion, for refusal to execute a Stipulation of Discontinuance thereby maintaining a frivolous action, against C. ANTUNES IRON WORKS, INC., STIRLING INSURANCE SERVICES and SCOTT R. KIRTLAND (fees and costs to be submitted after the Court issues a Decision and Order)"

(Notice of Motion, p. 2). In Motion Sequence Number 5, Plaintiff moves for partial summary judgment against Defendant G&L Popian, Inc. ("G&L") on the Labor Law § 240(1) cause of action. In Motion Sequence Number 6, Third-Party Defendant and Second Third-Party Defendant C. Antunes Iron Works, Inc. ("Antunes") moves for summary judgment dismissing Popian's Third-Party Complaint and G&L's Second Third-Party Complaint. In Motion Sequence Number 7, Antunes cross-moves for leave to amend its Answer to the Third-Party

Complaint (to include two counterclaims against Popian). Each motion is opposed.

BACKGROUND

As set forth in the pleadings, Popian and G&L, owners of certain premises, agreed with Antunes that the latter would perform construction related work there. In an undated written agreement "effective as of 04-21-17," Antunes also agreed to indemnify both. G&L alleges that it contracted with Second Third-Party Defendant Scott R. Kirtland ("Kirtland"), as broker, and Second Third-Party Defendant Stirling Insurance Services, LLC ("Stirling"), as insurance agency, to provide an insurance policy for the construction related work. G&L further alleges that, although paid, Kirtland and Stirling failed to do so, misrepresenting that they had.

On August 2, 2017, Plaintiff allegedly fell off a ladder while employed by Antunes[1] and performing construction related work at the premises. The Complaint contains two causes of action for negligence (one each against Popian and G&L) and one for violation

[1]It appears that, in the Complaint, Plaintiff does not allege being employed by Antunes. Nonetheless, Antunes affirmatively represents that Plaintiff was injured "while working for Antunes" (Affirmation in Opposition to Ion Popian's Motion for Summary Judgment and in Support of Cross-Motion, p. 2); *see also* Affirmation in Support of Motion for Partial Summary Judgment, p. 5).

of the Labor Law (Sections 200, 240[1], 240[2], 240[3], and 241[6]). The Third-Party Complaint contains three causes of action for breach of contract. In its Amended Answer, Antunes asserted "cross-claim[s]" against "co-Third-Party Defendants[2]" (Verified Amended Answer, p. 7-8). The Second Third-Party Complaint contains three breach of contract claims and one negligence claim against Antunes and breach of contract, negligence, fraud, and "breach of special relationship duty" (Second Third-Party Complaint, p. 13) claims against Kirtland and Stirling.

CONTENTIONS OF THE PARTIES

1. Popian's Motion for Summary Judgment and Sanctions

Popian asserts that

"The undisputed testimony establishes that ION POPIAN is a one family homeowner that was not at the home at the time of the incident and did not direct or control the work. There is no good faith basis to sustain a claim against ION POPIAN, nor are there any claims, counter-claims or cross-claims left against it. Accordingly, counsel for Plaintiff and G&L POPIAN, INC. have executed a voluntary Stipulation of

[2] There are no other Defendants in the Third-Party Complaint.

> Discontinuance against ION POPIAN. ION POPIAN is seeking attorney's fees and costs against the two (2) remaining parties for refusal to execute the Stipulation of Discontinuance, especially in light of the fact that neither of those parties has any counter-claims or cross-claims against ION POPIAN"

(Counsel Affirmation[3], p. 2-3)(capital letters in original).

Antunes first responds that, despite being the owner of the premises, a single family home, Popian is not entitled to the homeowner's exemption (Labor Law § 240[1]). Antunes adds that, since this argument has merit, the branch of Popian's motion seeking sanctions should be denied.

In Reply, Popian repeats that all other parties have discontinued their claims against it and Antunes never asserted any. Notwithstanding, Popian argues that the homeowner's exemption applies as there is no issue of fact that it did not participate in and/or direct or control any of the construction related work. Consequently, sanctions should be imposed on Antunes.

[3] The document is denominated "Notice of Motion for Summary Judgment."

2. Plaintiff's Motion for Partial Summary Judgment on the Labor Law § 240(1) Claim

Plaintiff asserts that there is no issue of fact that the injury occurred while employed at a construction site where G&L was the general contractor. Plaintiff adds that G&L failed to provide any safety devices and/or a safe working environment.

G&L first responds that it "was the nominal "general contractor for the Project, but mostly acted in a financial capacity as opposed to a managerial capacity" (Attorney Affirmation in Opposition, p. 2). G&L adds that the motion should be denied because Plaintiff had been directed to use available safety equipment but failed to do so. Finally, G&L asserts that the motion must be denied because Plaintiff was "the sole proximate cause of the fall" (Memorandum of Law, p. 10).

Surprisingly, although, in the Notice of Motion, Plaintiff only seeks partial summary judgment against G&L, Antunes nonetheless submits opposition papers. In them, Antunes argues that "there are substantial questions as to whether Plaintiff's own actions were the sole proximate cause of the incident"

(Affirmation in Opposition to Plaintiff's Motion for Summary Judgment, p. 5).

In Reply, Plaintiff first assets that there is no evidence controverting the clear showing that G&L acted as the general contractor for the project. Plaintiff adds that the responding parties have not demonstrated that "Plaintiff was the sole proximate cause of his accident, because he was a recalcitrant worker in failing to use other safety devices that were supposedly available to him" (Reply Affirmation, p. 4).

3. Antunes' Motion for Summary Judgment Dismissing Popian's Third-Party Complaint and G&L's Second Third-Party Complaint

Antunes asserts that it

"is entitled to summary judgment as a matter of law because: (1) it did not have an agreement with G&L Popian; (2) Antunes is Plaintiff's employer and thus all common law causes of action must be dismissed as a matter of law; (3) Plaintiff did not suffer a "grave injury"; and (4) G&L Popian is not entitled to contractual indemnity because it exercised and/or should have exercised supervision, direction, and control over the injury-producing work"

(Affirmation in Support, p. 2).

As with its opposition to Plaintiff's summary judgment motion, G&L first responds that it "was the nominal general contractor for the Project, but mostly acted in a financial capacity as opposed to a managerial capacity" (Attorney Affirmation in Opposition, p. 2). G&L asserts that it had an oral agreement with Antunes and, after Plaintiff's accident, "simply reduced to writing what was already agreed to between the parties - including the agreement for C. Antunes to indemnify G&L for claims made as a result of C. Antunes working on the Property" (Memorandum of Law, p. 8). Moreover, that written agreement reflects that it was effective as of April 21, 2017, prior to the accident. While conceding that Plaintiff did not suffer a grave injury, G&L highlights the statutory exception in Section 11 of the Workers' Compensation Law for an employer's contract providing indemnification. Finally, G&L asserts that there is no issue of fact that it did not exercise control over any portion of the work assigned to Antunes and/or Plaintiff.

Popian first responds that all claims against it have been discontinued. Popian then adds that it is entitled to the Labor Law homeowner's exemption.

4. Antunes' Cross-Motion to Amend its Answer to the Third-Party Complaint (to add a Counterclaims for Common Law Indemnification and Common Law Negligence)

Antunes seeks to amend its Third-Party Answer to assert, against Popian, "cross-claims[4] (sic) of : (1) Common Law Indemnity; and (2) Common Law Negligence" (Affirmation in Opposition to Ion Popian's Motion for Summary Judgment and in Support of Cross-Motion, p. 10). Antunes asserts that its delay in so moving, on December 11, 2024, was due to its February 12, 2024 change of counsel. Antunes generically adds that Popian would not be surprised or prejudiced if the motion is granted.

Popian first responds that the motion to amend is untimely as it was filed after expiration of the time to file summary judgment motions[5]. Popian adds that the motion must be summarily denied because Antunes failed to submit the proposed amended pleading. Finally, Popian argues that, since the homeowner's exemption clearly applies, the newly proposed claims have no merit.

DISCUSSION

[4] There are no other defendants in the Third-Party action.
[5] On August 20, 2024, the court (Everett, J.) issued a Trial Readiness Order. On August 27, 2024, Plaintiff filed a Note of Issue.

1. Summary Judgment Generally

Pursuant to CPLR §3212(b), a motion for summary judgment "shall be granted if, upon all of the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." The Court of Appeals has explained that "[s]ummary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law ... when there is no genuine issue to be resolved at trial, the case should be summarily decided, and any unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated" (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

In a summary judgment motion, the movant bears the initial burden of presenting evidence, in competent and admissible form, establishing the absence of any material issues of fact. (*Viviane Etienne Medical Care v Country-Wide Insurance Company*, 25 NY3d 498 [2015]; *Bank of New York Mellon v Gordon*, 171 AD3d 197 [2d Dept 2017]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). In the event that initial burden is met, the non-moving party must come forward with proof, also in admissible form, that

there are material issues of fact which require a trial of the action. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

In *Celardo v Bell*, 222 AD2d 547 [2d Dept 1995], the court stated:

> It is axiomatic that summary judgment is a drastic remedy which should only be granted if it is clear that no material issues of fact have been presented. Issue finding, rather than issue determination, is the court's function (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957.) If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*Museums at Stony Brook v Village of Pachogue Fire Dept.*, 146 AD2d 572 (1989) …

In analyzing the contrasting factual allegations, the court may not engage in weighing the evidence. Rather, the court must draw all reasonable inferences in favor of the non-moving party. (*Rizzo v Lincoln Diner Corp.* 215 AD2d 546 [2d Dept 2000]). Then, the court must determine whether "by no rational process could the trier of facts find for the non-moving party" (*Jastrzebski v N Shore Sch Dist*, 232 AD2d 677 678 [2d Dept 1996]). Where facts are in dispute, there are issues of credibility, or conflicting inferences may be drawn from the evidence, summary judgment will not lie (*id.* at 678).

2. The Relevant Causes of Action

"To establish a prima facie case of negligence, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Solomon by Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). "Labor Law § 240(1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites. To prevail on a cause of action alleging a violation of Labor Law § 240(1), a plaintiff must show that the statute was violated, and that the violation was a proximate cause of his or her injuries. However, where a plaintiff's own actions are the sole proximate cause of the accident, there can be no liability" (*Probst v 11 W. 42 Realty Invs., LLC*, 106 AD3d 711, 711-12 [2d Dept 2013][internal citations and quotation marks omitted]). The essential elements in an action for breach of contract "are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach" (*Dee v Rakower*, 112 AD3d 204, 209 [2d Dept 2013]; *Elisa Dreier Reporting Corp. v Global Naps Networks, Inc.*, 84 AD3d 122, 127 [2d Dept 2011]).

3. Analysis

A. Popian's Motion for Summary Judgment and Sanctions

Popian seeks judgment as a matter of law dismissing all causes of action against it in the Complaint, counterclaims and cross-claims. Popian then asserts that there are none. Therefore, the motion is denied as moot.

As for sanctions, "CPLR 8303-a permits up to $10,000 in sanctions for each "successful party." Thus, each of the defendants was entitled to an award of $10,000. . . The imposition of sanctions must be sought by motion. . . Upon a finding of frivolousness, the successful party in the action is entitled to costs and reasonable attorney's fees not to exceed $10,000. The court may require payment of the costs and expenses by the offending party, the party's attorney, or both, as appropriate to the circumstances of the case. Based on the language of the statute ("the court shall award"), the imposition of costs has been held to be mandatory upon a finding of frivolousness; only the allocation as between party and attorney is discretionary. . . Even in actions for personal injury, property damage or wrongful death, the statute does not include all manner of frivolous

litigation conduct. Only frivolous claims, counterclaims, cross-claims or defenses--matters addressed in the pleadings--can be the subject of sanctions. Thus, the making of a frivolous motion on a procedural point or abusive discovery conduct is not encompassed by CPLR 8303-a" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, C8303).

In addition, "Pursuant to 22 NYCRR 130-1.1, a court in a civil action may award reasonable attorney's fees resulting from frivolous conduct. Conduct is frivolous within the meaning of 22 NYCRR 130-1.1, inter alia, where it is completely without merit in law or is undertaken primarily . . . to harass or maliciously injure another. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct. The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court's sound discretion" (Yinuo Yin v Xiao Feng Qiao, 203 AD3d 996, 997-998 [2d Dept 2022][internal citations and quotation marks omitted).

Here, oddly, notwithstanding repeatedly asserting that there are no claims against it, Popian seeks an award of costs and fees

for Antunes' failure to execute a Stipulation of Discontinuance. At best, one can only speculate which claim Popian is asking Antunes to discontinue, especially since it never had one. Based upon the moving papers, the only remaining claim involving Popian is its own Third-Party Complaint against Antunes. Put another way, if Popian wants "dismissal from the instant case" (Affirmation in Opposition, p. 7), it could do so by submitting its own Stipulation of Discontinuance. Therefore, Popian's motion for sanctions must be denied.

B. Plaintiff's Motion for Partial Summary Judgment on the Labor Law § 240(1) Claim

In support, Plaintiff submits, *inter alia*, the Verified Complaint and deposition transcripts. They establish, *prima facie*, Plaintiff's entitlement to judgment on the Labor Law § 240(1) claim. Consequently, the burden shifted to G&L to demonstrate the existence of a material issue of fact.

G&L posits that issues of fact exist regarding whether it was a general contractor, whether Plaintiff failed to use available safety equipment, and whether Plaintiff was the sole proximate

cause of the fall. In support, it submits various deposition transcripts.

"An entity is a contractor within the meaning of Labor Law § 240 (1) and § 241 (6) if it had the power to enforce safety standards and choose responsible subcontractors" (*Outwater v Ballister*, 253 AD2d 902, 904 [3d Dept 1998]). Thus, a party's "status as a contractor under Labor Law § 240 (1) is dependent upon whether it had the right to exercise control over the work, not whether it actually exercised that right" (*Williams v Dover Home Improvement, Inc.*, 276 AD2d 626 [2d Dept 2000]). G&L's submissions fail to establish that there is a triable issue of fact whether it was a contractor. Consequently, its argument has no merit.

For Labor Law 240(1) claims, "an owner who has provided safety devices is not liable for failing to 'insist that a recalcitrant worker use the devices'" (*Cahill v Triborough Bridge & Tunnel Auth.*, 4 NY3d 35, 39 [2004] quoting *Smith v Hooker Chems. & Plastics Corp.*, 89 AD2d 361, 365 [4th Dept 1982]). "The controlling question, however, is not whether plaintiff was 'recalcitrant,' but whether a jury could have found that his own conduct, rather than any violation of Labor Law § 240 (1), was the

sole proximate cause of his accident" (*id.* at 39-40). G&L highlights portions of deposition testimony by Antunes' supervisors (father and son) that safety equipment was available at the work site and that Plaintiff was directed to use it. The cited testimony, however, does not establish that Plaintiff failed to use safety equipment (*Guaman v New Sprout Presbyt. Church of N.Y.*, 33 AD3d 758 [2d Dept 2006]). Moreover, G&L fails to establish, *prima facie*, that Plaintiff was the sole proximate cause of the accident. Consequently, G&L's arguments have no merit. Therefore, the motion must be granted.

C. Antunes' Motion for Summary Judgment Dismissing Popian's Third-Party Complaint and G&L's Second Third-Party Complaint

Antunes fails to establish, *prima facie*, entitlement to judgment as a matter of law. While conceding that the parties entered into a written contract and submitting a copy of same[6], Antunes ignores the portion of the document that recites "effective as of 04-21-17." Consequently, Antunes fails to establish that the parties did not enter into a contract.

[6] Antunes denominates the document as "writings."

Antunes next argues that, because it employed Plaintiff, it cannot be liable to Popian and G&L on their third-party claims. Antunes' reliance on *Valenziano v Niki Trading Corp.*, 21 AD3d 818 (1st Dept 2005) is misplaced. Consequently, this argument, on its face, is devoid of merit.

With respect to its assertion that Plaintiff did not, as a matter of law, suffer a grave injury, pursuant to Workers' Compensation Law § 11 (1),

> The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom . . . An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

Thus, "Workers' Compensation Law § 11 permits an employer to be held liable for contribution or indemnity only where the third-party plaintiff proves through competent medical evidence that the employee sustained a grave injury. The term grave injury has been defined as a statutorily defined threshold for catastrophic injuries' * * * and includes only those injuries which are listed in the statute and determined to be permanent" (*Curran v Auto Lab Serv. Ctr., Inc.*, 280 AD2d 636, 638 [2d Dept 2001][internal quotation marks omitted]). In addition, the statutory list of grave injuries was intended to be "exhaustive, not illustrative" (Governor's Mem. approving L. 1996, ch. 635, 1996 McKinney's Session Laws of NY, at 1913).

Here, Antunes submits a report from an independent medical examination performed Dr. James R. Dickson. In it, Dr. Dickson indicates that, directly as a result of the accident, Plaintiff suffered a complete tear of the supraspinatus tendon of the right shoulder requiring surgery. In a more recent report, Dr. Dickson writes "[t]he repair of Dr. Kaplan provided an excellent result allowing Mr. Perez to return to his usual work in the summer of 2020, with excellent restoration of right shoulder function." Notably, none of the parties submit any other evidence relative to Plaintiff's injury. Consequently, the court finds that Plaintiff

did not suffer a grave injury as defined in the Workers' Compensation Law.

This does not, however, end the analysis. "Where the plaintiff has not sustained a 'grave injury,' section 11 of the Workers' Compensation Law bars third-party actions against employers for indemnification or contribution unless the third-party action is for contractual indemnification pursuant to a written contract in which the employer 'expressly agreed' to indemnify the claimant. Requiring the indemnification contract to be clear and express furthers the spirit of the legislation" (*Tonking v Port Auth. of New York & New Jersey*, 3 NY3d 486, 490 [2004]). That is exactly the claims made by Popian and G&L against Antunes in the Third-Party Complaint and Second Third-Party Complaint. With respect to the indemnification claims, Antunes fails to raise a triable issue of fact (*Falkowski v Krasdale Foods, Inc.*, 50 AD3d 1091 [2d Dept 2008]). Therefore, Antunes' motion for summary judgment dismissing the third-party claims must be denied.

D. Antunes' Cross-Motion to Amend its Answer to the Third-Party Complaint (to add Counterclaims for Common Law Indemnification and Common Law Negligence)

Pursuant to CPLR §3025(b),

> A party may amend his or her pleading or supplement it by setting forth additional and subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just...

"To obtain leave, a plaintiff must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment" (*Velarde v City of New York*, 149 AD3d 457, 457 [1st Dept 2017]). The party opposing the motion bears the burden of demonstrating prejudice or surprise, or that the proposed amendment is devoid of merit (*Lennon v 56th & Park (NY) Owner, LLC*, 199 AD3d 64 [2d Dept 2021]).

"In the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit. Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine. 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. The determination to permit or deny the amendment is committed to the sound and broad discretion of the trial court, and its determination will not

lightly be set aside" (*Shields v Darpoh*, 207 AD3d 586, 587 [2d Dept 2022][internal citations and quotation marks omitted]).

"[W]here the application for leave to amend is made long after the action has been certified for trial, judicial discretion in allowing such amendments should be discrete, circumspect, prudent, and cautious. In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts upon which the motion was predicated [and] whether a reasonable excuse for the delay was offered" (*Castaldi v Castle Restoration*, LLC, 207 AD3d 618, 620 [2d Dept 2022][internal citations and quotation marks omitted]). Moreover, a pleading cannot be amended to add a proposed cause of action which "lacks merit" (*David v South Nassau Communities Hosp.*, 26 NY3d 563 [2015]).

Here, Antunes seeks to add claims against Popian for common law indemnification and negligence. Preliminarily, the motion must be summarily denied because Antunes failed to include a proposed amended answer "clearly showing the changes or additions to be made to the pleading" (*Mendoza v Enchante Accessories, Inc.*, 185 AD3d 675, 679 [2d Dept 2020]). In fact, Antunes failed to submit anything showing the proposed amendment.

In any event, the proposed new claims have no merit. Not only does Antunes fail to submit sufficient evidence in support, Popian established entitlement to the homeowner's exemption. Finally, the cross-motion is untimely as it was made almost four months after the court issued a Trial Readiness Order. Antunes' suggestion that the extensive delay should be excused because it changed counsel ten months earlier has no merit. Thus, even if the motion was somehow considered on the merits, it would be denied.

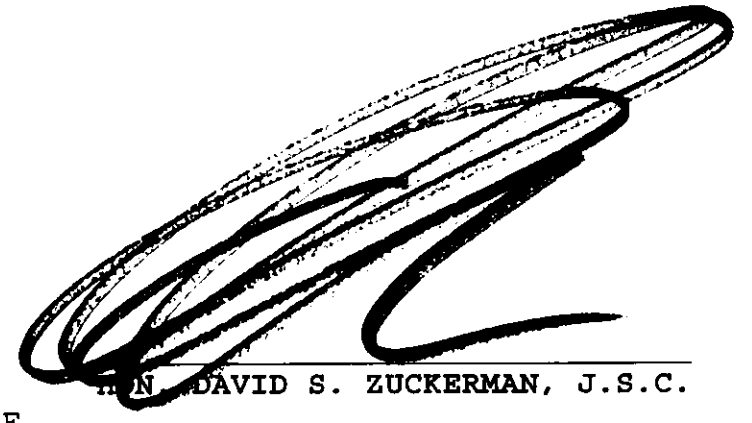
The remaining contentions, if any, do not compel a different result. Any additional relief requested by any party and not expressly considered herein is denied.

Accordingly, upon the foregoing papers, it is hereby

ORDERED that Plaintiff Martin Perez is granted summary judgment on liability on the cause of action for violation of Labor Law § 240(1).

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York
January 22, 2025



HON. DAVID S. ZUCKERMAN, J.S.C.

To: All Parties via NYSCEF