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SHORT FORM ORDER

INDEX No. 08-39684
CAL. No. 11-00353OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 9 - SUFFOLK COUNTY

PRESENT:

Hon. DANIEL M. MARTIN
Justice of the Supreme Court

MOTION DATE 7-5-11
ADJ. DATE 12-20-11
Mot. Seq. # 007 - MD
008 - XMD
009 - XMD

MATTHEW JANKITE, Plaintiff, - against - CSPN PALIURAS CONSTRUCTION CORP., VARDO CONSTRUCTION CORP. and SALVATORE GAUDIO, Defendants.	SIBEN & SIBEN, LLP Attorney for Plaintiff 90 East Main Street Bay Shore, New York 11706 MULHOLLAND, MINION, DUFFY, et al. Attorney for Defendant CSPN Paliuras Construction 374 Hillside Avenue Williston Park, New York 11596 WILKOFSKY, FRIEDMAN, KAREL, et al. Attorney for Defendant Vardo Construction 299 Broadway, Suite 1700 New York, New York 10007 MAZZARA & SMALL, P.C. Attorney for Defendant Salvatore Gaudio 800 Veterans Memorial Highway Hauppauge, New York 11788

Upon the following papers numbered 1 to 54 read on this motion and these cross motions for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 16 ; Notice of Cross Motion and supporting papers 17 - 30; 31 - 39 ; Answering Affidavits and supporting papers 40 - 46; 47 - 48; 49 - 50 ; Replying Affidavits and supporting papers 51 - 52; 53 - 54 ; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendant CSPN Paliuras Construction Corp. for summary judgment dismissing the complaint and any cross claims asserted against it is denied; and it is further,

ORDERED that the cross motion by defendant Salvatore Gaudio for, *inter alia*, summary judgment dismissing the plaintiff's complaint and any cross claims asserted against him is denied; and it is further,

ORDERED that the cross motion by defendant Vardo Construction Corp. for summary judgment dismissing the complaint and any cross claims asserted against it is denied.

In this action, the plaintiff seeks to recover damages for personal injuries which he purportedly sustained on June 16, 2007, when he fell off of a roof while performing construction work at premises located at 30 Shelter Rock Road in Manhasset, New York (hereinafter the subject premises). The subject premises is owned by defendant Salvatore Gaudio. Defendants Vardo Construction Corp. (hereinafter Vardo) and CSPN Paliuras Construction Corp. (hereinafter CSPN) were both retained by Gaudio to perform certain services in relation to the construction of two residential homes on the subject premises. At the time of the incident, the plaintiff was employed by a non-party roofing sub-contractor, Little Timbers. In his complaint, the plaintiff alleges that the defendants are liable for his injuries based on Labor Law §§ 200, 240 (1) and 241 (6) and common law negligence. In their respective answers, the defendants each deny the allegations of the complaint and assert cross claims against their co-defendants for, *inter alia*, contribution and indemnification.

Defendant CSPN now moves for summary judgment dismissing the complaint and all cross claims asserted against it. Specifically, CSPN contends that (1) the causes of action based on violation of Labor Law §§ 240 (1) and 241 (6) should be dismissed because CSPN was hired as a "construction manager" and was not a general contractor; (2) the cause of action based on Labor Law § 241 (6) should be dismissed because the Industrial Code provisions relied on by the plaintiff in support of such cause of action are inapplicable to the facts of this case, and (3) the causes of action based on Labor Law § 200 and common law negligence should be dismissed because CSPN did not supervise, direct or control the plaintiff's work and did not supply the tools, materials and/or equipment utilized by the plaintiff.

Defendant Gaudio cross-moves for summary judgment dismissing the complaint and all cross claims asserted against him. Specifically, Gaudio argues contends (1) the complaint and all cross claims asserted against him should be dismissed where the plaintiff's employer testified that accident at issue did not occur at the subject premises, (2) the causes of action based on violation of Labor Law §§ 240 (1) and 241 (6) should be dismissed pursuant to the homeowner's exception to liability contained in such provisions as he was the owner of a single family home under construction who did not direct, supervise or control the plaintiff's work, and (3) the causes of action based on violation of Labor Law § 200 and common law negligence should be dismissed because he neither directed or controlled the plaintiff's work nor had actual or constructive notice of a dangerous condition. In the event that the action against him is not dismissed in its entirety, Gaudio contends that he is entitled to contractual indemnification from CSPN.

Defendant Vardo cross-moves for summary judgment dismissing the complaint and all cross claims asserted against it. Specifically, Vardo contends (1) the causes of action based on violation of Labor Law §§ 200, 240 (1) and 241 (6) should be dismissed because it was not the general contractor at the subject premises at the time of the plaintiff's accident, and (2) the cause of action based on Labor Law § 200 and common law negligence should be dismissed as it did not have the authority to direct or control the plaintiff's work.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986] ; ***Winegrad v New York Univ. Med. Center***, 64 NY2d 851, 487 NYS2d 316 [1985]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 925 [1980]). Failure to make such prima facie showing requires a denial of the motion, regardless

of the sufficiency of the opposing papers (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Winegrad v New York Univ. Med. Center***, *supra*). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see* ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, *supra*).

The evidence submitted by CSPN was insufficient to establish its *prima facie* entitlement to judgment, as a matter of law, dismissing the complaint and all cross claims asserted against it. In support of its motion, CSPN submits, *inter alia*, the pleadings, the bill of particulars, the deposition testimony of the plaintiff, the deposition testimony of Lorenzo De Vardo on behalf of Vardo, the deposition testimony of Gaudio, the deposition testimony of non-party Simon Doherty on behalf of Little Timbers, purported proposals prepared by Little Timbers for CSPN, purported checks written by Gaudio to Little Timber, an agreement entered by Gaudio and CSPN with respect to work at the subject premises, the affidavit of Spiro Paliuras on behalf of CSPN, and a copy of the decision, dated December 17, 2009, in a Queens County case entitled ***Rivera v CSPN Paliuras Contracting***.

The majority of the evidence relied on by CSPN in support of its motion for summary judgment is of no probative value because it has not been submitted in admissible form. In particular, the deposition testimony of the plaintiff, Gaudio and Simon Doherty cannot be considered by this Court on the instant motion. These deposition transcripts are unsigned by the deponents and unattested (*see* ***Matter of Delgatto***, 82 AD3d 1230, 919 NYS2d 391 [2d Dept 2011]). CSPN fails to explain why these transcripts are unsigned and unsworn or to show that they were forwarded to the deponents for their review pursuant to CPLR 3116 (a) (*see* ***Marmer v IF USA Express***, 73 AD3d 868, 899 NYS2d 884 [2d Dept 2010];***Martinez v 123-16 Liberty Ave. Realty Corp***, 47 AD3d 901, 850 NYS2d 201 [2d Dept 2008]; ***McDonald v Mauss***, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]; ***Pina v Flik Intl. Corp.***, 25 AD3d 772, 808 NYS2d 752 [2d Dept 2006]; ***Santos v Intown Assoc.***, 17 AD3d 564, 793 NYS2d 477 [2d Dept 2005]; ***Lalli v Abe***, 234 AD2d 346, 650 NYS2d 313 [2d Dept 1996]; *compare* ***Franzese v Tanger Factory Outlet Ctrs., Inc.***, 88 AD3d 763, 930 NYS2d 900 [2d Dept 2011]). Moreover, these deposition transcripts were not certified by the reporter as accurate (*see* ***Marks v Robb***, 90 AD3d 863, 935 NYS2d 593 [2d Dept 2011]; ***Cox v Jeffers***, 222 AD2d 395, 634 NYS2d 519 [2d Dept 1995]; *compare* ***Rodriguez v Ryder Truck, Inc.***, 91 AD3d 935, 937 NYS2d 602 [2d Dept 2012]; ***Zalot v Zieba***, 81 AD3d 935, 917 NYS2d 285 [2d Dept 2011]; ***Morchik v Trinity School***, 257 AD2d 534, 684 NYS2d 534 [1st Dept 1999]; ***R.M. Newell Co. v Rice***, 236 AD2d 843, 653 NYS2d 1004 [4th Dept 1997]).

The remaining evidence was insufficient to demonstrate, as a matter of law, that CSPN was entitled to summary judgment dismissing the complaint and cross claims asserted against it. This evidence fails to establish that CSPN is not a party responsible for compliance with the statutory mandate of Labor Law §§ 240 (1) and 241 (6) because it was a "construction manager" rather than a "general contractor." Labor Law § 240 (1), commonly known as the "scaffold law," creates a duty that is nondelegable and an owner, general contractor, or agent thereof, who breaches that duty may be held liable in damages regardless of whether it had actually exercised supervision or control over the work (*see* ***Ross v Curtis-Palmer Hydro-Elec. Co.***, 81 NY2d 494, 601 NYS2d 49 [1993]). Labor Law § 241 (6) imposes a nondelegable duty of reasonable care upon an owner, general contractor, or agent thereof, to provide reasonable and adequate protection to workers. Although a "construction manager" is generally not considered a "contractor" or "owner" within

the meaning of Labor Law §§ 240 (1) or 241 (6), it may nonetheless become responsible for the safety of the workers at a construction site if it has been delegated the authority and duties of a general contractor, or if it functions as an agent of the owner of the premises (***Domino v Professional Consulting, Inc.***, 57 AD3d 713, 869 NYS2d 224 [2d Dept 2008]; ***Pino v Irvington Union Free School Dist.***, 43 AD3d 1130, 843 NYS2d 133 [2d Dept 2007]; *see* ***Walls v Turner Constr. Co.***, 4 NY3d 861, 863-64, 798 NYS2d 351 [2005]; ***Russin v Louis N. Picciano & Son***, 54 NY2d 311, 318, 445 NYS2d 127 [1981]). In this regard, "the label of construction manager versus general contractor is not necessarily determinative" (***Barrios v City of New York***, 75 AD3d 517, 905 NYS2d 255 [2d Dept 2010]). Rather, the critical question is whether the construction manager was delegated supervisory control and authority over the work being done when the plaintiff was injured (***Barrios v City of New York***, *supra*; *see* ***Domino v Professional Consulting, Inc.***, *supra*; ***Pino v Irvington Union Free School Dist.***, *supra*). Here, CSPN fails to establish, by admissible evidence, that it cannot be liable pursuant to Labor Law §§ 240 (1) and 241 (6) as a statutory agent of the owner or general contractor because it did not have sufficient authority to supervise and control the plaintiff's work (*see* ***Gonzalez v TJM Constr. Corp.***, 87 AD3d 610, 928 NYS2d 344 [2d Dept 2011]; ***Barrios v City of New York***, *supra*; *compare* ***Florez v Conlon***, 82 AD3d 831, 918 NYS2d 369 [2d Dept 2011]). A review of the agreement between CSPN and Gaudio fails to establish, as a matter of law, that it lacked such authority (*compare* ***Domino v Professional Consulting, Inc.***, *supra*) and the other evidence submitted, including the deposition testimony of Vardo and proposals prepared by Little Timbers for CSPN, raises a triable issue of fact on this issue.

Contrary to CSPN's contention, this Court is not bound by the determination of the Supreme Court, Queens County, in ***Rivera v CSPN Paliuras Contracting***, an action against the same defendants arising from the work performed at the subject premises. In such action, the Court granted summary judgment to CSPN finding that the evidence established that as "construction manager" at the subject premises it was not a liable party pursuant to Labor Law §§ 240 (1) and 241 (6). The doctrine of collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (***O'Gorman v Journal News Westchester***, 2 AD3d 815, 770 NYS2d 121 [2d Dept 2003]; *see* ***Montoya v JL Astoria Sound, Inc.***, __AD3d__, 939 NYS2d 92 [2d Dept 2012]; ***Kolel Damsek Eliezer, Inc. v Schlesinger***, 90 AD3d 851, 935 NYS2d 83 [2d Dept 2011]). "As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, strict requirements for application of the doctrine must be satisfied to insure that a party not be precluded from obtaining at least one full hearing on his or her claim" (***Gramatan Home Invs. Corp. v Lopez***, 46 NY2d 481, 485, 414 NYS2d 308 [1979]; ***Kolel Damsek Eliezer, Inc. v Schlesinger***, 90 AD3d 851, 935 NYS2d 83 [2d Dept 2011]). In order for collateral estoppel to apply, two elements must be established: (1) that the identical issue was necessarily decided in the prior action and is decisive in the present action; and (2) that the precluded party must have had a full and fair opportunity to contest the prior determination (***Montoya v JL Astoria Sound, Inc.***, *supra*; ***Shaid v Consolidated Edison Co.***, 95 AD2d 610, 467 NYS2d 843 [2d Dept 1983]). Among the elements to be considered in determining if there has been a full and fair opportunity to contest the decision, i.e., whether a party has had his day in court, are "such considerations as the size of the claim, the forum of the prior litigation, the use of initiative, the extent of the litigation, the competence and experience of counsel, the availability of new evidence, indications of a compromise verdict, differences in the applicable law and foreseeability of future litigation" (***Shaid v Consolidated Edison Co.***, *supra*). The record before this Court fails to establish that the precluded party, or a party in privity to such party, had a full and fair opportunity

to contest the prior determination. Indeed, it is undisputed that the plaintiff in this action was not a party to the Queens County proceeding. Moreover, the record fails to establish, as a matter of law, that the issue presented in the Queens County proceeding was truly "identical."

The evidence submitted, likewise, fails to demonstrate CSPN's *prima facie* entitlement to summary judgment of the cause of action based on Labor Law § 241 (6) on the grounds that the Industrial Code Provisions relied on are inapplicable to the facts of this case. Pursuant to Labor Law § 241 (6), a violation of an explicit and concrete provision of the Industrial Code by a participant in the construction project constitutes some evidence of negligence for which the owner, general contractor, or agent thereof may be held vicariously liable (*see* ***Rizzuto v L.A. Wenger Contr. Co.***, 91 NY2d 343, 670 NYS2d 816 [1998]; ***Melchor v Singh***, 90 AD3d 866, 935 NYS2d 106 [2d Dept 2011]; ***Fusca v A & S Constr., LLC***, 84 AD3d 1155, 924 NYS2d 463 [2d Dept 2011]). In order to recover damages on a cause of action alleging a violation of Labor Law § 241 (6), a plaintiff must establish the defendant's violation of an Industrial Code provision which sets forth specific safety standards and that such violation was a proximate cause of the accident (*see* ***Rizzuto v L.A. Wenger Contr. Co.***, *supra*; ***Ross v Curtis-Palmer Hydro-Elec. Co.***, *supra*; ***Ramos v Patchogue-Medford School Dist.***, 73 AD3d 1010, 906 NYS2d 45 [2d Dept 2010]). The rule or regulation alleged to have been breached must be a specific, positive command and must be applicable to the facts of the case (*see* ***Clavijo v Universal Baptist Church***, 76 AD3d 990, 907 NYS2d 515 [2d Dept 2010]; ***Forschner v Jucca Co.***, 63 AD3d 996, 883 NYS2d 63 [2d Dept 2009]). The admissible evidence submitted by CSPN fails to support a finding that the Industrial Code provisions relied on by the plaintiff are inapplicable to the facts of this case. Indeed, CSPN has submitted no admissible evidence with respect to the details of the plaintiff's accident.

In a similar vein, CSPN has also failed to submit sufficient evidence to demonstrate its entitlement to summary judgment dismissing the plaintiff's causes of action based on Labor Law § 200 and common law negligence. Labor Law § 200 merely codifies the common-law duty imposed upon an owner, or general contractor to provide construction site workers with a safe place to work (*see* ***Rizzuto v L.A. Wenger Contr. Co.***, *supra* at 352; ***Gasques v State of New York***, 59 AD3d 666, 873 NYS2d 717 [2d Dept 2009]; ***Dooley v Peerless Importers***, 42 AD3d 199, 837 NYS2d 720 [2d Dept 2007]). When a worker's injuries result from an unsafe or dangerous condition existing at a work site, the liability of a party will depend upon whether the party had control of the place where the injury occurred, and whether it either created, or had actual or constructive notice of, the dangerous condition (*see* ***Cook v Orchard Park Estates, Inc.***, 73 AD3d 1263, 902 NYS2d 674 [3d Dept 2010]; ***Harsch v City of New York***, 78 AD3d 781, 910 NYS2d 540 [2d Dept 2010]; ***Martinez v City of New York***, 73 AD3d 993, 901 NYS2d 339 [2d Dept 2010]). To be held liable under Labor Law § 200 and for common-law negligence when the method and manner of the work is at issue, it must be shown that "the party to be charged had the authority to supervise or control the performance of the work" (***Ortega v Puccia***, 57 AD3d 54, 61, 866 NYS2d 323[2d Dept 2008]; *see* ***La Veglia v St. Francis Hosp.***, 78 AD3d 1123, 912 NYS2d 611 [2d Dept 2010]; ***Domino v Professional Consulting, Inc.***, 57 AD3d 713, 869 NYS2d 224 [2d Dept 2008]). In such situations, it must be demonstrated that the defendant exercised actual control over the manner in which the work was performed. The admissible evidence submitted by CSPN, which as discussed *supra*, fails to include the details of the plaintiff's accident, was insufficient to establish that CSPN's negligence was not a proximate cause of the plaintiff's injuries.

Since CSPN failed to meet its *prima facie* burden of establishing an entitlement to summary judgement, it is not necessary to consider the sufficiency of the opposition papers (*see* ***Alvarez v Prospect Hosp.***, *supra*). Accordingly, the motion by CSPN for summary judgment is denied.

The cross-motion by Gaudio for summary judgment dismissing the complaint and all cross claims asserted against him is also denied. In support of his cross motion, Gaudio submits, *inter alia*, the pleadings, the bill of particulars, the agreement between himself and CSPN, the plaintiff's uncertified emergency room records, the plaintiff's affidavit indicating he fell from a roof in the course of roofing, the plaintiff's deposition testimony, his own deposition testimony, the deposition testimony of Lorenzo De Vardo on behalf of Vardo, the deposition testimony of Spiro Paliura on behalf of CSPN, and the deposition testimony of Simon Doherty on behalf of non-party Little Timbers.

The majority of this evidence is of no probative value because it has not been submitted in admissible form. In particular, the deposition testimony of the plaintiff, Gaudio, De Vardo and Doherty cannot be considered by this Court on the instant cross-motion as these deposition transcripts are unsigned by the deponents, unattested, and fail to show that they were forwarded to the deponents for their review pursuant to CPLR 3116 (a) (*see* ***Marmer v IF USA Express***, *supra*; ***Martinez v 123-16 Liberty Ave. Realty Corp***, *supra*; ***McDonald v Mauss***, *supra*; ***Pina v Flik Intl. Corp.***, *supra*; ***Santos v Intown Assoc.***, *supra*; ***Lalli v Abe***, *supra*). Significantly, these transcripts also were not certified by the reporter as accurate (*see* ***Marks v Robb***, *supra*; ***Cox v Jeffers***, *supra*). The remaining evidence submitted by Gaudio was insufficient to establish his *prima facie* entitlement to summary judgment dismissing the complaint and all cross claims asserted against him.

The admissible evidence, which does not contain an admissible copy of the deposition testimony of the plaintiff's employer, fails to establish that Gaudio is not liable for the plaintiff's injuries because the incident did not occur at the subject premises. The evidence submitted was also insufficient to establish that the causes of action based on Labor Law §§ 240 (1) and 241 (6) should be dismissed as against Gaudio because he is entitled to the protection of the homeowner's exception to liability contained in such provisions. The homeowner's exemption to liability under Labor Law §§ 240 (1) and 241 (6) is available to "owners of one and two-family dwellings who contract for but do not direct or control the work" (*see* ***Castellanos v United Cerebral Palsy Assn. of Greater Suffolk, Inc.***, 77 AD3d 879, 909 NYS2d 757 [2d Dept 2010]; ***Boccio v Bozik***, 41 AD3d 754, 839 NYS2d 525 [2d Dept 2007]; ***Ferrero v Best Modular Homes. Inc.***, 33 AD3d 847, 823 NYS2d 477 [2d Dept 2006]; ***Murphy v Sawmill Constr. Corp.***, 17 AD3d 422, 792 NYS2d 616 [2d Dept 2005]). The homeowners' exemption is intended to protect residential homeowners lacking in sophistication or business acumen from their failure to recognize the necessity of insuring against the strict liability imposed by the statute (*see* ***Ortega v Puccia***, 57 AD3d 54, 866 NYS2d 323 [2d Dept 2008]) and, thus, is not available to an owner who uses or intends to use a dwelling only for commercial purposes (*see* ***Castellanos v United Cerebral Palsy Assn. of Greater Suffolk, Inc.***, *supra*; ***Truppi v Busciglio***, 74 AD3d 1624, 905 NYS2d 291 [3d Dept 2010]; *see also*, ***Van Amerogen v Donnini***, 78 NY2d 880, 573 NYS2d 443 [1991]). "The determination whether the exemption is available to an owner in a particular case turns on the site and purpose of the work" (***Khela v Neiger***, 85 NY2d 333, 337, 624 NYS2d 566 [1995]; ***Lenda v Breeze Concrete Corp.***, 73 AD3d 987, 903 NYS2d 417 [2d Dept 2010]). The admissible evidence submitted by Gaudio in support of his cross-motion, which consists primarily of Paliura's deposition testimony, fails to demonstrate as a matter of law that Gaudio intended

to build the subject premises for non-commercial purposes. It also fails to demonstrate that Gaudio did not direct or control the plaintiff's work.

For similar reasons, Gaudio fails to establish a *prima facie* entitlement to summary judgment dismissing the plaintiff's causes of action based on violation of Labor Law § 200 and common law negligence. The evidence submitted fails to establish that Gaudio was not negligent because he did not direct or control the plaintiff's work (*see* ***La Veglia v St. Francis Hosp.***, *supra*; ***Ortega v Puccia***, *supra*). Similarly, the evidence submitted is insufficient to establish that Gaudio neither created nor had actual or constructive notice of an unsafe condition on the premises that caused the plaintiff's accident (*see* ***Cook v Orchard Park Estates, Inc.***, 73 AD3d 1263, 902 NYS2d 674 [3d Dept 2010]; ***Harsch v City of New York***, 78 AD3d 781, 910 NYS2d 540 [2d Dept 2010]; ***Martinez v City of New York***, 73 AD3d 993, 901 NYS2d 339 [2d Dept 2010]). In light of Gaudio's failure to demonstrate that the plaintiff's injuries did not result from his own negligence, he also fails to demonstrate a *prima facie* entitlement to indemnification from CSPN (*see generally* General Obligations Law § 5-322.1).

Since Gaudio failed to meet his *prima facie* burden of establishing an entitlement to summary judgement, his motion is denied without consideration of the sufficiency of the opposition papers (*see* ***Alvarez v Prospect Hosp.***, *supra*).

Lastly, the cross motion by Vardo for summary judgment dismissing the complaint and all cross claims asserted against it must also be denied. Vardo fails to include a complete set of the pleadings in support of its summary judgment motion, as required by CPLR § 3212 (b). Accordingly, it is not entitled to summary judgment and denial of its cross motion is required (*see* ***Ahern v Shepherd***, 89 AD3d 1046, 933 NYS2d 597 [2d Dept 2011]; ***Fiber Consultants, Inc. v Fiber Optek Interconnect Corp.***, 84 AD3d 1153, 924 NYS2d 276 [2d Dept 2011]; ***Sendor v Chervin***, 51 AD3d 1003, 857 NYS2d 500 [2d Dept 2008]). In any event, the Court notes that Vardo has failed to submit much of the evidence in support of its cross motion in admissible form, and that the admissible evidence which can be considered by the Court would be insufficient to establish Vardo's *prima facie* entitlement to summary judgment dismissing the complaint and cross claims asserted against it.

Dated: April 10, 2012.

J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION