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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LOUIS B. YORK J.S.C. PART 2
Justice

Index Number : 600899/2009
WADSWORTH CONDOS
vs.
DOLLINGER GONSKI
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
JAN 25 2013
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 1/22/13

_____, J.S.C.

LOUIS B. YORK J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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WADSWORTH CONDOS LLC, individually and derivatively on behalf of WADSWORTH CONDOS, LLC and 43 PARK OWNERS GROUP, LLC as the Owners, as Tenants-In-Common, of Real Property located at One Wadsworth Terrace, New York, New York,

Plaintiffs,

Index No.: 600899/2009

- against-

DOLLINGER GONSKI & GROSSMAN, MATTHEW DOLLINGER, EM DESIGN GROUP, INC., MICHAEL EVANS, SOLOMON ROSENZWEIG, PE P.C., SOLOMON ROSENZWEIG, YUSUF M. PATEL, and JOHN DOES 1-5, said names being fictitious, intended to be other Building Professionals who have worked on the Real Property located at One Wadsworth Terrace, New York, New York,

Defendants.

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YORK, J.,

Wadsworth Condos, LLC (Wadsworth), brings this action for legal malpractice, individually, on behalf of itself, and derivatively, on behalf of itself and 43 Park Owners Group, LLC (43 Park). Motion sequence numbers 003, 004, and 005, are consolidated for disposition. In motion sequence 003, defendants Dollinger, Gonski, & Grossman (the Dollinger law firm) and Matthew Dollinger (Dollinger), move, pursuant to CPLR 3212, for an order granting summary judgment and argue that they did not commit legal malpractice in an underlying action regarding a construction project.

In motion sequence 004, defendants Solomon Rosenzweig, PE P.C. (SRPE), Solomon Rosenzweig (Rosenzweig), and Yusuf M. Patel (Patel), move, pursuant to CPLR 3211 (a) (7), to dismiss the complaint for failure to state a cause of action, and alternatively move, pursuant to

CPLR 3212, for an order granting summary judgment. SRPE, Rozensweig, and Patel also move for sanctions, attorneys fees, and for the costs of making this motion.

In motion sequence 005, defendants Michael Even (Even) s/h/a Michael Evans and EM Design Group P.C. (EM) s/h/a EM Design Group, Inc., move, pursuant to CPLR 3212, for an order granting them summary judgment.

FACTUAL ALLEGATIONS

Wadsworth is a company formed by the real estate development group, The Bobker Group (Bobker), in order to commence a condominium construction project located at One Wadsworth Terrace in New York City (the premises). Bobker was founded by Joe Bobker, an architect and real estate developer. Eli Bobker serves as a managing member of the company.

On December 9, 2004, Bobker acquired the premises for $2,000,000. After acquiring the property, Joe Bobker met with Perry Finkelman (Finkelman), the principal of American Development Group (ADG), a real estate development company which engages in construction management. Finkelman and his partner, Mark Engel (Engel), president and CEO of Langsam Property Services Corp., are the managing members of 43 Park Owners Group, LLC (43 Park). Pursuant to a management agreement entered into on July 6, 2005, Wadsworth and 43 Park became tenants in common of the premises (together, the tenancy in common). 43 Park acquired a 20% undivided interest in the premises and Wadsworth retained the remaining 80%. The agreement provides, among other things, that Finkelman is responsible for all construction-related activities associated with the project.

Before Bobker acquired the premises, it retained architect Karl Fischer (Fischer) for architectural services for the condominium construction project. Following the commencement of construction at the premises, a portion of a retaining wall at the site was demolished. Shortly thereafter, a "stop work order" was issued by the New York City Department of Buildings (DOB), because it was alleged that the New York City Department of Transportation (DOT) owned the demolished retaining wall. Dollinger, an attorney, maintains that his firm was

contacted by the tenancy in common to review documents, including the survey and deed of the premises, in order to determine who owned the wall.

Dollinger continued to represent the tenancy in common during negotiations with the DOT regarding the retaining wall. The DOT, which Dollinger contends owned the wall, agreed to permit the tenancy in common to demolish the above-grade portion of the wall, as long as the tenancy in common assumed responsibility for the maintenance and stability of the area upon which the retaining wall existed. The tenancy in common was to obtain a performance bond in the amount of $300,000, and enter into an agreement with the adjoining property owner, Mauer-Bach.

Dollinger maintains that, on January 5, 2007, he met with Joe Bobker, Eli Bobker, and Finkelman, regarding the commencement of a potential lawsuit concerning the wall against Wadsworth's title insurers, Commonwealth Land Title Insurance Company and Chicago Title Insurance Company, 43 Park's title insurer, Stewart Title Insurance Company, and Fischer, the architect. Dollinger contends that he discussed with his clients how Fischer's plans ignored the existence of the retaining wall and that the title insurance policies failed to insure a right of access to the premises. Although Dollinger maintains that Joe Bobker believed that Fischer could be named as a potential defendant at a later date, Joe Bobker agreed that the title insurance companies were to be notified of the claims.

On October 30, 2007, the Dollinger defendants sent Eli Bobker a draft of the summons and complaint in connection with the underlying action against the title insurance companies and Fischer. Eli Bobker responded that he thought Fischer should be not named as a defendant. On October 31, 2007, an agreement for the maintenance and construction of the retaining wall was executed by Wadsworth, 43 Park and the DOT, however construction was delayed due to difficulties in obtaining a maintenance bond. Dollinger maintains that, at or about this time, Wadsworth entered into discussions with 43 Park regarding a possible purchase of Wadsworth's interest of the premises. On November 30, 2007, a draft of a contract of sale was made

regarding a proposed sale of Wadsworth to 43 Park, and a further draft was made on January 1, 2008. Despite the discussions and the proposed agreements, the sale of Wadsworth's interest of the premises was never finalized.

On August 27, 2008, Dollinger filed the underlying action, *43 Park Owners Group, LLC, Wadsworth Condos, LLC and Inwood Equities Group, Inc. v Commonwealth Land Title Insurance Company, Chicago Title Insurance Company, Stewart Title Insurance Company; and Karl Fischer* (Index No.: 06136-2008), in Nassau County. The lawsuit named Fischer as one of the defendants. Dollinger contends that Wadsworth explicitly agreed to the underlying action, and referenced the action in its negotiations concerning the sale of its interests to 43 Park.

On September 10, 2008, Joe Bobker sent an email to Dollinger, stating that the lawsuit had to be withdrawn because it was filed without Bobker's "consent, input, review valid retainer agreements, waiver of conflict issues, etc." (Dollinger Aff., ex.15). On November 10, 2008, Joe Bobker sent an email to Dollinger stating that "[y]ou are not authorized to represent the TIC (tenancy in common) interests. Please cease-and-desist immediately and notify all parties accordingly." (Dollinger, Aff., ¶15).

On March 23, 2009, Wadsworth commenced the instant action, alleging causes of action against the Dollinger law firm and Dollinger, for legal malpractice for commencing the underlying lawsuit. In their opposition to this motion, Wadsworth appears to be adding allegations that the Dollinger defendants committed legal malpractice when they sided with 43 Park and assisted the architecture and engineer defendants in a plan to convert the project from a condominium to a rental building. Furthermore, the opposition to the motion appears to allege that Dollinger failed to advise Wadsworth to apply for a permit to demolish the wall, and did not obtain a waiver of conflict of interest by representing the interests of both 43 Park and Wadsworth simultaneously. However, Dollinger maintains that these legal theories are new and were not incorporated into Wadsworth's complaint.

Wadsworth also alleges other causes of action, including negligence, breach of contract,

fraud, and aiding and abetting fraud, against the architects, Even and EM, and the engineers, SRPE, Rosenzweig, and Patel. Wadsworth maintains, in its opposition papers, that these architects and engineers were hired by 43 Park and transformed the plans for the premises from a condominium to a rental building, without the approval of the tenancy in common. Wadsworth maintains that the defendants were all aware that the premises was owned by a tenancy in common and did not seek its approval before commencing work.

DISCUSSION

Defendants maintain that Wadsworth does not have standing to bring this derivative action because Wadsworth's objective in filing this lawsuit is to vindicate its own rights as an individual corporation, and not to act on behalf of the rights of the tenancy in common. The Court of Appeals has held that "[w]hether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation." *Society of Plastics Indus., Inc. v County of Suffolk*, 77 NY2d 761, 769 (1991) (citations omitted). "Standing is thus a threshold determination that allows a litigant access to the courts to adjudicate the merits of a particular dispute that otherwise satisfies the other justiciability criteria." *Roberts v Health & Hosps. Corp.*, 87 AD3d 311, 318 (1st Dept 2011).

Here, the complaint alleges that the tenancy in common was negatively impacted by the actions of 43 Park. Specifically, Wadsworth alleges that 43 Park violated the terms of the management agreement, which governed the tenancy in common, by unilaterally changing the scope and purpose of the project from a condominium to a rental building, and by hiring professionals without its consent. Wadsworth maintains that each of the building professional defendants worked solely at the direction of 43 Park, without the consent of Wadsworth, and were paid on behalf of the tenancy in common.

As Wadsworth has set forth various allegations in the complaint which demonstrate how

the tenancy in common was allegedly impacted by 43 Park's actions, which were made without the consent of Wadsworth and were in violation of the management agreement, Wadsworth meets its burden and demonstrates that the derivative suit is necessary to represent the interests of the tenancy in common.

Dollinger and the Dollinger law firm contend that summary judgment must be granted in their favor because Wadsworth fails to demonstrate that they committed legal malpractice. The Court of Appeals has held that "[i]n order to establish a prima facie case of legal malpractice, a plaintiff must demonstrate that the plaintiff would have succeeded on the merits of the underlying action but for the attorney's negligence." *Davis v Klein*, 88 NY2d 1008, 1009-1010 (1996); *see also Coastal Broadway Assocs. v. Raphael*, 298 AD2d 186, 186 (1st Dept 2002) (holding that plaintiff failed to demonstrate the causal connection between the alleged malpractice and the loss which was sustained).

In the complaint, Wadsworth contends that Dollinger and the Dollinger law firm committed legal malpractice when they filed the lawsuit against Fischer. Wadsworth maintains that prior to the commencement of the action, Joe and Eli Bobker specifically instructed the Dollinger defendants to not name Fischer, Karl Fischer Architecture, PLLC, and Karl Fischer Design, Inc. as defendants. Wadsworth argues that the Dollinger defendants intentionally ignored the instructions and proceeded to file and serve the summons and complaint.

Wadsworth submits both the deposition testimony and an affidavit from Joe Bobker which discusses the allegations of legal malpractice. Along with improperly naming the Fischer defendants in the underlying action, Joe Bobker states that the Dollinger defendants subjected the tenancy in common to litigation positions which it had no control of and which created substantial expenses. Specifically, Joe Bobker maintains that Dollinger failed to advise Wadsworth of the full implications of commencing an action against the title insurance companies. Joe Bobker testified that Dollinger:

"locked us into positions with stipulations and depositions that we were unaware

> of and weren't given a chance to even attend or know about until after the fact . . . refused to give us access to our files when we asked them. He refused to even acknowledge that we were his client. He corresponded with our partners in the TIC (tenancy in common) behind our back. He assisted them in the destruction of our project by being aware of and knowing that the plans have changed."

(Joe Bobker 9/22/11 EBT, at 211).

Wadsworth argues that negotiations with the DOT and for the retaining wall accumulated unneeded legal fees, and did not require the extensive negotiations into which Dollinger entered. Joe Bobker maintains that if Dollinger had presented the alternative plan of complying with the permit requirements of the DOB, the tenancy in common could have been able to lift the "stop work order" and continue the project at the premises.

Joe Bobker contends that the delay in the continuation of the project resulted in the loss of financing and damages, including the loss of a construction loan, mortgage payments, equity infusions, legal fees, architectural fees, and carrying costs. He alleges that Dollinger's representation of 43 Park, and his failure to advise 43 Park to obtain Wadsworth's consent, as dictated by the management agreement, created conflicts with the interests of the tenancy in common.

Dollinger contends that Wadsworth cannot set forth a cause of action for legal malpractice because Bobker knew about the commencement of the action against Fischer, authorized it, and only objected to it after it was already commenced. Dollinger maintains that both Joe and Eli Bobker objected to the suit against Fischer only because of the breakdown of negotiations between 43 Park concerning the sale of Wadsworth's interest in the premises.

Dollinger argues that Joe Bobker admitted in his testimony that his reluctance to name Fischer was based upon a disagreement concerning litigation strategy. Dollinger further argues that the legal fees which were accumulated in the underlying action, would have been incurred regardless of any alleged misconduct; that lengthy negotiations were needed for the issues regarding the retaining wall; and that there is no evidence that Wadsworth objected to the

disbursements of legal fees when they were being made.

Summary judgment is a drastic remedy which is granted only when the party seeking summary judgment has established that there are no triable issues of fact. *Andre v Pomeroy*, 35 NY2d 361, 364 (1974). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006). "In considering a summary judgment motion, evidence should be analyzed in the light most favorable to the party opposing the motion." *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997).

"On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue, or if arguably there is a genuine issue of fact." *S. J. Capelin Assocs., Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 (1974); *see Psihogios v Stavropoulos*, 269 AD2d 295, 296 (1st Dept 2000) (holding that issues of credibility should be left for resolution by the trier of fact). Here, there is a clear dispute raised by the testimony of Joe Bobker and Dollinger. While Dollinger states that the litigation against Fischer was authorized, Joe Bobker disagrees, and states that this litigation was not authorized, and that Dollinger was specifically told not to commence the litigation against Fischer.

There also remains questions of fact as to whether Dollinger's work for 43 Park conflicted with the interests of the tenancy in common and the management agreement, and whether Dollinger did or did not contribute to delays in the litigation which resulted in damages. Therefore, because there are issues regrading the credibility of the witnesses, as well as issues of fact regarding Dollinger's work, Dollinger and the Dollinger law firm's motion for summary judgement must be denied.

In motion sequence numbers 004 and 005, Even, EM, SRPE, Rosenzweig, and Patel, move for summary judgement. Even, EM, SRPE, Rosenzweig, and Patel demonstrate, through affidavits and deposition testimony, that they were contracted to provide services for the premises by representatives of 43 Park, that they performed the requested services, that they

were paid for the services, and that they were not made aware that any other person or entity's permission was required in order for them to work at the premises. Furthermore, although Wadsworth maintains that the managing agreement between itself and 43 Park required Wadsworth, as a tenant in common, to approve of the engineer and architects, there is no evidence that these defendants were made aware of such agreement.

Even and his design group, EM, were retained by Finkelman to provide architectural services through an oral agreement. Even testified that when EM worked on the premises, he was only in contact with Finkelman; that Wadsworth did not provide instructions or request that it be consulted for the design for the premises; and that Wadsworth did not contact Even until after the architectural drawings for the premises were completed. Even believed Finkelman, who was in charge of construction at the premises, had the authority to direct him to provide the architectural services.

SRPE, Rosenzweig, and Patel also submit affidavits and deposition testimony which discuss their work on the project. Rosenzweig testified that, on May 31, 2006, Finkelman hired SRPE to provide engineering services at the premises. Rosenzweig maintains that SRPE was authorized to draft and file plans with the DOB; that it was SRPE's understanding that Finkelman was authorized to hire SRPE for the project; that SRPE completed work and submitted invoices to Finkelman; and that SRPE received payment for its work. Rosenzweig states in an affidavit dated March 28, 2012, that he believed that Finkelman was a controlling officer of the project, and that he "was never provided with any documentation indicating, or was otherwise made aware that SRPE needed any other person's or entity's consent to perform work on the project." (Rosenzweig Affidavit, ¶ 10).

With regard to defendant Patel, Patel submits an affidavit which states that, on February 1, 2008, Gary Griggs (Griggs) of ADG hired him to provide engineering services in connection with the construction project for the premises, including the design of the mechanical, electrical, plumbing, and fire and protection systems. Patel testified that his firm, YMP, completed the

engineering work, submitted invoices to ADG, and received payment. Patel believes that Griggs was authorized to hire him for the work, and maintains that he was not provided with any documentation which indicated that YMP needed any other person's or entity's consent to perform work on the project. (Patel Affidavit, ¶ 9).

In opposition to the defendants' motions for summary judgment, Wadsworth maintains that Evans, EM, Rosenzweig, SRPE, and Patel, were not authorized to represent the tenancy in common when they commenced work for the premises; that they were aware that the premises was owned by a tenancy in common and should have notified Wadsworth of their work; and that Wadsworth's consent was required regarding the retention of professionals. However, Wadsworth does not cite any agreement, authority, or case law which discusses that these defendants had a duty or legal responsibility to notify Wadsworth of their work at the premises. Furthermore, while Wadsworth alleges causes of action against the defendants for negligence, breach of contract, fraud, and aiding and abetting, Wadsworth fails to demonstrate that these defendants can be held liable for any of the causes of action.

For example, in order to set forth a prima facie case of negligence, a plaintiff must demonstrate, "the existence of a duty on defendant's part as to plaintiff; (2) a breach of this duty; and (3) injury to the plaintiff as a result thereof." *Akins v Glens Falls City School Dist.*, 53 NY2d 325, 333 (1981). Here, although Wadsworth alleges that the defendants were negligent, Wadsworth fails to provide any authority or case law, beyond speculation, which might show that a duty was owed by the defendants to alert the co-tenant in common of their work. The defendants were all hired by representatives of 43 Park and testified that they believed that the hiring party had authorization to hire them on behalf of the tenancy in common. Furthermore, while allegations of professional negligence require proof that there was a departure from the accepted standards and practices, Wadsworth has not provided any expert disclosure and does not discuss the appropriate standard of care for each professional. *See Travelers Indem. Co. v Zeff Design*, 60 AD3d 453, 455 (1st Dept 2009) ("a claim of malpractice against a professional

engineer requires expert testimony to establish a viable cause of action").

Wadsworth also alleges a cause of action of breach of contract against Even, EM, Rosenzweig, SRPE and Patel. In order to set forth a cause of action for breach of contract, plaintiff must demonstrate the existence of a contract, the claimant's performance under the contract, the defendant's breach of that contract, and resulting damages. *See Palmetto Partners, L.P. v AJW Qualified Partners, LLC*, 83 AD3d 804, 806 (2d Dept 2011). Wadsworth fails to demonstrate that Even, EM, Rosenzweig, SRPE or Patel breached a contract. The testimony demonstrates that the defendants contracted with a representative of the tenancy in common; that there was no contract entered with Wadsworth; that the defendants performed their services; and that they were paid for the services.

With regards to Wadsworth's allegations that Even, EM, Rosenzweig, SRPE, and Patel committed fraud, or aided and abetted fraud, Wadsworth again fails to specify how the defendants committed these causes of action. In order to set forth a cause of action for fraud, a plaintiff must prove a misrepresentation of a material fact which was false and known to be false by defendant, made for the purposes of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation and injury. *See Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 488 (2007). When alleging a cause of action for aiding and abetting, the plaintiff must demonstrate the existence of an underlying fraud, knowledge of the fraud on the part of the aiding and abetting party, and substantial assistance by the aiding and abetting party in achieving the fraud. *See Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476 (1st Dept 2009).

Here, Wadsworth fails to specify, with detail, what fraudulent activity occurred. Wadsworth does not specify what inducements were made by defendants, and fails to explain how Wadsworth relied on any misrepresentations. Wadsworth also does not present any evidence, which demonstrates that a fiduciary or independent duty was owed by the defendants to the tenancy in common.

Wadsworth also requests a permanent injunction against Evan, EM, SPRE, Rosenzweig and Patel from working on the project at the premises. For a permanent injunction to be granted there must be a "violation of a right presently occurring, or threatened and imminent ... that the plaintiff has no adequate remedy at law ... that serious and irreparable injury will result if the injunction is not granted; and ... that the equities are balanced in the plaintiff's favor." *Elow v Svenningsen,* 58 AD3d 674, 675 (2d Dept 2009) (citation and quotation marks omitted). Here, Wadsworth fails to discuss in its opposition papers the necessity for an injunction. Furthermore, the record does not indicate that work is ongoing on the project or at the premises, and Wadsworth fails to demonstrate that there will be an irreparable injury to the project, absent the granting of an injunction.

Wadsworth also argues that Even, EM, SPRE, Rosenzweig and Patel were unjustly enriched for their work at the premises. The Appellate Division, First Department, has held that a cause of action for unjust enrichment requires that a plaintiff demonstrate that "a benefit was bestowed . . . by plaintiffs and that defendants will obtain such benefit without adequately compensating plaintiffs therefor . . . ." *Murphy v 317-319 Second Realty. LLC*, 95 AD3d 443, 446 (1st Dept 2012) (citations and quotation marks omitted). Here, the defendants completed their professional services for 43 Park and were paid for their work. Therefore, because it remains unclear what benefit the defendants received, other than payment for their work, which they were hired by 43 Park or its representations to complete, this cause of action fails.

In conclusion, Evan, EM, SPRE, Rosenzweig and Patel demonstrate that the causes of action which Wadsworth has asserted against them are not supported by the record. Therefore, because these defendants make a prima facie showing of entitlement to judgment as a matter of law by presenting sufficient evidence to eliminate any material issues of fact, and because Wadsworth fails to raise a triable issue of fact, summary judgment must be granted. *See Mazurek,* 27 AD3d at 228. Finally, although SRPE, Rosenzweig, and Patel contend that they are entitled to sanctions and attorneys fees, the court declines to award such relief.

CONCLUSION and ORDER

Accordingly, it is

ORDERED that defendants Dollinger, Gonski, & Grossman and Matthew Dollinger, Esq.'s motion (sequence 003) for summary judgement is denied; and it is further

ORDERED that the motion for summary judgment by defendants Solomon Rosenzweig, P.E. P.C., Solomon Rosenzweig, and Yusuf M. Patel (sequence 004), is granted and the complaint is dismissed as to these defendants with costs and disbursements to these defendants as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the branch of defendants' motion seeking sanctions and attorneys fees, is denied; and it is further

ORDERED that the motion for summary judgment by defendants Michael Even s/h/a Michael Evans and EM Design Group P.C. s/h/a EM Design Group, Inc. (sequence 005), is granted and the complaint is dismissed as to these defendants with costs and disbursements to these defendants as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 1/22/13

ENTER:

J.S.C.

LOUIS B. YORK

FILED
JAN 25 2013
NEW YORK
COUNTY CLERK'S OFFICE