SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ROBERT DAVID KALISH** **PART** **IAS MOTION 29EFM**

Justice

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GARY GARTENBERG,

Plaintiff,

- v -

SUPREME COMPANY 1 LLC, DRITON LLC and ARBESA REST. CORP.,

Defendants.

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INDEX NO. 154159/2017

MOTION DATE 03/13/2019

MOTION SEQ. NO. 003, 004, 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 189, 190, 191, 196, 211

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 160, 161, 162, 163, 164, 165, 192, 193, 194, 195, 197, 199, 200, 201, 204, 205, 206, 212

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 187, 198, 202, 203, 213

were read on this motion to/for SUMMARY JUDGMENT.

Motion (Seq. 003) by Defendants Driton LLC d/b/a Nino's Ristorante Italiano ("Driton") and Arbesa Rest. Corp. ("Arbesa")[1] for summary judgment, pursuant to CPLR 3212, dismissing the complaint, or for certain alternative relief, is granted to the extent that the complaint is dismissed as against Arbesa and is otherwise denied; motion (Seq. 004) by Plaintiff Gary Gartenberg ("Plaintiff") for partial summary judgment, pursuant to CPLR 3212, on the issue of liability, is denied; and motion (Seq. 005) by Defendant Supreme Company I LLC ("Supreme") for summary judgment, pursuant to CPLR 3212, dismissing the complaint and all cross-claims is granted.

[1] The complaint was dismissed as against Arbesa during oral argument upon Plaintiff's counsel agreeing that he had no opposition to that branch of the motion. (Oral Arg. at 3:07-20.) As such, notwithstanding that motion sequence number 003 was made on behalf of both Driton and Arbesa, the instant decision will hereinafter refer to said motion as being made and argued by and on behalf of Driton. As Plaintiff reasonably conceded to dismissing the complaint as against Arbesa, this Court finds that it would be inequitable to award Arbesa costs pursuant to CPLR 8101.

BACKGROUND

In the instant action, Plaintiff alleges in sum and substance, that during the night of February 16, 2017, he was a patron at Nino's Ristorante, when he slipped and fell in the restroom. Nino's Ristorante is operated by Driton whose sole-shareholder is Shemsi "Nino" Selimaj. Driton leases the premises where it operates Nino's Ristorante from Supreme Company 1, LLC who is the fee owner of the premises.

With regard to his accident, Plaintiff states that on the night of the accident he was having dinner and drinks with a friend, and that after he finished his dinner he went to the restroom. As shown in photographs on this motion and as testified to by Plaintiff and other witnesses, the restroom used by Plaintiff contains a urinal and a toilet stall on one wall and a sink on a separate wall. The restroom floor is made of red ceramic tiles. In order to use the urinal, a patron must step onto a platform which is made of the same red ceramic tiles.

Plaintiff states that after having finished using the urinal, he turned around intending to use the sink and that he slipped and fell. He describes his accident as follows:

> "I finished my business, I turned to walk back towards the vanity to wash up, as I was coming down off the ledge – I will call it a ledge – my left foot slipped. As it slipped, it got stuck in a hole on the edge of the tile where the tile was broken and there was some repair work done to that tile, my foot, for a moment, got stuck in there, it twisted and then after it twisted, I fell down. I fell toward. I landed on my backside. I landed on my leg, my ankle.
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> ...
>
> I slipped on the edge of the platform. The edge of the platform was wet or — I wouldn't say wet, I would say moist. It was covered with some — I don't know — maybe urine. It just looked very unhygienic and the edge where I was about to step down, that's where the actual slip occurred and when the foot slipped, it went into the hole that was the break from the surrounding tiles."

(Plaintiff Affirm. in Supp., Ex. K [Plaintiff EBT] at 35:12-41:21.)

During Plaintiff's deposition, Plaintiff circled "the hole" where his foot became caught. (Plaintiff Affirm. in Supp., Ex. Q [Photo with Circle].) This "hole" appears to be an area of the floor on the ledge of the platform where a portion of the tile is missing. (Id.; *see also* Plaintiff Affirm. in Supp., Exs. O-P, R-S [Photographs].)[2] Driton's sole shareholder Shemsi "Nino" Selimaj ("Selimaj") stated that he believed that the tile had been chipped and then repaired by filling the area in with cement. (Plaintiff Affirm. in Supp., Ex. L [Selimaj EBT] at 42:06-47-22.) Selimaj further stated that this portion of the floor was in this same condition when he began

[2] While being shown a certain photograph at his deposition, Plaintiff stated that he did not recall there being a mat underneath the urinal and a "WATCH YOUR STEP" sign. (Plaintiff EBT at 62:10-64:13; *compare* Plaintiff Affirm. in Supp., Ex. M [Cipriano EBT] at 52:21-55:04 [stating that a mat was present underneath urinal on night of accident].)

running a restaurant at the premises in 1991, and that he did not do anything to change the condition of this portion of the floor. (Id.; *see also* Plaintiff EBT at 152:03-20 [describing the subject area as "the lousy repair that's on the tile"].)

Plaintiff stated that after he fell, he lay on the floor until one of the waiters Eliseo Cipriano ("Cipriano") entered the restroom and found him. (Plaintiff EBT at 73:07-75:02.) Cipriano stated that upon entering the restroom he found Plaintiff on the floor, and he then assisted Plaintiff in walking back to his table. (Plaintiff Affirm. in Supp., Ex. M [Cipriano EBT] at 19:12-21:07.) In describing what he saw on the night of the accident, Cipriano stated, "I didn't see any, like, weird thing, just like normal. … No, nothing wet or nothing wrong or nothing weird." (Id.)

According to Selimaj, the restroom is mopped twice every day, and more if needed, based upon inspections by staff that occur every thirty minutes. (Selimaj EBT at 80:20-82:24.)

The Court now has three motions for summary judgment before it. On motion sequence number 003, Driton moves to dismiss the complaint, or in the alternative to dismiss Plaintiff's claim for lost wages and to preclude Plaintiff's retained engineer Nicholas Belizzi from testifying at trial. On motion sequence number 004, Plaintiff moves for partial summary judgment on the issue of liability. On motion sequence number 005, Supreme moves for summary judgment dismissing the complaint as against it, or in the alternative granting it summary judgment on the issue of common law indemnification as against Driton and Arbesa. The Court will discuss each motion in turn.

DISCUSSION

"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 eliminate any material issues of fact from the case." (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985].) "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (Id.) Once this showing has been made, the burden shifts to the nonmoving party to produce "evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012].) "Under this summary judgment standard, even if the jury at a trial could, or likely would, decline to draw inferences favorable to the plaintiff . . . the court on a summary judgment motion must indulge all available inferences . . . ." (*Torres v Jones*, 26 NY3d 742, 763 [2016].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*Rotuba Extruders v Ceppos*, 46 N.Y.2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 A.D.2d 224, 226 [1st Dept 2002].)

I. Motion by Driton (Seq. 003)

A. The Branch of Driton's Motion Seeking Dismissal of the Complaint Is Denied

In sum and substance, Driton argues that the complaint against it should be dismissed because: (1) there was no dangerous condition; (2) there was no notice of a dangerous condition; and (3) the "hole," as Plaintiff refers to it, was a trivial defect.

"To meet its burden on the issue of lack of constructive notice, a defendant is required to offer some evidence as to when the accident site was last cleaned or inspected prior to the accident" (*Brum v Macy's Corp. Services, Inc.*, 134 AD3d 870, 871 [2d Dept 2015].) "Mere reference to general cleaning practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice" (id. [internal quotation marks omitted]; *see also De La Cruz v Lettera Sign & Elec. Co.*, 77 AD3d 566, 566 [1st Dept 2010] [holding that testimony of those without actual knowledge of events, or framed in the conditional tense of what an employee "would have" done, without demonstration of what actually was done, is generally insufficient to meet the summary judgment burden]).

Here, Plaintiff asserts, in sum and substance, that he slipped on moisture in the restroom and that his slipping was exacerbated by his foot going "into the hole that was the break from the surrounding tiles." (Plaintiff EBT at 35:12-41:21.) In this sense, Plaintiff asserts that there were two dangerous conditions that worked in tandem to bring about his accident: 1) the moisture that covered the entire floor; and 2) the "hole."

With regard to the tiles being "moist," Driton points to the deposition testimony of its employee Cipriano who stated that the restroom floor was "not[] wet" when he discovered Plaintiff lying on the floor after the accident. This of course stands in contrast to Plaintiff's testimony that the floor was moist. (*Compare* Cipriano EBT at 19:12-21:07 *with* Plaintiff EBT at 35:12-41:21.) As such, there is a material issue of fact concerning the "moist"-versus-"not[] wet" condition of the floor at the time of Plaintiff's accident.

In addition, as regards to the issue of the floor being moist, Driton has failed to make a prima facie showing that they lacked constructive notice of the alleged moist condition. Here, Driton asserts that it had a general cleaning procedure, but it has failed to submit any admissible evidence that that cleaning procedure was actually followed on the day of Plaintiff's accident. (*Vanterpool v Crotona Terrace Apartments, L.P.*, 2019 NY Slip Op 06715, 1 [1st Dept Sept. 24, 2019] ["Defendants failed to satisfy their prima facie burden on constructive notice by showing that they followed their prescribed cleaning schedule for the stairwell owned and managed by them, on which plaintiff fell."]; *Rodriquez v Concourse Vil. Inc.*, 104 AD3d 410 [1st Dept 2013] ["Plaintiff raised issues of fact as to whether defendant complied with its inspection schedule on the day of the accident, and when the area was last inspected before the accident."].)

There is, of course, no question that Driton had actual notice of the "hole" that Plaintiff alleges that he caught his foot on—Selimaj states that he first noticed it when he began running a restaurant at the premises in 1991. Driton argues, nonetheless, that this "hole"—or "repaired edge" as Driton's counsel refers to it—was at most a trivial defect. The Court notes that Plaintiff

and Driton have each submitted statements from professional engineers opining, inter alia, as to what role, if any, the "hole" may have played in causing Plaintiff's accident. (*See* Plaintiff Affirm. in Supp., Ex. Y [Bellizi Aff.]; Driton Affirm in Supp., Ex. F [Liss & Rentschler Letter.) However, given that this Court finds that there is a triable issue of fact concerning whether Plaintiff slipped on an allegedly moist floor, this Court finds that it cannot say as a matter of law whether the "hole" was a trivial defect. (*See Trincere v County of Suffolk*, 90 NY2d 976, 977-78 [1997] [holding that the "mechanistic disposition of a case based exclusively on the dimension of the sidewalk defect is unacceptable" and that "whether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury"]; *Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 78 [2015] [listing "numerous examples of factors that may render a physically small defect actionable"].) Rather, the Court finds it is more appropriate for the fact finder at trial to determine what if any role the two alleged conditions played in bringing about Plaintiff's accident, and if, under the circumstances, it is appropriate to hold Driton liable.

Accordingly, Driton's motion seeking summary judgment, pursuant to CPLR 3212, dismissing the complaint as against it is denied.

B. The Branch of Driton's Motion Seeking to Dismiss Plaintiff's Claim for Lost Profits Is Denied

In the alternative to dismissing the action outright, Driton moves the Court to dismiss a portion of Plaintiff's claim for lost wages. At the time of Plaintiff's accident, Plaintiff was the sole-owner of an auto-body shop named DNA Autobody d/b/a Marmin Collision ("DNA Autobody"). (Plaintiff EBT at 10:18-23:07, 105:17-108:03.) Plaintiff states that he was the only person in his shop that was licensed to write estimates for insurance companies. (Id.) According to Plaintiff, because he was bedridden following the accident for several weeks, various customers from non-party Liberty Mutual Insurance ("Liberty Mutual") complained that they were unable to get estimates and that this led to DNA Autobody being terminated from Liberty Mutual's referral program.[3] (Id.) Plaintiff estimates that these referrals were "a good 15 percent of our income." (Id.)

At trial, "[a] plaintiff bears the burden of proving loss of wages, which must be established with reasonable certainty." (*Tassone v Mid-Val. Oil Co., Inc.*, 5 AD3d 931, 932 [3d Dept 2004].) Such lost earnings are often established by submitting a plaintiff's tax returns or other relevant documentation. (*O'Connor v Rosenblatt*, 276 AD2d 610, 611 [2d Dept 2000].) In cases where a plaintiff's business suffers as a result of the alleged injury, "the lost profits are the direct result of the plaintiff's inability, because of injuries, to devote his or her personal skill,

[3] Plaintiff further testified that unlike other insurance companies that allow a 24-hour period to submit an estimate after a customer brings her vehicle into the shop, Liberty Mutual required that the estimate be performed immediately with the customer in the shop. (Plaintiff EBT at 129:05-133:22.) Plaintiff stated that whereas he could come into the shop each day for a couple hours and write-up the estimates that had come in for the other insurance companies in the weeks following his injuries, Liberty Mutual's policy required him to be present during the entire business day—which conflicted with his physician's advice that he be on bedrest in the weeks following his injury. (Id.)

talent or ability to the business, [and] the decline in profits following the injury is admissible to show the plaintiff's loss of earning capacity." (*Behrens v Metro. Opera Ass'n, Inc.*, 18 AD3d 47, 50 [1st Dept 2005].)

Driton argues, in sum and substance, that this claim for lost wages should be dismissed on the grounds that the connection between Plaintiff's injury and DNA Autobody's termination from Liberty Mutual's program is speculative.[4] On this point, Driton points to a letter from Liberty Mutual informing Plaintiff of the termination and stating: "We are making this decision due to the high number of Guaranteed Repair Network participants in your market and [the] need to reduce to a more manageable level." (Driton Affirm. in Supp., Ex. H [Liberty Mutual Letter].)

Plaintiff however was asked at his deposition about the aforesaid letter and his discussions with Liberty Mutual about potentially being reinstated to the program. (Plaintiff EBT at 14:24-21:14.) Plaintiff stated that he was informed that DNA Autobody was being terminated from Liberty Mutual's program around mid-March of 2017; and that he subsequently had several talks with Liberty Mutual seeking information about the reason for the termination and about potentially being reinstated. (Id.) Plaintiff stated that during these discussions he was told DNA Autobody was removed from the program because of "a change in demographics" and that he responded by rhetorically asking if that meant that there were "no longer Liberty Mutual insureds on the Upper East Side like there were for the last 20 years?" and he got the standard company line, "that's above my pay grade." (Id.) Plaintiff asserted that the real reason he was removed from Liberty Mutual's program was because of his inability to work for several weeks following his injury. (Id.)

This Court finds that whether DNA Autobody was removed from the Liberty Mutual's referral program because of Plaintiff's inability to work following his injury is a triable question of fact, which cannot be decided as a matter of law on this motion. Given the proximity between when Plaintiff could not work because of his injury and the termination, his testimony regarding Liberty Mutual's referral policy and their customers experiencing frustration with DNA Autobody's ability to provide service, a jury could reasonably find that Plaintiff's injury proximately caused DNA Autobody to be removed from Liberty Mutual's referral program and award Plaintiff damages for related lost earnings.

This Court also rejects Driton's conclusory assertion that Plaintiff "offers no competent evidence regarding how much he was earning from inclusion in the Liberty Mutual network." (Driton Memo in Reply at 11.) Plaintiff has provided various tax records and testimony concerning his claim for his loss of earnings and this Court finds that there is sufficient evidence for purposes of this claim surviving summary judgment.

Accordingly, the branch of Driton's motion seeking dismissal of Plaintiff's claim for lost earnings associated with the termination of DNA Autobody from Liberty Mutual's referral program is denied.

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[4] During oral argument, Driton's counsel withdrew her argument that the lost wages claim was barred because DNA Automotive was not a party in the action. (Oral Arg. at 17:08-24.)

C. The Branch of Driton's Motion Seeking to Preclude Plaintiff's Engineer Nicholas Belizzi from Testifying at Trial Is Denied.

"As a general rule the admissibility of expert testimony on a particular point is addressed to the discretion of the trial court. The guiding principle is that expert opinion is proper when it would help to clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror." (*De Long v Erie County*, 60 NY2d 296, 307 [1983].)

Driton seeks to preclude Plaintiff's retained engineering witness Nicholas Belizzi ("Belizzi") from testifying at trial, arguing that, based on his CPLR 3101 (d) disclosure, Belizzi offers a "flat opinion lacking scientific or engineering basis and should be excluded." (Driton Memo in Supp. at 15.) As expressed during oral argument, this Court has doubts about the applicability of certain NYC Administrative Code provisions to this case as referenced by Belizzi. (*See* Oral Arg. at 46:24-51:09.)[5] Notwithstanding those particular doubts, this Court finds that the better course is to defer to the sound discretion of the trial judge the question of what, if anything, Belizzi may testify to, rather than rule on such matters on the instant motion for summary judgment.

Accordingly, the branch of Driton's motion seeking to preclude Plaintiff's retained engineering witness Nicholas Belizzi from testifying at trial is denied, without prejudice to any motion in limine or motion to wholly preclude Belizzi at the time of trial.

II. Plaintiff's Motion for Partial Summary Judgment on the Issue of Liability (Seq. 004)

Plaintiff separately submits its own motion for partial summary judgment, pursuant to CPLR 3212, on the issue of liability. In sum and substance, Plaintiff argues that it is entitled to summary judgment because: (1) "Defendant"[6] had actual knowledge of "the hole"—that Plaintiff allegedly caught his foot on—"for decades;" and (2) because "defendant did not have proper procedures to mop or sanitize the men's bathroom to ensure it did not become covered with a film of liquid, possibly urine, due to the composition of the decorative tiles which the elevated urinal platform consisted of." (Plaintiff Memo. in Supp. at 4.)

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[5] The Court further notes that Plaintiff's counsel agreed that the subject platform was not an "Exit Passageway" for purposes NYC Administrative Code § 27-370. (Oral Arg. at 47:14-17; *see also Centeno v 575 E. 137th St. Real Estate, Inc.*, 111 AD3d 531 [1st Dept 2013] [holding that the subject stairway beneath a "trapdoor" was not an "Interior Stair" for purposes of NYC Administrative Code § 27–375 because it did not provide a means of egress and that NYC Administrative Code § 27-301.1—which re-codified former sections 27–127 and 27–128—was inapplicable as it merely put forth "non-specific safety provisions"].)

[6] The Court notes that Plaintiff uses the term "Defendant" without specifying whether he is referring to the tenant Driton or the landlord Supreme. Based on the arguments presented, this Court believes Plaintiff is referring to Driton, and as such will treat the motion as being directed for summary judgment, as against, Driton.

> "The mere existence of a foreign substance, without more, is insufficient to support a claim of negligence. To establish a prima facie case, the plaintiff must show that the defendant either created a dangerous condition or had actual or constructive knowledge of the condition. Furthermore, to constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit the owners' employees to discover and remedy it."

(*Segretti v Shorenstein Co., E., L.P.*, 256 AD2d 234, 234-35 [1st Dept 1998] [internal quotation marks, emendation and citations omitted]; *see also Acevedo v York Intern. Corp.*, 31 AD3d 255 [1st Dept 2006].)

Here, this Court has already held that there is a material question of fact concerning whether there was a slippery condition on the restroom floor: whereas Cipriano states that the floor was "not[] wet," Plaintiff's states that the floor was "moist." (*Compare* Cipriano EBT at 19:12-21:07 *with* Plaintiff EBT at 35:12-41:21.) Further, Driton puts forward evidence that it had procedures for regularly inspecting and cleaning the restroom—although Driton failed to establish that that procedure was followed on its motion for summary judgment (Seq. 003).

Furthermore, with regard to the "hole" that Plaintiff allegedly caught his foot on, this Court has already determined on Driton's motion that there is a triable question of fact concerning whether it constituted a dangerous condition, and whether it was a substantial factor in causing Plaintiff's injury.

Accordingly, Plaintiff's motion for summary judgment, pursuant to CPLR 3212, is denied.

III. Supreme's Motion for Summary Judgment (Seq. 005)

"It is well settled that "[a] landlord is not generally liable for negligence with respect to the condition of property after its transfer of possession and control to a tenant unless the landlord is either contractually obligated to make repairs or maintain the premises, or has a contractual right to reenter, inspect and make needed repairs at the tenant's expense, and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision." (*Malloy v Friedland*, 77 AD3d 583, 583 [1st Dept 2010].)

Here, Supreme moves for summary judgment arguing that as an out-of-possession landlord, it had no duty to protect Plaintiff from the alleged dangerous conditions—the slippery floor and the "hole." Plaintiff's sole argument in response is that there is a question as to "whether the raised platform of the men's basement bathroom constitutes a structure," and as such whether Supreme may have had a duty to repair the "hole." (Supreme Memo in Opp. at 5.)

This Court finds that as a matter of law the "hole" that Plaintiff allegedly caught his foot on does not constitute a significant structural or design defect for which Supreme, as landlord, had a duty to make repairs. Accordingly, Supreme's motion for summary judgment, dismissing the complaint and cross-claims as against it is granted.

As this Court dismisses the action as against Supreme, this Court need not consider the branch of Supreme's motion for summary judgment on its common law indemnification claims against Driton.

The Court has considered the parties' other arguments and finds them unavailing.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion (Seq. 003) by Defendants Driton LLC d/b/a Nino's Ristorante Italiano ("Driton") and Arbesa Rest. Corp. ("Arbesa") for summary judgment, pursuant to CPLR 3212, dismissing the complaint, or for certain alternative relief, is granted to the extent that complaint is dismissed as against Arbesa, and said motion is otherwise denied; and it is further

ORDERED that the motion (Seq. 004) by Plaintiff Gary Gartenberg ("Plaintiff") for partial summary judgment, pursuant to CPLR 3212, on the issue of liability, is denied; and it is further

ORDERED that the motion (Seq. 005) by Defendant Supreme Company I LLC ("Supreme") for summary judgment, pursuant to CPLR 3212, dismissing the complaint and all cross-claims against it is granted, with costs and disbursements to Supreme as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for Supreme serve the parties, via NYSCEF, with a copy of the instant decision and order within twenty (20) days.

The foregoing constitutes the decision and order of this Court.

10/4/2019
DATE

HON. ROBERT D. KALISH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE