Aguilar v Boyd
2020 NY Slip Op 34932(U)
October 1, 2020
Supreme Court, Dutchess County
Docket Number: Index No. 2018-52821
Judge: Hal B. Greenwald
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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:
Hon. HAL B. GREENWALD
Justice.

SUPREME COURT: DUTCHESS COUNTY

_____x

ANGELICA AGUILAR,

Plaintiff,

-against-

STOWE C. BOYD, SARAH H. BOYD, and LAUREN B. WEGEL,

Defendants.

_____x

DECISION AND ORDER
Index No. 2018-52821
Motion Seq. No. 1

The Court has reviewed the following documents in reaching the within Decision and Order.

NYSCEF Doc Nos. 17-39, 41-50

On January 18, 2018 it is alleged that Plaintiff ANGELICA AGUILAR (AGUILAR) slipped and fell at the property known as 26 South Brett Street Beacon, New York (the Premises). It is further alleged that Defendants STOWE C. BOYD and SARAH H. BOYD (collectively BOYD) owned, operated and maintained the said Premises and that Defendant LAUREN B. WEGEL (WEGEL) leased and occupied said Premises.

The action was commenced by the filing of a Summons and Complaint on September 6, 2018. On October 4, 2018 WGEL interposed her Answer with denials, affirmative defenses and cross claim. The BOYD Defendants interposed their Verified Answer containing denials, affirmative defenses and cross claims on October 8, 2018. Discovery commenced and the Note of issue was filed on December 4, 2019. BOYD moved for Summary Judgment and dismissal of the complaint by Notice of Motion filed January 29, 2020; opposition was filed on February 14, 2020; said motion was adjourned to July 30, 2020 and BOYD's Reply was filed on July 29, 2020.

SUMMARY JUDGMENT

As set forth in *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 (1957), summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of triable issues of fact. (*See Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223 [1978]; *Di Menna & Sons v. City of New York*, 301 N. Y. 118 [1950]; *Greenberg v. Bar Steel Constr. Corp.*, 22 N.Y.2d 210 [1968]; *Barrett v. Jacobs*, 255 N. Y. 520 [1931]).

When a court decides a motion for summary judgment: "…issue-finding not issue-determination is the key to the procedure. If and when the court reaches the conclusion that a genuine and substantial issue of fact is presented, such determination requires the denial of the application for summary judgment." (*Esteve v. Abad*, 271 A.D. 725 [1st Dept, 1947]).

Generally, the basis for determining summary judgment is that: "[T]he proponent of a summary judgment motion must make a prima facie case showing entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material fact." (*Pullman v. Silverman*, 28 N.Y.3d 1060 [2016], *quoting Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). Further as stated in *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985), "Bare conclusory assertions... " are insufficient to cause the court to grant summary judgment.

For a summary judgment motion to be denied, the one opposing the motion must demonstrate the existence of facts that have a probative value that indicates there is an unresolved material issue. (*See e.g. Piedmont Hotel Co. v. A.E. Nettleton Co.*, 263 N.Y. 25 [1933]). If the opposition can show there are questionable issues of fact that require a trial of the action, then summary judgment must be denied. In determining a motion for summary judgement, the court must look at the proof being offered in the light most favorable to the nonmoving party and then deny the motion when there is :….even arguably any doubt as to the existence of a triable issue'. (*Baker v. Briarcliff School Dist.*, 205 AD2d 652 [2d Dept., 1994]).

BOYD'S MOTION IS BASED UPON AN ATTORNEY AFFIRMATION

Defendant BOYD's Motion for Summary Judgment is based upon their attorney's affirmation (NYSCEF Doc. No. 18) which is being used as a device to introduce deposition testimony of several parties to the litigation. Plaintiff AGUILAR's deposition was taken April 26, 2019 and her deposition testimony is unsigned. Defendant SARAH BOYD appeared for her deposition on the same day and her deposition is signed. Defendant WEGEL's deposition was taken also on the same day, and her deposition is also not signed. All three depositions were annexed to the affirmation of Marc A. Rousseau Esq., in support of BOYD's instant motion.

CPLR 3116 speaks to the signing of depositions and provides that the witness is to sign the deposition, but if the witness fails to do so and return the signed deposition within sixty days, "…it may be used as fully as though signed." It appears that neither Plaintiff, nor a Defendant signed their respective deposition transcripts, but that the unsigned transcripts may properly be utilized as attached to counsel's affirmation.

Typically, a motion for summary judgment is supported by an individual with personal knowledge of the alleged facts. However, as stated in *Burgdorf v. Kasper*, 83 A.D.3d 1553 (4th Dep't, 2011), and the case at hand, the attorney affirmation is proper "as the vehicle for the submission of acceptable attachments [that] provide 'evidentiary proof in admissible form,' " such as the parties' depositions (*Zuckerman*, 49 N.Y.2d 557 [1980]; *see, Matter of Perceptron, Inc. [Vogelsong]*, 34 A.D.3d 1215 [4th Dep't, 2006]; *Grossberg Tudanger Adv. v. Weinreb*, 177 A.D.2d 377 [1st Dep't, 1991]).

This would also be true for a party opposing a motion for summary judgment where the attorney affirmation annexes deposition testimony and other evidence instead of relying on affidavits of fact based upon personal knowledge (*see, Olan v. Farrell Lines,* 64 N.Y.2d 1092, [1982]; *City of New York v. First Natl. Ins. Co. of Am.,* 79 A.D.3d 789 [2nd Dep't, 2010]; *Enriquez v. B & D Dev., Inc.,* 63 A.D.3d 780 [2nd Dep't, 2009]). Similar holding was made in *Roos v. King Constr.,* 179 A.D.3d 857 (Sup. Ct. Nassau, 2020). Accordingly, the instant motion for summary judgment is properly supported by an attorney affirmation with attached deposition testimony, as well as additional attached documentation.

DEFENDANT BOYD SEEKS SUMMARY JUDGMENT & DISMISSAL

The BOYD Co-defendants seek not only a dismissal of the Complaint filed by AGUILAR, but also a dismissal of the Cross Claims asserted by Defendant WEGEL. The BOYD defendants' position is that they are an out of possession landlord and do not owe a duty of care to the Plaintiff AGUILAR. BOYD avers that it is not disputed that BOYD does not reside at the premises; there is no claim that BOYD violated any statute by reason of their ownership of the premises; there is no claim that the lease between BOYD and WGEL caused BOYD to assume any duty towards AGUILAR and lastly BOYD's course of conduct as owner did not amount to an assumption of any duty to AGUILAR.

BOYD cites *Alnashmi v. Certified Analytical Group, Inc.*, 89 A.D.3d 10 (2nd Dep't, 2011) where the appellate court reversed the lower court's denial of defendant landlord's motion for summary judgment. The Appellate Division concluded that Defendant CAGI established it was an out of possession landlord where the, "…lease placed responsibility for maintenance and repair squarely on the tenant, CLI and that CLI, exclusively endeavored to perform maintenance and repair. Consequently, CAG met its initial burden of establishing that it owed no duty of care to the plaintiff.". Plaintiff failed to raise a triable issue of fact and the Appellate Division granted summary judgment to the defendant and dismissed the complaint.

Alnashmi discussed the issues concerning premises liability that there must be a duty of care for there to be liability as to negligence. (*See Palka v. Servicemaster Mgt. Servs. Corp.,* 83 N.Y.2d 579[1994]). The existence and extent of a duty is a question of law (*see Espinal v. Melville Snow Contrs.,* 98 N.Y.2d 136 [2002]). The property owner may have liability based upon common law, statute, regulation or by a course of conduct or the terms of a lease. (*Guzman v. Haven Plaza Hous. Dec. Fund,* 69 N.Y.2d 559 [1987]).

Plaintiff claims she slipped and fell on ice on the front steps of the premises., and there is no other claim. Defendant WEGEL as tenant, occupies the subject premises pursuant to a written Lease Agreement (Lease) (NYSCEF Doc. No. 30) with SARAH BOYD, as landlord. The Lease is for an "Apartment", although there is no indication anywhere in any filed court papers that the lease was for anything other than the entire house. Paragraph 34 of the Addendum to the lease spells out the relative responsibility concerning "snow removal" as follows:

> *34. Yard maintenance will be landlord's responsibility and snow removal is tenant's responsibility including driveway and sidewalks, Landlord will be responsible for snow removal from porch roof as necessary.*

BOYD contends that WEGEL is responsible for snow removal and that BOYD had no obligation or duty of care towards the Plaintiff. Plaintiff testified during her deposition (NYSCEF Doc. No. 26) that she saw ice on the third step from the bottom (pages 20/21); but did not remember if there was snow on the porch roof (page 26) or any water dripping from the porch roof (page 26). If there was any snow or ice on the steps, WEGEL had the obligation to clear it and had a duty of care towards the Plaintiff.

SARAH BOYD also gave deposition testimony (NYSCEF Doc. No. 28). She testified she purchased the premises as rental property in 2014 and in the intervening years (4) had removed snow from the porch roof only once (page 26) and had not received any complaints of snow or ice on the property or front steps (page 29). Further, as landlord, BOYD did not enter the premises for any inspections, and thus had no control over the premises. Sarah never saw water dripping from the porch roof onto the front steps (page 44).

Defendant WEGEL also was deposed (NYSCEF Doc. No. 29) and understood that, "…winter maintenance for the property was her responsibility as tenant.", (page 7) and had retained someone to clear the ice and snow and put down salt down (page 9). She claimed she did not see any ice on the steps the morning of the incident (page 24) and there was no dripping of water from the porch roof (page 29). Importantly, WEGEL never had any problems about the porch roof over the front steps. (page 38).

It is BOYDS's position that summary judgment should be granted and the complaint dismissed as to BOYD. The reason is that as the Court of Appeals has recently stated, as an out of possession landlord, BOYD would only have a duty of care to AGUILAR if imposed by statute, by contract such as a lease or by a course of conduct, "…and not merely through its 'control' as that term is currently used" (*Alnashmi, supra.; Rivera v Nelson Realty, LLC*, 7 N.Y.3d 530 [2006]). It was agreed in Plaintiff's Bill of Particulars (NYSCEF Doc. No. 25, page 4, paragraphs 5 and 6) that neither BOYD Defendant had violated any local laws, ordinances, rules or regulations. The "contract (Lease Agreement) stated that WEGEL, as tenant had snow removal responsibility. BOYD has established that it was not their course of conduct as landlord to assume snow or ice removal responsibility. Accordingly, BOYD has made out a prima facie case for summary judgment to be granted. The burden shifts to the opposition to demonstrate there are issues of fact that preclude the granting of summary judgment.

CO-DEFENDANT WEGEL'S OPPOSITION TO SUMMARY JUDGMENT

WEGEL's opposition centers on her claim that SARAH BOYD should not be considered an out of possession owner of the subject premises by reason of BOYD's deposition testimony (NYSEF Doc. No. 28) and what it reveals about her control over the premises. SARAH BOYD indicated that where she resides is, "… approximately 150 feet to the northeast of the [premises]…" (pages 9-10); that the front steps were painted once (page 14); that she may have replaced the gutter in the front of the house (page 18); that she lives very close by the premises and walks by it frequently (page 31); she sees the property all the time (page 31). SARAH also said she did not enter the premises or inspect them. WEGEL cites several cases in furtherance of her opposition.

In *Bartels v. Eack*, 164 A.D.3d 1202 (2nd Dep't, 2018) the lower court granted defendant summary judgment and dismissed the first and second causes of action which sounded in negligence. The Second Department reversed and proclaimed that plaintiff had raised triable issues of fact whether the drainage system installed and not properly maintained by defendant, was defective and if such defect caused the accident and denied summary judgment. The landlord also checked on the condition of the premises often and replaced an appliance during the short term of the tenancy indicating further that the landlord had retained certain control of the premises, unlike the situation presented herein.

WEGEL utilized *Alnashmi, supra* as did the BOYD, but may have focused on the potential of a landowner's duty under the common law, "…to maintain his or her premises in reasonably safe condition."

The Second Department in *Calderon v. 88-16 N. Blvd, LLC*, 135 A.D.3d 681(2nd Dep't, 2016) reversed the lower court's dismissal of the complaint concerning an injury at a carwash. The out of possession landlord/defendant had erected a fence that restricted where the plaintiff could safely work which contributed to the causation of the incident. *Calderon, supra*, stated "liability may attach to an out-of-possession owner who affirmatively created a dangerous condition or defect.". Accordingly, summary judgment was denied by the appellate court.

The matter was also not dismissed in *Utica Mut. Ins. Co. v. Brooklyn Navy Yard Dev. Corp.,* 83 A.D.3d 817 (2nd Dep't, 2011) where it was found through a review of the Bill of Particulars, that defendant/landlord had created the problem by "defectively install [ing]" the "fifth floor piping.". This claim, although not in the complaint, was not denied by the landlord assisting the appellate court in finding that the out-of-possession landlord/defendant had, in each case, created the problem that led to the accident that caused the injury to the plaintiff. The instant matter before the court, however, is distinguishable. BOYD did not create the ice on the steps.

Gronski v. County of Monroe, 18 N.Y.3d 374 (2011), dealt with the issue of whether the property owner has actually relinquished "control" despite the provisions of a written agreement between the parties. *Gronski* concerned an employee being injured working at a recycling center owned by the county but operated by a contractor under a written agreement. Both the lower court and the Appellate Division granted summary judgment dismissing the complaint, but the Court of Appeals reversed. First the Court of Appeals rejected the out-of-possession landlord standard as there was no leasehold, only a management agreement, then the Court stated "Control is both a question of law and of fact" (*Ritto v. Goldberg*, 27 N.Y.2d 887 [1970]). Lastly, the Court of Appeals stated: "…the issue remains to be resolved by a trier of fact is whether the County, through its course of conduct, exercised sufficient control over the facility such that it owed plaintiff a duty [of care]…". SARA BOYD indicated she walked by the premises literally every day, yet she did not testify that she inspected the property. She did state that she only would inspect the property when the tenant vacated, as she respected the tenant's right to privacy, thus BOYD did not exercise such a high level of control over the premises.

(Collado v. Jiacono, 126 A.D.3d 927 [2nd Dep't, 2015]) had no probative value.

Two cases offered by the BOYD movants to demonstrate lack of constructive or actual notice were dissected by co-defendant WEGEL in her opposition. In *Levinstim v. Parker*, 27 A.D.3d 698 (2nd Dep't, 2006). Plaintiff allegedly fell and injured herself when a deck chair on defendant's porch collapsed. Defendant had used the deck chairs many times before, never noticed any defect, no one had ever fallen or was injured, and no one complained about the chairs being dangerous. Accordingly, defendant claimed it had no constructive notice and the Appellate Division reversed the lower court and granted summary judgment dismissing the complaint. Another "chair case", *Zalko v. Sunrise Adult Health Care Ctr.*, 7 A.D.3d 616 (2nd Dep't, 2004) concerned a plaintiff falling when attempting to get up from a plastic patio chair. The Second Department also reversed the lower court and found defendant did not have constructive or actual knowledge of the allegedly defective chair. Neither case provided any substantial authority for this Court. In the case before the court, BOYD's own testimony that they retained responsibility for lawn maintenance, and removal of snow from the porch roof, coupled with their sharing of the garage does not substantiate that said activities would be sufficient for the landlord to have constructive knowledge of the ice on the steps, especially where the tenant did the snow removal.

PLAINTIFF AGUILAR's OPPOSITION TO SUMMARY JUDGMENT

AGUILAR's opposition is that BOYD is not truly an out-of-possession landlord and that BOYD failed to offer evidence that they neither created the condition that caused the injury, nor had constructive or actual knowledge of the condition. Further that BOYD failed to substantiate when the premises was last inspected or cleaned prior to the incident.

The Affirmation of John A. DeGasparis, Esq. (NYSCEF Doc. No. 41) offers several cases in support of Plaintiff's position to deny summary judgment. *Henry v. Hamilton Equities, Inc.*, 114 N.Y.S.3d 21 reviewed by this court at 2017 WL 4101849 (N.Y. Sup.) 2017 N.Y. Slip. Op 33112(U)(Trial Order) and 161 A.D.3d 418 (1st Dep't, 2018) was provided for the proposition that, based on who has control over the property, a property owner may be charged with a non-delegable duty to maintain its property in a safe manner. The connection to the instant proceeding was tenuous at best. In *Webb v. Audi*, 208 A.D.2d 1122 (3rd Dep't, 1994), the appellate court affirmed the lower court decision to deny summary judgment to the defendant tenant and property owner. The plaintiff was a friend of a subtenant who had slipped and fell in the basement. There were issues of fact as to which party was to provide maintenance, whether the basement was part of the leased premise and whether the landlord had constructive or actual knowledge. Neither case was particularly persuasive.

The out-of-possession landlord was held liable in *Cooper v. Bogel*, 246 A.D.2d 760 (3rd Dep't, 1998) where a sump pump malfunctioned, the premises became flooded and only temporary repairs were made. The landlord had retained an individual who checked on the property who had made the owner aware of the problem. The landlord could not avoid responsibility when some time later, the plaintiff fell on ice that may have formed when proper permanent repairs were not forthcoming, as they had to be authorized by the landlord, who had notice of the defective pump. *Cooper, supra.* is distinguishable from the case at bar.

In another Third Department case, *Farrell v. Prentice*, 206 A.D.2d 799 (3rd Dep't, 1994), the appellate court affirmed the lower court's denial of summary judgment to the defendants

finding there were issues of fact concerning a breach of their duty imposed upon them as owner and occupant. Defendant Prentice was the out-of-possession owner of the building. Co-defendant Degner was the tenant of an apartment in the building and in possession who was responsible for snow and ice removal of the walkways and driveway where the mailbox was located where the plaintiff was injured. Degner was on vacation and Prentice resided in another county at the time the ice accumulated. Whether the defendants each breached their respective duties was deemed by the court to be sufficient questions of fact to deny summary judgment.

In *Lindquist v. C & C Landscape Contractors, Inc and GSL Enterprises, Inc.*, 38 A.D.3d 616 (2nd Dep't, 2007), the court found that the lease was sufficient to demonstrate that the out-of-possession landlord/defendant had contracted away its responsibility towards the plaintiff, even though the landlord had a right to re-enter to inspect and make repairs. There had to be constructive knowledge of a defect, a statutory violation and a "…significant structural or design defect.". The appellate court affirmed summary judgment in the landlord's favor. BOYD had a right to re-enter, the premises, but testimony adduced from SARAH BOYD indicated there was no such re-entry during the tenancy and periodic views of the property did not equate to inspections of the premises.

The lower court dismissed the complaint in *Medina v. La Fiura development Corp.*, 69 A.D.3d 686 (2nd Dep't, 2020) but the appellate division reversed. The person responsible for snow removal could not recollect when the last snow happened and could not confirm how he removed the snow. This citation was not probative.

An injury as a result of an escalator accident was the basis of *Isaacs v. Federated Department Stores, Inc.*, 146 A.D.3d 762 (2nd Dep't, 2017). The lower court denied Defendant/Third Party Plaintiff Macy's and Third-Party Defendant Thyssenkrupp's motions for summary judgment and the appellate division modified and granted summary judgment dismissing the complaint and third-party complaint. The Second Department stated: "To meet its burden on the issue of lack of constructive notice, a defendant is required to offer some evidence as to when the site was last cleaned or inspected prior to the accident.". Defendant Macy's demonstrated it had regularly inspected and maintained the escalator as late as the morning of the accident and found nothing wrong with the escalator, thus not having any constructive or actual knowledge of a problem that resulted in injury to the plaintiff. In opposition plaintiff failed to raise a triable issue of fact.

Another case dealing with constructive or actual notice was J*ames v. Orion Condo – 35 West 42nd St., LLC,* 138 A.D.3d 927 (2nd Dep't, 2016) where the defendants were a Condominium and Condominium Board of Managers, who have certain contractual obligations to maintain the subject property, unlike the case at bar. Defendants moved for summary judgment and were denied by the lower court and the appellate court. The defendants failed to present any evidence as to when the subject area was last inspected prior to the underlying incident and could not substantiate a lack of constructive notice. BOYD, unlike the defendants in *Orion Condo, supra* had no such contractual duty to inspect. There was no testimony by anyone that they observed any water leaking or dripping.

Whether the landlord had constructive or actual notice of a liquid spill in a "garbage room" in an apartment building owned by the defendant was the subject in *Korn v. Parkside Harbors*

Apartments, LLC, 134 A.D.3d 769 (2nd Dep't, 2015). The appellate division reversed the lower court and found defendant landlord failed to demonstrate it did not have constructive notice of the spill. as it did not offer any evidence as to when it last inspected the site of the incident. This is irrelevant to the case before the court.

BOYD'S REPLY TO AGUILAR'S OPPOSITION

BOYD filed a Reply to the Plaintiff AGUILAR (NYSCEF Doc. No. 47) and a Reply to co-Defendant WEGEL (NYSCEF Doc. No. 46).

In the Reply to AGUILAR, BOYD again spoke of *Henry, Supra*, and reasserted that the party in possession and control of the property is in the best position to inspect and prevent injury to others. That there may be an exception based on a contractual obligation entered into between the parties was also discussed. The contract herein was the lease, and the responsible party for snow removal was the tenant, WEGEL, not the owner, BOYD. Yes, BOYD walked by the property on occasion, and shared the garage space with the tenant, had a right to reentry for repairs and to show the property, but that does not equate with possession and control, is what BOYD argues. There was a similar holding in *Keum Ok Han v. Kemp, Pin & Ski, LLC*. 142 A.D.3d 688 (2nd Dep't, 2016) in favor of an out-of-possession landlord where the Appellate Division reversed the lower court and dismissed the complaint.

BOYD cited *Boateng v. Four Plus Corp.*, 22 A.D.3d 323 (1st Dep't, 2005) but that matter concerned allegations of a statutory violation that were not substantiated and the out of possession landlords were granted summary judgment and the complaint dismissed as to them. In *Euvino v. Loconti* 67 A.D.3d 629 (2nd Dep't, 2009) the issue revolved around a matrimonial stipulation whereby the Defendant had agreed his wife was "exclusively entitled to use and occupancy of the house". There was certain similarity to the case at bar in that the defendant maintained certain garage rights but made rare visits and no repairs. The appellate court reversed the lower court, found defendant to be an out-of-possession landlord and dismissed the complaint, based in part upon the terms of the stipulation, as to exclusive occupancy of the subject property.

In a New York County Supreme Court Decision, *Doino v. RPS Corp*, 2016 N.Y. Slip Op 21379(U), the court found the owner of the property to be an out-of-possession landlord despite the lease between the parties providing for the owner's right of reentry and the obligation to make structural repairs. The plaintiff was injured due to a malfunction with the mechanical loading dock levelers, which the court deemed not to be the structural repairs the owner was obligated to repair or maintain. Further the owner did not control the day to day operations of the warehouse where the incident occurred. BOYD drew the analogy that the cause of the fall was the ice on the steps, that the tenant had the responsibility for snow removal, and the tenant had retained control over the premises, therefore BOYD should be granted out-of-possession landlord status.

The remainder of the argument in this Reply concerns the evidentiary value of the affidavits offered by plaintiff in opposition to the motion to dismiss. BOYD urges that the Acevedo Affidavit (NYSCEF Doc. No. 44) has no probative value, as Acevedo is not an expert and cannot offer an opinion as to how the ice formed and her affidavit should be ignored by the court.

BOYD'S REPLY TO WEGEL'S OPPOSITION

BOYD also offered a Reply (NYSCEF Doc. No. 46) to Co-Defendant WEGEL's opposition to the motion for summary judgment. The first case discussed was *Bartels, supra*, which this court reviewed earlier in this Decision. The drainage system, which was to be maintained by the landlord, failed and did not divert water from the entrance area. This may have led to ice forming which allegedly caused the accident, providing triable issues of fact to underscore the appellate divisions reversal of the lower court's dismissal of the complaint. In the matter before the court, the landlord (BOYD) was responsible for snow removal from the porch roof, yet, there was no testimony in the instant matter that water was seen dripping onto the steps or that there was any snow on the porch roof. Hence, the potential for roof drippings causing the ice was purely conjecture, with no basis in fact.

The Reply now changed course and dealt with the quality of the opposing affidavits and whether speculation and conclusory argument could defeat summary judgment and cited *Kalbacher v. Paez*, 215 A.D.2d 628 (2nd Dep't 1995) which cited the seminal case of *Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).* In *Zuckerman, supra* the Court of Appeals said: "…mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are in sufficient [to deny summary judgment]".

The matter of *Lynn G. v. Hugo*, 96 N.Y.2d 306 (2001) was not at all useful. The remaining cases cited in this Reply were all reviewed by this Court earlier in the within Decision and Order.

By reason of all the foregoing it is

ORDERED, that the Motion by Defendants STOWE C. BOYD and SARAH H. BOYD for Summary Judgment to dismiss the Complaint by Plaintiff ANGELICA AGUILAR as against said Defendants is granted; and it is further

ORDERED that the Motion by Defendants STOWE C. BOYD and SARAH H. BOYD for Summary Judgment to dismiss the crossclaims asserted by co-Defendant LAUREN B. WEGEL as against said Defendants is **granted**; and it is further

ORDERED, that the remaining parties shall appear for a virtual status conference on **January 26, 2021 at 11:00 A.M.** An email providing both the virtual link to participate as well as a telephone number will be forthcoming, please ensure this Court has email addresses for all parties (via NYSCEF).

The foregoing constitutes the decision and order of this Court.

Dated: October 1, 2020
Poughkeepsie, NY

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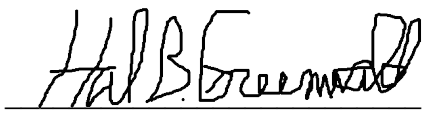

Hon. Hal B. Greenwald, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Greenwald's Chambers, please do not submit any copies. Submit only the original papers.