SCAN

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

Present: **HON. LAWRENCE J. BRENNAN**
Acting Justice Supreme Court

----------x **TRIAL PART: 52**

LESLEE FERRERO, as Administratrix of the Estate of PETER FERRERO and LESLEE FERRERO, individually

Plaintiff,

-against-

BEST MODULAR HOMES, INC., LAWN RANGER, INC., d/b/a PROPERTY MANAGEMENT, MICHAEL BELLOMO and AMY BELLOMO

Defendants

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NASSAU COUNTY
INDEX NO.: 010216/03

MOTION DATE: 9/16/05
SUBMIT DATE: 12/14/05
SEQ. NUMBER 1,2,3,4, 5

BEST MODULAR HOMES, INC.,

Third-Party Plaintiff

-against-

LAWN RANGER, INC., d/b/a K. O. PROPERTY MANAGEMENT, MICHAEL BELLOMO and AMY BELLOMO,

Third-Party Defendants

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The following papers have been read on this motion:

Notice of Motion, dated 8-16-05..... 1
Affidavit in Opposition, dated 10-12-05..... 2
Cross-Motion, dated 10-13-05.....3
Notice of Motion, dated 10-18-05..... 4
Cross-Motion, dated 11-1-05..... 5
Reply Affirmation, dated 11-22-05..... 6
Cross -Motion, dated 11-22-05..... 7
Affirmation in Opposition, dated 11-2-05..... 8
Affirmation in Partial Opposition, dated 11-2-05..... 9
Affirmation in Partial Opposition, dated 11-29-05.....10
Affirmation in Opposition, dated 11-21-05..... 11
Reply Affirmation, dated 12-12-05..... 12

Motion by defendants/third-party defendants' Michael Bellomo and Amy Bellomo (the "Bellomos") for an order pursuant to CPLR 3212 granting them summary judgment dismissing the plaintiff's complaint and all cross-claims and third-party claims as against themselves is granted.

Cross-motion by plaintiff Leslee Ferrero, as Administratrix of the Estate of Peter Ferrero, for an order pursuant to CPLR 3212 granting her partial summary judgment against the Bellomos on the issue of their liability pursuant to Sections 240(1), 241(6) and 200 of the Labor Law is denied.

Motion by plaintiff Leslee Ferrero, as Administratrix of the Estate of Peter Ferrero, for an order pursuant to CPLR 3212 granting her partial summary judgment against defendant Best Modular Homes, Inc., ("Best Modular") on the issue of Best Modular's liability pursuant to Sections 240(1) and 241(6) of the Labor Law is denied.

Cross-motion by defendant/third-party plaintiff Best Modular for an order pursuant to CPLR 3212 granting it summary judgment dismissing the plaintiff's complaint and all cross-claims and counterclaims as against Best Modular and granting Best Modular summary judgment against third-party defendant Lawn Ranger, Inc., d/b/a K.O. Property Management, ("KO") is determined as provided herein.

Cross-motion by third-party defendant KO for an order pursuant to CPLR 3212 granting it summary judgment dismissing all claims asserted against KO and further dismissing the plaintiff's complaint is determined as provided herein.

This wrongful death action arises out of an accident which occurred on residential property owned by the Bellomos located in Port Washington, New York. The plaintiff's amended complaint alleges, inter alia, that the Bellomos "entered into a contract with [Best Modular] for the construction of a one family home on the property to be known as 48 Pleasant Avenue, Port Washington, New York." The amended complaint further alleges that "prior to the construction of the structure for the one family home, [Best Modular] hired [KO] for the removal of trees and tree stumps at the site in order to lay the foundation for the home." The decedent's accident occurred on November 25, 2002 on the first day KO commenced work at the site.

The amended complaint goes on to allege that "on or before the 25th day of November, 2002, [KO] did hire decedent, [Peter Ferrero], as a subcontractor to

assist in the removal of trees at the construction site." It is furthermore alleged that the accident happened on November 25, 2002, at approximately 3:00 p.m., while the decedent was "standing on a ladder which was leaning against a tree on a sloping hill on the construction site." It is specifically alleged that "said tree collapsed causing the decedent, [Peter Ferrero], to fall in excess of twenty (20) feet thereby injuring himself and causing his death." The amended complaint additionally alleges that Best Modular, KO and the Bellomos "failed to provide the decedent, [Peter Ferrero], with the appropriate safety devices pursuant to the New York State Labor Law §200, 240(1) and 241(6)."

The plaintiff's amended complaint asserts three causes of action. The first cause of action, which seeks damages for wrongful death, alleges claims based upon negligence and violations of Labor Law §§200, 240(1) and 241(6). The second cause of action, which seeks damages for conscious pain and suffering, likewise alleges claims based upon negligence and violations of Labor Law §§200, 240(1) and 241(6). The third and last cause of action is a derivative claim asserted on behalf of the plaintiff in both her individual capacity and representative capacity. Also, there are third-party claims, cross-claims and counterclaims seeking indemnification and contribution asserted by the various parties.

It should be noted at this point that the plaintiff's claims against KO have apparently been discontinued by stipulation. (Exhibit A to KO's Cross-Motion).

The Court uses the word "apparently" because the two copies of the signed stipulations included as Exhibit A to KO's Cross-Motion are not signed by a representative of Best Modular and, thus, may not be valid. (See CPLR 3217[a][2]). However, since none of the parties dispute the validity of this stipulation, the Court will accept it as valid for the purposes of this decision.

Taking the Bellomos' motion first, these defendants move for summary judgment, inter alia, on the grounds that: "At the time of his accident decedent was not engaged in an activity protected under Labor Law 240(1) or 241(6)." The Court agrees as to Section 240(1); but holds that triable issues have been raised as to whether Section 241(6) applies to the facts of this case. In this regard, the Court notes that it is undisputed that KO was the only contractor at the site on November 25, 2002 and that no other contractor had commenced any work at the site prior thereto.

In **Martinez v City of New York** (93 NY2d 322), the Court of Appeals held that: "While the reach of section 240(1) is not limited to work performed on actual construction sites (see, *Joblon v Solow,* 91 NY2d 457, 464), the task in which an injured employee was engaged must have been performed during 'the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure'." (**Martinez**, p. 326). Furthermore, in **Panek v County of Albany** (99 NY2d 452), the Court stated that: "In **Martinez**, we concluded that section 240(1) afforded no protection to a plaintiff injured before any activity

listed in the statute was under way." (**Panek**, p. 457).

A tree is obviously not a building or structure (see **Lombardi v Stout**, 80 NY2d 290, 295-296) and the task of cutting down a tree or removing a tree stump does not fit under any of the above statutory categories of tasks. Moreover, in the present case, like in **Martinez**, the decedent was not engaged in a task covered by Section 240(1) and all of the covered tasks were to be performed in the future. (See, also, **Zyats v Bristled Five Corp.**, 4 Misc3d 1030A, 2004 N.Y. Misc. LEXIS 1639, pp. 8-10; cf. **Prats v Port Authority**, 100 NY2d 878, 881). The Court, therefore, concludes that the plaintiff does not have a cause of action against the Bellomos (or Best Modular) based upon Section 240(1) of the Labor Law.

Counsel for the plaintiff relies upon **Lombardi v Stout** (supra at p. 296) in which the Court of Appeals concluded that "tree-removal was a part of the house construction and site work for a driveway and parking lot." The **Lombardi** case is, however, distinguishable from the present case and does not support the plaintiff's position that the task of tree removal was a covered task. The Court of Appeals in **Lombardi** also held that: "Plaintiff established prima facie that the tree removal was part of a plan to remodel the house into a two-family building and that, at the time he was working on the tree, scaffolding was placed against the building in preparation for doing so." (**Id.**). Thus, the plaintiff in **Lombardi** was cutting down the tree while work was being performed in preparation for

remodeling (i.e., altering) the house.

Counsel for the plaintiff additionally relies upon **Mosher v St. Joseph's Villa** (184 AD2d 1000), a Fourth Department case decided prior to **Martinez v City of New York**. The Appellate Division held that: "The statute [i.e., Labor Law §240(1)] does not require that a worker, to come within the protection of the section, be performing work at the location of the building or structure at the time of his injuries; it is sufficient that the work he is performing be work that is necessary and incidental to or an integral part of the erection, etc., of the building or structure." (**Mosher**, p. 1002). This case does not support the plaintiff's position either. The Court of Appeals in **Martinez** expressly rejected the necessary and integral part test and held that: "Such a test improperly enlarges the reach of the statute beyond its clear terms." (**Martinez**, p. 326).

The Court furthermore holds that the Bellomos have made a prima facie showing that they fall within the statutory exception in Sections 240(1) and 241(6) of the Labor Law. This exception applies to "owners of one and two-family dwellings who contract for but do not direct or control the work." In this regard, it is the rule that: "'The phrase "direct or control" is construed strictly and refers to the situation where the "owner supervises the method and manner of the work".'" (**Siconolfi v Crisci**, 11 AD3d 600, 601, quoting *Mayen v Kalter*, 282 AD2d 508-509, quoting *Rimoldi v Schanzer*, 147 AD2d 541, 545). Here, the Bellomos have shown that they did not supervise the "method" or "manner" in which the

trees on their property were cut down and removed from the site.

First of all, it is undisputed that the accident happened on the very first day of work at the site and that the only contractor present that day was KO. At his deposition, Michael Bellomo testified that he was at work on November 25, 2002 and that he arrived at the scene of the accident at approximately 4 p.m. (Transcript, pp. 25, 35). Mr. Bellomo further testified that he did not have any conversations with Kevin O' Halpin (i.e., vice-president and co-owner of KO) or anybody at KO regarding the work they were going to do prior to Mr. Ferrero's death. (Transcript, p. 39). Mr. Bellomo additionally testified that he did not have any conversations with anyone from Best Modular or KO on that day prior to his arrival at 4 o'clock. (Transcript, p. 41). Mr. Bellomo also testified that he was never present when KO was doing work at the site prior to Mr. Ferrero's death. (Transcript, p. 44).

Amy Bellomo testified that: "[Her] only knowledge of what trees were to be removed were from the site plan that had been drawn up by the engineer at Bladikus and Penneta." (Transcript, p. 11). Ms. Bellomo further testified that she visited the property on two occasions on November 25, 2002. The first time at approximately 9 a.m. and the second time at approximately 2:45 p.m. (Transcript, pp. 12, 21). As to the first visit, Ms. Bellomo testified that when she arrived she saw three workers on the site, including Mr. Ferrero. (Transcript, pp. 26-27). Ms. Bellomo additionally testified that Mr. Ferrero was a "close friend of the family" and that she had a conversation with him. (Transcript, p. 27). When asked if she

recalled the sum and substance of that conversation, Ms. Bellomo answered that: "We were just talking about the house and how nice it would be and he was glad we got to stay in town." (Transcript, p. 27). Ms. Bellomo also testified that she did not talk to any of the workers from KO about the work they were performing. (Transcript, p. 33).

The Court holds that Bellomos' testimony constitutes prima facie proof that they did not direct or control the method or manner of KO's work. The burden of proof is, therefore, on the plaintiff "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." (**Alvarez v Prospect Hosp.**, 68 NY2d 320, 324). The plaintiff has not made the necessary showing.

Counsel for the plaintiff does contend that "the Bellomos are not owners who fall within the class protected by the exemption [i.e., the 'owners of one and two-family dwellings who contract for but do not direct or control the work'] because they controlled the work as 'construction manager'." Specifically, counsel contends that: "The Bellomos coordinated the whole construction project from start to finish and were responsible for overall supervision of the job." Counsel's argument is not persuasive. There is no proof whatsoever that the Bellomos directed or controlled KO's work or that they had anything to do with the method or manner in which the trees on their property were cut down.

With respect to Section 200 of the Labor Law, the Court of Appeals has

stated that: "It is settled law that where the alleged defect or dangerous condition arises from the contractor's methods and the owner exercises no supervisory control over the operation, no liability attaches to the owner under the common law or under section 200 of the Labor Law." (**Lombardi v Stout**, supra, p. 295). The dangerous condition here clearly arose from the contractor' s methods and there is no proof that the Bellomos exercised any supervision or control over the manner in which KO performed its work.

While it is true that liability can attach to an owner if her or she "had actual or constructive knowledge of the allegedly unsafe condition" (**Dennis v City of New York**, 304 AD2d 611, 612), "no liability will attach to the owner solely because [he or she] may have had notice of the allegedly unsafe manner in which work was performed." (**Id.**). Thus, Amy Bellomos presence at the site on two occasions during the first day of work at the site and her alleged observation of the unsafe manner in which Mr. Ferrero was cutting down trees does not raise a triable issue as to supervision and control.

Consequently, the plaintiff's amended complaint and all cross-claims and third-party claims as against the Bellomos shall be severed and dismissed. It necessarily follows that the plaintiff's cross-motion for partial summary judgment against the Bellomos must be denied as well.

Moving on to the plaintiff's motion for partial summary judgment against defendant Best Modular on the issue of Best Modular's liability pursuant to

Sections 240(1) and 241(6) of the Labor Law. The plaintiff's motion is being denied insofar as it seeks summary judgment based upon Section 240(1) of the Labor Law for the reasons already stated above. As to Section 241(6), counsel for the plaintiff states that: "The Industrial Code Violations in this case are 12 NYCRR Section 23-1.5; 1.16(a), (b), (c), (d), (e); 1.17; 1.21 and all subsections thereunder; New York Building Construction Code and O.S.H.A. [i.e., Occupational Safety and Health Administration] requirements." The plaintiff's motion is being denied insofar as it seeks summary judgment based upon Section 241(6) of the Labor Law for the reasons stated below.

The Court of Appeals has held that "section 241(6) imposes a nondelegable duty upon an owner or general contractor to respond in damages for injuries sustained *due to another party's negligence* in failing to conduct their construction, demolition or excavation operations so as to provide for the reasonable and adequate protection of the persons employed therein." (**Rizzuto v L.A. Wenger Contr. Co.**, 91 NY2d 343, 350). The Court further held that: "Thus, once it has been alleged that a concrete specification of the Code has been violated, it is for the jury to determine whether the negligence of some party to, or participant in, the construction project caused plaintiff's injury. [and] If proven, the general contractor (or owner, as the case may be) is vicariously liable without regard to his or her fault." (**Id.**). The Court also held that: "An owner or general contractor may, of course, raise any valid defense to the imposition of vicarious

liability under section 241(6), including contributory and comparative negligence." (**Id.**).

The only section of the Industrial Code alleged to have been violated by the plaintiff's engineering expert (i.e., Joseph C. Cannizzo, P.E.) is 12 NYCRR 23-1.21(b)(4)(iv). (Plaintiff's Exhibit 27). This provision of the Industrial Code is the only one that is the subject of the plaintiff's summary judgment motion. Mr. Cannizzo does, however, allege that a provision of the Code of Federal Regulations (29 CFR 1926.1053[b][6]) was violated. This section is an O.S.H.A. regulation and O.S.H.A regulations, as a general rule, do not provide a basis for liability under Section 241(6) of the Labor Law. (See **Rizzuto v L.A. Wenger Contr. Co.**, supra, p. 351; **Cun-En Lin v Holy Family Monuments**, 18 AD3d 800, 802). This regulation is no exception.

12 NYCRR 23-1.21(b)(4)(iv) reads as follows: "When work is being performed from ladder rungs between six and 10 feet above the ladder footing, a leaning ladder shall be held in place by a person stationed at the foot of such ladder unless the upper end of such ladder is secured against side slip by its position or by mechanical means. When work is being performed from rungs higher than 10 feet above the ladder footing, mechanical means for securing the upper end of such ladder against side slip are required and the lower end of such ladder shall be held in place by a person unless such lower end is tied to a secure anchorage or safety feet are used." There is, however, a triable issue as to whether

a ladder was required for the job of cutting down the trees in the first place. It is undisputed that no ladders were furnished for the job by KO, Best Modular or the Bellomos and that the ladder used by Mr. Ferrero was brought to the work site by Mr. Ferrero.

In support of the motion, counsel for the plaintiff submits the affidavit of Russell Jackle, who identifies himself as "a New York State Certified Arborist" and "the owner and operator of Aspen Tree Care[,] Inc." (Plaintiff's Exhibit 26). Mr. Jackle states that he is "fully familiar with practice and procedures of tree removal in the industry in order to maintain a safe and hazard [free] environment for workers at a site when removing trees." Mr. Jackle further states that in his opinion "the manner in which the trees located at 48 Pleasant Avenue, Port Washington, New York[,] should have been removed was by rigging the tree, that is by cutting down the branches first and then topping the various trees, which means that the tree is cut down to size in order to control the fall of the tree."

Mr. Jackle additionally states that in his opinion, "the required safety equipment [for] the removal of these trees would have been an extension ladder, tree spikes, harness belt/saddle with 'D' rings, lifeline/lanyard." Mr. Jackle also states that in his opinion: "The absence of cherry pickers/aerial bucket, harnesses/saddles and lifelines created a very dangerous, hazardous and unsafe work environment for [KO's] employees, especially the decedent Peter Ferrero. Mr. Jackle goes on to state that: "A review of the testimony of Kevin O'Halpin

and Rolando Turcios of Lawn Ranger, Inc.[,] illustrates that the trees at the site were removed by notching the trees at waist level and the trees were to free fall/dropping." Mr. Jackle furthermore states that in his opinion that "the equipment sent by Lawn Ranger, Inc., the employer of the decedent, Peter Ferrero, consisting of two hard hats and two chain saws was drastically insufficient to properly remove the trees."

On the other hand, counsel for KO submits the affidavit of Jon Hickey, who identifies himself as "a Board Certified Master Arborist" and "the General Manager of Lehman Plant Care Co., Inc." (Exhibit C to KO's Cross-Motion). Mr. Hickey states that it is his opinion that "removing the trees in question in the manner instructed by Kevin O'Halpin to Lawn's employees including decedent, specifically remaining at ground level, cutting the trees waist high and dropping them to the ground was a safe and proper method and manner to remove those trees." Mr. Hickey further states that it is his opinion that "aerial buckets, ladders, spikes, harness belts, harnesses/saddles with D rings, lanyards/lines, cherry pickers, aerial lifts with buckets and safety lines as referred to in the affidavits of Russell Jackle and Joseph C. Cannizzo [Plaintiff's Exhibits 26 and 27] were not required to perform the job in question."

The Court holds that the conflicting opinions of the arborists raise a triable issue as to whether a ladder and/or any other equipment mentioned by Mr. Jackle was necessary for the task of cutting down the trees on the Bellomos' property. If

it is determined that a ladder was not required, then 12 NYCRR 23-1.21(b)(4)(iv) does not apply and the plaintiff cannot recover under Section 241(6) of the Labor Law. If it is determined that a ladder was required, then there will be a further triable issue as to whether the violation of this specification was a proximate cause of Mr. Ferrero's accident.

The jury could find that Mr. Ferrero's own conduct was the sole proximate cause of his accident. In this regard, Mr. O'Halpin testified that he instructed his three workers, including Mr. Ferrero, that the trees were to be cut waist high and that "[w]e don't climb them." (Transcript, p. 48). Furthermore, Mr. Turcios [i.e., Alexer Rolando Turcios, a KO employee] testified that Mr. Ferrero had already made cuts on the bottom of the tree before he went up the ladder. (Transcript, pp. 51-52, 78). Mr. Turcios also testified that when Mr. O'Halpin returned to the site and told Mr. Ferrero to come down, Mr. Ferrero said "no." (Transcript, pp. 49-50).

Best Modular cross-moves for summary judgment on a number of grounds. Counsel contends that Best Modular "cannot be held liable under common law or pursuant to Labor Law §200" because it "did not direct, supervise or control the plaintiff's decedent's work." Counsel further contends that "the plaintiff's decedent was not engaged in an enumerated activity at the time of his accident and the plaintiff's decedent's actions were the sole proximate cause of the accident. Thus, Labor Law §240 does not apply." Counsel additionally contends that "none of the codes cited by the plaintiff apply to the facts of this case so the plaintiff

cannot prove a violation of Labor Law §241(6).

The Court agrees that Section 240(1) of the Labor Law does not apply to the facts of this case. Best Modular's cross-motion is, therefore, granted as to the Section 240(1) claims asserted against it for the reasons previously stated. As to common-law negligence and Section 200 of the Labor Law, it is the rule that "there is no liability under the common-law or Labor Law §200 unless the owner or general contractor exercised supervision or control over the work performed." (**Cun-En Lin v Holy Family Monuments**, supra, p. 801; **O'Donoghue v N.Y. City Sch. Constr. Auth.**, 1 AD3d 333, 336). There is a further rule that "the proponent of a Labor Law §200 claim must demonstrate that the defendant had actual or constructive notice of the allegedly unsafe condition that caused the accident." (**Mitchell v N.Y. University**, 12 AD3d 200, 201; **O'Donoghue v N.Y. City Sch. Constr. Auth.**, supra).

The Court holds that Best Modular has made a prima facie showing that it did not exercise supervision or control over KO's work on the day of the accident and that it had no actual or constructive notice of the unsafe manner in which the trees were being cut down. John Salvatore DiStefano testified at his August 12, 2004 deposition that he is the President of Best Modular Homes, Inc., and that he and his wife are the only shareholders. (Transcript, pp. 4-5). Mr. DiStefano further testified that he hired Mr. O'Halpin and KO. (Transcript, p. 18). As to the accident, Mr. DiStefano testified that he was not at the job site on the date of the

accident and that no one from Best Modular was at the job site on that day. (Transcript, pp. 21, 52). Mr. DiStefano additionally testified that he heard about the accident from Mr. O'Halpin, who called him around 8 o'clock that night. (Transcript, p. 30).

Mr. DiStefano went on to testify that he didn't recall any conversation with Mr. O'Halpin about the manner in which the trees were to be removed and that there was no conversation about safety equipment to his knowledge. (Transcript, pp. 37-38). Mr. DiStefano further testified that KO was to clear the trees, dig a hole and backfill and that no Best Modular employees were there during that process. (Transcript, p. 36). At his April 26, 2005 deposition, Mr. DiStefano testified that the accident took place during the "land clearing phase" of the job and that no work had been done on the project before the "land clearing phase" began. (Transcript, pp. 65-66). Mr. DiStefano also testified that no work was being done at the time of the accident other than land clearing. (Transcript, p. 66).

Since the plaintiff has not controverted Mr. DiStefano's testimony, Best Modular is granted summary judgment dismissing the plaintiff's common-law negligence claims and Labor Law §200 claims against Best Modular. Best Modular also seeks summary judgment on its common-law indemnification cause of action against KO asserted in its third-party complaint. This branch of the cross-motion is conditionally granted since Best Modular has established that it did not direct or control the decedent's work. (See **Francisco v 201 Saw Mill**

River Rd. Dev. Corp., 289 AD2d 374, 375; **Taddeo v 15 W. 72nd St. Owners Corp.**, 268 AD2d 468-469).

With respect to the plaintiff's Labor Law §241(6) claims against Best Modular, as already noted the only section of the Industrial Code in issue is 12 NYCRR 23-1.21(b)(4)(iv) and that triable issues preclude the grant of summary judgment based upon this specification. Consequently, Best Modular's cross-motion is denied insofar as it seeks dismissal of the plaintiff's Labor Law §241(6) claim.

Finally, KO's cross-motion for summary judgment dismissing the plaintiff's complaint is granted to the same extent as Best Modular's cross-motion. KO is, furthermore, granted summary judgment dismissing the second (i.e., contribution) and third (i.e., contractual indemnification) causes of action in Best Modular's third-party complaint as against KO. However, KO's cross-motion is denied insofar as it seeks dismissal of the first cause of action (i.e., common-law indemnification) in Best Modular's third-party complaint because the Court is granting conditional summary judgment to Best Modular on this cause of action. KO is also granted summary judgment dismissing all cross-claims asserted against it in both the main action and the third-party action.

Accordingly, the plaintiff's complaint and all cross-claims and third-party claims against the Bellomos are hereby severed and dismissed. The plaintiff's complaint against Best Modular insofar as it is based upon Labor Law §240(1),

Labor Law §200 and common-law negligence is hereby severed and dismissed. The second and third causes of action in Best Modular's third-party complaint are hereby severed and dismissed. All remaining cross-claims and counter-claims asserted in this action are hereby severed and dismissed.

The only cause of action left in the plaintiff's complaint is the Labor Law §241(6) claim against Best Modular and the only cause of action left in Best Modular's third-party complaint is the first cause of action for common-law indemnification on which Best Modular is being granted conditional summary judgment. All other claims asserted in this action are being dismissed.

This shall constitute the Decision and Order of this Court.

Dated: February 9, 2006

HON. LAWRENCE J. BRENNAN
Acting Supreme Court Judge

ENTERED
FEB 15 2006
NASSAU COUNTY
COUNTY CLERK'S OFFICE