

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MALVINA VITENKO, as administrator of the Estate of
BOHDAN VITENKO and MALVINA VITENKO,
individually,

Plaintiff,

-against-

NOTICE OF APPEAL
Index No.: 150106/2012

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF PARKS AND RECREATION and
JOHN DOE LIFEGUARDS A-F,

Defendants.

-----X

PLEASE TAKE NOTICE THAT Plaintiff hereby appeals to the Appellate Division, Second Judicial Department, from a Judgment of the Supreme Court, Richmond County (Hon. Orlando Marrazzo, Jr. J.), dated July 6, 2018, which was entered in the office of the Richmond County Clerk on July 10th, 2018 which was served with Notice of Entry via electronic filing on July 17th, 2018. This appeal is taken from each and every part of said Judgment which ascribed 30% of the liability to plaintiff's decedent, reduced the amount of damages awarded to plaintiff by the jury and used an improper discount rate in the calculation of interest.

Dated: Melville, New York
August 10, 2018

Yours, etc.,



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Supreme Court of Richmond County
26 Central Avenue
Staten Island, New York 10301

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Supreme Court of the State of New York
Appellate Division: Second Judicial Department

Form A - Request for Appellate Division Intervention - Civil

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

MALVINA VITENKO, as administrator of the Estate of BOHDAN VITENKO, and MALVINA VITENKO, individually,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION and JOHN DOE LIFEGUARDS A-F

Defendants.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type	<input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
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Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.

A. Administrative Review <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 Licenses <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other	D. Domestic Relations <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children - Support <input type="checkbox"/> 4 Children - Custody/Visitation <input type="checkbox"/> 5 Children - Terminate Parental Rights <input type="checkbox"/> 6 Children - Abuse/Neglect <input type="checkbox"/> 7 Children - JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residence <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other	F. Prisoners <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other	I. Torts <input type="checkbox"/> 1 Assault, Battery, False Imprisonment <input type="checkbox"/> 2 Conversion <input type="checkbox"/> 3 Defamation <input type="checkbox"/> 4 Fraud <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress <input type="checkbox"/> 6 Interference with Contract <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process <input type="checkbox"/> 8 Malpractice <input checked="" type="checkbox"/> 9 Negligence <input type="checkbox"/> 10 Nuisance <input type="checkbox"/> 11 Products Liability <input type="checkbox"/> 12 Strict Liability <input type="checkbox"/> 13 Trespass and/or Waste <input type="checkbox"/> 14 Other
B. Business & Other Relationships <input type="checkbox"/> 1 Partnership/Joint Venture <input type="checkbox"/> 2 Business <input type="checkbox"/> 3 Religious <input type="checkbox"/> 4 Not-for-Profit <input type="checkbox"/> 5 Other	E. Miscellaneous <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input type="checkbox"/> 3 Declaratory Judgment <input type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input type="checkbox"/> 6 Other	G. Real Property <input type="checkbox"/> 1 Condemnation <input type="checkbox"/> 2 Determine Title <input type="checkbox"/> 3 Easements <input type="checkbox"/> 4 Environmental <input type="checkbox"/> 5 Liens <input type="checkbox"/> 6 Mortgages <input type="checkbox"/> 7 Partition <input type="checkbox"/> 8 Rent <input type="checkbox"/> 9 Taxation <input type="checkbox"/> 10 Zoning <input type="checkbox"/> 11 Other	J. Wills & Estates <input type="checkbox"/> 1 Accounting <input type="checkbox"/> 2 Discovery <input type="checkbox"/> 3 Probate/Administration <input type="checkbox"/> 4 Trusts <input type="checkbox"/> 5 Other
C. Contracts <input type="checkbox"/> 1 Brokerage <input type="checkbox"/> 2 Commercial Paper <input type="checkbox"/> 3 Construction <input type="checkbox"/> 4 Employment <input type="checkbox"/> 5 Insurance <input type="checkbox"/> 6 Real Property <input type="checkbox"/> 7 Sales <input type="checkbox"/> 8 Secured <input type="checkbox"/> 9 Other	H. Statutory <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 <input type="checkbox"/> 6 Other		

Form A - RAD1 - Civil

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V2.0.060293



Appeal			
Paper Appealed From (check one only):			
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input type="checkbox"/> Order	<input type="checkbox"/> Resettled Order
<input type="checkbox"/> Amended Judgment	<input type="checkbox"/> Finding	<input type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):
<input type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree	
<input type="checkbox"/> Decree	<input checked="" type="checkbox"/> Judgment	<input type="checkbox"/> Resettled Judgment	
Court: SUPREME COURT OF THE STATE OF NEW YORK		County: RICHMOND COUNTY	
Dated: JULY 6, 2018		Entered: JULY 10, 2018	
Judge (name in full): HON. ORLANDO MARRAZZO, JR.		Index No.: 150106/2012	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal Information			
Are any unperfected appeals pending in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? <input type="checkbox"/> Yes <input type="checkbox"/> No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court:		County:	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order			
Court:		County:	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Appeal is from the judgment following jury verdict which resulted in a finding ascribing 30% of the liability to plaintiff's decedent and from that aspect of the judgment which reduced the amount of damages awarded by the jury to plaintiff and from that aspect of the judgment which used an improper discount rate to calculate interest on the jury's verdict.</p> <p>Amount: If an appeal is from a money judgment, specify the amount awarded.</p> <p>Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.</p> <p>Appeal is from the judgment following jury verdict which resulted in a finding ascribing 30% of the liability to plaintiff's decedent and from that aspect of the judgment which reduced the amount of damages awarded by the jury to plaintiff and from that aspect of the judgment which used an improper discount rate to calculate interest on the jury's verdict and such other errors as may become evident after a further review of the record.</p>			

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Issues Continued:

Use Form B for Additional Appeal Information

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	MALVINA VITENKO	Plaintiff	Appellant
2	THE CITY OF NEW YORK	Defendant	Respondent
3	NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION	Defendant	Respondent
4	JOHN DOE LIFE GAURDS A-F	Defendants	Respondents
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