

-against-

THOMAS ALTOBELLI,

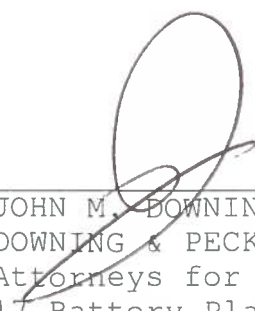
Index No. :
50517/2015

Defendants.

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PLEASE TAKE NOTICE, that defendant THOMAS ALTOBELLI by attorneys DOWNING, & PECK, P.C. hereby appeals to the Supreme Court of the State of New York, Appellate Division, Second Department, from the June 30, 2017 decision and order of Honorable Justice Sam D. Walcott (a copy of which is annexed hereto and made a part hereof) in that defendant appeals only to the extent that said Honorable Court denied Defendant's motion for a new trial on the issue of liability.

Dated: New York, New York
July 12, 2017



JOHN M. DOWNING, JR.
DOWNING & PECK, P.C.
Attorneys for Defendant
17 Battery Place - 7th Floor
New York, New York 10004
212-514-9190

TO: SULLIVAN & BRILL, LLP
Attorneys for Plaintiff
115 Broadway - 17th Floor
New York, New York 10006
212-566-1000

MARTIN GLYNN,

Plaintiff,

-against-

THOMAS ALTOBELLI,

Defendant,

Date Notice of Appeal Filed

For Appellate Division

| | | | |
|--|---|---|---|
| Case Type | | Filing Type | |
| <input checked="" type="checkbox"/> Civil Action | <input type="checkbox"/> CPLR article 78 Proceeding | <input checked="" type="checkbox"/> Appeal | <input type="checkbox"/> Transferred Proceeding |
| <input type="checkbox"/> CPLR article 75 Arbitration | <input type="checkbox"/> Special Proceeding Other | <input type="checkbox"/> Original Proceeding | <input type="checkbox"/> CPLR 5704 Review |
| <input type="checkbox"/> Habeas Corpus Proceeding | | | |
| Nature of Suit: Check up to five of the following categories which best reflect the nature of the case. | | | |
| A. Administrative Review | D. Domestic Relations | F. Prisoners | I. Torts |
| <input type="checkbox"/> 1 Freedom of Information Law | <input type="checkbox"/> 1 Adoption | <input type="checkbox"/> 1 Discipline | <input type="checkbox"/> 1 Assault, Battery, False Imprisonment |
| <input type="checkbox"/> 2 Human Rights | <input type="checkbox"/> 2 Attorney's Fees | <input type="checkbox"/> 2 Jail Time Calculation | <input type="checkbox"/> 2 Conversion |
| <input type="checkbox"/> 3 Licenses | <input type="checkbox"/> 3 Children - Support | <input type="checkbox"/> 3 Parole | <input type="checkbox"/> 3 Defamation |
| <input type="checkbox"/> 4 Public Employment | <input type="checkbox"/> 4 Children - Custody/Visitation | <input type="checkbox"/> 4 Other | <input type="checkbox"/> 4 Fraud |
| <input type="checkbox"/> 5 Social Services | <input type="checkbox"/> 5 Children - Terminate Parental Rights | G. Real Property | |
| <input type="checkbox"/> 6 Other | <input type="checkbox"/> 6 Children - Abuse/Neglect | <input type="checkbox"/> 1 Condemnation | <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress |
| B. Business & Other Relationships | | <input type="checkbox"/> 2 Determine Title | <input type="checkbox"/> 6 Interference with Contract |
| <input type="checkbox"/> 1 Partnership/Joint Venture | <input type="checkbox"/> 7 Children - JD/PINS | <input type="checkbox"/> 3 Easements | <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process |
| <input type="checkbox"/> 2 Business | <input type="checkbox"/> 8 Equitable Distribution | <input type="checkbox"/> 4 Environmental | <input type="checkbox"/> 8 Malpractice |
| <input type="checkbox"/> 3 Religious | <input type="checkbox"/> 9 Exclusive Occupancy of Residence | <input type="checkbox"/> 5 Liens | <input checked="" type="checkbox"/> 9 Negligence |
| <input type="checkbox"/> 4 Not-for-Profit | <input type="checkbox"/> 10 Expert's Fees | <input type="checkbox"/> 6 Mortgages | <input type="checkbox"/> 10 Nuisance |
| <input type="checkbox"/> 5 Other | <input type="checkbox"/> 11 Maintenance/Alimony | <input type="checkbox"/> 7 Partition | <input type="checkbox"/> 11 Products Liability |
| C. Contracts | | <input type="checkbox"/> 8 Rent | <input type="checkbox"/> 12 Strict Liability |
| <input type="checkbox"/> 1 Brokerage | <input type="checkbox"/> 12 Marital Status | <input type="checkbox"/> 9 Taxation | <input type="checkbox"/> 13 Trespass and/or Waste |
| <input type="checkbox"/> 2 Commercial Paper | <input type="checkbox"/> 13 Paternity | <input type="checkbox"/> 10 Zoning | <input type="checkbox"/> 14 Other |
| <input type="checkbox"/> 3 Construction | <input type="checkbox"/> 14 Spousal Support | <input type="checkbox"/> 11 Other | |
| <input type="checkbox"/> 4 Employment | <input type="checkbox"/> 15 Other | | |
| <input type="checkbox"/> 5 Insurance | E. Miscellaneous | | J. Wills & Estates |
| <input type="checkbox"/> 6 Real Property | <input type="checkbox"/> 1 Constructive Trust | <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 | <input type="checkbox"/> 1 Accounting |
| <input type="checkbox"/> 7 Sales | <input type="checkbox"/> 2 Debtor & Creditor | <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 | <input type="checkbox"/> 2 Discovery |
| <input type="checkbox"/> 8 Secured | <input checked="" type="checkbox"/> 3 Declaratory Judgment | <input type="checkbox"/> 3 General Municipal Law § 712 | <input type="checkbox"/> 3 Probate/Administration |
| <input type="checkbox"/> 9 Other | <input type="checkbox"/> 4 Election Law | <input type="checkbox"/> 4 Labor Law § 220 | <input type="checkbox"/> 4 Trusts |
| | <input type="checkbox"/> 5 Notice of Claim | <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 | <input type="checkbox"/> 5 Other |
| | <input type="checkbox"/> 6 Other | <input type="checkbox"/> 6 Other | |

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|---|--|---|-------------|
| Judge (name in full): Sam D. Walker | | Index No.: 50517/2015 | |
| Stage: <input checked="" type="checkbox"/> Interlocutory <input 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 appeal 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>This is an appeal from the June 30, 2017 decision and order of Justice Sam D. Walker which denied in part and granted in part defendant's post-trial motion to set aside the verdict and order new trials on liability and damages. Defendant now appeals only from the decision to the extent that it denied the motion for a new trial on the issue of liability where plaintiff/bicyclist was travelling on a road governed by a stop sign and defendant travelling on a road with no traffic control device and with the right-of-way, was it in error to deny a new trial on liability where the jury found that plaintiff was negligent but that such negligence was not a proximate cause of the accident.</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> | | | |

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 | MARTIN GLYNN | PLAINTIFF | RESPONDENT |
| 2 | THOMAS ALTOBELLI | DEFENDANT | APPELLANT |
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Party or Parties Represented (set forth party number(s) from table above or from Form C):

P L A I N T I F F

Attorney/Firm Name: DOWNING & PECK, P.C.

Address: 17 Battery Place - Suite 709

City: New York State: NY Zip: 10004 Telephone No.: 212-514-9190

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C): 2 D E F E N D A N T

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C): D E F E N D A N T

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C): D E F E N D A N T

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C): D E F E N D A N T

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

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