

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ANTHONY DALLI,

Plaintiff-Respondent,

-against-

WESTCHESTER COUNTY DEPARTMENT OF
TRANSPORTATION and ANTHONY MASSARO, JR.,

Defendant-Appellants.

Index No.: 50551/2013

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above named Defendants, WESTCHESTER COUNTY DEPARTMENT OF TRANSPORTATION and ANTHONY MASSARO, JR., hereby appeal to the Appellate Division of the Supreme Court, Second Judicial Department, from each and every part of the Order by the Honorable Terry Jane Ruderman, J.S.C. in the above captioned action, dated July 19, 2018 and entered on July 20, 2018, and served with Notice of Entry by the Court's electronic filing system on July 20, 2018.

Dated: White Plains, New York
July 23, 2018

HARRIS BEACH, PLLC

By: 

Darius P. Chafizadeh, Esq.

John J. Phelan, Esq.

Harris Beach, PLLC

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To: A.G. Trakas, P.C.
Arthur G. Trakas, Esq.
Attorneys for Plaintiff
3119 Newtown Avenue, Suite 500
Astoria, New York 11103

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.	For Court of Original Instance
ANTHONY DALLI <p style="text-align: center;">Plaintiff-Respondent,</p> <p style="text-align: center;">-against-</p> WESTCHESTER COUNTY DEPARTMENT OF TRANSPORTATION and ANTHONY MASSARO, JR., <p style="text-align: center;">Defendant-Appellants.</p>	Date Notice of Appeal Filed
	For Appellate Division

Case Type	Filing Type	Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
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"/> 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	<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	<input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other	<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		G. Real Property	
<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		<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	
C. Contracts		E. Miscellaneous	H. Statutory
<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		<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	<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
		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	

72.0.060293

Appeal

Paper Appealed From (check one only):

- | | | | |
|-------------------------------------------|-------------------------------------------------|---------------------------------------------|-------------------------------------------|
| <input type="checkbox"/> Amended Decree | <input type="checkbox"/> Determination | <input checked="" 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 type="checkbox"/> Judgment | <input type="checkbox"/> Resettled Judgment | |

Court: Supreme Court

County: Westchester

Dated: July 19, 2018

Entered: July 20, 2018

Judge (name in full): Hon. Terry Jane Ruderman, J.S.C.

Index No.: 50551/2013

Stage: Interlocutory Final Post-FinalTrial: Yes No If Yes: Jury Non-Jury

Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case? Yes No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? Yes No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

Original Proceeding

Commenced by: Order to Show Cause Notice of Petition 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

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.

Defendants appeal from the Supreme Court Order dated July 19, 2018 and entered with the Clerk of Westchester County on July 20, 2018, which denied, in part, Defendants' post-trial motion made pursuant to CPLR 4404 (a).

Amount: If an appeal is from a money judgment, specify the amount awarded.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

The Supreme Court erred in denying those branches of Defendants' post-trial motion which sought to set aside the liability and damages verdicts and direct a new trial, and which sought to reduce the jury's damages verdict as excessive and contrary to the weight of the evidence.

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	Westchester County Department of Transportation	Defendant	Appellant
2	Anthony Massaro, Jr.	Defendant	Appellant
3	Anthony Dalli	Plaintiff	Respondent
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Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Darius P. Chafizadeh, Esq. Harris Beach, PLLC
 Address: 445 Hamilton Avenue, Suite 1206
 City: White Plains State: NY Zip: 10601 Telephone No.: (914) 683-1200
 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): 1 2

Attorney/Firm Name: Arthur Trakas, Esq. A.G. Trakas, P.C.
 Address: 3119 Newtown Avenue, Suite 500
 City: Astoria State: NY Zip: 11103 Telephone No.: (718) 721-7171
 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): 3

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):

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):

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):

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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