DOCKET NO: CV-23-6038805-S	:	SUPERIOR COURT
MARYJO BELANGER	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
Z INCORPORATED ET AL.	:	APRIL 25, 2024

MEMORANDUM OF DECISION REGARDING DEFENDANT'S MOTION TO DISMISS AND/OR STRIKE THE SECOND COUNT (#107.00, #110.00)

The defendant,[1] Marc Zgorski, moves to dismiss and/or strike the second count of the complaint asserted against him for lack of subject matter jurisdiction. In the second count, the plaintiff alleges that the defendant aided and abetted the defendant, Z Incorporated,[2] in its violations of the Connecticut Fair Employment Practices Act (CFEPA). In support of the motion to dismiss, the defendant argues that the plaintiff, Maryjo Belanger, failed to exhaust her administrative remedies and submitted the affidavit of his attorney, Salvatore G. Gangemi. In support of his motion to strike, the defendant contends that the second count fails to state a claim upon which relief can be granted. On January 18, 2024, the plaintiff filed an objection to both motions. The court heard the matter remotely on February 21, 2024.

I
BACKGROUND

On or about January 5, 2023, the plaintiff filed a complaint with the Commission on Human Rights and Opportunities (CHRO) against Z Incorporated, alleging sexual harassment and gender-based discrimination. See CHRO Compl., Exh. A to Pl. Obj. In her CHRO complaint, the plaintiff alleged that, on or about July 13, 2022, she commenced employment with Z

[1] Although two defendants are named in the present action, any reference to "the defendant" will pertain to Marc Zgorski.
[2] This defendant will be referenced by name hereinafter.

Incorporated, a family-owned nursing home facility. CHRO Compl. ¶¶ 3-4. The defendant, as the president of Z Incorporated, hired the plaintiff. See Def.'s Answer to CHRO Compl., Exh. B to Pl.'s Obj. The plaintiff's duties included but were not limited to organizing medical records and providing CNA transportation, as well as scheduling appointments as instructed by the defendant. CHRO Compl. ¶ 5. Prior to her termination on November 14, 2022, the plaintiff had not received any reports of disciplinary or performance issues. CHRO Compl. ¶ 7.

In her CHRO complaint, the plaintiff alleged that on or about July 26, 2022, the defendant invited the plaintiff out to dinner, which she accepted because she felt she could not decline due to the defendant's title as her superior. CHRO Compl. ¶ 10. At the defendant's request, the plaintiff met him at his home, where he initiated conversation about his sexual desires and fantasies; the plaintiff and the defendant engaged in consensual sex after dinner. CHRO Compl. ¶ 11. Later that evening, the defendant explained to the plaintiff that he had sex with other employees, and that he liked to "take [new employees] for a test drive to see how they drive." CHRO Compl. ¶ 12. The defendant told the plaintiff that if she were to tell anyone about their sexual relations, "all hell would break loose," insinuating to the plaintiff that she would get in trouble. CHRO Compl. ¶ 12. About two weeks after this initial encounter, the defendant approached the plaintiff and asked her to continue having sex with him and to go to his house after work. CHRO Compl. ¶ 13. The plaintiff felt as though she must comply with the defendant's request as he was her superior and the owner of the company, so she went to his home where another sexual encounter occurred. CHRO Compl. ¶ 13-14.

During this time, the plaintiff heard from other employees of Z Incorporated that the defendant had a propensity to be attracted to younger women, and on one occasion she witnessed the defendant approach a twenty-four year old administrative assistant who became very upset

following her interaction with him. CHRO Compl. ¶ 15-16. On or about September 8, 2022, the defendant initiated a sexual text conversation with the plaintiff while she was at work, causing her to feel uncomfortable and to attempt to avoid the defendant's continuous efforts to engage with her. CHRO Compl. ¶¶ 17-18. On a following occasion, the defendant texted the plaintiff and asked her to participate in a "threesome" with another person, which she refused. CHRO Compl. ¶ 19. The plaintiff continued to work for Z Incorporated until she was terminated on or about November 14, 2022, purportedly due to Z Incorporated's need to hire a full-time employee for her position. CHRO Compl. ¶ 23.

By release of jurisdiction notice, dated September 7, 2023, the CHRO released its jurisdiction over the plaintiff's CHRO complaint and authorized the plaintiff to commence a civil action against Z Incorporated. See Compl., Exh. A. The plaintiff was represented by legal counsel in her administrative proceeding before the CHRO. On September 14, 2023, the plaintiff commenced the present action. In count one of her complaint, the plaintiff brings a cause of action of sexual harassment under General Statutes §§ 46a-60 (b) (1) and (b) (8) against Z Incorporated, based on the same allegations made in her CHRO complaint. In count two, the plaintiff brings a cause of action of aiding, abetting, inciting, compelling, or coercing discriminatory acts in violation of General Statutes § 46a-60 (b) (5) against the defendant, also based on the allegations made in her CHRO complaint.

II
LEGAL STANDARD

A
MOTION TO DISMISS

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be

heard by the court." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). Specifically, Practice Book § 10-30 (a) provides: "A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process." "The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . Where, however . . . the motion is accompanied by supporting affidavits containing undisputed facts, the court may look to their content . . . ." (Internal quotation marks omitted.) *Cogswell* v. *American Transit Ins. Co.*, 282 Conn. 505, 516, 923 A.2d 638 (2007). The "allegations [in the complaint] are tempered by the light shed on them by the [supplementary undisputed facts]." (Internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 652, 974 A.2d 669 (2009).

B
MOTION TO STRIKE

"The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "[The court] construe[s] the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 350, 71 A.3d 480 (2013). "A motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588, 693 A.2d 293 (1997). "A motion to

strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, supra, 308 Conn. 349. "If facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.*, supra, 580. "It is well established that a motion to strike must be considered within the confines of the pleadings and not external documents . . . . We are limited . . . to a consideration of the facts alleged in the complaint." (Internal quotation marks omitted.) *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 268-69 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005); see also *Rowe* v. *Godou*, 209 Conn. 273, 278, 550 A.2d 1073 (1988) (in ruling on motion to strike, court cannot resort to information outside of complaint).

III
DISCUSSION

A
MOTION TO DISMISS

The defendant contends that the court lacks jurisdiction over the subject matter of the second count alleging aiding and abetting against him because the plaintiff failed to exhaust her administrative remedies before the CHRO by failing to name the defendant as a party-respondent in her CHRO complaint. He also argues that the CHRO's release of jurisdiction only authorized the plaintiff to file a civil action against Z Incorporated, as opposed to the defendant, and that the identity of interests exception does not apply to excuse the plaintiff's failure to exhaust administrative remedies. The plaintiff objects and argues that, although CFEPA requires administrative exhaustion of remedies prior to filing suit, her claims against the defendant are subject to the limited exceptions provided under CFEPA.

Reasonably Related

The present action is brought pursuant to CFEPA, codified in General Statutes § 46a–60 et seq. "In drafting and modifying [CFEPA] . . . our legislature modeled that act on its federal counterpart, Title VII of the Civil Rights Act of 1964 . . . and it has sought to keep our state law consistent with federal law in this area." (Citations omitted.) *Ware* v. *State*, 118 Conn. App. 65, 82, 983 A.2d 853 (2009). Connecticut courts interpreting CFEPA have thus followed federal courts in allowing certain exceptions to the exhaustion requirements of CFEPA. See *Deravin* v. *Kerik*, 335 F.3d 195, 200 (2d Cir. 2003) ("claims that were not asserted before the [Equal Employment Opportunity Commission (EEOC), the federal administrative counterpart to the CHRO] may be pursued in a subsequent federal court action if they are reasonably related to those that were filed with the agency" [internal quotation marks omitted]). For claims brought pursuant to CFEPA, courts have allowed a plaintiff to pursue claims in the court action that are reasonably related to the claims brought in the administrative action or if there is an identity of interests between the claims. See *Tatro* v. *Cascades Boxboard Group Connecticut, LLC*, Superior Court, judicial district of New London, Docket No. CV-09-4009597-S (April 22, 2010, *Martin, J.*) ("[o]ne such exception permits the court to exercise jurisdiction over a charge that was not presented during . . . administrative proceedings as long as it is reasonably related to the conduct complained of during the administrative proceedings").

Courts recognize three ways in which allegations not raised in an administrative complaint but raised in a legal action are "reasonably related" to the allegations of the administrative complaint for purposes of the exhaustion doctrine. The first involves "a claim alleging retaliation by an employer against an employee for filing an EEOC charge. . . ." (Internal quotation marks omitted.) *Deravin* v. *Kerik*, supra, 335 F.3d 201 n.3. The second

involves "a claim where the plaintiff alleges further incidents of discrimination carried out in precisely the same manner alleged in the EEOC charge." Id. The third exception involves "claims not raised in the charge . . . where the conduct complained of would fall within the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." (Internal quotation marks omitted.) *Butts* v. *Dept. of Housing Preservation & Development*, 990 F.2d 1397, 1402 (2d Cir. 1993).

In applying the reasonably related exception, Connecticut courts have limited interpretations to additional claims as opposed to additional parties. See *Patrick* v. *Groton*, Superior Court, judicial district of New London, Docket No. CV-14-6022681-S (August 14, 2015, *Cole-Chu, J.*) (60 Conn. L. Rptr. 803, 805); *Chassie* v. *Sprigs & Twigs, Inc.*, Superior Court, judicial district of New London, Docket No. CV-14-6020965-S (November 21, 2014, *Cole-Chu, J.*) (59 Conn. L. Rptr. 350, 352).

In reviewing the claims made by the plaintiff in her current complaint and the CHRO action, the court finds that the reasonably related exception does not apply to the present matter. In her CHRO complaint, the plaintiff alleged two violations of §§ 46a–60 (b) (1) and (b) (8), solely against Z Incorporated, both of which relate to the sexual harassment and discrimination claim and how such issues manifested themselves in the defendants' workplace. All the allegations of discriminatory conduct that the plaintiff set forth were the actual conduct engaged in by the defendant in his position as president and an owner of Z Incorporated. The conduct by the defendant gave rise to the discriminatory actions alleged by the plaintiff and her claims. In fact, the defendant was not sued by the plaintiff at the CHRO, and therefore the reasonably related exception does not apply to preserve her claims against him presently before this court.

Identity of Interests

With respect to the second exception to the exhaustion doctrine, the identity of interests exception "permits an action against a party not named as a respondent in the [CHRO] complaint if the underlying dual purposes of the exhaustion requirement are otherwise satisfied." [Internal quotation marks omitted.] *Robitaille* v. *Stratford*, Superior Court, judicial district of Fairfield, Docket No. CV-15-6053873-S (March 8, 2017, *Kamp, J.*) (64 Conn. L. Rptr. 100, 102). The identity of interests exception applies when there is significant "interrelationship" or "overlap" between the named and unnamed parties at the CHRO. *Garcia* v. *Charter Oak's Favorite Chicken, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-14-6055552-S (September 9, 2015, *Peck, J.*).

Relying on federal case law and guidance, the Supreme Court in *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 453-54, 689 A.2d 1145, cert. denied, 241 Conn. 906, 695 A.2d 539 (1997), adopted the application of the identity of interests exception to CFEPA cases. In *Malasky*, the court considered the exception's applicability to a plaintiff, who had failed to name certain parties in her prior administrative complaint before the CHRO, where she was unrepresented by counsel. Id., 454. In determining whether the identity of interests exception should apply to CFEPA, the court "considered the fact that the plaintiff had not been represented by counsel at the time she filed the administrative complaints." *Id.,* discussing *Maturo* v. *National Graphics, Inc.*, 722 F. Supp. 916, 923 (1989). Upon establishing this fact, the court applied the following factors to determine whether the exception should apply: "1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the [CHRO] complaint; 2) whether, under the circumstances, the interests of a named [party] are so similar as the unnamed party's that for the purpose of obtaining

voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the [CHRO] proceedings; 3) whether its absence from the [CHRO] proceedings resulted in actual prejudice to the interests of the unnamed party; [and] 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party." (Internal quotation marks omitted.) *Malasky v. Metal Products Corp.*, supra, 44 Conn. App. 453-54.

Connecticut state and federal courts, however, have disagreed on the applicability of the identity of interests exception where the plaintiff was represented by counsel when the CHRO complaint was filed. See *Robinson* v. *New Haven*, 578 F. Supp. 2d 385, 390 (D. Conn. 2008) (granting motion to dismiss, reasoning that identity of interests exception only applies when plaintiff was not represented by counsel before CHRO); *Heyward* v. *State*, Superior Court, judicial district of Waterbury, Docket No. CV-13-6019925-S (February 4, 2014, *Zemetis, J.*), affirmed in part and dismissed in part, *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 124 A.3d 920 (2015) (affirming lower court's holding is only relevant for present purposes) (granting motion to dismiss, reasoning that identity of interests exception only applies when plaintiff was not represented by counsel before CHRO); but see *Marks* v. *Cogswell*, Superior Court, judicial district of New Haven, Docket No. CV-08-5022000-S (January 11, 2011, *Frechette, J.*) (denying motion for summary judgment upon consideration of identity of interests factors, even though plaintiff was represented by counsel before CHRO); *Simpson* v. *D & L Tractor Trailer School*, Superior Court, judicial district of Fairfield, Docket No. CV-05-4008081-S (December 19, 2007, *Maiocco, J.T.R.*) (denying motion to dismiss upon consideration of identity of interests factors, even though plaintiff was represented by counsel before CHRO).

"Some [federal] district courts have interpreted that language to mean that the identity of interest exception should apply *only* when the plaintiff was not represented by counsel in the administrative proceeding." (Emphasis in original.) *Parlato* v. *East Haven*, United States District Court, Docket No. 3:22CV1094 (SVN) (D. Conn. August 14, 2023), citing *Dunbar* v. *Omnicom Group, Inc.*, United States District Court, Docket No. 3:19CV00956 (KAD) (D. Conn. February 18, 2021); *Joseph* v. *United Technologies Corp.*, United States District Court, Docket No. 14CV424 (AWT) (D. Conn. February 26, 2015); *Anderson* v. *Derby Board of Education*, 718 F. Supp. 2d 258, 274-75 (D. Conn. 2010); *Peterson* v. *Hartford*, 80 F. Supp. 2d 21, 24 (D. Conn. 1999). Others have suggested that the identity of interests exception's applicability would depend on the attorney's individual experience with Title VII administrative proceedings. *Parlato* v. *East Haven*, supra, United States District Court, Docket No. 3:22CV1094 (SVN), citing *Senecal* v. *B.G. Lenders Service LLC*, 976 F. Supp. 2d 199, 216 (N.D.N.Y. 2013); *Gagliardi* v. *Universal Outdoor Holdings, Inc.*, 137 F. Supp. 2d 374, 379 (S.D.N.Y. 2001); *Flower* v. *Mayfair Joint Venture*, United States District Court, Docket No. 95CV1744 (DAB) (S.D.N.Y. March 13, 2000). "[O]ther district courts have considered whether the plaintiff was represented by counsel [before the CHRO] . . . to be a non-dispositive factor in applying the identity of interest test." *Parlato* v. *East Haven*, supra, United States District Court, Docket No. 3:22CV1094 (SVN), citing *Senecal* v. *B.G. Lenders Service LLC*, supra, 215-16; *Williams* v. *Quebecor World Infiniti Graphics, Inc.*, United States District Court, Docket No. 3:03CV2200 (PCD) (D. Conn. March 23, 2007); *Wood* v. *Pittsford Central School District*, United States District Court, Docket No. 03CV6541T (W.D.N.Y. January 10, 2005); *Olvera-Morales* v. *Sterling Onions, Inc.*, 322 F. Supp. 2d 211, 217-18 (N.D.N.Y. 2004). Courts that have adopted the last approach have reasoned that "the Second Circuit has not imposed any such precondition for utilizing the identity of interest test . . . and

that a proper balance of the various goals of the administrative exhaustion requirement is best achieved by a case-by-case evaluation of the circumstances in light of all relevant factors. . . ." (Citation omitted; internal quotation marks omitted.) *Parlato* v. *East Haven*, supra, United States District Court, Docket No. 3:22CV1094 (SVN). Moreover, "there is no Connecticut appellate or Second Circuit authority that explicitly imposes pro se status as a threshold requirement, and look to the entirety of the circumstances, including whether the complainant had legal representation, to determine whether the underlying purposes of the exhaustion requirement were fulfilled." *Garcia* v. *Charter Oak's Favorite Chicken, LLC*, supra, Superior Court, Docket No. CV-14-6055552-S.

In applying the factors applied by Connecticut state and federal courts, the court finds that the identity of interests exception applies to provide subject matter jurisdiction for this court to hear the second count. In the present case, the defendant's role was clear in that it was ascertainable at the time the plaintiff filed her complaint; the defendant's position with the company, as well as his role in the factual circumstances giving rise to the plaintiff's claims, put him on notice as to the CHRO complaint. See *Malasky* v. *Metal Products Corp.*, supra, 44 Conn. App. 454-55. Moreover, he was involved in the CHRO proceedings even though he was not personally named so he had actual notice of the complaint.[3] Accordingly, the court finds that the identity of interests exception applies to preserve the court's jurisdiction.

B
MOTION TO STRIKE

The defendant also argues that the plaintiff has failed to sufficiently allege a cause of action sounding in aiding and abetting against the defendant. Section 46a-60 (b) (5) provides: "It

[3] The defendant signed Z Incorporated's answer to the plaintiff's CHRO complaint. See Def. Answer to CHRO Compl., Exh. B to Pl. Obj.

shall be a discriminatory practice in violation of this [section for] any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so." The defendant contends that he cannot aid and abet discriminatory or retaliatory conduct under § 46a-60 (b) (5), while at the same time being the perpetrator of the discriminatory or retaliatory conduct under General Statutes § 46a-60 (b) (4). The plaintiff maintains that the defendant's argument directly contradicts the holdings of several courts that have considered this exact issue.

In reviewing the case law, the court agrees with the plaintiff. Particularly, the cases discussed by the plaintiff are instructive. In *Cullen* v. *Southington Oral & Maxillofacial Surgeons, P.C.*, Superior Court, judicial district of Hartford, Docket No. CV-12-6037579-S, (Sept. 30, 2014, *Huddleston, J.*), the plaintiff was subjected to various incidents of sexual harassment by the oral surgeon who owned and was employed by the business for whom she worked. Id. In addition to her claims of discrimination and sexual harassment against the business, the plaintiff brought a claim of aiding and abetting discriminatory practices against the oral surgeon. Id. In his motion for summary judgment, the oral surgeon argued that, "as a matter of law he cannot be found to have aided and abetted discriminatory acts because he is the alleged perpetrator of the discriminatory acts." Id. In considering this argument, the court first observed that while it had found no appellate authority on the issue, a number of trial courts that have considered it had concluded that "an individual . . . can be held liable for aiding and abetting discrimination by the employer even where the alleged discrimination results solely from the [individual's] acts." Id. In denying the oral surgeon's motion for summary judgment, the court was "persuaded by the reasoning in *Rentz* [v. *Cartwright Ltd. Partnership*, Superior Court, judicial district of Windham, Docket No. CV 04-0072318-S (November 23, 2004, *Foley, J.*) (38

Conn. L. Rptr. 338, 340-41)]. [The oral surgeon] and the corporate defendant are separate persons under the principles of corporate law. While the corporation may be liable for the acts of [the oral surgeon], who is its employee and officer, [the oral surgeon] may be personally liable for aiding and abetting the discriminatory acts of the corporate defendant." *Cullen* v. *Southington Oral & Maxillofacial Surgeons, P.C.*, supra, Superior Court, Docket No. CV-12-6037579-S.

Federal courts that have considered this issue have also found that an employee whose conduct serves as the basis for CFEPA violations may in fact have aided and abetted the corporate employer's violations. See, e.g., *Jones* v. *Sansom*, United States District Court, Docket No. 3:21CV442 (VAB) (D. Conn. January 27, 2023) ("[A]n individual may aid and abet his employer's discrimination. . . . CFEPA's aiding and abetting liability is particularly applicable to supervisors in the use of their authority, as is the case here . . . even where the employer's liability is derived from the supervisor's wrongful conduct." [Citation omitted; internal quotation marks omitted.]); *Hampton* v. *Diageo North America, Inc.*, United States District Court, Docket No. 3:04CV346 (PCD) (D. Conn. February 7, 2008) (same); *Farrar* v. *Stratford*, 537 F.Supp.2d 332, 356-57 (D. Conn. 2008) ("The law in Connecticut is clear that while an individual employee may be held liable for aiding and abetting his employer's discrimination, an employer [cannot] be liable for aiding and abetting its own discriminatory conduct. . . . Thus, a plaintiff may seek recovery from individual . . . employees for illegally aiding and abetting discrimination against h[er]. . . ." [Citations omitted; internal quotation marks omitted.]).

The cases relied upon by the defendant are distinguishable from the present case. For example, in *Thomas* v. *Eder Bros., Inc.,* Superior Court, judicial district of Ansonia-Milford at Derby, Docket No. CV-23-6049643-S (August 21, 2023, *Welch, J.*), the plaintiff alleged that both the defendant company and the defendant vice president had aided and abetted one another in the

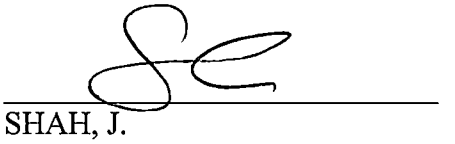
discriminatory conduct, even though the defendant vice president was the individual who sexually harassed the plaintiff. Id. The court in *Thomas* concluded that the plaintiff had failed to adequately allege discriminatory practices against the defendant company, and thus the defendant vice president could not aid and abet himself in the discriminatory practices solely alleged against him. Id. Here, the sufficiency of the allegations against Z Incorporated in count one is not being challenged. Rather, the present matter is more like the cases where a separate count was brought against the employee for actions that gave rise or contributed to the claims against the employer.

Based on the reasoning of courts that have allowed an aiding and abetting claim in similar circumstances to the present matter, the court finds that count two sufficiently states a claim for aiding and abetting against the defendant. Thus, the motion to strike is denied.

IV
CONCLUSION

For the foregoing reasons, both motions are denied. It is so ordered.

BY THE COURT,



SHAH, J.