

NYSCEF DOC. NO. 158

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February 3, 2025

VIA NYSCEF

The Hon. Maria S. Vazquez-Doles
New York Supreme Court, Orange County
285 Main Street
Goshen, New York 10924

Re: *Oral Clarke, et al. v. Town of Newburgh, et al.* (Index No. EF002460-2024; Orange Cnty.)

Dear Justice Vazquez-Doles,

Defendants Town of Newburgh and Town Board of the Town of Newburgh (together, “Defendants”) write regarding the Court’s Notice, NYSCEF No. 157, ordering the parties to appear before Your Honor on February 4, 2025, to discuss remaining discovery, expert disclosure, any other aspects of the case remaining before trial can proceed, trial dates, witnesses, documentary/electronic evidence, duration of trial, and any other aspects of trial that affect scheduling. Defendants respectfully submit that it is premature to set any deadlines or trial dates, for three separate reasons.

First, the Appellate Division, Second Department, has yet to issue remittitur. Until that happens, this Court lacks jurisdiction. C.P.L.R. 5524(b); *Fry v. Vill. of Tarrytown*, 176 Misc. 2d 275, 276, 671 N.Y.S.2d 633, 634 (Sup. Ct. Westchester Cnty. 1998).

Second, pursuant to CPLR § 5602, Defendants intend to move the Second Department for permission to appeal to the Court of Appeals, to vindicate this Court’s Decision and Order dated November 7, 2024. Defendants intend to request that the Second Department refrain from issuing remittitur until the issues on appeal are fully resolved in the appellate courts, as it would be illogical and a waste of judicial and party resources to proceed to trial before such finality.

Third, any additional case deadlines must account for time needed for Defendants’ submission of their supplemental expert report(s) and the deposition of Plaintiffs’ expert, Dr. Barreto, regarding the addendum to his expert report, all of which this Court expressly permitted by Order dated October 25, 2024. NYSCEF No. 141.

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Respectfully submitted,

/s/ Bennet J. Moskowitz

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cc: All counsel of record via NYSCEF