

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

M247773
E/rr

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2016-12854

DECISION & ORDER ON MOTION

In the Matter of Ferncliff Cemetery Association,
appellant, v Town of Greenburgh, et al., respondents.

(Index No. 2868/15)

Motion by the respondents to strike stated portions of the record on an appeal from an order and judgment (one paper) of the Supreme Court, Westchester County, dated November 15, 2016, to direct the appellant to serve and file a supplemental record which contains their pre-answer motion to dismiss, and to enlarge the time to serve and file a brief. Cross motion by the appellant, inter alia, in effect, for leave to make corrections to the record. By decision and order on motion of this Court dated January 30, 2018, the matter was remitted to the Supreme Court, Westchester County, to report on whether that court considered the material contained on pages 158, 176-177, 179-181, 294, 317, 342, 346, 1258, 1354-1355, 1358, 1360, 1368-1369, 1385, 1390-1391, 1395-1398, and 1400 of the record on appeal in connection with the petition and motion which were determined by the order and judgment dated November 15, 2016, and the motion and the cross motion were held in abeyance in the interim. The Supreme Court, Westchester County, has issued a report dated March 8, 2018.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the papers filed in support of the cross motion and the papers filed in opposition thereto, and upon the report of the Supreme Court, Westchester County, dated March 8, 2018, it is

ORDERED that the branch of the motion which is to strike stated portions of the record is denied; and it is further,

ORDERED that the branch of the motion which is to direct the appellant to serve and file a supplemental record which contains the respondents' pre-answer motion to dismiss is granted and on or before April 13, 2018, the appellant shall serve and file a supplemental record containing those motion papers; and it is further,

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ORDERED that the branch of the motion which is to enlarge the respondent's time to serve and file a brief is granted, the respondent's time to serve and file a brief is enlarged until May 14, 2018, and the respondent's brief shall be served and filed on or before that date; and it is further,

ORDERED that the branch of the cross motion which is for leave to correct the size and color of certain exhibits is granted, and on or before April 13, 2018, the appellant shall replace pages 148, 149, 150, 155, 156, 157, 247, 314, 316, 317, 324, 456 and 1397, in the size and color in which they were submitted to the Supreme Court in connection with the petition and motion which were determined by the order and judgment dated November 15 2016; and it is further,

ORDERED that the cross motion is otherwise denied.

BALKIN, J.P., AUSTIN, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court