

**Scarola Malone & Zubatov, LLC v Andrew Ellner, Lightbox
Capital Mgt., LLC, & Lightbox Ventures, LLC**

Motion No: 2021-00214 2020-00234

Slip Opinion No: 2021 NYSlipOp 63966(U)

Decided on March 30, 2021

Appellate Division, First Department, Motion Decision

Published by [New York State Law Reporting Bureau](#) pursuant to
Judiciary Law § 431.

This motion is uncorrected and is not subject to publication in the
Official Reports.

Supreme Court of the State of New York
Appellate Division, First Judicial Department

PRESENT: Hon. Judith J. Gische, Justice Presiding,
Angela M. Mazzarelli
Peter H. Moulton
Saliann Scarpulla, Justices.

Scarola Malone & Zubatov, LLC, Plaintiff-Respondent Plaintiff-Respondent-Respondent, -against-	Motion No. 2021-00214 2020-00234 Index No. 651324/17 Case Nos. 2019-03384 2020-02530 2021-00300 2021-00301
Andrew Ellner, Lightbox Capital Management, LLC, and Lightbox Ventures, LLC, Defendants-Appellants/ Defendants-Respondents-Appellants,	SEALED

Brem Moldovsky, LLC,
Defendant/
Defendant-Appellant-Respondent

An appeal having been taken by defendants-appellants Andrew Ellner, Lightbox Capital Management, LLC and Lightbox Ventures, LLC (collectively the Lightbox defendants) from an order of the Supreme Court , New York County, entered on or about July 8, 2019 (Case No. 2019-03384) and said appeal having been perfected,

And an appeal and cross appeal having been taken defendant Brem Moldovsky LLC and the Lightbox defendants and from an order, same court, entered on or about December 18, 2019 (Case No. 2020-02530) and said appeals having been perfected,

And unperfected appeals having been taken by defendant Brem Moldovsky LLC from orders of the same court, entered on or about October 21, 2020 (Case No. 2021-00300) and on or about December 10, 2021 (Case No. 2021-00301),

And plaintiff having moved in Case No. 2019-03384 for an order striking Appendix, Volume III filed by the Lightbox defendants, disallowing certain material said defendants submitted for judicial notice, and striking all references to the stricken and disallowed material in said defendants' reply brief (M-2021-00214),

And defendant Brem Moldovsky LLC having moved for an order (1) consolidating the appeals taken from the orders entered on or about July 8, 2019 (Case No. 2019-03384), December 18, 2019 (Case No. 2020-02530), October 21, 2020 (Case No. 2020-00300) and December 10, 2021 (Case No. 2020-00301), and (2) striking the portions of the Lightbox defendants' s reply brief in the appeal from the July 8, 2019 order (Case No. 2019-03384) and the supplemental appendix and reply brief in the appeal and cross appeal from the December 18, 2019 order (Case No. 2020-02530) that are de hors the record (M-2021-00234),

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon, it is

Ordered that plaintiff's motion (M-2021-00214) is granted and Volume III of the Lightbox defendants' appendix in Case No. 2019-03384 and the portions of said defendants' reply brief, as set forth in Exhibits A and B to the Scarola Affirmation, are stricken. Sua sponte, the perfected appeal is adjourned to the September 2021 Term and the Lightbox defendants may file a revised reply brief for said Term omitting all references to the stricken material, and it is further

Ordered that defendant Brem Moldovsky LLC's motion (M-2021-00234) is granted to the extent that (1) the perfected appeals under Case Nos. 2019-03384 and 2020-02530 are adjourned to the September 2021 Term and the appeals under Case Nos. 2021-00300 and 2021-00301 are to be placed on the same day calendar as the perfected appeals on condition said appeals are perfected for said September 2021 Term; (2) striking the passages in the reply brief filed by the Lightbox defendants in Case No. 2019-03384 at pages 11 and 13 concerning Moldovsky, with leave to file a revised reply brief for the September 2021 Term omitting such material; and (3) striking passages in the Reply Brief filed by the Lightbox defendants in Case No. 2019-02530 at p. 5, 13, and 14 with leave to file a revised brief for the September 2021 Term omitting such material. The motion is denied to the extent it seeks to strike the supplemental appendix filed by the Lightbox defendants in Case No. 2020-02530. (See, M-2021-00480/Case No. 2021-00380, decided simultaneously herewith).

ENTERED: March 30, 2021



Susanna Molina Rojas
Clerk of the Court