At an IAS Term, **Part 26** the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the **9th** day of January, **2004.**

PRESENT:

HON. MELVIN S. BARASCH,
Justice.

. . . . . -X

**LILLIAN GANCI,** and **All** Others Similarly Situated,
Plaintiffs,

- against -

Index No. **18462/03**

CAPE CANAVERAL TOUR AND TRAVEL, INC., et al.,
Defendants.

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The following papers numbered 1 to **17** read on this motion:

| | Pauers Numbered |
|---|---|
| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed | **1-3 4-5 8 9-13 15-17** |
| Opposing Affidavits (Affirmations) | |
| Reply Affidavits (Affirmations) | *7* **14** |
| Affidavit (Affirmation) | |
| Other Papers | |

Upon the foregoing papers in this proposed class action brought by plaintiff Lillian Ganci, on behalf of herself and all others similarly situated (plaintiff) against defendants Cape Canaveral Tour and Travel, Inc. (Cape Canaveral); Nicholas Kosmas, Robert P. Kosmas a/k/a Paul R. Kosmas (Robert P. Kosmas), Steven P. Kosmas, individually and doing business as Etourandtravel (the individual Kosmas defendants); Kosmas Group International,

Inc. (KGI); and King's Creek Plantation, LLC (King's Creek) (collectively, defendants), alleging violations of the Telephone Consumer Protection Act (47 USC § 227 [b][1][B]) (TCPA) and seeking statutory damages and injunctive relief, Richard J. Capriola, **Esq.,** the attorney for defendants Cape Canaveral, Nicholas Kosmas, Robert P. Kosmas, Steven P. Kosmas, and KGI, moves for an order, pursuant to Court of Appeals Rules for Admission of Attorneys and Counselors at Law (22 NYCRR) § 520.11, for admission ***pro hac vice*** to the Supreme Court, Kings County, for purposes of representing the aforesaid defendants in this litigation. King's Creek moves for an order, pursuant to CPLR 3211 (a) (7), dismissing plaintiff's complaint as against it based upon the ground that it fails to state a cause of action.

The individual Kosmas defendants cross-move for an order, pursuant to CPLR 3211 (a) (8), cismissing plaintiff's complaint as against them based upon a lack of personal jurisdiction over them. Defendant KGI cross-moves for an order, pursuant to CPLR 3211 (a) (7) and (8), dismissing plaintiff's complaint as against it based upon the grounds of failure to state a cause of action and a lack of personal jurisdiction over it. Plaintiff cross-moves, pursuant to CPLR 3025 (b), for leave to amend her complaint, and for an order, pursuant to CPLR 3211 (d), granting her leave to conduct discovery with respect to the issue of personal jurisdiction over the individual Kosmas defendants and KGI.

Initially, the motion by Richard J. Capriola, pursuant to Court of Appeals Rules for Admission of Attorneys and Counselors at Law (22 NYCRR) § 520.11, to be admitted ***pro hac vice*** to represent Cape Canaveral, the individual Kosmas defendants, and KGI in this

litigation, is granied. Richard J. Capriola has submitted his own affidavit and that of local counsel with whom he is associated, attesting to his membership in good standing of the bar of other states, and there is no opposition to this motion.

The facts of the instant matter are as follows: The named plaintiff asserts that on October 9,2002, December 27,2002, and January 30,2003, defendants, without her prior express invitation or permission to do so, placed telephone calls to her residence using an artificial or prerezorded voice in order to advertise the commercial availability or quality of their property, goods, or services. She states that she is one of numerous recipients who received these telephone calls. Consequently, on May 19,2003, plaintiff, by the filing of her summons and complaint, brought this proposed class action against defendants, claiming that defendants violated the TCPA, which provides thnt "[i]t shall be unlawful for any person within the United States . . . to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or **order** by the [Federal Communications] Commission" (47 USC § 227 [b] [1] [B]).

Congress enacted the TCPA due to public outrage against unsolicited telemarketing ***(see*** 1991 **US** Code Cong & Admin News, at 1968-79; ***Kaplan*** v ***Democrat & Chronicle,*** 266 AD2d 848,849; ***Kaplan*** v ***First City Mortgage,*** 183 Misc 2d 24, 28). The legislative history of the TCPA indicates that the TCPA's sponsor, Senator Ernest Hollings of South Carolina, contemplated that actions for alleged violations of the TCPA would be brought in "[s]mall

claims court or a similar court [which] would allow the consumer to appear before the court without an attorney" (137 Cong Rec S16205-16206 [Nov 7, 1991]).

Plaintiff's complaint, which is framed as a class action, seeks injunctive relief as well as statuto y damnges (including treble damages) for each class member pursuant to the TCPA's provisions. Section 227 (b) **(3)** of the TCPA provides:

> "**(3) Private right of action**
>
> **A** person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State-
>
> **(A)** an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
>
> **(B)** an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or
>
> **(C)** both such actions. If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than **3** times the amount available under subparagraph (B) of this paragraph."

King's **Creek,** in support of its instant motion, argues that plaintiff's complaint must be dismissed because the TCPA is unconstitutional. In support of this argument, King's Creek relies upon the decision of the Civil Court of the City of New York, Kings County, in *Rudgayzer & Gratt v* ***Enime,*** *Inc.* (193 Misc 2d 449, 450-45 1). The court, in *Rudgayzer & Gratt* (193 Misc 2d at 450), however, only found that portion of the TCPA concerning faxes to violate the First Amendment of the United States Constitution and the Constitution of the

State of New York, and did not address the issue of the constitutionality of the portion of the TCPA concerning telephone calls to residential telephone lines using an artificial or prerecorded voice. The Ninth Circuit of the United States Court of Appeals, in *Moser* v *FCC* (46 F3d 970,975 [9th Cir], *cert denied* 515 US 1161), found that the provision in the TCPA banning automated, prerecorded calls to residences did not violate the First Amendment of the United States Constitution *(see also Margulis v P&M Consulting,* __SW3d__, 2003 WL 22705106, *5 [Mo App]).

Moreover, the Civil Court, in *Rudgayzer & Gratt* (193 Misc 2d at 451), expressly stated that in finding the TCPA as applied to faxes unconstitutional, it was "adopt[ing] the analysis of the United States District Court for the Eastern District of Missouri, in *Missouri ex rel. Nixon v American Blast Fax, Inc.* (196 F Supp 2d 920)." *Missouri ex rel. Nixon* (196 F Supp 2d at 934) was subsequently reversed on appeal by the Eighth Circuit of the United States Court of Appeals *(see Missouri* ex *rel. Nixon v American Blast Fax,* 323 F3d 649,660 [8th Cir]), which concluded that the TCPA as applied to faxes "satisfies the constitutional test for commercial speech and thus withstands First Amendment scrutiny." It is noted that cases which have subsequently addressed this issue have also held in favor of the constitutionality of the TCPA *(see e.g. Destination Ventures, Ltd. v F.C.C.,* 46 F3d 54, 56-57 [9* Cir]; *Texas* v *American Blastfax,* 121 F Supp 2d 1085, 1092 [WD Tex]; *Kenro, Inc.* v *Fax Daily, Inc.,* 962 F Supp 1162,1167-1169 [SD Ind]; *Kaufman* v *ACS Sys.,* 110 Cal App 4th 886,917, Cal Rptr 3d 296,321-322 [Cal App], *Harjoe* v *Herz Financial,* 108SW3d 653,654 [Mo]). Thus.

inasmuch as *Rudgayzer & Gratt* (193 Misc 2d at **45** 1) relies upon a decision which has been reversed, and since, contrary to King's Creek argument, the Civil Court's decision in *Rudgayzer & Gratt* (193 Misc 2d at **45** 1) is not binding precedent on this court, that court's finding that the TCPA is unconstitutional should not be followed.

Furthermore, although not expressly determining the issue of the constitutionality of the TCPA, the Appellate Division, Second Department, of this State has recognized the viability of a claim under the TCPA by expressly holding that "a private right of action may be brought in state court pursuant to the TCPA" *(Schulman v Chase Manhattan Bank,* 268 AD2d 174,179; *see also Kaplan,* 266 AD2d at 848; *Kaplan,* 183 Misc 2d at **26).** Defendant has also failed to establish any meritorious basis for a finding that the **TCPA,** which is supported by the substantial governmental interest of providing a remedy to consumers for telemarketing abuses, is unconstitutional *(see Schulman,* 268 AD2d at 175). Consequently, the named plaintiff, with respect to her individual claims, has stated a cognizable cause of action under the TCPA. King Creek's motion, insofar as it seeks dismissal of the named plaintiff's complaint for failure to state a cause of action, must, therefore, be denied.

However, King's Creek, in support of its motion, additionally seeks dismissal of plaintiff's complaint insofar as plaintiff attempts to maintain her claims as a class action. King's Creek asserts that since the instant action seeks to recover a minimum measure of recovery created and imposed by the TCPA, CPLR 901(b) precludes this action. CPLR 901 (b) provides:

> "Unless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action."

Plaintiff argues that despite the specific prohibition of a class action for alleged TCPA violations pursuant to CPLR 901 (b), New York courts cannot apply this statute due to the "reverse-Erie" doctrine. The "reverse-Erie" doctrine requires that the substantive remedies afforded by the states conform to federal law (see Felder v Casey, 487 US 131, 151-152; Garrett v *Moore-McCormack* Co., 317 US 239,245; O'*Hara* v Bayliner, 89 NY2d 636,646, cert denied 522 US 822). Here, however, such doctrine is inapplicable since the only jurisdiction for an action brought pursuant to the TCPA is with the state courts, which have exclusive subject matter jurisdiction over TCPA claims; federal courts lack such subject matter jurisdiction (see Foxhall Realty *Law Offices* v Telecommunications Premium Sews., 156 F3d 432,434 [2d Cir]; Schulman, 268 AD2d at 178).

No federalism or preemption issues exist to bar application of CPLR 901 (b) in the context of the TCPA. Congress expressly granted states the right to enforce it consistent with each state's laws (see Foxhall Realty *Law Offices*, 156 F3d at 438). In fact, the Second Circuit of the United States Court of Appeals, in Foxhall Realty *Law Offices* (156 F3d at 438) has determined that "the TCPA does not provide a 'federal protection,' but [only] a permissive authorization to bring actions in state court." Thus, a party alleging a violation of the TCPA does not have a federal right of action, and can only sue in state court if the

particular state where the matter is brought allows a private right of action under the TCPA *(Foxhall Realty Law Offices*, 156 F3d at 438; *International Science & Technology Inst. v Inacom Communications,* 106 F3d 1146, 1156 [4th Cir]; *R.A. Ponte Architects v Investors' Alert,* 149 Md App 219, 238-239, 815 A2d 816, 827 [Md App], *cert granted by* 374 Md 358, 822 A2d 3224).

While New York State has (as noted above) permitted a private right of action to be brought under the TCPA *(Schulman,* 268 AD2d at 179), it is not required to permit a class action under the TCPA in contravention of its own laws. The Supremacy Clause of the United States Constitution permits states to "have great latitude to establish the structure and jurisdiction of their own courts" (*Howlett* v *Rose,* 496 **US** 356, 372). The TCPA does not specifically authorize class actions in state courts. Rather, the TCPA's "if otherwise permitted' clause defers to the state court's laws and rules and gives the state court discretion over the administration of the TCPA *(see Rudgayzer & Gratt v LRS Communications,* ____ Misc 2d ____, 2003 WL 22344990, *7 [Civil Ct, Kings County]).

Plaintiff's reliance upon *Califano v Yamasaki* (442 US 682, 699-700) for the proposition that under federal law, class actions may be brought under federal statutes that give rise to a cause of action unless Congress expressly excludes the right to bring a class action, is misplaced. In *Califano* (422 US at 701), the federal district court had jurisdiction over the claim and Fed. R. Civ. P. 23 was applicable. Here, since federal district courts do not have jurisdiction over claims brought under the TCPA, only New York's class action

statute and not Fed. R. Civ. P. 23 applies. Moreover, while "'a State court may not limit a party's substantive rights by applying its own procedural rules if those rules would "significantly affect the result of the litigation, i.e. would be outcome determinative"'" (*O'Hara*, 89 NY2d at 646, quoting *Lerner* v *Karageorgis Lines*, 66 NY2d 479,485, quoting *Matter of Rederi [Dow Chem.* Co.], 25 NY2d 576,581, *cert denied* 398 **US** 939), here, the application of CPLR 901 (b) would not alter the result of the litigation in state versus federal court since this action could only be brought in state court. Additionally, the application of CPLR 901 (b) does not result in barring the numerous plaintiffs, which plaintiff purports to represent, of any remedy, but only prohibits them from seeking relief by way of a class action. Such plaintiffs are not precluded from asserting their individual claims for relief under the TCPA.

Plaintiff's reliance upon *Dornberger* v *Metropolitan Life Insurance Company* (182 FRD 72, 84 **[SD** NY]), in support of their argument that CPLR 901 (b) is a substantive law rather than a procedural rule, is also misplaced. *Dornberger* (182 FRD at 84) involved Insurance Law § 4226, which provided a statutory **rcmcdy.** The federal **district** court, in *Dornberger* (182 FRD at 84), in finding CPLR 901 (b) applicable to prevent Insurance Law § 4226 from serving as a basis for recovery in a class action, did not find that CPLR 901 (b) was a substantive law, as opposed to a procedural rule, but found that since Insurance Law § 4226 expressly provided that it should be read in accordance with CPLR provisions, "[i]t would be patently unfair to allow [the] plaintiff an attempt in recovery in federal court for

a state law claim that would be barred in state court" ***(Dornberger,*** 182 FRD at 84). Here, the TCPA similarly provides that a private action thereunder may be brought in state court only "if otherwise permitted by the laws or rules of court of [that] State," and CPLR 901 (b) does not permit such an action.

The court further notes that General Business Law § 399-p is a similar state law, which also places restrictions on the use of automatic dialing-announcing devices and is directed at the abuses of unsolicited consumer calls in telemarketing (see *Kaplan*, 183 Misc 2d at 27). That statute, like the TCPA, also provides a statutory minimum measure of damages for a violation ***(see*** General Business Law § 399-p [9]; ***Kaplan***, 183 Misc 2d at 27), and a class action would thus be precluded thereunder pursuant to CPLR 901 (b). The court finds that this reflects the New York legislature's intent not to permit a class action for violations of the TCPA, a comparable federal law.

While plaintiff cites numerous cases of other states in which class action relief for actions under the TCPA has been granted, none of these other states have a statute analogous to CPLR 901 (b) ***(see e.g. ESI Ergonomic Solutions v United Artists Theatre Circuit,*** 203 Ariz 94, 100-101, 50 P3d 844, 850-851 [Ariz App]; ***Kaufman*** v ***ACS Systems,*** 110 Cal App 4th 886, 925, 2 Cal Rptr 3d 296, 327 [Cal App]; ***Hooters of Augusta*** v ***Nicholson,*** 245 Ga App 363, 367-368, 537 SE2d 468, 472 [Georgia App]). Although there **is** one New York case which has held to the contrary ***(see Bonime*** v ***Discount Funding Assocs.,*** Sup Ct, Kings County, Oct. 16, 2003, Aronin, J., Index No. 51200/02, at 2), in the recent case of *Rudgayzer*

& Gratt (2003 WL 22344990, at *8), the Civil Court, Kings County, in a well-reasoned decision, has specifically rejected the "reverse-Erie" doctrine, and found that CPLR 901 (b) bars class actions for violations of the TCPA (see also Weber v Rainbow *Software*, Sup Ct, Kings County, Nov. 18, 2003, Barasch, J., Index No. 4195/03).

Thus, inasmuch as the court finds that CPLR 901 (b) bars plaintiff from maintaining a class action herein, dismissal of plaintiff's complaint insofar as it contains class action allegations and purports to seek class action relief, is required (see CPLR 901 [b]; Rudgayzer & Gratt, 2003 WL 22344990, at *8). King's Creek's motion must, therefore, be granted in this respect. Similarly, the individual Kosmas defendants' cross motion and KGI's cross motion must also be granted with respect to dismissal of plaintiff's class action allegations and insofar as plaintiff's complaint purports to seek class action relief.

The individual Kosmas defendants' cross motion and KGI's cross motion also seek an order, pursuant to CPLR 3211 (a) (8), dismissing plaintiff's individual complaint as against them based upon a lack of personal jurisdiction over them. It is undisputed that the individual Kosmas defendants are residents of the State of Florida, and that KGI is a Florida corporation. In support of their cross motion, the individual Kosmas defendants have each submitted an affidavit, stating that they are officers of KGI, and that they never had an agency relationship with King's Creek, never personally engaged in any business relationship with King's Creek, and never personally authorized any person or company to place a telephone call using an artificial or prerecorded voice to any New York residents' residential

telephone line advertising the commercial availability or quality of property, goods, or services. They further assert that KGI also did not have a contractual or agency relationship with King's Creek, and that KGI never placed or authorized anyone else to place the telephone calls at issue.

KGI contends that only its subsidiary, Orlando Resort Development Group, Inc. (ORDGI), agreed with King's Creek to offer certain accomodations, i.e., Vacation Villas at Fantasy World in Florida, to King's Creek's customers. It asserts that neither it nor its subsidiary was involved in the marketing efforts of King's Creek, and that it never placed or caused a third person to place the telephone calls at issue. The individual Kosmas defendants and KGI thus argue that they have not committed any tortious act which can serve as the basis for this court's exercise of personal jurisdiction over them pursuant to CPLR 302, this State's long-arm statute.

On a motion to dismiss, the plaintiff bears the burden of proving that the court has personal jurisdiction over the defendant *(Silverman v Worsham Bros. Co.*, 595 F Supp 959, 960 [SD NY]; *Birmingham Fire Ins. Co. of Pennsylvania v KOA Fire & Marine Ins. Co.*, 572 F Supp 962, 964 [SD NY]; *Roldan v Dexter Folder Co.*, 178 AD2d 589, 590; *Spectra Products v Indian River Citrus Specialties*, 144 AD2d 832, 833; *Reyes v Sanchez-Pena*, 191 Misc 2d (100,602). The plaintiff is required to come forward with definite evidentiary facts supporting the connection of the non-domiciliary defendant with the New York transaction or act which forms the basis for the action *(Dewitt v American Stock Transfer Co.*, 433 F

Supp 994,1003 [SD NY], *amended* 440 F Supp 1084 [SD NY]; *Roldan,* 178 AD2d at 590; *Spectra Products,* 144 AD2d at 833; *Cato Show Printing Co. v Lee,* 84 AD2d 947,949).

In opposition, plaintiff has submitted her affidavit, wherein she only generally states that on October 9, 2002, she received a telephone call, which used a recorded voice, that "advertised vacation opportunities." She does not state that this call was made by KGI or one of the individual Kosmas defendants, or that it advertised a specific vacation service or product offered by KGI. She merely asserts that after she received the call, she called the telephone number that was included in the recorded message, and was told by someone named "Sadie" that one of the companies responsible for the call was KGI, and that KGI owns a time-share resort called Vacation Villas at Fantasy World, which a person would be required to visit in order to take the advertised vacation. She further states that "Sadie" told her that KGI works with King's Creek "to try to get people interested in their resorts, and that they hire telemarketing companies to do this." Plaintiff claims that she then also spoke to a man named "Paul," who refused to remove her telephone number from his company's calling list because his **company** did not actually make the calls.

Defendant KGI and the individual Kosmas defendants have, in response, submitted the sworn affidavit of Debra Bean, the administrator of Human Resources for KGI and certain of its subsidiaries, including ORDGI. Debra Bean states therein that ORDGI owns and operates a time-share resort in Kissimmee, Florida, known as Vacation Villas at Fantasy

World, and that a review of the employee records reveal that no one with the first name of "Paul" or "Sadie" was employed by KGI or ORDGI at the time relevant to this action.

Thus, plaintiff has not refuted the showing by KGI and the individual Kosmas defendants that the telephone calls at issue were not initiated by them ***(see*** 47 USC § 227 [b] [13 [B]). Plaintiff's speculation as to a relationship between KGI and King's Creek based upon a resort owned by a subsidiary of KGI, which was somehow related to the advertised vacation, is too remote a connection with the telephone calls at issue to constitute a "tortious act" outside the state to serve as a basis for the exercise of long-arm jurisdiction, pursuant to CPLR 302 (a) (3) (i) or (ii), over KGI or its corporate officers. Consequently, KGI's cross motion and the individual Kosmas defendants' cross motion to dismiss the named plaintiff's complains must be granted ***(see*** CPLR 3211 [a] [8]).

Plaintiff's cross motion, insofar as it seeks leave to amend her complaint to add CPLR 302 (a) (2) as a basis for personal jurisdiction over KGI and the individual Kosmas defendants, must be denied. Leave to amend a complaint must be denied where the proposed amendment is patently lacking in merit (*see Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 25; ***Monteiro v R. D. Werner Co.,*** 301 AD2d 636,637; ***Leszczynski v Kelly & McGlynn,*** 281 AD2d 519,520). CPLR 302 (a) (2) has been narrowly construed to require a defendant to be physically present in New York at the time of the tortious act ***(see Bensusan Rest.*** *Corp.* ***v King,*** 126 F3d 25, 29 [2d Cir]; ***Roberts-Gordon, LLC v Superior Radiant Products, Ltd.,*** 85 F Supp 2d 202, 213-214 [WD **NY]; *Carlson v Cuevas,*** 932 F Supp 76, 80 [SD **NY];**

***Feathers v McLucas,*** 15NY2d 443,459, ***cert denied*** 382 **US** 905; ***Kramer v Vogl,*** 17NY2d 27, 31), and it has been held that communications by telephone from outside of New York into New York is not an act committed "within the state" for the purposes of the tortious act provision of CPLR 302 (a) (2) ***(seeAhava Ford Corp. v Donnelly,*** ___ F Supp 2d___, 2002 WL 31757449, *2 [SD NY]; ***Louros v Cyr,*** 175 F Supp 2d 497, 519 [SD NY]). In any event, as discussed above, plaintiff has failed to establish a sufficient connection between KGI or the individual Kosmas defendants and the subject telephone calls to serve as a predicate for this court's exercise of personal jurisdiction over them.

Plaintiff's cross motion, insofar as it seeks leave to amend the complaint to delete inadvertent references therein to unsolicited fax advertisements, is granted. Such proposed amendment is unopposed and will not cause prejudice to any party ***(see*** CPLR 3025 **[b]).**

Plaintiff's cross motion also seeks an order, pursuant to CPLR 3211 (d), to conduct discovery in an effort to establish whether KGI and the individual Kosmas defendants derive substantial revenue from interstate or international commerce so as to provide a basis for personal jurisdiction over **them pursuant to CPLR *302* (a)** (3) (ii). This branch **of plaintiff's** cross motion must be denied as plaintiff has failed to make a showing that facts favoring jurisdiction may exist but cannot now be stated ***(see*** CPLR 3211 [d]; ***Mandel v Busch Entertainment Corp.,*** 215 AD2d 455,455).

Accordingly, Richard J. Capriola, Esq.'s motion for admission ***pro hac vice*** herein is granted. King's Creek's motion to dismiss plaintiff's complaint is granted with respect to

plaintiff's class action allegations and insofar as said complaint seeks maintenance of her action as a class action. King's Creek's motion is denied with respect to the individual claims of plaintiff. The individual Kosmas defendants' cross motion and KGI's cross motion for an order dismissing plaintiff's complaint as against them, are granted. Plaintiff's cross motion is granted to the extent that it seeks leave to amend her complaint to delete inadvertent references in the complaint to unsolicited fax advertisements. Plaintiff's cross motion is denied insofar as it seeks leave to amend her complaint to add that the basis for personal jurisdiction over the Kosmas defendants and KGI is CPLR 302 (a) (2), and insofar as it seeks leave to conduct discovery, pursuant to CPLR 3211 (d).

The constitutes the decision and order of the court.

E N T E R ,

Melvin S. Barasch

J. S. C.

MELVIN S. BARASCH