

Jordan v Dixon

2011 NY Slip Op 31708(U)

June 17, 2011

Supreme Court, New York County

Docket Number: 106636/07

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon John A. Madden

PART II

Index Number : 106636/2007

JORDAN, KATHRYN

vs

DIXON, JOHN C.

Sequence Number : 007

VACATE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the Memorandum Decision + order.*

FILED

JUN 27 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: June 17, 2011

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
KATHRYN JORDAN,

Plaintiff,

Index No. 106636/07

- against -

JOHN C. DIXON,

Defendant.

-----X
JOAN A. MADDEN, J.:

FILED

JUN 27 2011

NEW YORK
COUNTY CLERK'S OFFICE

Motion seq. nos. 006, 007, 008, 009 and 011 are consolidated for disposition. The motions seek, *inter alia*, recusal of this court, removal of defendant John Dixon's ("Dixon") counsel, vacatur of this court's decision and order confirming the Referee's report; and a pre-trial lien against Dixon.

Background

In this action, plaintiff Kathryn Jordan ("Jordan"), who originally had attorney but is now appearing *pro se*, alleges Dixon, who was her former boyfriend, breached an agreement to support her for life. The complaint alleges that in 1994 and 1999, the parties entered into an oral agreement which provided in part, that Dixon would provide Jordan "with lifetime support in the style in which they had been living..." The complaint alleges that "in or about mid-2001...Dixon and Jordan reaffirmed and agreed again to the terms of their agreement..." While no written agreement is alleged in the complaint, during discovery, an undated "Partnership Agreement" was produced by Jordan, which Jordan maintains was given to her by Dixon in or about July 2001.

The Partnership Agreement provides that proceeds from a "Fund" or future investment

activities would be divided equally between Jordan and Dixon, and that “if for some reason the Fund is not launched or successful, that [Dixon] will provide [Jordan] with an equal share of any income [Dixon] receive[s] and recognize[s] that this is in consideration for [Jordan’s] significant contributions to the advancement of [Dixon’s] career and the sacrifices [Jordan] ha[s] asked [Jordan] to make.”

Dixon moved for summary judgment on various grounds, including that his signature on the Partnership Agreement is a reproduction of a signature from another agreement. Dixon argued that since an agreement to support another person for life must be in writing and signed by the party charged to be enforceable (General Obligations Law § 5-701(a)(1); Melwani v. Jain, 281 AD2d 276 (1st Dept 2001)), a finding that Partnership Agreement was not signed by him would bar Jordan’s claim. In his decision and order dated July 30, 2008, Justice Michael Stallman referred the issue of whether Dixon “affixed or caused his signature to be affixed to the Partnership Agreement” to a Special Referee noting that the resolution of this issue “would dispose of the entire controversy.” Justice Stallman also referred any discovery issues related to the issue to the Special Referee. Jordan, who at the time was represented by counsel, did not appeal¹ or move for reargument of Justice Stallman’s decision, and did not object to the reference to the Special Referee at the hearing. After Justice Stallman referred the matter to the Special Referee, he recused himself and the matter was assigned to this court.

On November 3, 2008, counsel for Jordan made an application for the production of certain documents demanded in discovery, and the Referee denied this application, and the

¹An order referring a matter to a Special Referee is appealable. Gottesman Business Brokers, Inc. v. Goldman Fire Prevention Corp., 238 AD2d 250 (1st Dept 1997).

hearing was adjourned to November 20, 2008. At the hearing, Dixon called John Osborn (“Osborn”) to testify as an expert witness on his behalf. After Osborn gave testimony with regard to his education, training and professional experience which included his work in the field of forensic document examination for 26 years and his certification by American Board of Forensic Document Examiners, Dixon’s application to have Osborn qualified as an expert was granted.

Osborn testified that the Dixon’s signature on the Partnership Agreement and the signature on a June 30, 2001 agreement² signed by Dixon are identical, noting that “the two signatures were remarkably consistent with another” except that the signatures were different sizes (Transcript from November 28, 2008 Referee hearing, at 12-16). According to Osborn, when the signature on the June 30, 2001 document was reduced by 68%, the “two signatures were a proportional match.” (Id., at 15-16). Osborn testified that his conclusion that the two signatures were identical was based not only on his finding that they were proportionally consistent but also “because of several more subtle characteristics found in the signature line and among the components of the letters appearing within the signature.” (Id., at 16). He further testified that “[a]ny reproduction will or has the potential of slight distortion, but many of the subtle characteristics appearing in what purport to be two signatures satisfy me well beyond any reasonable degree of certainty that these signatures are the same signature.” (Id.). During cross examination, Osborn answered “yes” when asked whether the signatures on the two relevant documents were reproductions of the same signature. (Id., at 20). When asked which was the

²The June 30, 2001 agreement was in the form of a letter to Jordan from Dixon and listed various conditions that Dixon was to agree to in order to continue living with Jordan in her apartment. Dixon testified during the hearing that he did not recall signing this agreement.

manipulated signature, he stated that if the smaller signature on the Partnership Agreement had been enlarged and reproduced on the June 30, 2001 document “the increase in size would have significantly diminished the quality of the reproduction to a noticeable degree and that is not the case. So while I can’t opine without an original, which is the manipulation, certainly the evidence would suggest it was [the Partnership Agreement].” (Id., at 20-21). Jordan did not call her own expert to refute Osborn’s opinion.

Dixon also testified at the hearing and denied any recollection of drafting or signing the Partnership Agreement. Jordan testified that Dixon gave her a copy of the Partnership Agreement and asked her to sign it and that Dixon signed it later and gave her a copy of the agreement

During the hearing, Jordan sought to put into evidence another signature page to the Partnership Agreement which she testified that she recently located in a storage facility after her lawyer asked her to continue to look for documents. While it was marked as Plaintiff’s Exhibit 1 for identification, the Referee did not permit Jordan to put it into evidence.

On April 9, 2009, the Referee filed his report together with a transcript and evidence introduced during the proceeding. In his report, the Referee wrote that:

I have considered all of the relevant evidence, and I find that the defendant established, by a fair preponderance of the evidence that he did not affix his signature nor cause his signature to be affixed to [the Partnership Agreement] which [Jordan] purports bears [Dixon’s] signature on the second page....I also find that Osborn testified credibly with regard to his conclusion that the signature appearing on the such document was a reproduction of [Dixon’s] genuine signature....I find that the various documents admitted into evidence corroborate Osborne’s testimony. Moreover, I find that [Dixon] testified credibly that he co-habited with [Jordan] “off and on” during the summer of 2001 but that he

did not recall ever drafting or signing such document. Conversely, I find that [Jordan] was not credible with regard to her testimony that [Dixon] drafted and signed [the Partnership Agreement]

Report, at 9-10.

Jordan argued that the Report should be rejected on various grounds including that the Referee was biased, the Referee erred in refusing to permit discovery relevant the credibility of the parties and in refusing to permit Jordan to produce evidence regarding Dixon's addictions and psychological status and history of domestic violence, which would have impacted on the Referee's determination as to Dixon's credibility. Jordan also argued that Osborne's testimony did not definitively establish that the signature on the Partnership Agreement was taken from another document, and that the Referee erred in refusing to permit her to put into evidence the newly discovered signature page to the Partnership Agreement. Dixon countered that the Report should be confirmed and summary judgment granted to him dismissing the complaint.

In its decision and order dated April 28, 2010 (the April 2010 decision"), this court confirmed the Report, writing that the record supported the Referee's finding that the Dixon established by a preponderance of the evidence that he did not affix his signature or caused his signature to be affixed to the Partnership Agreement. Specifically, the court found that:

The Referee's finding is supported by Osborn's testimony that the signature on the Partnership Agreement and that on the June 30, 2001 letter are identical reproductions. Moreover, while Osborn testified that he could not opine without the original which signature was manipulated he testified that the evidence suggested that the smaller signature of the Partnership Agreement was the manipulation given that the enlargement of the smaller signature for the June 30, 2001 document would have significantly diminished the quality of the reproduction which was not the case here. In addition, Osborn's testimony was supported by Dixon's denial of any recollection of drafting or signing the Partnership Agreement. The Referee found Dixon's testimony denying any recollection of signing the Partnership Agreement to be credible

while Jordan's testimony was not. In addition, contrary to Jordan's position, discovery was not needed to explore Dixon's character and psychological condition.

With respect to Jordan's claim that the Referee was biased, the court found that Jordan waived any such claim by raising it only after the Referee prepared his report and Dixon moved to confirm it (Shen v. Shen, 21 AD3d 1078, 1079 [2d Dept 2005]), and that in any event, the record did not support any claim of bias which is based solely on Jordan's disagreement with the Referee's interpretation of the evidence.

The court also found that there was no reason to disturb the Referee's decision to refuse to admit Jordan's Exhibit 1 into evidence, which as indicated above, was another signature page to the Partnership Agreement, particularly given that the signature page was not attached to the first page of the Partnership Agreement and was not provided to the defense until the hearing. In addition, in a footnote, the court noted that in Jordan's supplementary affidavit in support of her cross motion to reject the Report, and in connection with a Notice of Motion to vacate Justice Stallman's refusal to consider her sur-reply, Jordan attached a copy of a March 24, 1998 letter sent from Dixon and Jordan to the managing agent or landlord of a building in which Jordan and Dixon resided, concerning permitting a broker to come up to their apartment at an inconvenient time. The letter contained a note apparently from Dixon asking Jordan to sign the letter on his behalf and also Dixon's signature after Jordan apparently refused to do so. The court found that contrary to Jordan's position, the letter was insufficient to prove that she and Dixon were partners or that she is more credible than Dixon, and that the letter thus did not provide a basis for rejecting the Report.

Based on the Referee's finding that Dixon did not sign the Partnership Agreement and therefore that the purported agreement to support Jordan for life is not evidenced by a writing

signed by Dixon as the party charged, the court found that its enforcement is barred by the Statute of Frauds since by its terms it could not be fully performed prior to the end of Jordan's lifetime. GOL § 5-701(a)(1); See Williams v. Lynch, 245 AD2d 715, 717 (3d Dept 1997), appeal dismissed, 91 NY2d 957 (1998)(alleged oral contract between home owner and long time co-habitant under which home owner purportedly promised co-habitant that she could use the home for the rest of her life was barred by the Statute of Frauds). Accordingly, the court granted Dixon's motion for summary judgment dismissing the complaint.

Jordan then moved to vacate the court's April 2010 decision pursuant to CPLR 5015(a)(2)(3)& (5) (motion seq. no. 006) on the grounds of newly discovered evidence, fraud on the adverse party, and denial of her Fourteenth Amendment right to due process. By an eleven-page interim decision and order dated January 12, 2011, the court denied the motion to vacate to the extent of finding that Jordan pointed to no "newly discovered evidence" or fraud. The court also found that there was no apparent basis for relief from the judgment pursuant to CPLR 5015(a)(5) which relates to the "reversal, modification or vacatur of a prior judgment or order upon which it is based." See generally, McKinney's Consol. Laws of New York, Book 7B, CPLR 5001 to 5100, C5015:10, at 222-223 (2007).

However, as to Jordan's argument the Referee improperly rejected her request for further discovery, the court found that the Referee erred insofar as he denied the November 3, 2008 application by Jordan's counsel for certain discovery that was relevant and material to the issue before him concerning the authenticity of the Partnership Agreement.

The court thus directed that Dixon provide Jordan with responses to the relevant document requests and interrogatory and gave Jordan an opportunity "to serve any papers regarding the impact of the discovery responses on the issue before the court as to whether the

decision should be vacated.”

The Motions

After the court issued its interim decision and order, Jordan made five motions for various relief. The first three motions (motion seq. no 007, 008, and 009) were made by notice of motion. On March 11, 2011, the court issued an order directing that “all further motions shall be made by order to show cause or shall be denied without considering their merits.” Jordan then submitted a proposed order to show cause (motion seq. no. 010) seeking “a default judgment” which the court declined to sign writing, *inter alia*, that “there are no legal grounds asserted for a default judgment” and that “a motion to reconsider [the court’s] order confirming the referee report was sub judice to the extent indicated in [the court’s] interim order dated January 12, 2011.” Jordan also submitted a proposed order to show cause seeking, inter alia, for the court to recuse itself (motion seq. no. 011)

The court will first consider Jordan’s motions seeking the court’s recusal (motion seq. nos. 008, and 011). In motion seq. no. 008, Jordan alleges that the court should recuse herself as it is biased against her as a disabled *pro se* litigant, and thus ruled in favor of Dixon despite her arguments to the contrary, and rejected her “litigation strategy” of seeking full discovery and instead directed the remedy of requiring Dixon to comply with the discovery sought by her counsel at the hearing. In motion seq. no. 011, Jordan also accuses the court of bias, asserting that the court wrongfully rejected her arguments as to Justice Stallman’s erroneous determination regarding the partnership law, the unreliability of the Special Referee’s credibility findings, and the improper conduct of Dixon’s attorney, Robert Brodegaard. Jordan also argues that it is apparent that the court “knew Mr. Brodegaard from the inception of the case” was in “close communication with him” and had “a number of ex parte discussions with him.”

When, as here, there is no statutory basis for the court's recusal under Judiciary Law § 14, the court is the sole arbiter of whether recusal is warranted.³ Best v. Best, 302 AD2d 295 (1st Dept 2003); Schwartz v Schwartz & Schlacter, 188 AD2d 285 (1st Dept 1992); see also, EECP Centers of America, Inc. v Vasomedical Inc., 277 AD2d 349 (2d Dept 2000). Here, the court finds that there is no reason for recusal. First, contrary to Jordan's assertions, the court does not know Mr. Brodegaard outside this case and has had no ex parte communications with him. In fact, Jordan's accusations in this regard appear to be based on a permissible conversation between my court attorney and an associate at the law firm representing Dixon about a scheduling matter. Next, Jordan's complaints of bias are grounded in solely on her disagreement with court's rulings which rejected her position. Moreover, this court has no bias or prejudice against Jordan and has carefully considered the issues before it. Furthermore, the recusal motion, when considered in light of Jordan's numerous attempts to have this court revisit issues, and her clear dissatisfaction with the court's determinations raises concerns with respect to judge shopping. Accordingly, the court finds that given the number and nature of the motions made by Jordan, and the lack of any grounds for recusal, and the interest in protecting the integrity of the judicial process, that the recusal motion should be denied.

Jordan also seeks the "removal" of Dixon's counsel, "a pre-trial lien" against Dixon, Dixon's present and former counsel, and Dixon's former employer, which is allegedly no longer in business, and seeks emergency relief against Dixon and his former employer to prevent their efforts to hide Dixon's assets (motion seq nos. 007 & 011). Dixon opposes the relief sought by Jordan.

³Jordan incorrectly relies on two federal statutes governing recusal (28 USC §§ 144, 455).

Jordan argues that Mr. Brodegaard should be removed based on “his scheme to disrupt discovery [and] his alleged suppression of evidence” and his conduct during the hearing before the Special Referee. “Disqualification...during litigation implicates not only the ethics of the profession but also the substantive rights of the litigants [and] denies a party’s right to representation by the attorney of its choice.” S & S Hotel Ventures Limited Partnership v 777 S. H. Corp., 69 NY2d 437, 443 (1st Dept 1987)(citations omitted).” The right to counsel is “a valued right [and] any restrictions must be carefully scrutinized.” Id. Furthermore, where the rules relating to professional conduct are invoked not at a disciplinary proceeding but “in the context of an ongoing lawsuit, disqualification...can create a strategic advantage of one party over another.” Id. Thus, unless movant meets heavy burden of showing disqualification is warranted, such a motion should be considered as an effort to obtain strategic advantage. Broadwhite Associates v. Truong, 237 AD2d 162, 163 (1st Dept 1997).

Here, Jordan has not met this burden as she provides no evidence suggesting that Dixon’s attorney should be disqualified, but, instead, relies on unsubstantiated accusations that his conduct during this litigation was improper.

Jordan’s request for “Pre-Trial Lien” is without merit. Jordan argues she is entitled to a lien as Dixon’s former employer, an investment firm was closed after a FINRA investigation of its practices, and that Dixon’s employer and attorney hid the investigation, and that a lien is needed to protect any judgment she might obtained in this action. In support of her request for relief, she attaches a “Notice of Lis Pendens and Notice of Attachment” in the amount of \$15,000,000, plus interests and costs against Dixon, his attorneys and his former employer and seeks various discovery, including the names of all the partners of Dixon’s employer. As Jordan has provided no evidentiary basis for an attachment based on fraud and the other grounds for an

attachment under CPLR 6201 do not apply,⁴ her request is denied. See, Laco X-Ray Systems, Inc. v Fingerhut, 88 AD2d 425 (2d Dept 1982), appeal dismissed, 58 NY2d 606 (1983).

Jordan also seeks to vacate this court's determination confirming the report of Special Referee and, upon such vacatur, to reopen the issues decided by the Special Referee, and to vacate Judge Stallman's prior orders and to grant her full discovery (motion seq. nos. 007, 008, 009, 011).⁵ As a preliminary matter, she has previously sought this relief and her most recent request should be denied on this ground alone. In any event, there is no merit to her request. To the extent Jordan disagreed with Judge Stallman prior orders, her remedy was to timely appeal or to move for reargument of such orders. Under the doctrine of law of the case, as a court of coordinate jurisdiction, this court may not undo the orders of Justice Stallman that were made previous to the court's assignment to the matter. Ayala v. S.S. Fortaleza, 40 AD3d 440, 441 (1st Dept 2007)(noting that "[i]t is axiomatic that one judge may not review or overrule the order of another judge of co-ordinate jurisdiction in the same action or proceeding"); Nong Yaw

⁴CPLR 6201(3) provides that:

An order of attachment may be granted in any action ... where plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants when: (3) the defendant, with the intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, or encumbered or secreted property, or removed it from the state or is about to do any of these acts.

⁵While motion seq. nos. 007 and 009 seek a "default judgment" there is no legal basis cited for such relief.

Trakansook v. 39 Wood Realty Corp., 18 AD3d 633, 634 (2d Dept 2005)(court of coordinate jurisdiction had no authority to rule on plaintiff's claims with respect to vacating referee's deed conveying certain real property after the foreclosure sale, where claims had already been reviewed and ruled upon in pending foreclosure action against plaintiff).⁶

Next, as Jordan, who was represented by counsel, did not object to the reference to the Special Referee and participated in the hearing, she waived any argument that the issue relating the genuineness of Dixon's signature should not have been before the Special Referee. See Winopa International Ltd v. Woorj American Bank, 59 AD3d 203 (1st Dept 2009)(holding that plaintiffs' contention that the court improperly referred the matter to a Special Referee to hear and report on contested issues of fact was waived by their failure to object to the reference and their willing participation in the resulting hearing); Law Offices of Sanford A. Rubenstein v. Shapiro Baines & Saasto, 269 AD2d 224 (1st Dept), lv denied 95 NY2d 757 (2000)(holding that the argument by defendants that the court improperly referred contested issues of fact to the referee thus denying them a right to a jury trial was waived when defendants only objected on the ground that the court had not ruled on their summary judgment motion); compare Trocom Construction Corp. v. Consolidated Edison Co.of New York, 7 AD3d 434 (1st Dept 2004)(defendant did not waive argument that issue of damages should not be decided by Special Referee where defendant objected to the reference before participating in the hearing).

Thus, on the motion to confirm the only issue before the court concerned whether the Special Referee's report should be confirmed. As delineated above, based on the record before it, the court properly found that the report should be confirmed and that nothing in the record supported Jordan's arguments that the Special Referee was biased and that any claim of biased

⁶The federal cases cited by Jordan are not controlling here.

was waived since Jordan waited until after the other side sought to confirm the report before objecting on the grounds of bias. Dine Sav. Bank of New York v. Glavey, 214 AD2d 419 (1st Dept 1995)(defendant waived her claim of bias when she waited to raise the objection until weeks after the hearing was concluded and only after plaintiff moved to confirm the Referee's report); Shen v. Shen 21 AD3d at 1078 (holding that defendant waived any claim of bias exhibited by Referee when she raised it for the first time after the hearing).

However, as indicated above, after Jordan sought to vacate the court's determination confirming the award, the court determined that the Special Referee erred in denying the discovery sought by her counsel prior to the hearing,⁷ and ordered that Dixon respond to this discovery as it was relevant to the issues before the Special Referee.

In particular, the court determined that the Referee should have required Dixon to respond to item nos. 1 and 17 of plaintiff's first request for documents which sought, respectively, "all documents including emails concerning any agreement or partnership or communication between Dixon and Jordan," and "all documents concerning any promise Dixon made to Jordan, including all documents concerning whether the promise was honored." In response to item no. 1, Dixon responded that he

has made every effort to locate any and all documents including emails in his possession, custody or control relating to any agreement or partnership with [Jordan]. No such document exist, as no agreement or partnership existed. Dixon has made every effort to locate any and all communications in his possession, custody or control relating to any agreement or partnership with [Jordan]. No such communications exist, as no agreement or

⁷Contrary to Jordan's apparent misunderstanding, once Judge Stallman ordered the hearing before the Special Referee, the record shows that her counsel did not seek full discovery, including the deposition of Dixon, but rather sought only those items that were ordered by the court in its interim decision and order dated January 12, 2011.

partnership existed.

In response to item no. 17, Dixon responded that he:

has made every effort to locate any and all documents including emails in his possession, custody or control concerning any promise made to [Jordan]. No such document exist, as no promise was made to [Jordan]. Dixon has made every effort to locate any and all communications in his possession, custody or control concerning whether any promise, if such promise existed, was honored by Dixon. No such documents exist, since Dixon is unaware of any promises made with [Jordan] he has made no effort to honor what he believes does not exist

The court also directed that Dixon answer interrogatory no. 13 of plaintiff's first interrogatories which asks that Dixon state whether he "has made any efforts to honor any agreements, partnerships or promises that he had with Jordan, and for each, state in detail what those efforts were." In response, Dixon responds that he is "unaware of any efforts to honor any agreements, partnerships or promises made with [Jordan] and, as such, he has made no effort to honor what he believes does not exist."

Dixon also submits his affidavit in which he states that since the court issued its interim decision and order he has "endeavored to look for any and all documents including emails in [his] possession relating to any agreements, partnerships or promises with [Jordan]" and that he is not in possession of such documents and that as he "is unaware of any agreements, partnership or promises made with [Jordan], I have made no effort to honor what I believe do not exist." (Dixon Aff., ¶2-5).

CPLR 3120(1)(i) permits discovery of "designated documents which are in the possession, custody or control of the party." However, a party may not be "compelled to produce information that does not exist or which he does not possess (citation omitted)." Corriel v.

Volkswagen of Am., Inc., 127 AD2d 729, 731 (2d Dept 1987). At the same time, the affidavit from Dixon is insufficient to show that a good faith effort was made to locate the documents as it provides no details regarding the nature of his search and the steps taken to locate such documents. See Pagan v. City of New York, 180 AD2d 545 (1st Dept 1992); Creekmore v. PSCH, Inc., 26 Misc3d 1217(A)(Sup Ct. NY Co. 2010).

Accordingly, Dixon shall be required to respond to the documents requests or to provide an affidavit detailing the efforts he made to search for documents responsive to items 1 and 17 of plaintiff's first document request. The affidavit shall delineate the location where Dixon maintains documents of the kind demanded, the nature of the records he maintains, including the types of documents, the method of organization and the length of time of retention, and the nature and extent of his search. As to the emails, the affidavit shall detail the computer(s) used by Dixon during the period at issue, whether the emails were stored, transferred or saved, the location of the computer(s), and the nature and extent of the search conducted by Dixon.

Conclusion

In view of the above, it is

ORDERED that Jordan's requests for relief in motion seq. nos. 0017, 008, 009 and 011 are denied; and it is further

ORDERED that Dixon shall be required to respond to the documents requests 1 and 17 of plaintiff's first document request or provide an affidavit detailing the efforts he made to search for documents responsive to these items in accordance with the above on or before July 14, 2011; and it is further

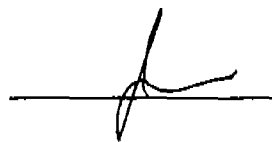
ORDERED that the Jordan shall serve any papers regarding the impact of the discovery

responses on the issue of whether the court should vacate its original decision on or before July 28, 2011 and any papers not responsive to this issue shall not be considered, and Dixon shall serve any reply on or before August 11, 2011; and it is further

ORDERED that this matter shall be placed on the Part 11 calendar for August 18, 2011, **for calendar purposes only, and no parties shall appear on that date.**

A copy of this decision and order is being mailed by my chambers to Jordan and counsel for Dixon.

DATED: June 17 2011



J.S.C.

FILED
JUN 27 2011
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