

Siegel v Siegel

2012 NY Slip Op 32372(U)

September 7, 2012

Sup Ct, NY County

Docket Number: 114101/10

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

MARTHA L. SIEGEL, as the Executrix of the Last Will
and Testament of HERBERT A. SIEGEL, deceased,

Plaintiff,
-against-

LLOYD M. SIEGEL,
Defendant.

INDEX NO.	<u>114101/10</u>
FILED DATE	<u>08-014-2012</u>
PRO SE NO.	<u>002</u>
MOTION NO.	

FILED
SEP 13 2012
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 6 were read on this motion to/for Summary Judgment and Cross-motion to Compel or Strike Answer

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 3</u>
Answering Affidavits — Exhibits <u>cross motion</u>	<u>4 - 5</u>
Replying Affidavits	<u>6</u>

Cross-Motion: X Yes No

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

Motions submitted on February 15, 2012, under Motion Sequence Nos. 002, 003, 004, 006, 007 and 008, were stayed pursuant to the February 16, 2012, decision of the Supreme Court, Appellate Division, First Department, under Motion No. M-67 (2012 N.Y. Slip Op. 64480(U)). All matters were stayed pending a hearing and determination on appeal of Motion Sequence 001, this Court's Decision and Order denying defendant's motion pursuant to CPLR §3211[a],[7], seeking to dismiss this action. On August 14, 2012, a Decision and Order was rendered by the Supreme Court, Appellate Division, First Department, unanimously affirming this Court's decision (2012 N.Y. Slip Op. 05944), and the stay is vacated.

Defendants' motion submitted under Motion Sequence 002, pursuant to CPLR §3212 [a][b] and CPLR §3214 [b], seeks summary judgment dismissing this action as barred by the applicable statute of limitations.

Plaintiff submits a cross-motion pursuant to CPLR §3124 seeking to compel defendant to comply with previous discovery Orders including responses to the demand for a Bill of Particulars, alternatively pursuant to CPLR §3126, to strike the defendant's answer and pursuant to 22 NYCRR 130-1.1, for sanctions.

Defendant's motion submitted under Motion Sequence 003, pursuant to CPLR 2221[a][2], seeking an Order granting renewal of a previous Compliance Conference Order dated October 5, 2011 and a protective order pursuant to CPLR §3103, modifying the October 5, 2011 Compliance Conference Order to direct plaintiff's deposition be conducted in New York, New York and not Rochester, New York, staying all party and non-party depositions pending a decision on Motion Sequence 002 and vacating plaintiff's CPLR §3121 notice seeking to have the defendant submit to a psychiatric examination.

Defendant's motion submitted under Motion Sequence 004, pursuant to CPLR §3124 and CPLR §3126, seeks to compel plaintiff to provide adequate responses, answers

and document production and issuing a stay of plaintiff's deposition pending compliance with interrogatories and document requests.

Defendant's motion submitted under Motion Sequence 006, pursuant to CPLR §3123, seeks a protective order striking the plaintiff's Notice to Admit on the grounds that it seeks confidential and privileged information; is an unavailable discovery device prohibited under the circumstances of this case; and it improperly seeks facts in dispute.

Defendant's motion submitted under Motion Sequence 007, pursuant to CPLR §3103, seeks a protective order, on behalf of non-party Roslyn Siegel, staying her deposition and quashing the subpoena duces tecum as overbroad and oppressive.

Plaintiff's motion submitted under Motion Sequence 008, pursuant to 22 NYCRR 130-1.1, seeks costs, sanctions and attorney fees, for frivolous motion practice and in violation of Rule 8 and Rule 10 of the Rules of the Justices of this Court and for the defendant's failure to comply with the Preliminary Conference Order dated August 3, 2011 and the Compliance Conference Order dated October 5, 2011 and pursuant to CPLR §3126, seeks to have the defendant's answer to the Amended Complaint stricken.

The amended complaint asserts causes of action for breach of contract; imposition of a constructive trust; unjust enrichment and conversion (Mot. Seq. 001, Exh. 1). The complaint further asserts causes of action for an accounting; permanent injunction and a declaratory judgment finding that Lloyd Siegel took proper and legal title to 261 shares of Capital Stock in Ardsley Tenant Corporation in or about February 1985, which is null and void and contrary to law (Mot. Seq. 002, Exh. 1).

In order to prevail on a motion for summary judgment pursuant to CPLR §3212, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (Klein v. City of New York, 89 N.Y. 2d 833, 675 N.E. 2d 548, 652 N.Y.S. 2d 723 [1996]). To establish prima facie entitlement to summary judgment CPLR §3212[b], requires an affidavit of merit by a party with personal knowledge of the facts. Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence in admissible form, sufficient to require a trial of material factual issues (Amatulli v. Delhi Constr. Corp., 77 N.Y. 2d 525, 571 N.E. 2d 645; 569 N.Y.S. 2d 337 [1999]). In determining the motion the Court must construe the evidence in a light most favorable to the non-moving party (SSBS Realty Corp. v. Public Service Mut. Ins. Co., 253 A.D. 2d 583, 677 N.Y.S. 2d 136 [N.Y.A.D. 1st Dept., 1998] and Martin v. Briggs, 235 A.D. 2d 193, 663 N.Y.S. 2d 184 [N.Y.A.D. 1st Dept., 1997]).

The affirmation of an attorney having no personal knowledge of the facts is hearsay, insufficient for purposes of summary judgment, and a basis for denial without a need to address the sufficiency of the opposing papers (Batista v. Santiago, 25 A.D. 3d 326, 807 N.Y.S. 2d 340 [N.Y.A.D. 1st Dept., 2006] and Currie v. Wilhouski, 93 A.D. 3d 916,), 941 N.Y.S. 2d 218 [N.Y.A.D. 2nd Dept., 2012]).

Pursuant to CPLR §213[2], claim of breach of contract has a six year statute of limitations which accrues from the date of breach. An executory contract is not extinguished by the death of a party, an administrator or executor as an agent acting on behalf of the estate has the right to seek performance of a contract (DISciplo v. Sullivan, 30 A.D. 3d 660, 816 N.Y.S. 2d 576 [N.Y.A.D. 3rd Dept., 2006] citing to Gura v. Herman, 277 A.D. 452, 238 N.Y.S. 230 [N.Y.A.D. 2nd Dept., 1929]). Pursuant to CPLR §213[1], a constructive

trust claim has a six year statute of limitations which commences, "from the time of the wrongful act giving rise to a duty of restitution," and not from when the fraud is discovered (*Knobel v. Shaw*, 90 A.D. 3d 493, 936 N.Y.S. 2d 2 [N.Y.A.D. 1st Dept., 2011]). A wrongful act occurs when the property is acquired wrongfully from the date of acquisition, or the date the trustee wrongfully withholds the lawfully acquired property breaching the agreement with the beneficiary (*Zane v. Minlon*, 63 A.D. 3d 1151, 882 N.Y.S. 2d 255 [N.Y.A.D. 2nd Dept., 2009]).

A cause of action for conversion, pursuant to CPLR §213[8], if stated as fraud, has a six year statute of limitations. A cause of action for conversion, pursuant to CPLR §214[3], stated based on replevin or a possessory interest, has a three year statute of limitations (*Garber v. Ravitch*, 186 A.D. 2d 361, 588 N.Y.S. 2d 163 [N.Y.A.D. 1st Dept., 1992]). A claim for conversion pursuant to CPLR §214[3], where possession is initially lawful, does not begin to run until there is a demand for return of the possession and a refusal to do so (*In Re Rausman*, 50 A.D. 3d 909, 855 N.Y.S. 2d 263 [N.Y.A.D. 2nd Dept., 2008]). Pursuant to CPLR §213[1], cause of action for unjust enrichment has a six year statute of limitation and seeks relief which is equitable in nature. A claim that the defendant is seeking to keep of profits or retain the value of property, has a six years statute of limitations (*Knobel v. Shaw*, 90 A.D. 3d 493, *supra*).

Defendant under Mot. Seq. 002, seeks an Order dismissing this action and granting summary judgment claiming that there are no issues of fact and this action is barred by the statute of limitations. Defendant relying on the amended complaint and the affidavit of Martha Siegel dated January 18, 2011 (Mot. Seq. 002, Exhs. 1 & 2), claims that the agreement relied upon by the plaintiff was signed on March 30, 1985, more than twenty five years ago, therefore all the asserted causes of action are time-barred. Defendant claims that the statute of limitations on cause of action for breach of contract is six years and based on an October 8, 2004 letter from Thomas Hoffman, Esq., the action was commenced 19 days after the statute of limitations expired.

Plaintiff opposes summary judgment claiming that the statute of limitations was raised in Mot. Seq. 001, as part of defendant's reply to her cross-motion for summary judgment and was denied. Plaintiff claims, the statute of limitations for breach of contract and breach of a constructive trust is six years, but the statute of limitations for conversion is three years. Plaintiff claims the causes of action alleged in the complaint did not accrue until September 23, 2010, when she sought performance under the March of 1985 agreement, which was refused by the defendant. The October 8, 2004 letter reflects negotiations to further clarify the terms of the March of 1985 agreement. Defendant re-affirmed March of 1985 agreement with his March 18, 2005 note. Plaintiff claims that the municipal bearer bonds were retained by Herbert Siegel, he made annual bond distributions to Lloyd Siegel starting in March of 1985, in reliance on the agreement and as valid consideration. As of September 23, 2010, Lloyd Siegel breached and repudiated the agreement and interfered with Herbert Siegel's possessory interest in the apartment.

This Court finds defendant relies on the hearsay affirmation of his attorney and the affidavit of Martha Siegel submitted on a prior motion. The Supreme Court Appellate Division First Department stated in its August 14, 2012 Decision and Order, that the record presented material issues of fact, "such as the nature of the relationship between the decedent and the defendant, neither parties is entitled to summary judgment." Defendant has not eliminated those issues of fact. Defendant has not established that this action is untimely. The complaint alleges Lloyd Siegel repudiated the March 1985 agreement by refusing to surrender either the value of, or the capital stock on September 23, 2010, when

it was sought to be recovered by the estate. Defendant relies on hearsay evidence, including the unauthenticated letter of Thomas Hoffman, Esq., and has not eliminated any issues of fact related to establishing that the March of 1985 agreement was altered, breached or repudiated, before, or as of October 8, 2004, or prior to September 23, 2010. On March 18, 2005, Lloyd Siegel affirmed in writing that half of the co-operative apartment was owned by Herbert Siegel. Plaintiff's causes of action for breach of contract and constructive trust and unjust enrichment each have a six year statute of limitations, and are timely as alleged. The plaintiff's cause of action for conversion has a three year statute of limitations is alleged to have begun to run after September 23, 2010, and is timely. Defendant's motion papers do not specifically address the causes of action for an accounting; permanent injunction or a declaratory judgment. Defendant's motion for summary judgment, submitted under Motion Sequence. 002, is denied.

Pursuant to CPLR § 3130 [b], a motion for summary judgment pursuant to CPLR § 3212 stays disclosure until a determination of the motion, unless the Court order otherwise. The stay can be vacated by the Court if there is a determination of a legitimate need for discovery (*Reilly v. Oakwood Heights Community Church*, 269 A.D. 2d 582, 704 N.Y.S. 2d 829 [N.Y.A.D. 2nd Dept., 2000]).

Pursuant to CPLR §3124, the Court may compel compliance upon failure of a party to provide discovery. It is within the Court's discretion to determine whether the materials sought are "material and necessary" as legitimate subject of inquiry or are being used for purposes of harassment to ascertain the existence of evidence (*Roman Catholic Church of the Good Shepard v. Tempco Systems*, 202 A.D. 2d 257, 608 N.Y.S. 2d 647 [N.Y.A.D. 1st Dept. 1994]). Pursuant to CPLR §3126, there must be a showing of a willful violation of a prior Order for discovery or that the failure to provide discovery was willful, contumacious or due to bad faith. This would include predicate failure to provide the discovery sought (*Slegman v. Rosen*, 270 A.D. 2d 14, 704 N.Y.S. 2d 40 [N.Y.A.D. 1st Dept. 2000]).

The court has broad discretion in supervising disclosure and to grant a protective order pursuant to CPLR §3103 (*148 Magnolla, LLC v. Merrimack Mut. Fire Ins. Co.*, 62 A.D. 3d 486, 878 N.Y.S. 2d 727 [N.Y.A.D. 1st Dept., 2009]). The test concerning discovery is one of "usefulness and reason" and as such should lead to disclosure of admissible proof. Parties to an action are entitled to reasonable discovery of any relevant facts to the action (*Allen v. Crowell-Collier Publ.Co.*, 21 N.Y. 2d 403, 288 N.Y.S. 2d 449, 235 N.E. 2d 430 [1968]). Disclosure sought is required to lead to relevant evidence, and should not be, "overly broad or unnecessary and therefore 'palpably improper'" (*Perez v. Board of Educ. Of City of New York*, 271 A.D. 2d 251, 706 N.Y.S. 43 [N.Y.A.D. 1st Dept., 2000]).

A protective order may be applied to non-party witnesses if the discovery sought is not material and necessary to the case, and would result in unnecessary attention to a collateral matter (*Greasy Spoon v. Jefferson Towers*, 181 A.D. 2d 639, 581 N.Y.S. 2d 1006 [N.Y.A.D. 1st Dept., 1992] and *Blittner v. Berg and Dorf*, 138 A.D. 2d 439, 525 N.Y.S. 2d 858 [N.Y.A.D. 2nd Dept., 1988]).

Pursuant to CPLR §3130[1], a party is prohibited from the service of interrogatories upon a party served with a demand for a bill of particulars. A party may utilize either discovery device but not both (*Splerer v. Bloomingdale's*, 17 A.D. 3d 252, 793 N.Y.S. 2d 403 [N.Y.A.D. 1st Dept., 2005]).

A subpoena may not be used as a discovery device or to condone a fishing expedition to determine the existence of evidence (*Law Firm of Ravi Batra v. Rabinowich*,

77 A.D. 3d 532, 909 N.Y.S. 2d 706 [N.Y.A.D. 1st Dept., 2010]). The standard for a motion to quash a subpoena duces tecum is whether the information sought is "utterly irrelevant to any proper inquiry" (*Ayubo v. Eastman Kodak Co., Inc.*, 158 A.D. 2d 641, 551 N.Y.S. 2d 944 [N.Y.A.D. 1st Dept., 1990]). The burden of establishing whether the information sought is irrelevant is on the party being subpoenaed (*Velez v. Hunts Point Multi-Serv. Ctr., Inc.*, 29 A.D. 3d 104, 811 N.Y.S. 2d 5 [N.Y.A.D. 1st Dept., 2006]).

Pursuant to CPLR § 2221 [a][2], a party may seek to stay, vacate or modify an Order by motion before the Judge that signed it. Renewal is not available to parties that seek a "second chance" because of failure to exercise due diligence (*Chelsea Piers Management v. Forrest Electric Corporation*, 281 A.D. 2d 252, 722 N.Y.S. 2d 29 [N.Y.A.D. 1st Dept., 2001] and *Berkas v. McMillan*, 40 A.D. 3d 563, 835 N.Y.S. 2d 388 [N.Y.A.D. 2nd Dept. 2007]).

Frivolity as defined by 22 NYCRR 130-1.1, requires conduct which is continued when its lack of legal or factual basis should have been apparent to counsel or the party.

The remainder of the submitted motions which include, plaintiff's cross-motion submitted under Motion Seq. 002, Motion Seqs. 003, 004, 006, 007 and 008, seek discovery, protective orders, or sanctions, related to the Preliminary Conference Order and Compliance Conference Order, dated October 5, 2011.

The Preliminary Conference was conducted on August 3, 2011, the attorneys for the parties were unwilling to cooperate in the preparation of the Order which required over an hour of the Court's time in negotiating and attempting to ascertain the extent of the discovery and provide suitable dates for its completion. Plaintiff's attorney advised the Court that discovery demands had been served on defendant as of June 6, 2011, with no objection or responses provided as of August 3, 2011. Defendant's attorney advised the Court he was attempting to appeal the decision filed April 15, 2011, under Motion Sequence 001, and additional time was requested. Defendant's counsel objected strenuously to an inspection of the premises scheduled to take place on October 21, 2011.

The Preliminary Conference Order dated August 3, 2011, directed that plaintiff serve the demand for a Bill of Particulars by August 15, 2011, with the defendant serving responses by September 15, 2011. Defendant's counsel did not object to this part of the Order. Defendant was directed to provide responses to the remainder of plaintiff's June 6, 2011 demands by October 21, 2011. Defendant was directed to serve a demand of a bill of particulars on the plaintiff by September 13, 2011, with plaintiff providing responses by October 10, 2011. Authorizations were to be served by October 21, 2011. Depositions of the parties were to be conducted on or before December 9, 2011, and non-party witnesses to be deposed on January 16, 2012, with time and location to be agreed upon by counsel. A compliance conference was scheduled for February 15, 2012.

On September 14, 2011, plaintiff's counsel became aware that defendant was filing his motion for summary judgment submitted under Motion Sequence 002. The Court was contacted by plaintiff's counsel and advised that defendant's motion sought previously requested relief and that defense counsel was attempting to use the summary judgment motion to stay Court Ordered by September 15, 2011, discovery responses. Attempts to contact defendant's attorney for a conference call were unsuccessful, and conference was scheduled for October 5, 2011, so that both parties could present their positions.

Defense counsel appeared In Court on October 5, 2011, seeking a conference on the record before a court reporter, and insisting a stay was In effect based on his pending appeal and motion for summary judgment. Plaintiff's counsel presented documents including reply papers and a brief submitted by defendant to the Supreme Court Appellate Division First Department, on Motion Seq. 001, to demonstrate that there was prior mention of the statute of limitations. Plaintiff's counsel claimed that the previously ordered discovery was necessary to refute defense counsel's new claims that Lloyd Siegel signed documents under duress, and to proceed with the case. Plaintiff's counsel advised the Court that failure to proceed with discovery would prejudice his client an older woman, and that he was being forced to repeatedly make travel arrangements from Rochester and cancel them based on defense counsel's delay tactics, including frivolous motions. Defense counsel indicated he was contemplating withdrawing the appeal but insisted that he was going to be successful In having the action dismissed on statute of limitations grounds, therefore the discovery was unnecessary. The Court determined that the stay of discovery pending the motion for summary judgment should be vacated and a new discovery order issued.

Plaintiff's counsel suggested conducting depositions of his client in Rochester or defense counsel's office in Port Chester New York , especially since there was a possible difficulty In obtaining space in New York County. Discussions resulted In an agreement between counsel that depositions would be split to avoid some of the additional travel from Rochester. The October 5, 2011, Compliance Conference Order extended the time for Defendant's responses to plaintiff's demands for a bill of particulars to October 14, 2011 and permitted defendant to serve his own demand for a bill of particulars by October 18, 2011. Depositions of the parties were extended to December 15, 2011, and non-party witness were to be deposed by January 16, 2012. A compliance conference was scheduled for February 15, 2012.

Upon review of all the papers submitted, this Court finds, that the defendant shall not be compelled to provide responses to plaintiff's demands for Interrogatories, including those served on June 6, 2011. Defendant provided responses to plaintiff's demand for a bill of particulars and first demand for production of documents, however these documents state numerous objections and appear to be incomplete. Defendant has stated a basis in Motion Sequence 003, to direct that depositions be conducted in New York County because of his client's inability to attend depositions in Rochester. Defendant has not stated a basis to issue a protective order preventing plaintiff from seeking psychiatric evaluation or medical records. Defendant has placed his physical and mental condition at issue based on his claims that he signed documents while under mental duress and physical coercion. Defendant has stated a basis in Motion Sequence 004, to compel more complete responses to Interrogatories and for document production. Plaintiff's claims that the documents sought related to Florence and Meyer's estates are already in the defendant's exclusive possession or knowledge, are not sufficient.

Defendant has not stated a basis to obtain the protective orders sought in Motion Sequences 006 and 007. Lloyd Siegel has put his mental and physical condition at issue based on his claims of duress and coercion. Roslyn Siegel was defendant's wife at the time of the alleged occurrences, documentation was provided that at one time she attempted to mediate an agreement between Herbert and Lloyd Siegel concerning estate assets. The documents sought by the subpoena duces tecum relates to the estates of Florence and Meyer Siegel, distribution of assets, and Lloyd and Herbert Siegel's relationship, it is relevant and shall be provided. Plaintiff's motion for sanctions submitted

*** 7]**
under Motion Sequence 008, shall be denied, there have been disputed discovery requests by all parties to this action and defendant's actions will not be sanctioned.

Accordingly, it is ORDERED, that defendant's motion submitted under Motion Sequence 002, pursuant to CPLR §3212 [a][b] and CPLR §3214 [b], seeking summary judgment and dismissing this action as barred by the applicable statute of limitations, is denied and it further

ORDERED, that plaintiff's cross-motion to compel defendant to comply with previous discovery Orders including responses to the demand for a Bill of Particulars, alternatively, to strike the defendant's answer and for sanctions, is granted to the extent that, defendant shall provide supplemental responses to plaintiff's demand for a Bill of Particulars, document demand and omnibus demands on or before November 2, 2012, failure to do so shall result in defendant's answer being deemed stricken, and it is further,

ORDERED, that the Orders of this Court dated August 3, 2011 and October 5, 2011, are modified and that portion of the Orders directing defendant to provide responses to plaintiff's Interrogatories is vacated, pursuant to CPLR §3130[1], plaintiff is prohibited from the service of Interrogatories upon the defendant, having also served a demand for a bill of particulars, and it further,

ORDERED, that defendant's motion submitted under Motion Sequence 003, seeking an Order granting renewal and modification of the Compliance Conference Order dated October 5, 2011 and a protective order; directing plaintiff's deposition be conducted in New York, New York and not Rochester, New York, staying all party and non-party depositions pending a decision on Motion Sequence 002 and vacating plaintiff's notice seeking to have the defendant submit to a psychiatric examination, is granted to the extent that the Order of this Court dated October 5, 2011, is modified to state depositions of all parties shall be conducted in New York County, on or before January 18, 2013, at 10:00a.m., failure to appear at deposition shall result in that party being precluded from testifying at the time of trial, and it is further,

ORDERED, that the remainder of Motion Sequence 003 is denied, and it is further,

ORDERED, that Defendant's motion submitted under Motion Sequence 004, seeking to compel plaintiff to provide adequate responses, answers and document production and staying plaintiff's deposition pending compliance with Interrogatories and document requests, is granted to the extent that plaintiff shall provide supplemental responses to defendant's demands for Interrogatories and document requests, on or before November 2, 2012, failure to do so shall result in plaintiff's Amended Summons and Complaint being deemed stricken and this case dismissed, and it is further,

ORDERED, that the remainder of Motion Sequence 004 is denied, and it is further,

ORDERED, that defendant's motion submitted under Motion Sequence 006, seeking a protective order striking the plaintiff's Notice to Admit on the grounds that it seeks confidential and privileged information; is an unavailable discovery device prohibited under the circumstances of this case, is denied, and it is further,

ORDERED, that defendant's motion submitted under Motion Sequence 007, seeking a protective order, on behalf of non-party Roslyn Slegel, staying her deposition and

quashing the subpoena duces tecum as overbroad and oppressive, is denied, and it is further,

ORDERED, that the non-party deposition of Roslyn Siegel is to be conducted on February 22, 2013 at 10:00am in New York County, and the document production sought by subpoena duces tecum shall be provided to plaintiff by January 18, 2013, failure of Roslyn Siegel to comply shall result in a finding that she is in Contempt of Court; and it is further,

ORDERED, that the remaining non-party depositions shall be conducted in New York County, to be completed on or before, February 28, 2013, and it is further,

ORDERED, that plaintiff's motion submitted under Motion Sequence 008, seeking costs, sanctions and attorney fees, for frivolous motion practice and for the defendant's failure to comply with the Preliminary Conference Order and the Compliance Conference Order, and seeking to have the defendant's answer stricken, is denied, and it is further,

ORDERED that the parties shall appear for a Status Conference, in IAS Part 13, room 307 at 80 Centre Street, New York, New York at 9:30a.m. on March 27, 2013.

ENTER:



MANUEL J. MENDEZ,
J.S.C.

Dated: September 7, 2012

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

FILED
SEP 13 2012
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