SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 150054/2011
DAVIDOFF, STUART M
vs.
122 GREENWICH OWNERS LLC
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion.

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 12/12/12

HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☒ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

----------X

STUART MICHAEL DAVIDOFF and JILL ELLEN FORD,

Plaintiffs,

-against- Index No. 150054/11

125 GREENWICH OWNERS, LLC,

Defendant.

----------X

HON. ANIL C. SINGH, J.:

In this action, plaintiffs Stuart Michael Davidoff and Jill Ellen Ford seek rescission of an agreement to purchase an apartment at 122 Greenwich Avenue, New York, New York (the Building); the return of their contract deposits in the amounts of $842,750.00 and $280,250.00; and a determination that no further payment is due, and that plaintiffs owe no further obligations to the sponsor of the building, defendant 122 Greenwich Owner, LLC. Plaintiffs contend that defendant deceived them into purchasing the apartment through deliberate and specific misrepresentations about the apartment, its proximity to an electrical substation operated by the New York City Transit Authority which generates electromagnetic fields (EMF), and the risk that EMF pose to children. Plaintiffs assert one cause of action for fraud and rescission.

Defendant moves for summary judgment dismissing the complaint, and an order awarding it summary judgment on its counterclaims. For the reasons set forth below, defendant's motion for summary judgment is granted.

BACKGROUND

Pursuant to an offering plan (the Plan [Documentary Supp, Exh B]), defendant

sponsor is the developer of the One Jackson Square Condominium (the Condominium). On July 16, 2007, at the height of the real estate market, plaintiffs and the sponsor entered into a purchase agreement (the Purchase Agreement [*id.*, Exh A]), for the purchase of Unit 28 (6D) (the Unit) at the Building, with little or no negotiation.

The purchase price for the Unit was fixed at $5,625,000.00. Plaintiffs paid a deposit in the amount of $1,125,000 to secure their obligations under the Purchase Agreement. The Purchase Agreement specifically incorporates the terms of the Plan promulgated by the sponsor for the sale of Condominium units. In the "Special Risks" section of the Plan, in accordance with the Regulations of the Attorney General (13 NYCRR 20.3 [c]), the sponsor disclosed all features of the offering that involved significant risk, including potential known risks associated with EMF that may be generated by the New York City Transit Authority facility located adjacent to the Condominium. The Special Risks section of the Plan states:

> New York City Transit Authority Station
>
> Directly adjacent to the Property is a New York City Transit Authority ("NYCTA") Station housing mechanical and electrical equipment. The electrical equipment located therein can generate electromagnetic fields ("EMF") which, if strong enough, can disturb electric equipment and pacemakers. Sponsor engaged Field Management Services Corporation to do an EMF analysis of the areas adjacent to the substation, and no danger was found.

(Plan, at 10).

As stated in the Plan, the sponsor engaged Field Management Services Corporation (FMS), an expert in the field of EMF, to perform testing, including a site assessment, and to provide an analysis of all potential risks associated with EMF generated from the transit station. FMS concluded that the levels of EMF exposure measured in the Unit and on

the sidewalks in front of the building were either typical of those found in any residence, or were below levels commonly found in many other settings in the city, and thus posed no danger (*see* Site Assessment Report [Documentary Supp, Exh C]).

It is important to note that, after 30 years of scientific investigation, EMF have been classified by the World Health Organization and other agencies as a "possible human carcinogen," the lowest level of risk to health used to classify potential risks. Other risks in this category include coffee, gasoline engine exhaust, and welding fumes (*see* Environmental Health Criteria 238 [2007] Extremely Low Frequency [ELF] Fields, WHO, Geneva, Switzerland, ISBN 978-92-157238-5, http://www.who.int/peh-emf/publications/elf_ehc/en/index.html).

It is undisputed that plaintiffs were fully aware, before they executed the Purchase Agreement, about the existence of the transit substation, and the known risk of EMF emissions from it. On May 31, 2007, via email to the sales agent, plaintiffs asked for information about the NYCTA substation, and the results of the testing that had been performed concerning EMF emissions (*see* email exchange between plaintiffs and sales agent [Documentary Supp, Exh D]). On June 1, 2001, a full month before they executed the Purchase Agreement and tendered the deposit, they received a copy of the Site Assessment Report (*see id.*). Thus, at the time of the execution of the Purchase Agreement and their tender of the deposits, plaintiffs had all of the information in the sponsor's possession concerning EMF, their levels, and the known effects of their emission from the transit substation.

When the real estate market began to turn, however, plaintiffs sought to extract concessions from the sponsor by challenging the legal validity of various aspects of the transaction. In May 2009, plaintiffs' broker inquired as to whether the sponsor would renegotiate

the terms of the Purchase Agreement (*see id.*, Exh E). When it became apparent that the sponsor would not renegotiate the terms of the Purchase Agreement, by letter dated June 16, 2009, plaintiffs sought to challenge its legality under the Interstate Land Sales Act (ISLA), 15 USC § 1701 *et seq.* (*see id.*, Exh G).

In a further effort to renegotiate the terms of the Purchase Agreement, plaintiffs then began to express concerns about EMF exposure, contending that, should they be forced to close title to the Unit, their children would be exposed to health hazards, including the risk of cancer and childhood leukemia which, according to plaintiffs, are associated with EMF. To support this argument, plaintiffs sought the aid of Dr. David O. Carpenter for the purpose of demonstrating that there is a "scientific basis" for plaintiff's fear of EMF (*see* Documentary Supp, Exh J]). In his statement, dated December 1, 2009, Dr. Carpenter contends that there is a connection between long-term exposure to EMF and the increased risk of childhood leukemia (*see* Aff. of Stuart Davidoff, Exh F]).

On December 10, 2009, plaintiffs filed an application before the Attorney General in which they sought rescission of the Purchase Agreement, based upon the sponsor's alleged failure to disclose the health risks associated with EMF emissions and the "scientific evidence" linking it with childhood leukemia (*see* Documentary Suppl, Exh O). In their submissions to the Attorney General, plaintiffs took the position that the sponsor failed to comply with the disclosure requirements of General Business Law (GBL) § 352, otherwise known as the Martin Act (*see id.*).

In its response to plaintiffs' application, the sponsor stated to the Attorney General that Dr. Carpenter's report and his opinion concerning the purported risks associated with EMF

emission should have been disregarded because (1) he concededly made no independent investigation of the site or performed any tests to the Building or Unit; (2) his opinions regarding possible health risks associated with exposure from EMF are controversial and have not been adopted or accepted by any court, governmental agency in the United States or the World Health Organization; (3) the prevailing accepted scientific community rejects his opinions; and (4) even assuming the validity of Dr. Carpenter's opinions, the EMF measurements taken at the site reveals levels well below even those Dr. Carpenter suggests may be hazardous (*see id.*).

The Attorney General did not respond to plaintiffs' submission, and they ultimately withdrew it.

In December of 2009, after receiving Dr. Carpenter's report, the sponsor engaged FMS to retest the Building and the Unit. FMS confirmed that the levels of EMF emissions were consistent with those detected before the special risk disclosure was made, and that there were no dangerous levels of EMF being emitted from the substation (*see id.*, Exh Q).

In addition, the sponsor engaged the services of Dr. Kenneth R. Foster, an EMF consultant to the World Health Organization, to conduct a peer review of FMS's work, and to perform independent tests of the Building, the Unit and the substation. In his report, Dr. Foster found that FMS's findings were accurate, and that the level of EMF being emitted were well below those that Dr. Carpenter stated were dangerous. Dr. Foster further explained that Dr. Carpenter's views on the subject of EMF emissions were on the extreme spectrum, and were not widely accepted by the scientific community. Dr. Foster's report concludes that no scientific evidence exists to support Dr. Carpenter's thesis concerning EMF emissions (*see id.*, Exh R]).

Beginning in October of 2009, plaintiffs began to get notices from the sponsor

that a closing date was at hand (*see id.*, Exh S). A closing of title was eventually scheduled for December 14, 2009, and the sponsor procured a temporary Certificate of Occupancy (*see id.*). However, plaintiffs failed to close on that date. By notice dated December 23, 2009, plaintiffs were notified that they were in default of their obligations under the Purchase Agreement (the Default Notice). Plaintiffs were advised that, if they failed to cure the default by closing title to the Unit on or before January 25, 2010, the Purchase Agreement would be deemed canceled, and the sponsor would have the right to retain the deposit as liquidated damages, with interest (*see id.*, Exh T). Plaintiffs failed to close within the cure period set forth in the Default Notice, and accordingly, the Purchase Agreement was deemed canceled.

In December of 2010, plaintiffs brought this action.

DISCUSSION

In the complaint, plaintiffs allege that the Plan contains significant material omissions concerning the health risks associated with EMF emissions from the substation located adjacent to the Building (Complaint, ¶ 11). Plaintiffs further allege that, had they been aware of the dangers to young children associated with exposure to EMF, they would not have entered into a contract to purchase the Unit (*id.*, ¶ 13). Even though it is undisputed that plaintiffs were provided with the FMS report prior to signing the Purchase Agreement, plaintiffs also allege that the FMS report was omitted from the Plan (*id.*, ¶ 14). Finally, plaintiffs allege that the value of the Unit was adversely affected due to its proximity to the substation, and that the sponsor breached its duty to disclose this (*id.*, ¶ 56). Plaintiffs contend that they thus have a right to rescind the Purchase Agreement, because the sponsor omitted to mention in the Plan the potential dangers associated with EMF, with the intent to mislead plaintiffs, and induce them to enter into

the Purchase Agreement. Plaintiffs allege that the sponsor knew that they would rely upon representations made in the Plan about the Unit when they executed the Purchase Agreement (*id.*, ¶¶ 19-21).

Defendant moves for summary judgment dismissing the complaint on the ground that it is barred by the Martin Act, and because plaintiffs cannot allege the reliance element of a fraud cause of action.

With respect to defendant's Martin Act defense, the allegations set forth in the complaint are based upon the identical claims that plaintiffs made before the Attorney General. Plaintiffs framed the issue as follows to the Attorney General: "Did the Plan afford purchasers an adequate basis on which to found their own judgments about purchasing in the Building and did it otherwise comply with the disclosure requirements of the Martin Act and the Regulations?" (*see* 7/13/2000 Letter from Plaintiffs to Attorney General [Documentary Supp., Exh O]). Plaintiffs concluded that, by omitting the potential health risks arising from EMF, the sponsor violated the Martin Act (*id.*).

However, because the allegations of plaintiffs' fraud complaint are virtually identical to the Martin Act claims asserted before the Attorney General, it cannot survive, as there is no private right of action under the Martin Act for such claims.

The marketing and sale of securities in New York is governed by the Martin Act. The Martin Act prohibits a broad range of fraudulent and deceitful practices in advertising, distributing, exchanging, selling and purchasing securities, including condominium units, within or from New York state (*see* General Business Law §§ 352, 352-c, 353). There is no express or implied private right of action under the Martin Act (*CPC Intl. v McKesson Corp.*, 70 NY2d 268

[1987]). Instead, the Attorney General, who has been "granted various investigatory, regulatory, and remedial powers aimed at detecting, preventing, and stopping fraudulent securities practices" (*Caboara v Babylon Cove Dev., LLC*, 54 AD3d 79, 81 [2d Dept 2008], citing *Kralik v 239 E. 79th St. Owners Corp.*, 5 NY3d 54, 58-59 [2005]), has the exclusive authority to enforce its provisions (*Assured Guar. (UK) Ltd. v J.P. Morgan Inv. Mgt., Inc.*, 18 NY3d 341 [2011] [discussing Martin Act preemption in the condominium context, and explaining that a purchaser of a condominium unit may not bring a claim for common-law fraud against a sponsor where the fraud is predicated on alleged omissions in the offering plan of disclosures mandated by the Martin Act or the Attorney General's implementing regulations]; *accord Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership*, 12 NY3d 236, 247 [2009] [recognizing that a fraud claim predicated on violations of the obligations imposed by the Martin Act would invite an impermissible "backdoor" private cause of action]; *Berenger v 261 West LLC*, 93 AD3d 175 [1st Dept 2012] [common law fraud claim against sponsor dismissed where gravamen of claim was predicated on omissions in the offering plan as to information required by the Martin Act]).

Prior to the enactment of the Martin Act, New York adhered to the doctrine of caveat emptor, meaning that a seller of real estate had no duty to disclose any information regarding the premises to be sold in an arm's-length transaction. The Martin Act altered the common law by imposing disclosure obligations concerning the property in the offering on sellers of certain real estate (*see Kerusa Co. LLC*, 12 NY3d 236). It is well established that where a disclosure is mandated by the Martin Act or its regulations, such as the special risk disclosure here, the Attorney General has exclusive jurisdiction for its enforcement, and any private claim based on its omissions is absolutely barred (*id*; *see also Assured Guar. (UK) Ltd.*,

18 NY3d at 353 ["a private litigant may not pursue a common-law cause of action where the claim is predicated solely on a violation of the Martin Act or its implementing regulations and would not exist but for the statute"]).

Here, plaintiffs are attempting to do precisely what the Martin Act prohibits. In their single claim for relief, plaintiffs allege that the sponsor should have disclosed in the Plan facts concerning potential health risks caused by the emission of EMF from the adjacent transit substation. This claim, on which plaintiff's fraud allegations are based, rests entirely on alleged omissions that, but for the Martin Act and its implementing regulations, would not be required by law to be disclosed at all.

Berenger v 261 West LLC (93 AD3d 175) is remarkably similar to the instant case. In that action, the plaintiff sought to maintain a private right of action, based upon the sponsor's failure to disclose the presence of a cooling tower on the roof of the building, even though the plaintiff had knowledge of the cooling tower's existence, since he visited the site, and saw it before signing the purchase agreement. Like the disclosure made here, the presence of the cooling tower was a disclosure mandated by the Martin Act. The Court dismissed the plaintiff's claims for fraud and misrepresentation, holding that, like here, since the subject disclosure was mandated by the Martin Act, it was not justiciable in an action by an individual.

Here, but for the Martin Act and its regulations, pursuant to which the disclosures concerning the transit substation were expressly required, the sponsor would have been under no obligation to make any such disclosure. Because no independent basis exists for plaintiffs' claim, aside from the Martin Act, plaintiffs' claim is barred.

In opposition to the motion, plaintiffs contend that in *Assured Guar. (UK) Ltd. v*

J.P. Morgan Inv. Mgt., Inc. (18 NY3d 341) (*Assured*), the Court of Appeals "narrowed" *Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership* (12 NY3d 236) (*Kerusa*) by holding that an "injured investor may bring a common-law claim (for fraud or otherwise) that is not entirely dependent on the Martin Act for its viability" (*Assured Guar. (UK) Ltd.*, 18 NY3d at 353). According to plaintiffs, *Assured* thus recognized the viability of common-law causes of action based upon material misstatements, as opposed to mere omissions from an offering plan, which claims are in the Attorney General's exclusive province. Plaintiffs then assert that their action for common-law fraud "is not predicated solely on material omissions from the offering plan that would have been otherwise required by the Martin Act," but rather arises from "misstatements and incomplete disclosure as well as the misleading FMS Study" (Pl Opp., at 6).

The court rejects this argument. Contrary to plaintiffs' contention, *Assured* reaffirmed the principle that there is no private right of action where the fraud and misrepresentation in the complaint rely entirely on alleged omissions in disclosures required by the Martin Act. But for the Martin Act and its implementing regulations, pursuant to which the disclosures concerning the transit substation were expressly required, the sponsor would not have been under any obligation to make such disclosure. Moreover, it is clear that the gravamen of the complaint is that the sponsor defrauded plaintiffs, and induced them into signing the Purchase Agreement, by failing to disclose the allegedly harmful effects of EMF. Although plaintiffs argue that the disclosures in the Plan should be characterized as "fraudulent misstatements" rather than "omissions," to demonstrate that they have a legal basis independent of the disclosure requirements of the Martin Act, their allegation that the disclosure was "inadequate and incomplete" is no different than alleging that the sponsor "omitted" those facts from its

disclosure, which is a quintessential Martin Act claim. Indeed, in their application to the Attorney General, plaintiffs alleged facts identical to the claims asserted here, and took the position that the sponsor violated its disclosure obligations under the Martin Act (*see* Aff. of David Penick, ¶ 6; Doc Supp., Exh O [plaintiffs' 7/13/10 letter to Attorney General]).

Accordingly, because no independent basis exists for plaintiffs' claims, apart from the disclosure requirements of the Martin Act, the complaint cannot stand (*see e.g. Board of Mgrs., Lore Condo v Gaetano*, Sup Ct, New York County, October 15, 2012, Kenney, J., index No. 114515/11, at 6 [dismissing fraud claim against architect as barred by the Martin Act because "plaintiff's fraud claim is based on Mr. Gaetano's report and certification, which were required to be filed pursuant to the Act"]; *see also Board of Mgrs. of the Crest Condominium v City View Gardens Phase II, LLC*, 35 Misc 3d 1223[A], 2012 NY Slip Op 50826[U] [Sup Ct, Kings County 2012], *10 [dismissing plaintiff's fraud claim on ground that "[t]o permit plaintiff to proceed with its private claims under General Business Law § 349 ... would be to authorize '*a backdoor private cause of action to enforce the Martin Act*' in violation of the statutory scheme"] [emphasis in original and quoting *Assured Guar. (UK) Ltd.*, 18 NY3d at 353]).

In addition, even if the fraud claim were not preempted by the Martin Act, in order to make a prima facie showing of fraud, plaintiffs are required to establish that they reasonably relied upon the alleged misrepresentation, and that, as a result, they were induced to engage in a specific course of conduct (*Ross v Louise Wise Servs., Inc.*, 8 NY3d 478 [2007]; *Meyercord v Curry*, 38 AD3d 315 [1st Dept 2007]).

Although plaintiffs allege in the complaint that the Plan failed to include the FMS report (Complaint, ¶ 14), it is undisputed that plaintiffs were in possession of the FMS report

prior to executing the Purchase Agreement and tendering the deposit. As such, plaintiff cannot allege any, much less reasonable, reliance upon a misrepresentation of fact, since they were in possession of the very information that they complain was omitted from the Plan prior to the execution of the Purchase Agreement (*see Berenger*, 93 AD3d at 184 [despite the omission in the offering plan, plaintiff purchased the unit having previously been on notice of the complained of condition, and, as such, plaintiff could not rely upon incomplete disclosure as ground for rescission]).

Moreover, it is clear that, in any event, plaintiffs could not have reasonably relied on the omission in the Plan of the "dangers to young children associated with long-term exposure to EMF emissions," as any alleged link between EMF and cancer has never been concluded as fact by any recognized governing authority. Indeed, no scientific evidence supporting such linkage exists (*see Barnett v Carberry*, 420 Fed Appx 67, *1 [2d Cir 2011], *cert denied* __ US __, 132 SCt 248 [2011] [recognizing that no legislature or administrative agency has ever determined levels of EMS that would be "unreasonably high"]; *Reiss v Consolidated Edison Co. of N.Y.*, 228 AD2d 59 [3d Dept 1996], *appeal dismissed* 89 NY2d 1085 [1997], *cert denied* 522 US 1113 [1998] [rejecting claim that EMF-generating electric plan adjacent to plaintiff's property caused a diminution in property value, since no scientific proof was offered that EMF constitute a health hazard]).

Although plaintiffs contend that defendant's disclosure was "incomplete and misleading," and that it "purposely concealed the link between EMF exposure and childhood leukemia," they cannot claim that they were induced into executing the Purchase Agreement by defendant's actions where, as here, they had knowledge of and ample opportunity to further

investigate the spectrum of opinion concerning the purported health risks associated with EMF (*see Margolin v IM Kapco, Inc.*, 89 AD3d 690 [2d Dept 2011]).

Accordingly, defendant's motion for summary judgment dismissing the complaint is granted.

Defendant's motion for summary judgment on its counterclaims is also granted. In its counterclaims, defendant seeks: (1) an order directing the release of the deposit to the sponsor; and (2) the costs and expenses, including reasonable attorneys' fees, with respect to plaintiffs' default, the enforcement of the Purchase Agreement, and the defense of this litigation, all of which are expressly provided for in the Purchase Agreement.

Plaintiffs' failure to close title to the Unit constitutes a default entitling defendant to judgment on its counterclaims by which it seeks to retain plaintiffs' deposit as liquidated damages. A seller may retain a purchaser's deposit where a purchaser defaults on a real estate contract without lawful excuse (*see 1776 Assoc. Corp. v Broadway W. 57th St. Assoc.*, 181 AD2d 601 [1st Dept 1992], *appeal dismissed* 80 NY2d 824 [1992]).

The sponsor is also entitled to recover the costs and expenses relating to plaintiffs' default under the Purchase Agreement, including reasonable attorneys' fees. Contracts that provide for the recovery of attorneys' fees and court costs incurred in the prosecution or defense of an action are valid and enforceable under state law (*Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1 [1986]; *Equitable Lbr. Corp. v IPA Land Dev. Corp.*, 38 NY2d 516 [1976]). Here, the Purchase Agreement specifically provides for an award of attorneys' fees incurred by the sponsor in defending or enforcing its rights under the Purchase Agreement. The Purchase Agreement contains the following paragraph, entitled COSTS OF ENFORCING AND

DEFENDING AGREEMENT:

> Purchaser shall be obligated to reimburse Sponsor for any legal fees and disbursements incurred by Sponsor in defending Sponsor's rights under this Agreement or in the event Purchaser defaults under this Agreement beyond any applicable grace period, in canceling this Agreement or otherwise enforcing Purchaser's obligations hereunder.

(Purchase Agreement, ¶ 30).

Thus, under the express terms of the Purchase Agreement, plaintiffs are responsible for the sponsor's legal fees relating to plaintiffs' defaults, including those incurred in defending this action. However, summary judgment with respect to defendant's costs, expenses and legal fees is granted as to liability only, and the issue of the amount of such costs, expenses and legal fees shall be submitted to a Special Referee to hear and report.

The court has considered the remaining arguments, and finds them to be without merit.

Accordingly, it is

ORDERED that defendant's motion for summary judgment dismissing the complaint is granted, and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that defendant's motion for summary judgment on its counterclaims is granted as to liability only; and it is further

ORDERED that the issue of the amount of the costs and expenses, including reasonable attorneys' fees, incurred by defendant with respect to plaintiffs' default, the enforcement of the Purchase Agreement, and the defense of this litigation, is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing

of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issues; and it is further

ORDERED that this portion of the motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that counsel for the party seeking the reference or, absent such party, counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet[1] upon the Special Referee Clerk in the Motion Support office in Rm. 119 at 60 Centre Street, who is directed to place this matter on the calendar of the Special Referee's Part (Part 50R) for the earliest convenient date.

Dated: December 12, 2012

ENTER:

ANIL C. SINGH
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

[1]Copies are available in Rm. 119 at 60 Centre Street, and on the Court's website.