Gellenbeck v Whitton
2015 NY Slip Op 30289(U)
March 2, 2015
Supreme Court, New York County
Docket Number: 154365/2014
Judge: Arthur F. Engoron

11SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

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ROGER DOUGLAS GELLENBECK a/k/a R. DOUGLAS GELLENBECK a/k/a DOUGLAS GELLENBECK,

Index Number: 154365/2014

Sequence Numbers: 002, 003, 004

Plaintiff,

- against -

Decision and Order

MICHAEL WHITTON,

Defendant.

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Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 7 were used on plaintiff's motion, pursuant to CPLR 3212, for summary judgment on his complaint and dismissing defendant's counterclaims; defendant's motion, pursuant to CPLR 3025(b) and 3024(b), to amend his answer and to strike scandalous matter from the complaint; and plaintiff's motion for a preliminary injunction:

Papers Numbered:

Upon the foregoing papers, plaintiff's motion for summary judgment is granted, defendant's motion to amend and to strike is granted in part, and plaintiff's motion for a preliminary injunction is denied.

Background

The instant action, which seeks partition of the parties' jointly owned co-op apartment on East 11th Street in Manhattan and a judgment declaring the true owner of the family dog "Stevie," is occasioned by the end of the parties' 13-year close, committed domestic partnership. While the Court is sensitive to the emotional strain caused by the end of what appears to have been a once happy and loving relationship, the legal issues presented are neither novel nor complicated, the relevant facts as to plaintiff's entitlement to partition are undisputed, and the reasons for the end of the parties' relationship are irrelevant to determine the remaining issues of distribution of the proceeds of sale of the parties' apartment and ownership of Stevie.

The complaint, filed on May 5, 2014, alleges in pertinent part that: plaintiff Roger Douglas Gellenbeck and defendant Michael Whitton were in 13-year "a close and committed relationship" and registered with the City of New York as Domestic Partners in December 30, 2009 (Complaint, ¶9); on July 2, 2008, the parties purchased, as "tenants-in-common," 139 shares of stock in Cast Iron Corp. (the "co-op") allocated to apartment number 517 (the "apartment") at 67 East 11th Street, New York, New York, and executed a Proprietary Lease for the apartment pursuant to which the parties are required to make monthly maintenance payments (¶¶10-14, 20); the parties "each own an equal fifty percent (50%) interest in the shares of stock … and each has an equal and undivided right to occupy and use the apartment" (Id., ¶ 21); the apartment is the primary residence for both plaintiff and defendant (Id., ¶23); the parties financed the purchase with a mortgage loan and home equity line of credit from Chase, and agreed to be jointly and severally liable for the repayment of the loan and line of credit (Id., ¶¶15, 32, 33); plaintiff paid 20% of the purchase price as a down-payment, all of the closing costs and fees, and the costs to repaint the apartment, re-finish the floors and to move in (Id., ¶¶30, 31, 34, 35); defendant has not contributed to the costs of maintaining the apartment since July of 2012 (Id., ¶¶2, 25, 26, 36-38); plaintiff "no longer desires to own or hold the apartment in common with defendant" (Id., ¶¶27, 49); the apartment can not be physically partitioned into separate units or divided (Id., ¶¶19, 52); plaintiff is the sole and exclusive owner of Stevie, "a tan, female, mixed-breed, part Basenji dog"; defendant gave Stevie to plaintiff as a birthday gift; and plaintiff is Stevie's "registered owner" (Complaint, ¶¶41-46). Based upon the foregoing allegations, the complaint asserts four causes of action, as follows: for an order directing that the apartment be sold at public auction and that the proceeds of sale be distributed first to pay the costs of sale, second to pay off the Chase loans, third to reimburse plaintiff for expenditures made in excess of his obligations, with the balance remaining to be split equally between the parties (first cause of action for partition); for an accounting to calculate defendant's expenditures "made in excess of his obligations" (second cause of action); for a declaration that plaintiff is the owner of Stevie (third cause of action); and for a permanent injunction enjoining defendant from holding himself out as Stevie's owner (fourth cause of action).

On May 29, 2014, defendant, acting *pro se*, filed and served an answer to the complaint in which he separately answered each allegation of the complaint by way of an admission, a denial or some combination thereof, and cast the parties' dispute as a matrimonial action in which defendant requested "equitable distribution" of the parties assets. As is here pertinent, defendant denied that the parties own the apartment as "tenants-in-common," and alleged that they are instead "joint tenants with rights of survivorship." Defendant admitted that he is jointly liable with plaintiff for the apartment's monthly maintenance and the Chase loans, and that his present "financial hardship" has made it difficult to contribute, but alleges that he has contributed "to the best of his ability in good faith." Defendant denied that plaintiff is the lawful owner of Stevie, and alleged that he adopted Stevie and that Stevie is "common property." Defendant asserted two counterclaims, the first for appointment of three appraisers and that plaintiff buy defendant's shares for an average of the three appraisals plus 10%, and the second for a declaration that he is the lawful owner of Stevie with "shared custody."

In support of his motion for summary judgment, plaintiff submits, inter alia, the co-op stock certificate showing that the parties own 139 shares in the co-op; the Proprietary Lease; his June 17, 2014 affidavit terminating the parties' Domestic Partnership, and the New York City "Dog

License" for Stevie issued to plaintiff. Plaintiff argues that he is entitled to partition under RPAPL § 901 in that he is a tenant-in-common with a right of possession to the apartment, and that sale of the apartment at public auction is warranted because the apartment – a studio with a 400 foot sleeping loft – cannot be physically partitioned. Plaintiff also argues that he is the sole owner of Stevie because defendant gave Stevie to plaintiff as a gift, and plaintiff is Stevie's registered owner with the New York City Department of Health.

Defendant, now represented by an attorney (retained on August 11, 2014), opposes the motion and simultaneously moves to amend his answer and to strike scandalous matter from the complaint. Defendant argues that there are issues of fact which preclude summary judgment and require discovery, of which there has been none, specifically that: (1) the studio apartment can be divided into two apartments so that sale at public auction, which would allegedly cause "great prejudice," is unnecessary; (2) the "equities" require a 50/50 split of the proceeds of sale of the apartment because the apartment was a "family" asset, the parties agreed that expenses "were not necessarily shared equally," the parties equally split the cost of their $50,000 wedding in September 2009, defendant "contributed" by staying home and caring for the apartment and Stevie, and plaintiff voluntarily made certain payments; (3) the parties intent was to own the apartment as "joint-tenants-with-rights-of-survivorship," and not "tenants-in-common"; (4) plaintiff is not entitled to an accounting because there are no rents or profits from the apartment and plaintiff is in control of the parties' joint bank account; and (5) Stevie was not a gift and defendant adopted Stevie, which makes him the owner. In reply, plaintiff argues that defendant's defenses to a sale of the apartment at public auction (i.e., physical partition or private sale) and claim that the parties own the apartment as "joint tenants" are without merit, and that any issues as to the distribution of the sales proceeds, including discovery on such issues, are matters to be addressed before a Referee and do not bar partition. Plaintiff also reiterates his argument that, as the registered owner of Stevie, he is Stevie's legal owner of record.

On his motion to strike and to amend, defendant argues that the paragraphs 2 through 6 and 24 in the complaint should stricken because they contain scandalous allegations that defendant abuses drugs and is physically hostile to plaintiff, which are unnecessary and irrelevant to the partition cause of action. Defendant argues that the proposed amendments remove "irrelevant and unnecessary counterclaims", clarify affirmative defenses and raise appropriate counterclaims, which will "benefit" all parties and do not prejudice plaintiff. In opposition, plaintiff argues that the allegations as to defendant's purported drug use and hostile conduct are necessary to "justify" plaintiff's request for partition. Plaintiff argues that the motion to amend is procedurally and substantively defective because it is not supported by an affidavit of merit or a proposed answer "clearly showing the changes or additions" to be made.

Subsequent to his motion for summary judgment, plaintiff also moves, by order to show cause, for a preliminary injunction granting plaintiff "exclusive" use and occupancy of the apartment (relief not sought in the complaint), compelling defendant to return Stevie, and granting plaintiff "exclusive right to possession" of Stevie during the pendency of the action. The order to show cause application contained a proposed temporary restraining order for the same relief pending decision on the motion. The Court declined to sign the temporary restraining order as written, and, instead, ordered defendant to immediately return Stevie to plaintiff and enjoined defendant from using the sleeping loft in the studio apartment and from interfering with plaintiff's right to

be left alone. Plaintiff argues that he is entitled to a preliminary injunction excluding defendant from the studio apartment because defendant voluntarily moved out in September of 2014, has not contributed to the mortgage or maintenance payments for two years, and the studio apartment is too small for the parties to reside in together given the acrimonious relationship. Plaintiff also argues that an injunction is needed because defendant allegedly assaulted him in the middle of a night in July of 2014 and defendant accosted a neighbor in April of 2014. According to plaintiff, by e-mail dated December 29, 2014, defendant advised plaintiff that would be moving back in by January 8, 2015, thus precipitating the preliminary injunction motion. Plaintiff also submits the affidavit of a volunteer from the dog adoption agency stating that Stevie was a gift to plaintiff. In opposition, defendant argues that: he has an equal right to possession of the apartment as does plaintiff, as a matter of law; plaintiff failed to establish a threat of harm sufficient to exclude defendant from the apartment; the request for an order excluding defendant from the apartment goes beyond the complaint; there are sharp issues of fact as to Stevie's ownership; and granting a temporary injunction as to Stevie would constitute an improper grant of the ultimate relief sought in the complaint.

Discussion

Defendant's motion to amend his answer is denied. Defendant failed to submit an affidavit demonstrating the merit of the proposed amended answer, including the basis for defendant's change of position reflected in his proposed denial of several allegations to which he previously admitted, and the basis for the new affirmative defenses and counterclaims. See Marinelli v Shifrin, 260 AD2d 227, 229 (1st Dep't 1999) ("As this Court stated the principle, a motion for leave to amend a pleading 'must be supported by an affidavit of merits and evidentiary proof that could be considered upon a motion for summary judgment'."). In the absence of an affidavit of merit, defendant has failed to establish that his proposed amendments are not palpably insufficient or patently devoid of merit. See generally Tarantino v Queens Ballpark Co., LLC, 123 AD3d 1105 (2nd Dep't 2014) ("Court properly denied the plaintiff's cross motion for leave to amend the complaint to add certain party defendants, since the proposed amendment was palpably insufficient and patently devoid of merit."). Moreover, defendant failed to clearly show "the changes or additions to be made" to the answer, as required by CPLR 3025[b].

Defendant's motion to strike scandalous matter from the complaint is granted, as indicated below. Although the motion is untimely (see CPLR 3024(b) and (c)), defendant has demonstrated "good cause" (see CPLR 2004) to excuse his untimeliness in that he was a pro se defendant at the time he served his answer, and "good cause" for the motion in that the allegations of defendant's purported drug use and hostile behavior, which plaintiff admits are prejudicial, are wholly irrelevant and unnecessary to this partition action. Indeed, plaintiff's argument in support of his motion for summary judgment is that he "is a tenant in common with the right of possession, 'which is all that [is] needed to maintain the present action'," and there is no need for discovery because the "only element" of plaintiff's case (i.e., that the parties owned the apartment jointly) has been conceded. Thus, any allegations about defendant's conduct are neither necessary nor relevant to establishing entitlement to partition.

Plaintiff's motion for summary judgment is granted. Pursuant to RPAPL §§ 901(1) and 915, a co-owner of property who no longer desires to use or hold the property in common has the right to seek physical partition of the property or for sale thereof if physical partition would cause

"great prejudice." RPAPL § 901(1) ("A person holding and in possession of real property as a joint tenant or tenant in common, in which he has an estate…for life …, may maintain an action for the partition of the property, and for a sale if it appears that a partition cannot be made without great prejudice to the owners"); RPAPL § 915 (where physical partition cannot be made without "great prejudice to the owners," the court "shall direct that the property… be sold at public auction"); Chiang v Chang, 137 AD2d 371, 373 (1st Dep't 1988) ("It is also a generally held view that absent an express agreement to the contrary, a testamentary restriction against partition, or extreme prejudice to a co-owner, a partition is a matter of right of a co-owner who no longer desires to hold or use the property in common"); Manganiello v Lipman, 74 AD3d 667, 668 (1st Dep't 2010) ("Pursuant to both the common law and statute, a party, jointly owning property with another, may as a matter of right, seek physical partition of the property or partition and sale when he or she no longer wishes to jointly use or own the property."; physical partition of parties' condominium "could not be made without great prejudice").

Plaintiff established entitlement to partition by submitting undisputed proof that he is a co-owner of, and has a right to possession to, the parties' studio apartment. Whether the parties own the studio apartment as tenants-in-common or joint tenants with rights of survivorship is irrelevant and does not bar partition or sale of the apartment at public auction. RPAPL § 901(1). Additionally, because physical partition of the studio apartment, which has one entrance, one kitchen and one bathroom, would result in great prejudice, the apartment shall be sold at public auction. See Estate of Steingart v Hoffman, 33 AD3d 465, 466 (1st Dep't 2006) (sale of apartment necessary where parties "fundamentally disagree upon issues relating to the maintenance and repair of the apartment and, accordingly, that physical partition of the premises would have resulted in great prejudice"); Manganiello v Lipman, supra. Defendant's contention that the studio apartment could be divided into two smaller studios with the consent of the co-op board is not supported by proof of any such consent and fails to explain who would pay for the renovations and how the time and expense of such renovations would not constitute "great prejudice." Accordingly, this Court finds that plaintiff and defendant each own an undivided 50% interest in the 139 shares allocated to the studio apartment, which shall be sold at public auction by a Referee. RPAPL §§ 901(1), 915.

Because this action is both statutory and equitable in nature, notwithstanding this Court's finding that each party is a 50% owner of the apartment, an accounting of the expenses of the co-op must be conducted to determine distribution of the sales proceeds before entry of interlocutory judgment directing the sale. See McVicker v Sarma, 163 AD2d 721, 722 -723 (3rd Dep't 1990) ("It is axiomatic that in an action for partition the court may adjust the equities of the parties in determining the distribution of the sale proceeds"); Colley v Romas, 50 AD3d 1338, 1340 (3rdDep't 2008) ("we note that even when the rights of the parties are not controverted, the court is still obligated to ensure that there is an accurate accounting before entry of an interlocutory judgment directing their sale."). Pursuant to separate order issued simultaneously herewith, the Referee appointed to oversee the sale of the studio apartment is also appointed to oversee the accounting of expenses of the apartment, and shall hear and report on the issue of distribution of the sales proceeds. In hearing the evidence and making the report, the Referee shall apply the general rule that, absent an ouster or agreement to the contrary, tenants in common equally bear the costs incurred in maintaining the property. See Degliuomini v Degliuomini, 45 AD3d 626, 629 (2nd Dep't 2007) ("The evidence at the hearing supported the referee's finding that the

plaintiff, who failed to establish an ouster, was responsible for one half of the payments toward the real estate taxes and the mortgage"). In this regard, the Referee shall make note of this Court's finding that there has been no ouster of defendant by plaintiff – indeed, defendant admits that he voluntarily vacated the apartment in September 2014. However, notwithstanding defendant's admission in his answer that he is responsible for one-half of the monthly maintenance and Chase loan payments, in determining whether plaintiff is entitled to be reimbursed for "expenditures made in excess of his obligations" (i.e., expenditures made over his 50% share of all costs for the studio apartment, including the contract down-payment, all closing costs, painting and floor refinishing costs), the Referee may consider proof in support of defendant's allegation that the parties agreed that defendant could pay less than half of his 50% share in exchange for his taking care of "household responsibilities" and Stevie. See generally Dee v Rakower, 112 AD3d 204, 210-211 (2nd Dep't 2013) ("[W]hile cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation, neither does cohabitation disable the parties from making an agreement within the normal rules of contract law").

As to Stevie, the parties each submit proof raising a question of fact as to Stevie's ownership – plaintiff provides sworn statements that Stevie was a gift and the NYC dog license showing that he is Stevie's "registered owner," and defendant provides his own sworn statement ostensibly refuting plaintiff's claim that Stevie was a gift and insurance and rabies vaccination documents as proof that he is Stevie's owner – requiring a full, one day hearing. See Travis v Murray, supra 42 Misc3d at 456 (court directed a full one-day hearing on issue of ownership of family dog; "whether plaintiff bought Joey from the pet store with her own funds or whether defendant received him from plaintiff as a gift is only one factor to consider when determining what becomes of him"). Consistent with Travis v Murray, in making its determination, this Court will apply the standard of "what is best for all concerned," and the parties each have the burden of proving why Stevie will have "a better chance of living, prospering, loving and being loved" in the care of one partner as opposed to the other. Travis v Murray, supra 42 Misc3d at 460.

Finally, plaintiff is not entitled to a preliminary injunction excluding defendant from the studio apartment and granting plaintiff an "exclusive right of possession" to Stevie pending determination of this action. Plaintiff failed to establish a likelihood of success on the merits of these claims. See Armendariz v Luna, 121 AD3d 629, 629 (1st Dep't 2014) (preliminary injunction properly denied upon the ground that plaintiffs failed to establish likelihood of success on their breach of contract claim). As a co-owner of the studio apartment, defendant has an equal right to possess and reside in the apartment as does plaintiff. While it is undisputed that the parties' relationship has been acrimonious for some time, the single domestic incident report filed by plaintiff in July 2014 – after commencement of the instant action and after 14 years of no such reports having been filed – is insufficient to prove that plaintiff was in imminent harm by reason of defendant's return to the apartment. Indeed, this Court notes that the parties continued to live together without incident for several months after the plaintiff filed the report, until September 2014, when defendant moved out. As for Stevie, as explained above, plaintiff has not established his right to possession of Stevie as a matter of law, and this issue must be determined at a hearing. Additionally, the preliminary injunction as to Stevie is subject to denial because it seeks the ultimate relief. See Village of Westhampton Beach v Cayea, 38 AD3d 760, 762 (2nd Dep't 2007) ("Mandatory injunctive relief should not be granted pendente lite without a showing

of extraordinary circumstances where the status quo would be disturbed and the plaintiff would be granted the ultimate relief in the action").

However, solely in order to maintain the status quo pending final determination of this action, the temporary restraining order, issued on January 6, 2015, enjoining defendant from use of the sleeping loft in the apartment and directing defendant to return Stevie to plaintiff's care in the apartment shall remain in full force and effect.

Conclusion

Plaintiff's motion for summary judgment is granted in part as to his first cause of action for a partition to the extent of adjudging and declaring that the parties each own an undivided 50% interest in the 139 shares in the co-op allocated to the studio apartment number 517 at 67 East 11th Street, New York, New York, which shall be sold at public auction by a Referee; and plaintiff's second cause of action for an accounting of the expenses of the studio apartment and distribution of the proceeds of sale thereof, is hereby referred to a Referee to hear and report, pursuant to separate order issued simultaneously herewith.

The issue of ownership of Stevie is set down for a one day **hearing** before this Court, Part 37, 80 Centre Street, Room 328 on **May 22, 2015 at 9:30 a.m.**

Defendant's motion to amend the answer is denied. Defendant's motion to strike scandalous matter from the complaint is granted, and paragraphs 2 through 6 and 24 of the complaint are hereby deemed stricken in their entirety, and the Clerk is directed to amend the file accordingly.

Plaintiff's motion for a preliminary injunction is denied. The temporary restraining order issued on January 6, 2015 remains in full force and effect pending final determination of this action.

Dated: March 2, 2015

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Arthur F. Engoron, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

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ROGER DOUGLAS GELLENBECK a/k/a R. DOUGLAS GELLENBECK a/k/a DOUGLAS GELLENBECK,

Index Number: 154365/2014

Plaintiff,

ORDER OF REFERENCE TO HEAR AND REPORT

- against -

Decision and Order

MICHAEL WHITTON,

Defendant.

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This matter having come on before this Court on plaintiff's motion for summary judgment on his complaint; and defendant having opposed the motion; and this Court having issued a Decision and Order, dated March 2, 2015, granting plaintiff's motion for summary judgment in part as to plaintiff's first cause of action for partition of the parties' studio apartment, number 517 located at 67 East 11th Street, New York, New York (the "studio apartment"), to the extent of: adjudging and declaring that the parties each own an undivided 50% interest in the 139 shares in the co-op allocated to the studio apartment, which shall be sold at public auction by a Referee; and referring plaintiff's second cause of action for an accounting of the expenses of the studio apartment and distribution of the proceeds of sale thereof, to a Referee to hear and report, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) (a) the issue as to whether the parties agreed that defendant could pay less than half of his 50% share of the expenses for the studio apartment, including less than 50% of the contract down-payment, closing costs and painting and repair costs, the monthly co-op maintenance charges and Chase mortgage and home equity line of credit payments, in exchange for his taking care of "household responsibilities" and Stevie, notwithstanding defendant admission in his answer that he is responsible for 50% of such monthly charges, and, if so, then the proceeds of sale of the studio apartment shall be divided equally between the parties after payment of the closing costs of such sale and pay off of the Chase mortgage and home equity line of credit;

(b) if the Referee determines that the parties did not agree that defendant could pay less than his 50% share of all costs for the studio apartment, then the Referee shall determine the amount plaintiff is entitled to be reimbursed for expenditures he made on behalf of the studio apartment in excess of his obligation to pay 50% of all expenses therefor, including payments made by plaintiff in excess of 50% for: the contract down-payment; all closing costs for the purchase of the studio apartment; painting and floor refinishing costs prior to when the parties moved into the studio apartment; the monthly co-op maintenance charges; and the monthly Chase mortgage loan and home equity line of credit payments. The sum determined by the Referee to be due to plaintiff in reimbursement will be paid to plaintiff from the proceeds of sale of the studio apartment after first using such proceeds to pay the costs of such sale and to pay off the Chase mortgage and home equity line of credit, with the any remaining sales proceeds to be split equally between the parties; and

(2) the issue as to whether an appraisal of the studio apartment is necessary to set a minimum selling price.

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR.

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spred@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of the Court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above, and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days for the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referee Part, and it is further

ORDERED that the plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendant shall serve objections to the proposed accounting within 20 days from service of plaintiff's papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above, and it is further

ORDERED that the parties shall appear for the reference hearing, including with all

witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part, and it is further

ORDERED that, the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320(a)) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion, and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts, and it is further

ORDERED that, unless otherwise directed by this Court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this Court thereon.

Dated: March 2, 2015

ENTER:

Arthur F. Engoron, J.S.C.