

Mubarez v Rabah

2019 NY Slip Op 30049(U)

January 3, 2019

Supreme Court, New York County

Docket Number: 653317/2016

Judge: Jennifer G. Schechter

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
ABDUL MUBAREZ,

Index No.: 653317/2016

Plaintiff,

DECISION & ORDER

-against-

EHAB ZIAD RABAH et al.,

Defendants,

VC MANAGEMENT INC., F.A.M. CAPITAL LLC and
ATM WIRELESS, LLC,

Nominal Defendants.
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EHAB ZIAD RABAH and FRED WICH, individually and
derivatively on behalf of ATM WORLD CORP., F.A.M.
CAPITAL LLC and ATM WIRELESS, LLC,

Counterclaim-Plaintiffs,

-against-

ABDUL MUBAREZ, ABED AYESH, ATM WORLD
CORP., F.A.M. CAPITAL LLC and ATM WIRELESS
LLC,

Counterclaim-Defendants,

ATM WORLD CORP., F.A.M. CAPITAL LLC and
ATM WIRELESS, LLC,

Nominal
Counterclaim-Defendants.
-----X

JENNIFER G. SCHECTER, J.:

Counterclaim-Defendant Abed Ayesh moves, pursuant to CPLR 3211(a)(1) and (7), to
dismiss the second, eighth and tenth counterclaims pleaded as against him by Counterclaim-

Plaintiffs Ehab Ziad Rabah and Fred Wich in their Answer¹ to the Amended Complaint (AC) filed by plaintiff Abdul Mubarez. Rabah and Wich oppose the motion. For the reasons that follow, Ayesh's motion is granted in part.

I. Factual Background & Procedural History

The facts pleaded, which are accepted as true for this motion, are taken from the Answer (Dkt. 31)² and from Rabah's affidavit (Dkt. 59). The documentary evidence submitted by the parties is also addressed below.

Ayesh, Rabah, Wich and Mubarez (Shareholders), in conjunction with six New York entities in which the Shareholders own stock or membership interests—F.A.M. Capital LLC (FAM), ATM Wireless LLC (Wireless), VC Management Inc. (VC), ATM World Corp. (ATM World), Atlas ATM Corp. (Atlas) (collectively, the Companies) and MAS Capital Group, Inc. (MAS) (*see* AC ¶ 9; Answer ¶¶ 9, 161-165)—are involved in the ATM industry in New York and nearby states. To settle prior litigation, the Shareholders entered into a contract titled “Binding Memorandum of Understanding” (MOU) dated October 31, 2014 (the MOU Date) (Answer ¶¶ 169-172; Dkt. 32 [MOU]). Ayesh executed the MOU in his individual capacity (MOU at 13). Wich executed the MOU in his individual capacity and as FAM's CEO (*id.*). Mubarez executed the MOU in his individual capacity, as managing member of Wireless and as chairman of ATM World and Atlas (*id.*). Rabah executed the MOU in his individual capacity and as president of VC

¹ The AC also names Anna Rabah and Tarik Rabah, Ehab Ziad Rabah's wife and brother, respectively, as defendants. This decision refers to Ehab Ziad Rabah as Rabah, and to Anna Rabah and Tarik Rabah by their full names. Anna Rabah and Tarik Rabah joined in the Answer filed by Rabah and Wich but asserted no counterclaims.

² References to “Dkt.” followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing system (NYSCEF). Page numbers refer to the e-filed PDF.

and MAS (*id.*). Rabah wholly owns, operates and controls MAS (AC ¶ 9; Answer ¶ 9). Rabah and Wich allege their own compliance with the MOU (Answer ¶ 206).

Pursuant to paragraph 3 of the MOU, which describes a reallocation of ownership interests in the Companies (the Ownership Exchange) that Rabah and Wich seek to enforce (Answer ¶¶ 193-204), each of the Shareholders has a 25% membership interest in each of FAM and Wireless. As to VC's shares, Rabah owns 30.25%, while the remaining Shareholders each own 23.25%. Mubarez owns 53.68% of the shares of each of ATM World and Atlas, while Ayesh, Wich and Rabah divide the remaining shares of each corporation among them (23.16%, 20.48% and 2.68% respectively). Finally, as required by paragraph 3 of the MOU, the Shareholders formed VCMG LLC (VCMG), a New York LLC, to hold their interests in certain ATM machines identified in Schedule 2 to the MOU (Answer ¶ 173). Pursuant to the MOU, Rabah owns a 59% membership interest in VCMG, Wich and Mubarez each own 17% and Ayesh owns 7% (Answer ¶ 174).

Paragraphs 4 and 4(a)-4(m) of the MOU require the Shareholders and signatory entities to engage a third-party accountant to examine the books and records of FAM, Wireless and VC from March 29, 2010 until the MOU Date and to compute (1) the profits or losses that accrued to VC from operating VCMG's ATM machines from March 29, 2010 until the MOU Date; and (2) the financial impact through the MOU Date of the Ownership Exchange, effective January 1, 2011 (the Reconciliation). A final and binding determination of the net amounts owed to each party to the MOU would result. Paragraph 21 of the MOU states that FAM, Wireless and VC would each bear one-third of the cost of the accounting expenses incurred with respect to the Reconciliation.

Paragraph 12 of the MOU provides:

Mubarez will have the primary day to day operating responsibility for [ATM World] and Atlas and Rabah will have the primary day to day operating responsibility for FAM, Wireless, VC and [VCMG], but neither Mubarez nor Rabah will be entitled to make any

decisions that result in their being favored over other Shareholders, Notwithstanding the foregoing, all Shareholders will be entitled to have access to and be provided any and all financial or other information related to the Companies that they request, including access to all processor reports, and all Shareholder Decisions (defined below) will be decided as provided in paragraph 13 of this MOU (Dkt. 32 [MOU] at 9).

Paragraph 13 of the MOU provides:

All Shareholder Decisions will be made only by the holder(s) of a majority of the outstanding ownership interests of the applicable Company after a full discussion open to all Shareholders, Shareholder Decisions are defined as any expenditure involving a dollar amount of \$2,000 or more outside of the payment of business expenses incurred in the ordinary course of business or any decision adversely impacting any individual Shareholder. The Shareholders agree that a breach of the provisions of this paragraph 13 would result in irreparable harm and damages would be difficult if not impossible to ascertain. Accordingly, in addition, to, and not in substitution for any other remedy available in law or equity, upon each violation of the provisions of this paragraph 13 each of the Shareholder(s) participating in the Shareholder Decision giving rise to such breach will also pay an aggregate of ten thousand dollars (\$10,000) to the excluded Shareholder(s) out of salaries otherwise due the participating Shareholder(s), which the Parties acknowledge is fair, reasonable and not a penalty (*id.*).

Paragraph 16 of the MOU provides:

The amounts of salaries and other compensation, if any, currently paid to each of the Shareholders by each of the Companies is as set forth on Schedule 4 attached hereto and cannot be changed other than by consent of a majority of the shares of the affected Company. Future salary changes will be based on work effort and value added rather than being tied to ownership percentage. No salaries/guaranteed payments will be paid by Wireless to any Wireless owner, but Wireless will pay distributions to each Wireless owner pro-rata equal to twelve thousand and five hundred dollars (\$12,500) per month (*id.* at 10; *see also id.* at 33 [Schedule 4 to MOU]).

Rabah and Wich allege that an accountant, Don Klareich, was previously retained to perform the Reconciliation pursuant to paragraph 4 of the MOU (Answer ¶ 210). However, Mubarez and Ayesch allegedly undermined and frustrated these efforts by refusing to provide

information necessary for the Reconciliation (*id.* ¶¶ 210-212). Mubarez also allegedly excluded Wich and Rabah from access to ATM World, FAM and Wireless's books and records, bank accounts, financial information and other information (*id.* ¶¶ 269-272).

Rabah and Wich further allege that Mubarez made excessive ATM World, FAM and Wireless distributions to himself and Ayesh and made insufficient distributions from those entities to Wich and Rabah (Answer ¶ 275). In 2016, Mubarez allegedly disbursed ATM World dividends of \$223,350 to himself, \$96,304 to Ayesh, \$40,960 to Wich (who was allegedly owed \$85,197) and \$0 to Rabah (who was allegedly owed \$11,149) (*id.* ¶¶ 327-331). In 2017, Mubarez allegedly disbursed ATM World dividends of at least \$160,000 to himself and Ayesh, but *none* to Wich and Rabah (*id.* ¶¶ 332-333). Moreover, since October 31, 2014, Rabah allegedly received only "a few hundred dollars" of ATM World dividends and no Wireless distributions in recent years, despite holding a 25% membership interest in Wireless (*id.* ¶¶ 334-336). Rabah and Wich allege that Mubarez and Ayesh each "participated" in the decisions to disburse such dividends (*id.* ¶ 338). Rabah attests that Ayesh recently received \$15,000 from FAM, which were distributions from Wireless (Dkt. 59 [Rabah Aff.] ¶¶ 32-34). Rabah also attests that Wich received the same (but did not cash the checks) and that Rabah received no such distributions (*id.*; *see also* Dkts. 105-106 [checks from FAM to Wich]).

On June 22, 2016, Mubarez and Ayesh initiated this litigation by summons and complaint (Dkt. 1). On December 15, 2016, the complaint was amended to omit Ayesh as a plaintiff (Dkt. 9 [AC]). The AC asserts eighteen causes of action, including a first cause of action for a declaratory judgment that the MOU is a nullity and unenforceable as a matter of law and an eighteenth cause of action against Rabah for breach of the MOU. On January 11, 2017, defendants Rabah, his wife Anna Rabah, his brother Tarik Rabah, ATM Exchange (an entity through which, the AC alleges,

Rabah conducts business) and MAS moved to dismiss the first cause of action and ten other causes of action sounding in conversion, breach of fiduciary duty and tortious interference with contract. On August 24, 2017, the court dismissed the first, fourth and ninth through seventeenth causes of action and held that the MOU was a binding contract on its face, not an unenforceable “agreement to agree” as Mubarez had argued (Dkt. 27 [order]; Dkt. 29 [transcript] at 3-6).

On October 20, 2017, defendants filed their Answer (Dkt. 31) to the eight remaining causes of action. Wich and Rabah assert twelve counterclaims, including (a) a first against Mubarez and Ayesh for a declaratory judgment that the MOU is valid and binding; (b) a second counterclaim against Mubarez and Ayesh for specific performance and injunctive relief requiring Mubarez and Ayesh to cooperate with the Reconciliation; (c) an eighth counterclaim, individually and on behalf of FAM and Wireless, against Mubarez, Ayesh, ATM World, Wireless and FAM for specific performance and injunctive relief directing Mubarez to transfer operational control over FAM and Wireless and to provide financial and other information to Wich and Rabah, and directing Mubarez and Ayesh to disgorge improper ATM World, Wireless and FAM dividends and to remit unpaid dividends to Wich and Rabah; (d) a ninth counterclaim for a common law accounting of ATM World, FAM and Wireless’s finances, including disgorgement of improper dividends allegedly paid to Mubarez and Ayesh; and (e) a tenth counterclaim for breach of the MOU against Mubarez and Ayesh. The remaining counterclaims are not asserted against Ayesh.

On February 13, 2018, the Shareholders agreed, by so-ordered stipulation (the Stipulation), that an accountant would conduct the Reconciliation according to paragraphs 4, 4(a), 4(b), 4(c), 4(e), 4(g), 4(i), 4(j), 4(k) and 4(m) of the MOU (Dkt. 42 [Stipulation] at 1). The Shareholders reserved their respective rights as to when and at what interest rate—the MOU specifies 24% per annum—any amounts owed would be paid. The Shareholders agreed to provide all relevant

documents in their custody and control within 15 days of the accountant's designation, and further agreed as follows:

The parties enter into this stipulation without prejudice to challenge and/or enforce the validity of the MOU or any of its provisions, and do not concede the validity of the MOU. The parties reserve the right to challenge and/or enforce the MOU and whether it is in force and effect (*id.* at 2).

The Stipulation neither incorporated paragraph 21 of the MOU nor explained how accounting expenses arising from the Reconciliation would be funded.

By April 2018, the Shareholders agreed that EisnerAmper LLP (an accounting firm) would conduct the Reconciliation and that FAM and VC would each pay one-third of the accounting expenses, but vigorously disputed who would fund the remaining one-third in light of Wireless' lack of a bank account from which to disburse funds. At a July 11, 2018 phone conference, the Shareholders agreed that FAM would pay the remaining one-third of the Reconciliation accounting expenses on behalf of Wireless, as a credit against amounts owed by FAM to Wireless (Dkt. 117 [July 12, 2018 order] at 1).

Ayesh moves to dismiss the second, eighth and tenth counterclaims as against him.

II. Discussion

a. Legal Standard – Motion to Dismiss

On a motion to dismiss, the facts alleged in the pleading are accepted as true as are all reasonable inferences in the proponent's favor that may be gleaned from them (*see Amaro v Gani Realty Corp.*, 60 AD3d 491, 492 [1st Dept 2009]; *Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003]). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration" (*Skillgames*, 1 AD3d at 250). Dismissal must be denied if the pleading sets forth a viable cause of action (*see id.*). Deficiencies in the pleading,

moreover, may be remedied by proper affidavits (*see Amaro*, 60 AD3d at 492; *see also Leon v Martinez*, 84 NY2d 83, 88 [1994]). Where dismissal is sought based upon documentary evidence under CPLR 3211(a)(1), the motion will succeed if “the documentary evidence utterly refutes [the party’s] factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002], citing *Leon*, 84 NY2d at 88 [1994]).

b. Second Counterclaim – Paragraph 4 of the MOU

The second counterclaim for specific performance and injunctive relief seeks a court order directing Mubarez and Ayesh to cooperate with the Reconciliation pursuant to the MOU by providing information, documents, and books and records and seeks an order enjoining them from interfering with the Reconciliation.³ “To plead a cause of action for a permanent injunction, a plaintiff must allege, *inter alia*, ‘[a] violation of a right presently occurring, or threatened and imminent’” (*Lemle v Lemle*, 92 AD3d 494, 500 [1st Dept 2012], quoting *Elow v Svenningsen*, 58 AD3d 674, 675 [2d Dept 2009]). Moreover, “specific performance is an equitable remedy for a breach of contract, rather than a separate cause of action” (*Cho v 401-403 57th St. Realty Corp.*, 300 AD2d 174, 175 [1st Dept 2002]).

Ayesh argues that the so-ordered Stipulation renders the second counterclaim moot because it provides for the Reconciliation to be conducted pursuant to the MOU, because enforcement of the Stipulation is mandatory and because dismissal of the second counterclaim would serve judicial

³ The second counterclaim also seeks damages incidental to Mubarez and Ayesh’s alleged misconduct in connection with efforts to conduct the Reconciliation, including attorneys’ fees and costs. “Under the general rule, attorney’s fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule” (*Hooper Assocs., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]). To the extent Rabah and Wich seek *other* damages relating to Mubarez and Ayesh’s alleged breach of ¶ 4 of the MOU, they may move to amend their counterclaims (whether to add another breach of contract counterclaim or to supplement the tenth counterclaim).

economy. Rabah and Wich argue that they have not yet received all the relief requested, the Reconciliation has not been completed and Ayesh continues to reserve his rights to challenge the MOU. However, the opposition brief (Dkt. 116 at 13-14) complains only that information relating to the closure of Wireless's bank account—which reportedly occurred *after* the MOU Date (*see* Dkt. 59 [Rabah Aff.] ¶ 38)—has not been provided. The relevance of information relating to the closure of Wireless's bank account was limited to the Reconciliation funding issue, which the second counterclaim does not address. The information is not otherwise necessary to conduct the Reconciliation, whose accounting period *ends* on the MOU Date. Moreover, after opposition papers were filed, the court ordered FAM to fund Wireless' one-third of the Reconciliation expenses as a credit against amounts owed to FAM by Wireless, consistent with the parties' agreement in a July conference (Dkt. 117). Ayesh's continued reservation of rights to challenge the *MOU's* enforceability is not relevant to this counterclaim, which seeks relief solely relating to the *Reconciliation* that has, by all accounts, been granted pursuant to the so-ordered Stipulation. Accordingly, the second counterclaim is dismissed without prejudice.⁴

c. Eighth Counterclaim – Paragraph 12 of the MOU

The eighth counterclaim, asserted individually and derivatively⁵ on behalf of FAM and Wireless, alleges that, since the MOU Date, and in violation of paragraph 12 of the MOU, Mubarez paid himself and Ayesh excessive ATM World, FAM and Wireless dividend distributions and failed to make owed dividend distributions to Wich and Rabah (Answer ¶¶ 275-284, 294[ii]). The remaining allegations asserted in connection with the eighth counterclaim are against Mubarez

⁴ If Rabah and Wich can state a claim for injunctive relief that falls outside the scope of the so-ordered Stipulation, they may move to replead the second counterclaim.

⁵ Ayesh does not dispute that the Answer adequately pleads demand futility (Answer ¶¶ 182-191).

only, including allegations that Mubarez excluded Wich and Rabah from access to bank accounts and information relating to FAM, ATM World and Wireless (*see id.* ¶¶ 266-274, 286-294).

Paragraph 12 of the MOU provides:

Mubarez will have the primary day to day operating responsibility for [ATM World] and Atlas and Rabah will have the primary day to day operating responsibility for FAM, Wireless, VC and [VCMG], but neither Mubarez nor Rabah will be entitled to make any decisions that result in their being favored over other Shareholders, ... [A]ll Shareholders will be entitled to have access to and be provided any and all financial or other information related to the Companies that they request ... (Dkt. 32 [MOU] at 9 [emphasis added]).

Ayesh argues that the Stipulation granted access to financial information to all Shareholders and that, in any event, the eighth counterclaim fails to state a claim because Ayesh is not alleged to have inhibited such access. The court agrees. However, Ayesh does not address the allegations of wrongfully disbursed dividends and distributions (Answer ¶¶ 275-284, 294[ii]).

Nevertheless, the eighth counterclaim is improperly framed as to the allegations of wrongfully disbursed dividends and distributions as one for specific performance and injunctive relief (*see Cho*, 300 AD2d at 175 [“[S]pecific performance is an equitable remedy for a breach of contract,⁶ rather than a separate cause of action”]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 415 [2001] [“In general, specific performance will not be ordered where money damages ‘would be adequate to protect the expectation interest of the injured party’” (quoting Restatement [Second] of Contracts § 360)]; *Parry v Murphy*, 79 AD3d 713, 716 [2nd Dept 2010] [permanent injunctive relief is not warranted where damages award would fully compensate the plaintiff]). These allegations are also improperly asserted as both a direct and derivative claim (*see*

⁶ The eighth counterclaim does not state a claim for breach of contract against Ayesh because it does not specify any action or inaction by Ayesh that breached paragraph 12 of the MOU.

Serino v Lipper, 123 AD3d 34, 39–40 [1st Dept 2014] [direct “claim[s] must be factually supportable by more than complaints that conflate [both] derivative and individual rights”]).

Accordingly, the eighth counterclaim is dismissed without prejudice as against Ayesh and *sua sponte* dismissed without prejudice as against Mubarez *solely* as to the allegations of improperly disbursed dividends and distributions. Leave is granted to Rabah and Wich to amend their answer to add one or more counterclaims seeking monetary damages for the alleged improperly disbursed dividends and distributions. Each such counterclaim must, however, specify (1) a proper cause of action (e.g., breach of contract, breach of statutory law,⁷ breach of fiduciary duty or unjust enrichment); (2) against whom it is being asserted; and (3) whether it is asserted directly *or* derivatively (and if derivatively, on behalf of which LLC or corporation).

⁷ NY LLC Law applies to FAM and Wireless, as New York LLCs. LLC Law § 504 states:

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, if any, in the manner provided in the operating agreement If the operating agreement does not so provide, distributions shall be allocated on the basis of the value, as stated in the records of the limited liability company, if so stated, of the contributions of each member ...

Moreover, “at the time a member becomes entitled to receive a distribution, such member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution” (LLC Law § 506).

NY Business Corporation Law, meanwhile, applies to ATM World, as a New York corporation. BCL § 510(a) states as follows:

A corporation may declare and pay dividends or make other distributions in cash or its bonds or its property, including the shares or bonds of other corporations, on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in the certificate of incorporation.

d. Tenth Counterclaim – Breach of Paragraph 13 of the MOU

The tenth counterclaim, asserted individually by Wich and Rabah, asserts a breach of the MOU against Mubarez and Ayesh, alleging that Ayesh violated of paragraph 13 of the MOU by having “participated” in the “Shareholder Decisions” to make improper distributions from ATM World, FAM and Wireless without a full discussion open to all Shareholders (Answer ¶¶ 321-338).

Ayesh argues that the tenth counterclaim fails to state a claim against him because—apart from alleging that he “participated” in certain decisions—it is not alleged that he “did anything” in violation of paragraph 13 of the MOU or that he excluded other Shareholders from discussions. Ayesh argues further that he was entitled to vote as a shareholder (or member) of ATM World, FAM and Wireless, and that paragraph 13 required, rather than prohibited, his participation.

Paragraph 13 of the MOU provides:

All Shareholder Decisions will be made only by the holder(s) of a majority of the outstanding ownership interests of the applicable Company after a full discussion open to all Shareholders. ***Shareholder Decisions are defined as any expenditure involving a dollar amount of \$2,000 or more ... or any decision adversely impacting any individual Shareholder*** (MOU at 9 [emphasis added]).

The penalty for each Shareholder that participates in a Shareholder Decision in breach of paragraph 13 is \$10,000 “out of salaries otherwise due the participating Shareholder(s),” plus any other remedy available in law or equity (*id.*). Thus, any Shareholder “participating” in any decision adversely impacting any individual Shareholder violates and may be held liable under paragraph 13 of the MOU if such decision was not made by a majority after a full discussion open to all Shareholders.

Pursuant to CPLR 3013, “Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.”

To properly plead a breach of contract, the pleading must set forth “the existence of a valid contract, plaintiff’s performance of his obligations thereunder, defendant’s breach ..., and resulting damages” (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [1st Dept 2007]).

The allegations that Ayesh “participated” in decisions to make distributions to some shareholders or members to the exclusion of others and that he actually received such improper distributions are sufficient to support an inference that he breached paragraph 13 of the MOU. Moreover, one may plausibly interpret the contractual term “participating” to include acceptance of disbursed funds (e.g., by cashing a check). The tenth counterclaim, therefore, survives. Accordingly, it is

ORDERED that counterclaim-defendant Abed Ayesh’s motion to dismiss is granted without prejudice with respect to both the second and eighth counterclaims asserted by counterclaim-plaintiffs Ehab Ziad Rabah and Fred Wich and is otherwise denied; and it is further

ORDERED that the second counterclaim and portions of the eighth counterclaim of Rabah and Wich seeking disgorgement of and/or payment of distributions and dividends are dismissed as against Abdul Mubarez without prejudice; and it is further

ORDERED that Rabah and Wich are granted leave to file an amended answer to add new counterclaims relating to payment or nonpayment of ATM World, FAM and/or Wireless distributions and/or dividends in accordance with the guidance set forth in this decision; and it is further

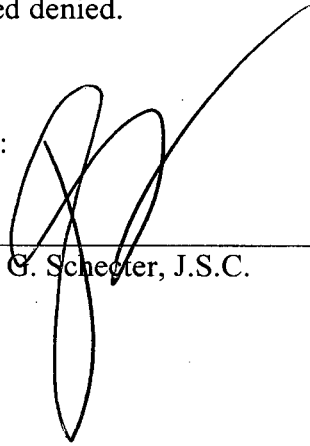
ORDERED that the amended answer shall be e-filed within 21 days of the entry of this order on the NYSCEF system; and it is further

ORDERED that the amended answer shall be deemed served upon all appearing parties once it is e-filed; and it is further

ORDERED that, if Rabah and Wich fail to file an amended answer in conformity with the deadline set forth herein, then leave to amend shall be deemed denied.

Dated: January 3, 2019

ENTER:



Jennifer G. Schechter, J.S.C.