

**Wimbledon Fund, SPC (Class TT) v Weston Capital Partners Master Fund II, Ltd.**

2019 NY Slip Op 30863(U)

April 4, 2019

Supreme Court, New York County

Docket Number: 160576/2017

Judge: Saliann Scarpulla

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Services Inc. (“SIP”).<sup>2</sup> Weston moves, pursuant to CPLR §§ 3211 (a)(1), (2), (3), (5) and (7), to dismiss the petition.

### **Background**

Class TT, a segregated portfolio in The Wimbledon Fund, SPC, alleges that it was the victim of a wide-ranging fraudulent scheme which caused its investors to lose more than \$17 million. Albert Hallac ("Hallac"), Jeffrey Hallac ("Jeffrey"), and Keith Wellner ("Wellner") managed Class TT through Weston Capital Asset Management, LLC and its related affiliate Weston Capital Management LLC.

As per the petition, Class TT’s investment managers, including Hallac and Wellner, caused Class TT to transfer \$17.7 million to SIP pursuant to a Note Purchase Agreement (the “NPA”), dated November 14, 2011, “which ostensibly allowed Class TT to purchase so-called ‘reference notes’ issued by SIP.” However, Class TT’s monies were not invested in accordance with the NPA. In fact, once Class TT’s funds were received, Hallac, Wellner and David Bergstein (“Bergstein”) (SIP’s president, secretary and 25-50% shareholder), immediately authorized a series of transfers to third parties, allegedly without any consideration to SIP or Class TT. These transfers resulted in the depletion of SIP’s bank accounts shortly after it received Class TT’s funds, rendering it either insolvent or with an unreasonably minimal amount of capital.

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<sup>2</sup> Class TT received its \$23 million judgment against SIP as a result of another New York litigation, index no. 650446/2013, on November 24, 2015.

The petition alleges that this scheme benefitted Partners II<sup>3</sup>, another investment fund managed by Hallac, because it received \$3,525,675 of Class TT's funds through three fraudulent transfers from SIP. Bank records show that the money was wired to Partners II. SIP did not owe any debts to Partners II and no consideration was received in exchange for the funds. Instead, the funds were transferred to Partners II to repay a loan that Partners II had made to Arius Libra<sup>4</sup> with SIP acting as the conduit for the effectuation of the alleged fraudulent transfers.

Based on this scheme, the Securities and Exchange Commission filed complaints against Bergstein, Hallac, and Wellner and the United States Attorney for the Southern District of New York brought criminal charges against them. Bergstein was found guilty after a jury trial before Judge Castel on March 1, 2018 and was sentenced to 8 years. Hallac and Wellner both plead guilty to criminal fraud.

During his plea allocution, Hallac admitted to participating in "a scheme to defraud Weston investors" by, among other things, failing to disclose to investors the transfer of moneys from one investment fund to benefit the investors of another fund. Moreover, Hallac specifically admitted to using Class TT's \$17.7 million investment to repay part of the Partners II Loan.

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<sup>3</sup> Partners II was WFMF's predecessor in interest. Weston was assigned WFMF's interest in Partners II pursuant to an assignment agreement dated October 16, 2015.

<sup>4</sup> Arius Libra was a sham entity in which SIP had no interest. Hallac, Jeffrey, and Wellner served as directors of Arius Libra, along with Bergstein and Kia Jam.

## **Related Proceedings**

A discussion of the petition before me requires a brief description of two other proceedings that stem from the same scheme.

### a. Turnover Proceeding before Judge Kornreich – The Class C Decision

In May 2016, WFMF commenced a turnover proceeding relating to the above-discussed scheme. *See Wimbledon Financing Master Fund, Ltd. v. The Wimbledon Fund, SPC*, No. 652771/2016, 2016 WL 7440844 (N.Y. Sup. Dec. 22, 2016). In that case, WFMF alleged that Arius Libra transferred Partners II's funds to parties – including another Weston-managed entity, Class C – to whom Arius Libra owed no debts and in exchange for no consideration. *Id.* at \*1-2. WFMF sought the recovery of a \$700,000 payment that Class C received from Arius Libra in satisfaction of a loan that Class C made to Gerova Financial Group, Ltd.. *Id.* at \*5. Acknowledging that Class C was also a victim of fraud, Justice Kornreich stated that “[n]onetheless, it had no right to receive money from Arius Libra without providing Arius Libra with consideration.” *Id.* at \*5, fn.7. Justice Kornreich granted WFMF's petition and held that Class C's receipt of the \$700,000 payment was both a constructive and intentional fraudulent conveyance.<sup>5</sup>

### b. The California Action and Settlement Agreement

In August 2015, Class TT commenced litigation in the United States District Court for the Central District of California (the “California Action”) to recover more than \$17 million of its investors' funds that were stolen by several wrongdoers, including

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<sup>5</sup> The First Department affirmed Justice Kornreich's decision on June 7, 2018.

Bergstein and SIP. A settlement agreement, dated November 16, 2017, was reached between Class TT, Bergstein, Graybox and SIP (the "Settlement Agreement") and post-dated Justice Kornreich's decision.

Under the Settlement Agreement,

The first FIVE HUNDRED THOUSAND (\$500,000.00) of the Settlement Proceeds referenced... above shall be held by Cole Schotz (as counsel for the TT Fund) as a retainer to fund litigation costs and expenses... in connection with the prosecution of TT Fund's claims and causes of action against Weston Capital Partners Master Fund II, Ltd. ("Partners II"), Paul Parmar ("Parmar"), and any other applicable entities, assignees, successors in interest and/or subsequent transferees related to the transfer of funds received directly or indirectly from SIP, as deemed appropriate by TT Fund...

The Settlement Agreement contained the following release:

Upon TT Fund's receipt of the full amount of Settlement Proceeds..., TT Fund will forever release, discharge, waive and acquit Bergstein, Graybox, SIP, Scher, Cascade, Jannol, Swartz and Grunfeld, and each of said individuals' and entities' agents, representatives, employees, officers, directors, shareholders, members, partners, subsidiary entities, parent entities, affiliate entities, lawyers, successors, and assigns, excluding, to the extent not specifically released herein, Jam and IA... from any and all claims, demands, suits, debts, causes of action, defaults, breaches, violations and liabilities of every conceivable character or nature, whether known or unknown, which exist as of the date of this Agreement and arise from or directly or indirectly relate in any way to the facts and transactions referenced in the Consolidated Action. The scope of this release is intended to be broad, comprehensive, and general with respect to its subject matter.... This release includes all remedies and damages of every possible nature.... This release does not release or waive any rights or obligations contained in this Agreement.

Class TT brought this petition on November 11, 2017 seeking: 1) to have the money transfers from SIP to Partners II set aside as fraudulent conveyances; and 2) an

order directing Weston to turn over \$3,525,675 in partial satisfaction of the judgment entered against SIP.

In opposition, Weston filed a motion to dismiss, arguing that Class TT failed to state a cause of action for fraudulent conveyance, that the action was barred by Texas' four-year statute of limitations, and that documentary evidence showed that Partners II acted in good faith. After learning of the settlement agreement, Weston requested permission to amend its motion to dismiss, which I granted. In its amended motion to dismiss, Weston argues that the petition must be dismissed because Class TT lacks standing, that Partners II was released, the suit is champertous and Class TT has unclean hands.

### **Discussion**

“Under CPLR article 52, a special proceeding for a turnover order is the procedural mechanism devised by the legislature to enforce a judgment against an asset of a judgment debtor, held in the ‘possession or custody’ of a third party.”

*Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 59 (2013). In relevant part, CPLR 5225(b) states:

Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

A special proceeding is governed by the same standards as a motion for summary judgment and thus a turnover petition must be decided “upon the pleadings, papers and admissions to the extent that no triable issues of fact were raised.” *Gonzalez v. City of New York*, 127 A.D.3d 632, 633 (1st Dept. 2015) (citation omitted).

A court will grant a motion to dismiss under CPLR 3211(a)(1) only when “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Furthermore, in deciding a motion to dismiss pursuant to CPLR 3211(a)(7), “the court must ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.’” *Sokol v. Leader*, 74 A.D.3d 1180, 1181 (2d Dept. 2010) (citations omitted).

### **Choice of Law**

In its initial motion to dismiss, Weston alleges that Cayman law applies to the tort of fraudulent conveyance because both Class TT and Partners II are domiciled in the Cayman Islands. Weston argues that the claims must be dismissed because the elements of fraudulent conveyance under Cayman law cannot be satisfied. In the amended motion to dismiss, Weston states that “[t]he parties disagree about the applicable law, but for these purposes New York and Cayman law are the same and therefore New York choice of law considerations do not require reference to foreign law.”

In opposition, Class TT argues that fraudulent conveyance is a conduct-regulating tort and that for such torts, the court must apply the law of the jurisdiction where the tort occurred. Class TT also claims that Weston's amended motion, which relies on New York law, should be deemed a waiver of its argument that Cayman law applies.

In light of Weston's concession that "New York and Cayman law are the same" as relevant to this action, Weston failed to meet its burden of demonstrating a conflict of laws between New York and the Cayman Islands and therefore a choice of law analysis is unnecessary. *See Portanova v. Trump Taj Mahal Assocs.*, 270 A.D.2d 757, 759-760 (3d Dept. 2000) (holding that the court need not engage in a choice of law analysis where party failed to establish the existence of conflict); *see also Martin v. Cohoes*, 37 N.Y.2d 162, 165 (1975) (stating that "parties to a civil litigation, in the absence of a strong countervailing public policy, may consent, formally or by their conduct, to the law to be applied.").<sup>6</sup>

Weston makes an additional choice-of-law argument, under CPLR § 202, with respect to the statute of limitations, claiming that Texas law applies because SIP was a Texas corporation and the action accrued outside New York. Weston posits, without any caselaw support, that SIP is the "real" party in interest because if Class TT succeeds in voiding the fraudulent conveyance, the funds would be returned to SIP. Weston argues that under Texas law, the claims are barred because the statute of limitations for

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fraudulent conveyances is the later of four years from the conveyance or one year from discovery.<sup>7</sup>

Even if Weston did not agree that I may apply New York law, I nevertheless find that New York law applies in this turnover proceeding. Fraudulent conveyance laws are “conduct-regulating” and thus “the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders.” *Atsco Ltd. v. Swanson*, 29 A.D.3d 465, 466 (1st Dept. 2006) (internal quotation and citation omitted). Here, the fraudulent conveyances of \$3,525,675 of Class TT’s funds were deposited into Partners II’s New York bank account. Class TT alleges that Weston conducted business on Partners II’s behalf in New York and Hallac confirmed in his plea allocution that many of the fraudulent actions described “occurred while conducting business in New York City.” Also, the judgment that is the basis for this turnover proceeding was issued by a New York court. Hence, the tort occurred in New York and New York law, including the New York statute of limitations, applies.

### **The Release**

Weston makes several release-based arguments in support of its motion to dismiss. Weston first argues that because the Settlement Agreement releases SIP, Class TT is precluded from bringing this petition which seeks to undo fraudulent conveyances from SIP to Partners II. Weston also argues that even if Class TT implicitly reserved its rights

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<sup>7</sup> Weston does not raise a statute of limitations argument under New York law.

with respect to Partners II, the reservation was legally ineffective because it was not explicit.

“A release is a contract, and its construction is governed by contract law.” *Schiller v. Guthrie*, 102 A.D.3d 853, 853 (2d Dept. 2013) (citation omitted); *see also Johnson v. Lebanese American University*, 84 A.D.3d 427, 429 (1st Dept. 2011). In general, a valid release is “a complete bar to an action on a claim which is the subject of the release.” *Allen v. Riese Organization, Inc.*, 106 A.D.3d 514, 516 (1st Dept. 2013) *citing Centro Empresarial Cempresa S.A. v. America Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011) (internal quotation marks omitted). When the language of the release is “clear and unambiguous,” it is binding on the parties. *Allen*, 106 A.D.3d at 516. However, “[t]he meaning and coverage of a general release depends on the controversy being settled and upon the purpose for which the release was actually given, and a general release may not be read to cover matters which the parties did not desire or intend to dispose of.” *Rivera v. Wyckoff Heights Medical Center*, 113 A.D.3d 667, 670 (2d Dept. 2014) (internal citation omitted).

The Settlement Agreement unambiguously released parties in the California Action, including SIP and Bergstein. Partners II was not a party in the California Action. Notwithstanding Weston’s argument to the contrary, the Settlement Agreement also explicitly preserved Class TT’s claims against Partners II. Indeed, the Settlement Agreement states that a portion of the Settlement Proceeds were to fund “the prosecution of TT Fund's claims and causes of action against Weston Capital Partners Master Fund II,

Ltd. ("Partners II")... related to the transfer of funds received directly or indirectly from SIP." This turnover proceeding against Partners II is precisely the type of action preserved in the Settlement Agreement. *See Murray-Gardner Mgmt. v. Iroquois Gas Transmission Sys., L.P.*, 229 A.D.2d 852, 853-854 (3d Dept. 1996) (stating that "releases are contracts that, unless their language is ambiguous, must be interpreted to give effect to the intent of the parties as indicated by the language employed.")

Weston next states that payment of money is an assignment and because SIP sent money to Partners II, Partners II is an assignee of SIP. Weston concludes that based on Partners II's status as an "assignee," it was released pursuant to the Settlement Agreement and the Petition must be dismissed.

First, Weston's argument lacks any caselaw support. Second, the release language states that Class TT releases SIP and the other named entities' "agents, representatives, employees, officers, directors, shareholders, members, partners, subsidiary entities, parent entities, affiliate entities, lawyers, successors, and assigns." Partners II did not become an assignee of the corporate entity of SIP by virtue of its receipt of a money transfer. Thus, the release does not apply to Partners II.

I have considered Weston's other release-related arguments and find them unavailing and conclude that the release does not bar Class TT's turnover petition, premised on the fraudulent conveyance claim.

### **Standing**

As acknowledged by Weston in its reply brief, "Petitioner is right that [Respondent] has not found a decision where a court has dismissed an action because a

true beneficiary of the action has no standing to pursue it. Nonetheless, what Petitioner is asking this Court to do is to allow it to act as a Trojan horse to allow David Bergstein, who clearly cannot pursue this action (PII has provided authority for that proposition), to pursue this action.”

First, Bergstein is not a party to this action so his standing is irrelevant. Second, I agree with Weston that its standing argument is not law-based and therefore decline to dismiss the petition on this basis.

### **Champerty**

Weston argues that the Settlement Agreement renders Bergstein an “undisclosed petitioner” in this action due to his contribution of Settlement Proceeds to be used to finance actions such as this and therefore the action must be dismissed based on champerty.

In opposition, Class TT contends that it is the only petitioner in this action and Bergstein is not a party to the action nor does he have any control over the litigation.

Judiciary Law § 489 is New York’s champerty statute, and states, in relevant part:

No person... shall solicit, buy or take assignment of, or be in any manner interested in buying or taking an assignment of bond, promissory note, bill of exchange, book debt, or other thing in action, or any claim or demand, with the intent and for the purpose of bringing an action or proceeding thereon...

The purpose of the champerty doctrine was “to prevent or curtail the commercialization of or trading in litigation.” *Trust for Certificate Holders of Merrill Lynch Mtge. Invs., Inc. v. Love Funding Corp.*, 13 N.Y.3d 190, 198 (2009) (quotation

marks and citation omitted). In New York, early champerty cases were “limited in scope and largely directed toward preventing attorneys from filing suit merely as a vehicle for obtaining costs, which, at the time, included attorneys' fees.” *Bluebird Partners, L.P. v. First Fidelity Bank, N.A.*, 94 N.Y.2d 726, 734 (2000). In fact, “while [the New York Court of Appeals] has been willing to find that an action is *not* champertous as a matter of law... it has been hesitant to find that an action *is* champertous as a matter of law.” *Id.* at 734-735 (emphasis in original) (internal citations omitted). Finally, establishing champerty requires “that the acquisition be made with the intent and for *the* purpose (as contrasted to *a* purpose) of bringing an action or proceeding.” *Id.* at 736.

If Bergstein was assigned the claim and commenced this action in his own name, then dismissal for champerty would have been appropriate. Here, however, the petitioner is Class TT which has the right to pursue this action on its own behalf. *See Gowen v. Helly Nahmad Gallery, Inc.*, 60 Misc.3d 963, 996-998 (Supreme Ct., New York Co. 2018). In light of the narrowness of the champerty statute and the fact that Class TT is asserting claims on its own behalf, rather than as an assignee, I will not dismiss Class TT's claims based on the champerty doctrine.

### **Unclean Hands**

Weston contends that the petitioner here “is an association-in-fact consisting of TT and Bergstein,” and Bergstein cannot maintain this action because he has unclean hands.

As stated above, Bergstein is not a petitioner in this action. Even assuming that Bergstein was a petitioner in this action, unclean hands does not furnish a ground for

dismissal. Unclean hands is equivalent to in pari delicto and such an argument “is not a defense to a fraudulent conveyance suit.” *Wimbledon Financing Master Fund, Ltd. v. Wimbledon Fund*, 162 A.D.3d 433, 434 (1st Dept. 2018) quoting *FIA Leveraged Fund Ltd. v. Grant Thornton LLP*, 150 A.D.3d 492, 497 (1st Dept. 2017). Weston’s unclean hands argument thus fails.

### **Sufficiency of Fraudulent Conveyance Cause of Action**

#### a. Constructive Fraudulent Conveyance

Any conveyance that renders a conveyer insolvent “is fraudulent as to creditors without regard to actual intent, if the conveyance was made without fair consideration.” *CIT Group/Commercial Servs., Inc. v. 160-09 Jamaica Ave. Ltd. Partnership*, 25 A.D.3d 301, 302 (1st Dept. 2006). Where “a transfer [was] made without fair consideration, a presumption of insolvency and fraudulent transfer arises, and the burden shifts to the transferee to rebut that presumption.” *Battlefield Freedom Wash, LLC v. Song Yan Zhuo*, 148 A.D.3d 969, 971 (2d Dept. 2017). Notably, even where there is fair consideration, a transfer may still be constructively fraudulent if good faith is absent for both the transferor and transferee. *CIT Group/Commercial Servs., Inc.*, 25 A.D.3d at 303.

Here, Class TT alleges that Partners II received more than \$3 million of its money without providing any consideration to Class TT or SIP and that SIP was insolvent at the time it made the transfers. These allegations shift the burden to Weston.

Weston argues that: 1) Hallac’s bad actions cannot be attributed to Partners II because he was acting only in his own interest; and 2) Bergstein received almost \$9

million from Partners II as the proceeds from the initial loan and Bergstein paid back slightly more than \$3 million, so there was no benefit to the company. These arguments lack merit and do not satisfy Weston's burden.

Even if Partners II paid fair consideration to SIP, the transfers would still be constructively fraudulent because Weston cannot show that both SIP (transferor) and Partners II (transferee) acted in good faith. “[B]ecause the conveyances were made to insiders of the debtor, they were presumptively made in bad faith.” *Wimbledon Financing Master Fund, Ltd. v. Bergstein*, 166 A.D.3d 496, 497 (1st Dept. 2018). Additionally, the guilty pleas of Hallac and Wellner, and the conviction of Bergstein, belie any claim of good faith.

b. Intentional Fraudulent Conveyance

To state a claim for intentional fraudulent conveyance, the plaintiff must plead facts, with sufficient particularity, that show that the challenged conveyance lacked fair consideration and was made with the actual intent to hinder, delay or defraud creditors. *See* Debtor and Creditor Law (“DCL”) § 276; *Carlyle, LLC v. Quik Park 1633 Garage LLC*, 160 A.D.3d 476 (1st Dept. 2018). “Due to the difficulty in proving actual intent to hinder, delay or defraud creditors,” parties pleading an intentional fraudulent conveyance claim may “rely on ‘badges of fraud’ to support [its] claim.” *Wall Street Assocs. v. Brodsky*, 257 A.D.2d 526, 529 (1st Dept. 1999). “Badges of fraud” include “a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the consideration; the

transferor's knowledge of the creditor's claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance.” *Id.*

Here, the claims in the petition encompass many “badges of fraud” – Partners II did not pay consideration to SIP; at the time of the transfer, SIP (through Bergstein, Hallac and Wellner) knew that Partners II did not owe any consideration to SIP or Class TT; and SIP’s payment to Partners II was part of a large-scale fraudulent scheme. These allegations are supported by testimony from Hallac and Wellner as well. Furthermore, Bergstein, Hallac, and Wellner were all sentenced in criminal cases based on this fraudulent scheme.

I deem the conveyances here, like the conveyances at issue in Justice Kornreich’s Class C Decision, to be the embodiment of “a textbook example of an intentional fraudulent conveyance.” *See Wimbledon Financing Master Fund, Ltd*, 2016 WL 7440844 at \*6.<sup>8</sup> These badges of fraud, coupled with Weston’s “failure to proffer any legitimate explanation for the conveyances,” establish Class TT’s entitlement to a judgment setting the conveyances aside pursuant to DCL § 276. *Machado v. A. Canterpass, LLC*, 115 A.D.3d 652, 654 (2d Dept. 2014) (finding that presence of “badges of fraud” and “defendants’ failure to proffer any legitimate explanation for the conveyances,” rendered the “defendants’ actual fraudulent intent [] readily inferable” entitling plaintiff to a judgment under Debtor and Creditor Law § 276).

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<sup>8</sup> Indeed, I follow Justice Kornreich’s holdings regarding the sufficiency of the fraudulent conveyance claims in the Class C Decision.

Weston has not asked the Court to submit an answer if its motions to dismiss are denied. Moreover, Weston's papers do not raise any defense to the fraudulent conveyance claims that would necessitate an answer to the petition. Therefore, I resolve the turnover petition based on the papers before me, *see Matter of Targee St. Internal Medicine Group P.C. Profit Sharing Trust v. Nationwide Assoc.*, 300 A.D.2d 497, 498 (2d Dept. 2002) (holding that "[l]eave to submit an answer following denial of a motion to dismiss a special proceeding is discretionary") and resolve the petition in accordance with summary judgment standards. *See Gonzalez*, 127 A.D.3d at 633. As set forth above, Weston has failed to set forth a viable defense to the turnover petition, and I therefore grant it.

### **Attorneys' Fees**

Class TT requests an order, pursuant to DCL § 276-a, directing Weston to pay its attorneys' fees incurred in setting aside the applicable fraudulent conveyances. Class TT is entitled to its attorneys' fees under DCL § 276-a because it established actual intent to defraud. *Setters v. AI Properties & Developments (USA) Corp.*, 139 A.D.3d 492 (1st Dept. 2016). The amount of attorneys' fees to be awarded will be resolved at a hearing before a Special Referee to determine the amount of attorneys' fees that Class TT incurred, unless the parties stipulate to an amount.

In accordance with the foregoing

ORDERED that Weston's motion to dismiss and amended motion to dismiss are denied in their entirety, and it is further

ORDERED and ADJUDGED that Class TT's petition is granted as against respondent Weston; and it is further

ORDERED AND ADJUDGED that respondent Weston is directed to turn over, forthwith, to the New York County Sheriff, property and money equal to \$3,525,675 plus post-judgment interest in partial satisfaction of the judgment obtained by Class TT on July 31, 2018; and it is further

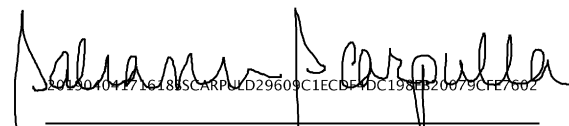
ORDERED that a hearing shall be conducted before a Special Referee on the amount of reasonable attorneys' fees to be awarded to Class TT unless the parties are able privately to agree on an attorneys' fee award. The Special Referee is to report to this Court with all convenient and deliberate speed, 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 attorneys' fee issue; and it is further

ORDERED that counsel for Class TT shall, within 30 days from the date of this order, serve a copy of the order with notice of entry, together with a completed Information Sheet, 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 SOR) for the earliest convenient date; and it is further

ORDERED that, upon receipt of the Special Referee’s report and a motion to confirm the Special Referee’s report, I will enter a separate judgment on the attorneys’ fees.

This constitutes the decision, order and judgment of the Court.

4/4/2019  
DATE

  
SALIANN SCARPULLA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE