

<b>Clark v Castor and Pollux L.L.C.</b>
2019 NY Slip Op 30913(U)
April 4, 2019
Supreme Court, New York County
Docket Number: 655446/2017
Judge: Anthony Cannataro
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ANTHONY CANNATARO PART IAS MOTION 41EFM**

*Justice*

-----X

ALLISON CLARK,  
  
Plaintiff,

- v -

CASTOR AND POLLUX LIMITED LIABILITY COMPANY, SEAN  
NICHOLAS, JUSTIN DEDEMKO

Defendant.

INDEX NO. 655446/2017  
  
MOTION DATE 03/24/2019,  
02/19/2019  
  
MOTION SEQ. NO. 004 006

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86

were read on this motion to/for RENEWAL.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for STRIKE PLEADINGS.

Plaintiff moves for an order pursuant to CPLR 3126 (3) striking answers of defendants Castor and Pollux Limited Liability Company, Sean Nicholas, and Justin Dedemko. Defendants have not opposed the motion. Accordingly, the motion to strike is granted on default.

This matter came before the Court on January 23, 2019, for plaintiff's motion to renew and reargue plaintiff's prior motion for a default judgment, order of seizure, and deposition. Given that the answers of defendants are stricken as part of the decision herein, the motion to renew and reargue is moot and is therefore denied.

The only remaining issue in the case is damages. A reference to determine damages is proper and appropriate pursuant to CPLR 4317 (b) in that an issue of damages is separately triable and does not require a trial by jury. Accordingly, it is

**ORDERED** that plaintiff's motion to strike is granted without opposition; and it is further

**ORDERED** that plaintiff's motion to renew or reargue is denied as moot; and it is further

**ORDERED** that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following issues of fact:

- (1) Actual, compensatory, consequential, exemplary and special damages;
- (2) Restitution for unjust enrichment;
- (3) Punitive damages;
- (4) Fees, expenses, costs, and interest; and it is further

**ORDERED** that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) 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 this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link), shall assign this matter at the

initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

**ORDERED** that counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible 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 Referees Part; and it is further

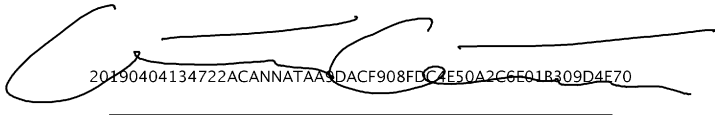
**ORDERED** that the parties shall appear for the reference hearing, including all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referee Part in accordance with the Rules of that Part; and it is further

**ORDERED** that, 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 counsel must arrange their schedules and those of their witnesses accordingly; and it is further

**ORDERED** that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's

website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

4/4/2019  
DATE



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ANTHONY CANNATARO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE