SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **IAS MOTION 7EFM**

Justice

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ST. NICHOLAS W. 126 L.P.,

Plaintiff,

- v -

REPUBLIC INVESTMENT COMPANY, LLC,
VERTIGO VENTURES LLC,
JOSEPH NEHMADI, GAD ASHOORI D/B/A GAD ASHOORI ENGINEERING, BAHARY ARCHITECTURE P.C.,
BDB CONSTRUCTION ENTERPRISE INC

Defendant.

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INDEX NO. 156149/2017

MOTION DATE 06/04/2019

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 205, 206, 207, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245

were read on this motion to DISMISS.

Goldstein Hall PLLC (Daniel Goldenberg of counsel), for plaintiff.
Koster, Brady & Nagler, LLP (William H. Gagas of counsel), for Defendants Vertigo Ventures LLC and Joseph Nehmadi.
Sichenzia Ross Ference, LLP (Todd J. Manister of counsel), for Defendant BDB Construction Enterprise Inc.
John M. Giordano, P.C. (John M. Giordano of counsel), for Defendant Bahary Architecture P.C.
Rivkin Radler LLP, (David M. Grill and Evan R. Schieber of counsel), for Defendant Republic Investment Company LLC.

Gerald Lebovits, J.:

Defendants Vertigo Ventures LLC (Vertigo) and Joseph Nehmadi (Nehmadi) (collectively, Moving Defendants) move for an order, pursuant to CPLR 3126, dismissing the complaint with prejudice for failure to respond to discovery demands, or precluding plaintiff from offering evidence at trial or supporting claims for which it has failed to provide discovery responses. Plaintiff cross-moves for an order, pursuant to NYCRR 130-1.1, granting plaintiff sanctions against the Moving Defendants on the ground that their motion was filed prior to the time the discovery was due, and for an order, pursuant to CPLR 3126, striking the Moving Defendants' pleadings or imposing an adverse inference against them, because they have spoliated all physical evidence of their alleged trespass onto plaintiff's property.

In this action, plaintiff property owner alleges the Moving Defendants illegally trespassed on plaintiff's property while developing the Moving Defendants' adjacent property, and improperly installed underpinning under the foundation of plaintiff's building, causing damage to the structure. In this motion, the Moving Defendants contend that plaintiff failed to respond to discovery requests by the date set by a prior compliance conference order of this court, and then, in their reply, maintain that plaintiff's responses were insufficient. In its cross motion, plaintiff seeks spoliation sanctions, contending that defendants proceeded with their construction project, covering up the foundation and underpinning, without preserving evidence or permitting plaintiff a reasonable opportunity to preserve it.

BACKGROUND

Plaintiff owns the land and building located at 2364 8th Avenue, New York, NY (the Subject Building) (exhibit A to notice of motion, compl, ¶ 2). Defendant Vertigo owns the adjacent land located at 284 West 127 Street, New York, New York (the Development Lot), and defendant Nehmadi is a member of Vertigo (*id.*, ¶¶ 4, 7). Plaintiff alleges, upon information and belief, that defendant Republic Investment Company LLC (Republic) is the parent of, and exercises complete dominion over, Vertigo (*id.*, ¶ 6). Defendant BDB Construction Enterprise Inc. (BDB Construction) is the contractor hired by Vertigo to build on the Development Lot, and defendant Bahary Architecture P.C. (Bahary) is the architect hired by Vertigo (*id.*, ¶¶ 13-16).

In March 2017, while developing the Development Lot, BDB Construction began excavating the site. Plaintiff's agent asserts that he was in the Subject Building and felt it shake from the construction work. He then discovered that defendants were using a backhoe underneath the Subject Building (*id.*, ¶¶ 20-26). Plaintiff observed structural damage to the Subject Building and to a structure beneath the building (*id.*, ¶ 31).

Plaintiff then hired a licensed professional engineer, William Eng (Eng) of Murray Engineering, P.C. to inspect the construction and determine its effect on the Subject Building. On April 27, 2017, plaintiff gained access to the Development Lot to conduct the inspection. Eng observed that the lot was already excavated, concrete footings were being prepared, and underpinning was installed under the Subject Building (*id.*, ¶¶ 33, 36-37). Eng also observed that the underpinning of the north wall of the Subject Building caused the wall to settle, and he observed cracks in the rear wall of the Subject Building (*id.*, ¶ 38; *see* exhibit H affidavit of Kenneth Quigley [Quigley aff]). He reviewed the New York City Department of Buildings (DOB) file on the construction work. He took photos and then sent an email report to plaintiff with his observations (*id.*).

Eng, on plaintiff's behalf, reached out to the DOB and placed a complaint about the work being performed by defendants. That complaint caused the DOB to conduct a special inspection of the Development Lot and issue a stop work order (SWO) (compl, ¶¶ 46-47).

On July 10, 2017, plaintiff commenced this action asserting five causes of action: private nuisance, trespass, negligence, violations of the New York City Buildings Code, and permanent injunction under RPAPL § 871. It seeks $250,000 in damages. Defendants have answered the

complaint, denying the material allegations, and served their initial discovery demands on plaintiff.

The Moving Defendants assert that plaintiff has filed numerous complaints with the DOB, obtaining several SWOs, but that defendants have responded to those by taking corrective measures, the SWOs were lifted and construction was then permitted to proceed by the DOB (affirmation of William H. Gagas in opposition, dated Feb 14, 2019 [Gagas opp affirm], ¶ 11). They submit various DOB technical inspection and special inspection reports for the project which approved the concrete, excavation, and underpinning work as of November 15, 2017 (exhibits B, C, D to Quigley aff).

Defendants also submit a December 7, 2017 letter from Murray Engineering, plaintiff's engineering firm, to the DOB, requesting that it shut down construction at the site, which included multiple photos of damages that plaintiff's engineer alleges are related to the construction work at the Development Lot (exhibits F and H to Quigley aff). Defendants assert that, by email dated January 10, 2018, the DOB responded to plaintiff's complaints stating that the cracks in the adjoining wall of the Subject Building were not of significant structural concern, and that the concrete used was certified as acceptable (Gagas affirm, ¶¶ 14-15).

Meanwhile, on December 1, 2017, plaintiff filed an application for a TRO and a preliminary injunction, seeking an order staying the construction work and excavation. The TRO was granted on condition that plaintiff obtain a security bond (*id.*, ¶ 16). The TRO was vacated upon plaintiff's failure to obtain the bond. Ultimately, this court denied plaintiff's request for a preliminary injunction, finding that it failed to demonstrate a likelihood of success on the merits, irreparable harm, or a balancing of the equities in its favor (exhibit B to Gagas affirm at 25-26). In its injunction application, plaintiff asserted that because of defendants' construction activity at the Development Lot, evidence of the illegal and improper underpinning has been covered up along with evidence of the damage to the foundation of the Subject Building (exhibit A to Gagas affirm, tr of December 6, 2017 preliminary injunction hearing at 15-19; exhibit B to Gagas affirm, tr of December 14, 2017 continued hearing at 5).

Beginning in early 2018, the parties conducted discovery, with Vertigo serving demands for a bill of particulars, to which plaintiff then responded. In May 2018, Vertigo served a demand for a supplemental bill of particulars, a demand for itemized damage information, and a notice for discovery and inspection (affirmation of Brian J. Markowitz, dated Jan 3, 2019 [Markowitz affirm], ¶¶11-12). Plaintiff also served discovery requests upon all the defendants. Responses were served, but the parties disputed back and forth over whether the responses were sufficient, and whether certain demands were still outstanding.

On October 3, 2018, a Compliance Conference Order was issued by this court, which provided, in relevant part, that:

> "All additional demands be served by November 15, 2018
> All responses to all outstanding demands by December 31, 2018
> All other deadlines, including deposition on or before Feb 18, 2019"

(exhibit G to Markowitz affirm).

Moving Defendants' CPLR 3126 Motion to Dismiss or Preclude

On December 21, 2018, the Moving Defendants made the present motion to dismiss the complaint for failure to respond to discovery demands in accordance with the Compliance Conference Order. They assert that plaintiff was required to serve its supplemental responses to the demands for a Supplemental Bill of Particulars, Demand for Statements, Demands for Photos, Demand for Itemized Damage Information dated May 23, 2018, and Notice for Discovery and Inspection dated May 23, 2018, by November 15, 2018. They submit an affirmation of good faith, indicating that they sent a letter to plaintiff on November 26, 2018 seeking this discovery (affirmation of Erica L. Mobley, dated December 20, 2018).

In response, plaintiff asserts that this motion is premature. Its discovery responses were not due, according to the Compliance Conference Order, until December 31, 2018, and it reached out numerous times to the Moving Defendants' counsel informing them of the date, and then served its responses on December 28, 2018 (Markowitz affirm, ¶¶ 18, 20-21). On that day, and again on January 2, 2019, plaintiff requested that the Moving Defendants withdraw their motion as moot, but the Moving Defendants refused (*id.*, ¶¶ 21-22). Therefore, plaintiff seeks sanctions for frivolous motion practice.

In reply, the Moving Defendants contend that plaintiff's boilerplate responses were wholly inadequate (affirmation of William Gagas in reply [Gagas reply affirm], dated Feb 14, 2019, ¶¶ 6-13). For example, they maintain that plaintiff responded to requests about specific statute provisions and regulations which plaintiff alleges defendants violated, and the response generally relies on Building Code § 3309 but fails to indicate which of the 16 subsections or sub-subsections applies. They also contend that plaintiff repeatedly just refers to allegations in the complaint as its response, many of which allegations are asserted upon information and belief, and are vague, and lack details such as the specific dates on which key observations were made (*id.*).

Plaintiff filed a reply affirmation but failed to address the Moving Defendants' contentions about the deficiencies in its responses to the Moving Defendants' discovery requests. Instead, it urged that defendants failed to oppose plaintiff's request for sanctions, and, therefore, the sanctions should be granted as unopposed. It then filed a letter seeking the opportunity to file a sur-reply addressing the adequacy of its discovery responses.

Plaintiff's Cross Motion for Spoliation Sanctions

Plaintiff moves to strike the defendants' pleadings, and/or asks this court to grant an adverse inference against all defendants prohibiting them from offering evidence opposing plaintiff's claims regarding the improper and defective underpinning, because defendants have spoliated all physical evidence by continuing construction of the Development Lot, covering up the foundation and underpinning.

Plaintiff asserts that defendants had an obligation to preserve evidence, and that "[u]pon information and belief, Defendants, acting collectively and or individually, have proceeded with their construction project" (Markowitz affirm, ¶ 9). Plaintiff contends that defendants illegally and improperly installed underpinning under the foundation of plaintiff's building, and that the concrete used by defendants did not meet the specifications set forth in the defendants' own Support of Excavation ("SOE") Drawings (*id.*, ¶¶ 30-31). It maintains, based on its attorney's affirmation, that it has no idea, and no ability now to test, what its building is sitting upon, and no way of discovering if its building would support additional construction if plaintiff desired to use its available air rights and raise the building (*id.*, ¶ 31). It contends that the evidence is lost forever.

In response, Vertigo and Nehmadi argue that plaintiff's motion is yet another attempt to shut down all construction activities and remove any existing underpinning and installations based on the mere allegations of the complaint. They urge that this court already rebuffed this by denying plaintiff's preliminary injunction motion. They further urge that the DOB also refused to shut down construction and remove the underpinning after plaintiff's complaints to the DOB were resolved by Vertigo, and it permitted Vertigo to go forward with the project.

Vertigo and Nehmadi also contend that plaintiff fails to identify evidence that was destroyed. They assert that while plaintiff claims it cannot assess its alleged damages, it has already obtained three reports of specially retained engineers which set forth plaintiff's claimed damages (exhibits F, G, H to Quigley aff). Moreover, an independent special inspector from IP Concrete Testing, who was at the site for 10 days during the excavation and underpinning work inspecting and took color photos, submitted a special inspection report to the DOB, with the photos and drawings of such work. In that report, the inspector confirmed to the DOB that the work was acceptable as done in accordance with the plans, and as per DOB plans and specifications (*see* exhibit D to Quigley aff).

In addition, Vertigo and Nehmadi submit the affidavit of Kenneth Quigley, a licensed professional engineer, who attests that, contrary to plaintiff's contention, there are numerous ways to inspect underpinning work even after a structure has been completed (Quigley aff, ¶¶ 9, 10, 12, 14). They argue that plaintiff's claims about its inability to discover the damage to its building is not based on any expert opinion, but, instead, just on its own counsel's bald claims. Thus, Vertigo and Nehmadi urge that the continued construction does not and has not prevented plaintiff from ascertaining the alleged damage to its property.

Defendant Republic Investment Company LLC ("Republic") urges that plaintiff may not assert a cross claim against Republic because it was not a moving party in the initial motion. In addition, it contends that there is no basis for the cross motion against it since it does not own the Development Lot, and any purported liability stemming from Vertigo's construction on its property cannot be imputed to Republic.

Defendant Bahary Architecture asserts that it provided architectural plans for the project, not structural plans, and that it had no ongoing role in the construction and no authority with respect the construction. Thus, it asserts that it cannot be subject to spoliation sanctions.

Defendant BDB Construction makes the same arguments as Vertigo that plaintiff has photos, inspections, and its own expert reports, and failed to submit any evidence that the continued construction interfered with its ability to prove its case. It urges that the foundation and underpinning were covered up not to frustrate plaintiff's discovery but in the ordinary course of business with the proper city building permits and DOB approval.

DISCUSSION

The Moving Defendants' motion is granted only to the extent that plaintiff is directed to serve additional supplemental responses as set forth below. Plaintiff's cross motion for spoliation sanctions is denied.

CPLR 3126 sanctions may be imposed "'when a party intentionally, contumaciously, or in bad faith fails to comply with a discovery order or destroys evidence prior to an adversary's inspection'" (*see Melcher v Apollo Medical Fund Management LLC.*, 105 AD3d 15, 23 [1st Dept 2013], quoting *Sage Realty Corp. v Proskauer Rose*, 275 AD2d 11, 17 [1st Dept 2000]).

First, Moving Defendants' request to sanction plaintiff by dismissing the complaint or precluding it from presenting evidence because its response was untimely, is denied. Plaintiff is correct that the Compliance Conference Order gave it until December 31, 2018 to respond, and plaintiff timely served its response by December 28, 2018. Since the Moving Defendants fail to show a willful and contumacious failure by plaintiff to comply with the discovery deadline, this part of the motion is denied.

As to the sufficiency of those responses, while plaintiff is correct that the Moving Defendants' arguments about the adequacy of plaintiff's responses were raised for the first time on reply, plaintiff had the opportunity and did submit a sur-reply to the Moving Defendants' reply on their discovery motion (*see* reply affirmation of Daniel Goldenberg, dated Feb 27, 2019). Therefore, rather than disregard those arguments, this court will address the adequacy of plaintiff's responses to the discovery requests.

The Moving Defendants are correct that many of plaintiff's responses in the Supplemental Bill of Particulars simply refer to paragraphs in the complaint which are vague. The purpose of a bill of particulars is to provide more specific details than those set forth in the complaint, and to simply refer to the paragraphs in the complaint defeats that purpose. Plaintiff is directed to file a new Supplemental Bill of Particulars responding again to Items 9-15, 17, 18, 20, 22-24; those responses shall set forth specific facts such as dates, identify its agents, and the specifics of conversations and observations, as requested. Plaintiff must also describe the alleged damages to its property, as requested in Items 16 and 18, and not simply refer to its engineer's report.

Plaintiff also is directed to respond again to Vertigo's Demand for Itemized Damage Information. Plaintiff's response essentially states that the information is in the complaint, and the request is duplicative (*see* exhibit B to Gagas reply aff). This is insufficient. Plaintiff must respond to the demand with facts, respond to each question, setting forth its claimed damages,

and cannot simply attach its engineer's prior reports because that report does not answer the demands posed.

With respect to plaintiff's response to Vertigo's Notice for Discovery and Inspection (exhibit C to Gagas reply aff), responses 16-19 and 22 are insufficient. Vertigo's demands seek documents regarding the design plans, drawings, and specifications for the Subject Building (demand 16), records pertaining to construction, renovations, alterations, and/or repair work for the Subject Building (demand 17), engineering reports, condition assessments, surveys, and studies of the building (demand 18), photos regarding the foundation and underpinning of the building (demand 19), and all documents relating to plaintiff's purchase of the building, including closing documents, inspection reports, records from any retained engineer, and any other preclosing inspection records (demand 22). Plaintiff 's blanket objection to these demands is insufficient. Contrary to plaintiff's objections, the demands are reasonably calculated to lead to the discovery of admissible evidence and are appropriate.

The cross motion for sanctions based on spoliation of evidence is denied.

> "On a motion for spoliation sanctions, the moving party must establish that (1) the party with control over the evidence had an obligation to preserve it at the time it was destroyed; (2) the records were destroyed with a culpable state of mind, which may include ordinary negligence; and (3) the destroyed evidence was relevant to the moving party's claim or defense."

(*Duluc v AC & L Food Corp.*, 119 AD3d 450, 451–452 [1st Dept 2014] [internal quotation marks and citation omitted]; *VOOM HD Holdings LLC v EchoStar Satellite L.L.C.*, 93 AD3d 33, 45 [1st Dept 2012]; *Ahroner v Israel Discount Bank of N.Y.*, 79 AD3d 481, 482 [1st Dept 2010]). The burden is on the party requesting sanctions to make the requisite showing (*see Duluc v AC & L Food Corp.*, 119 AD3d at 452; *Mohammed v Command Sec. Corp.*, 83 AD3d 605, 605 [1st Dept 2011]).

Where the destruction of evidence is the result of intentional or gross negligence, relevance is presumed, but where it is the result of merely negligence, the party seeking sanctions must prove relevance (*VOOM HD Holdings LLC v EchoStar Satellite L.L.C.*, 93 AD3d at 45). In deciding whether to grant the motion, courts examine the extent that the spoliation of evidence may prejudice the movant, and whether a particular sanction is necessary as a matter of basic fairness (*see Ortega v City of New York*, 9 NY3d 69, 76 [2007]). The party seeking sanctions must show that the unavailability of the evidence will substantially hinder its ability to prove its case (*see Flomenbaum v New York Univ.*, 71 AD3d 80, 88 [1st Dept 2009], *affd* 14 NY3d 901 [2010] [sanction unwarranted where failed to show defendant unfairly gained advantage because of nondisclosure]; *Shapiro v Boulevard Hous. Corp.*, 70 AD3d 474, 476 [1st Dept 2010]; *Thomas v City of New York*, 9 AD3d 277, 278 [1st Dept 2004]). The court has broad discretion in determining a sanction for spoliation (*Lentini v* Weschler, 120 AD3d 1200, 1201 [2d Dept 2014]; *see Ortega v City of New York*, 9 NY3d at 76).

Plaintiff fails to meet its burden on this cross motion. It fails to demonstrate that Vertigo acted intentionally to destroy crucial evidence. In addition, it does not clearly demonstrate that Vertigo was negligent—it resumed construction based on the DOB's approval of its plans and work, and when the SWOs were resolved.

Moreover, plaintiff fails to submit any evidentiary proof that it would be unable to determine the integrity of the underpinning or the concrete used, and, thus, that the evidence was even destroyed (*see Abe v New York Univ.*, 140 AD3d 557, 558 [1st Dept 2016] [no spoliation sanction where no demonstration that evidence was destroyed in the first instance]). Rather, it submits only its counsel's affirmation, whose assertions are conclusory and based on speculation. Vertigo has submitted an engineer's affidavit, which sets forth the ways in which the integrity of the underpinning that was installed may be tested, and the methods that may be used to assess whether the work complied with the as-built plans even after the construction has been completed (Quigley aff, ¶¶ 8-13).

The severe sanction of dismissing a pleading may only be imposed where a party destroys key physical evidence such that its adversaries are "prejudicially bereft of appropriate means to [either present or] confront a claim with incisive evidence" (*Tommy Hilfiger, USA v Commonwealth Trucking*, 300 AD2d 58, 60 [1st Dept 2002] [internal quotation marks and citations omitted]). It would only be appropriate where plaintiff has no other means to prove its case (*see Flomenbaum v New York Univ.*, 71 AD3d at 88; *Shapiro v Boulevard Hous. Corp.*, 70 AD3d at 476; *Thomas v City of New York*, 9 AD3d at 278).

Plaintiff, here, failed to demonstrate that it has endured such prejudice as a result of the continuation of Vertigo's construction, particularly since plaintiff had retained engineers who had site inspections, took photos of the work before the construction resumed, and wrote detailed reports (*see* exhibits F, G, and H to Quigley aff). In addition, as discussed above, plaintiff fails to support its conclusory claim that there is no way to assess the underpinning work after the construction was continued by Vertigo. Thus, plaintiff fails to demonstrate sufficient prejudice to warrant such sanctions (*see Russo v BMW of N. Am., LLC*, 82 AD3d 643, 644 [1st Dept 2011] [no sanctions where movant failed to show that evidence was crucial and that spoliator's conduct evinced some higher degree of culpability]; *Robertson v New York City Hous. Auth.*, 58 AD3d 535, 536-537 [1st Dept 2009] [no sanctions where no evidence opposing party acted in bad faith, plaintiff had prior opportunity to inspect, and no prejudice]; *McMahon v Ford Motor Co.*, 34 AD3d 263, 264 [1st Dept 2006]).

Moreover, since plaintiff fails to demonstrate that the evidence was destroyed, even a negative inference charge would not be appropriate (*see Scordo v Costco Wholesale Corp.*, 77 AD3d 725, 727-728 [2d Dept 2010] [all sanctions denied, including lesser sanction of precluding evidence of condition of car, where evidence at time of accident was available to both sides, and no unfair advantage obtained from failure to preserve evidence]; *Kirschen v Marino*, 16 AD3d 555, 557 [2d Dept 2005] [no preclusion sanction where both parties had photos of the apartment, so no showing of prejudice in the defense of the claim]; *430 Park Ave. Co. v Bank of Montreal*, 9 AD3d 320, 321 [1st Dept 2004] [where documents and photo evidence are sufficient to allow party to present their defense, claims against them will not be dismissed as spoliation sanction]; *cf. VOOM HD Holdings LLC v EchoStar Satellite, L.L.C.*, 93 AD3d at 47 [negative inference

charge was appropriate where plaintiff showed defendant destroyed highly relevant emails and although it had other evidence to point to in proving its case, the destroyed evidence was not duplicative]). Here, it appears that plaintiff is trying to use discovery sanctions to achieve what it failed to obtain from its preliminary injunction application, or from its complaints to the DOB – a complete halt in construction. Therefore, plaintiff's cross motion for sanctions as against defendants Vertigo and Nehmadi is denied.

To the extent that plaintiff's cross motion is also asserted against the remaining defendants Republic, Bahary Architecture and BDB Construction, it similarly is denied. A cross motion may only be made for relief against a moving party (CPLR 2215; *see Sanchez v Metro Bldrs. Corp.*, 136 AD3d 783, 785 [2d Dept 2016]; *Gaines v Shell-Mar Foods, Inc.*, 21 AD3d 986, 987-988 [2d Dept 2005]; *see also Williams v Sahay*, 12 AD3d 366, 367 [2d Dept 2004]), and these defendants were not moving parties. Moreover, plaintiff fails to make any specific allegations against these defendants in its cross motion, and simply refers to them generally as "Defendants." Again, plaintiff fails to make a sufficient showing for spoliation sanctions against them.

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

Accordingly, it is

ORDERED that the motion of defendants Vertigo Ventures LLC and Joseph Nehmadi is granted only to the extent that plaintiff is directed: (i) to file a new Supplemental Bill of Particulars responding again as discussed above to Items 9-18, 20, 22-24; (ii) to respond again as discussed above to Vertigo's Demand for Itemized Damage Information; and (iii) to respond again as discussed above to items 16-19 and 22 in Vertigo's Notice for Discovery and Inspection and it is further

ORDERED that the motion of defendants Vertigo Ventures LLC and Joseph Nehmadi is otherwise denied; and it is further

ORDERED that plaintiff's cross-motion for sanctions is denied.

7/29/2019
DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE