Gamma Lending Omega LLC v Kaminski
2020 NY Slip Op 32831(U)
August 28, 2020
Supreme Court, New York County
Docket Number: 653374/2018
Judge: Andrew Borrok

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK **PART** IAS MOTION 53EFM

Justice

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GAMMA LENDING OMEGA LLC,

Plaintiff,

- v -

MATTHEW KAMINSKI, BRENDA KAMINSKI

Defendant.

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INDEX NO. 653374/2018

MOTION DATE 06/23/2020, 07/02/2020

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 92, 93, 94, 95, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 97, 98, 99, 100, 101, 102, 127, 128, 129, 130, 131

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

Upon the foregoing documents, Matthew Kaminski and Brenda Kaminski's (collectively, the **Guarantors**) motions (i) to compel (Mtn. Seq. No. 001) is decided in accordance with the below, and (ii) to vacate the note of issue (Mtn. Seq. No. 002) is denied.

The Relevant Facts and Circumstances

Reference is made to (i) a Loan Agreement (the **Loan Agreement**; NYSCEF Doc. No. 21) and an Amended and Restated Promissory Note (the **Note**; NYSCEF Doc. No. 22), each dated January 27, 2017, by and between Gamma Real Estate Capital, LLC (the **Gamma Real Estate**) and Talon First Trust, LLC (the **Borrower**), pursuant to which Gamma Real Estate lent $51,600,000 (the **Loan**) to the Borrower to refinance certain indebtedness and make

improvements to a commercial property located at 180 East 5th Street, St. Paul, Minnesota (the **Property**), (ii) a Payment Guaranty Agreement (the **Payment Guaranty**; NYSCEF Doc. No. 24) and a Limited Recourse Guaranty Agreement (the **Limited Recourse Guaranty**; NYSCEF Doc. No. 25), each dated January 27, 2017, by and between Gamma Real Estate and the Guarantors, (iii) a certain foreclosure action filed on January 31, 2018 in Minnesota District Court, Second Judicial District captioned *Gamma Lending Omega LLC v. Talon First Trust LLC, Talon OP. L.P., and Thomas Grace Construction Inc.*, Index No. 62-CV-16-656 (the **Minnesota Action**) (Amend. Compl., NYSCEF Doc. No. 20, ¶ 42) pursuant to which the Plaintiff [1] foreclosed on the Loan following the Borrower's failure to repay the Loan at maturity on January 26, 2018, (iv) an Order and Second Amended Order (the **Judgment**; NYSCEF Doc. No. 27), respectively dated May 1, 2018 and May 22, 2018, pursuant to which the Plaintiff was granted partial summary judgment on its foreclosure claim and obtained a $54,868,368.62 judgment against the Borrower for (a) $51,600,000 of unpaid principal, (b) $12,492.75 of outstanding pre-default interest, (c) $123,258.29 unpaid tax and insurance escrow payments, (d) $399,991.17 outstanding default interest, (e) $2,586,787.55 of late charges, and (f) $145,838.86 of reasonable costs and attorneys' fees, (v) a certain foreclosure sale pursuant to which the Plaintiff obtained a credit bid of $51,995,000 which failed to satisfy the Judgment (NYSCEF Doc. No. 20, ¶¶ 46-47), (vi) an Opinion (NYSCEF Doc. No. 105), dated April 22, 2019, of the Minnesota Court of Appeals, pursuant to which the Minnesota Court of Appeals affirmed the Judgment and determined that the late charges were enforceable because they were not invalid as liquidated damages and there was no abuse of discretion in awarding attorneys' fees, and (vii) an Order (the **Deficiency Judgment**; NYSCEF Doc. No. 106), dated July 30, 2019, pursuant to which the

[1] On or about January 27, 2017, Gamma Real Estate assigned its rights and interest in the Loan and the operative loan documents to the Plaintiff (NYSCEF Doc. No. 20, ¶ 18).

Plaintiff obtained a deficiency judgment of $2,878,245.99 against the Borrower and a separate guarantor, Talon OP, L.P.

By this action, the Plaintiff seeks to recover amounts necessary to satisfy the Deficiency Judgment, interest and attorneys fees against the Guarantors, alleging (i) breach of the Payment Guaranty and (ii) breach of the Limited Recourse Guaranty. Among other things, the Plaintiff alleges that on or about June 27, 2018, the Borrower's parent company was sold to a third party without the Plaintiff's consent, which tripped the Guarantors' liability under the Limited Recourse Guaranty (*id.*, ¶¶ 48-52, 55-57).[2]

The Guarantors filed an Answer with Counterclaims alleging (i) breach of the Agreement, (ii) breach of the Note, (iii) breach of the security agreement, (iv) breach of the Payment Guaranty, (v) breach of the Limited Recourse Guaranty, (vi) breach of the implied covenant regarding the Agreement, (vii) breach of the implied covenant regarding the Note, (viii) breach of the implied covenant regarding the security agreement, (ix) breach of the implied covenant regarding the Payment Guaranty, (x) breach of the implied covenant regarding the Limited Recourse Guaranty, and (xi) unjust enrichment regarding the Payment Guaranty.

On November 14, 2018, a Preliminary Conference Order was issued by this court (Ramos, J.) pursuant to which the parties were to serve their interrogatories and demands by December 17,

[2] Section 1 (b) (iv) of the Limited Recourse Guaranty prohibits Transfers without consent including Changes of Control. Change of Control is defined in the Loan Agreement as "the occurrence of any of the following: (a) the failure of Talon Real Estate Holding Corp., a Utah corporation, to Control the management of Borrower, or (b) the failure of the Entity Guarantor to be the sole member of Borrower, or (c) the failure of the Individual Guarantors to own at least twenty percent (20%) of the aggregate direct or indirect ownership interests in Borrower" (NYSCEF Doc. No. 21, § 1.1).

2018, their responses by January 17, 2019, and to complete document production by both parties on or before January 31, 2019 (NYSCEF Doc. No. 39). The parties were also ordered to meet and confer regarding ESI prior to the next status conference, which was scheduled for February 13, 2019 (*id.*).

On December 11, 2018, the Guarantors served the Plaintiff with 452 requests for the production of documents (the **Requests**), 121 requests for admissions (the **RFAs**), and 18 interrogatories (NSYCEF Doc. Nos. 108-110). On December 31, 2018, the Plaintiff provided a response to the RFAs and interrogatories, but not to the Requests (NYSCEF Doc. No. 67).

The Plaintiff provided counsel for the Guarantors with a proposed ESI protocol on January 23, 2019 (NYSCEF Doc. No. 104, ¶ 11; NYSCEF Doc. No. 111). The Guarantors responded by letter dated January 28, 2020 (NYSCEF Doc. No. 112), stating, *inter alia*, that they, "refuse[d] to agree to the ESI protocol" based on alleged deficiencies in the Plaintiff's hard copy document production and because the Plaintiff's proposed ESI protocol did not contain any provisions for fee shifting between the parties. For the avoidance of doubt, typically, each side bears its own costs of searching, retrieving, and producing ESI discovery in Commercial Division actions (*see Brandofino Communications, Inc. v Augme Tech. Inc.*, 2014 NY Slip Op 50077[U], *6 [Sup Ct, NY County 2014, Oing, J.], citing *U.S. Bank N.A. v GreenPoint Mtge. Funding, Inc.*, 94 AD3d 58 [1st Dept 2012]). The Guarantors have never made an application for fee shifting to the court in this action.

Pursuant to a Compliance Conference Order, dated March 28, 2019, the Guarantors were directed to "narrow" their 452 Requests and to provide comments to the proposed ESI protocol, both by April 11, 2019 (NYSCEF Doc. No. 40). On April 10, 2019, the Guarantors provided a revised list of 169 Requests and on May 10, 2019, the Plaintiff provided its written responses (NYSCEF Doc. No. 78). The Guarantors refused to narrow their requests any further when the Plaintiff again requested they do so by letter, dated April 12, 2019 (NYSCEF Doc. No. 114).

Pursuant to a So-Ordered Stipulation, dated May 15, 2019, the Guarantors were ordered to provide search terms for ESI by May 31, 2019 and to complete their initial search by June 7, 2019 (NYSCEF Doc. No. 43). The parties were to meet and confer regarding the search results from both sides the week of June 17, 2019, and to complete all outstanding document production, including ESI, on or before August 1, 2019 (*id.*).

However, on June 24, 2019, the Plaintiff emailed the court to again advise of issues related to ESI production (NYSCEF Doc. No. 117). Thereafter, on July 8, 2019, following another conference, the court So-Ordered a new schedule, which among other things set a July 26, 2019 deadline for the Guarantors to provide tailored search terms to the Plaintiff, which the Guarantors failed to do (NYSCEF Doc. No. 46; NYSCEF Doc. No. 104, ¶ 18).

The Guarantors made their first ESI production to Plaintiff on August 2, 2019 (NYSCEF Doc. No. 104, ¶ 20). Pursuant to a So-Ordered Stipulation, dated August 5, 2019, the court gave the Guarantors until August 19, 2019 to produce outstanding documents (NYSCEF Doc. No. 47).

Due to continued disputes over ESI production, the Plaintiff provided an affidavit from its President, Jonathan Kalikow, dated August 22, 2019, wherein Mr. Kalikow attested that the Plaintiff had retrained electronic, rather than hard copy, files of its lending transactions from January 1, 2016 to the present (NYSCEF Doc. No. 83).

In response to the Guarantors' request for the Plaintiff's internal documents regarding the Loan Agreement, the Plaintiff provided a second affidavit, dated September 4, 2019, wherein Mr. Kalikow attested that the Plaintiff had produced all "responsive, non-privileged documents after a reasonably diligent search" (*id.*).

The parties then engaged in settlement discussions, which were ultimately unsuccessful, and depositions were completed in late February of 2020. After the Guarantors raised further discovery deficiencies post-deposition, the Guarantors filed the instant motion by order to show cause on June 23, 2020 (Mtn. Seq. No. 001). The Plaintiff filed note of issue on June 30, 2020 and the Guarantors filed their motion to vacate the note of issue on July 2, 2020 (Mtn. Seq. No. 002).

Discussion

I. Motion Sequence 001 (the Guarantors' Motion to Compel)

CPLR § 3101 (a) requires the full disclosure of "all matter material and necessary in the prosecution or defense of an action," and this provision is interpreted liberally to require disclosure of facts that assist a party's good faith preparation for trial (*Johnson v National R.R. Passenger Corp.*, 83 AD2d 916 [1st Dept 1981]).

A. The Minnesota Action

As an initial matter, the parties each discuss the effect of the findings and holdings of the Minnesota Action. Collateral estoppel prevents a party, or one in privity with a party, from relitigating an issue that was decided against it (*D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 [1990]). There are two elements for collateral estoppel to apply: "(1) that the identical issue was necessarily decided in the prior proceeding and is decisive of the present action, and (2) that there was a full and fair opportunity to contest that issue in the prior proceeding" (*id.* at 665-666).

Thus, inasmuch as the Guarantors now seek to obtain documents to contest the legality of the late charges in this action, they cannot do so as the Minnesota Court of Appeals already resolved this issue when it determined that the late charges were valid and enforceable (NYSCEF Doc. No. 105). This finding from the Minnesota Action applies to the Guarantors because they are plainly in privity with the Minnesota Action defendants (i.e., the Change of Control provision was tripped if their ownership fell below a certain percentage of the Borrower), who were the Borrower and another guarantor of the same loan obligations that the Guarantors now seek to avoid (*see APF 286 Mad LLC v Chittur & Assoc. P.C.*, 132 AD3d 610, 610 [1st Dept 2015] [defendant guarantor collaterally estopped from disputing amount due to plaintiff landlord as determined in separate landlord-tenant action because guarantor was in privity with the tenant]).

As discussed further below, they were more than in privity – the Guarantors controlled the Borrower. Simply put, the Minnesota Action defendants had a full and fair opportunity to

contest the late charge, including an unsuccessful appeal to the Minnesota Court of Appeals. As a result, the Guarantors are estopped from contesting the enforceability of the late charges in the present action and the Plaintiff is not required to produce any documents concerning the same.

The Guarantors also argue that the Plaintiff should be judicially estopped from taking any position in this litigation that is contrary to its position in the Minnesota Action. In particular, the Guarantors request that the Plaintiff be estopped from asserting that it does not use standard commercial terms in its loan agreements because Mr. Kalikow stated in the Minnesota Action that it was (i) common practice for commercial lenders to include a late charge in loan agreements and (ii) that the Plaintiff regularly included a late charge of 5% of the missed payment/principal, especially in loans collateralized by large and complex properties (NYSCEF Doc. No. 89, ¶ 5).

Judicial estoppel prevents a party who assumed a certain position in a prior proceeding and secured a ruling in his or her favor from advancing a contrary position in another action, simply because his or her interests have changed (*Becerril v City of NY Dept. of Health & Mental Hygiene*, 110 AD3d 517, 519 [1st Dept 2013]).

To invoke the doctrine of judicial estoppel, a party must demonstrate that: (i) the other party has taken one position in a prior proceeding, (ii) in which that party secured a favorable judgment, and (iii) that party has thereafter taken a contrary or inconsistent position in a subsequent proceeding. In general, judicial estoppel only applies in cases where the court has relied on or

adopted a party's prior inconsistent position in ruling in that party's favor (*Kalikow 78/79 Co. v State*, 174 AD2d 7, 11 [1st Dept 1992]).

As the Minnesota Court of Appeals accepted the Plaintiff's evidence that it regularly included late charges in its loan agreements (NYSCEF Doc. No. 105 at 15-16), the Plaintiff is estopped from denying that it regularly included a late charge in its loan agreements but may continue to assert that each loan was bespoke. However, the Guarantors fail to establish that the court in the Minnesota Action relied on any other purportedly inconsistent statement of the Plaintiff in the Minnesota Action and the court declines to apply judicial estoppel to any other statements by the Plaintiff at this time (*see Matter of Stewart v Chautauqua County Bd. of Elections*, 14 NY3d 139, 150 [2010] [refusing to apply judicial estoppel where record was unclear as to whether trial court adopted party's initial position]).

B. The Guarantors' Requests for Admission

Pursuant to CPLR § 3123, a party may issue a written request for admissions regarding the truth of any factual matters that the party reasonably believes to be excluded from substantial dispute at trial. A notice to admit is limited in scope because its purpose is to secure the parties' agreement on specific matters and eliminate easily provable or undisputed issues from trial (*see Hodes v New York*, 165 AD2d 168, 170 [1st Dept 1991]; *Lewis v Hertz Corp.*, 193 AD2d 470, 470 [1st Dept 1993]). In other words, a notice to admit should not be used to obtain discovery.

The Guarantors argue that the Plaintiff should be compelled to either admit or deny RFAs 6 to 121 because the Plaintiff provided boilerplate objections to same (*see* NYSCEF Doc. No. 67). In

its opposition papers, the Plaintiff argues that it should not be required to provide a further response to the RFAs because they seek improper admissions on material issues or ultimate facts that are to be resolved at trial.

RFAs 6-29 seek admissions as to whether the Guarantors are signatories and/or parties to certain loan agreements. To the extent that the Guarantors seek confirmation of whether they were signatories of the Loan Agreement, the Note, and security agreement, this is a straightforward question of fact that the Plaintiff should respond to. However, the Guarantors are not entitled to a response as to who the "parties" are to certain documents as this calls for a legal conclusion and is not a mere question of fact. Accordingly, the Plaintiff shall provide a response either admitting or denying RFAs 6-11 and 18-23.

RFAs 30-69 seek admissions as to whether certain loan documents (i) contain standard terms, (ii) are in compliance with UCC, and (iii) are in compliance with the Second Restatement. However, the Plaintiffs are not required to respond to these RFAs as they improperly seek the admission of contested legal conclusions rather than uncontested issues of fact.

RFAs 70-117 seek admissions as to whether certain provisions or words are incorporated in various loan documents. These RFAs are improper because the incorporation of certain provisions is a question of law and RFAs may not be used as another means to obtain discovery.

RFAs 118-121 seek admissions on damages, including liquidated damages. The propriety of the damage award was already litigated in the Minnesota Action and its appeal. However, to the

extent that RFA 118 seeks clarification as to whether the late fee was charged in addition to the principal sum of the loan during the foreclosure sale, the plaintiff shall provide a response within 20 days.

Accordingly, the Plaintiff shall respond to RFAs 6-11, 18-23, and 118, only, by either admitting or denying the same within 20 days of this decision and order, otherwise these RFAs will be deemed admitted for the purpose of trial.

C. The Guarantors' Document Requests

The Guarantors argue that the Plaintiff should be compelled to respond to certain Requests because the materials sought are material and necessary to the Guarantors' affirmative defenses and counterclaims (*see* NYSCEF Doc. Nos. 72, 78).

Requests 16 and 17 call for documents demonstrating the standard terms used in the Plaintiff's loan agreements. Although the Guarantors assert that the Plaintiff provided "contradictory sworn testimony" on its use of standard terms in the loan agreements, the record indicates that the Plaintiff had a variety of terms that would often appear in loan documents, but as each loan was bespoke, there was no set of standard terms used for every loan document (NYSCEF Doc. Nos. 86, 88, 89). Accordingly, production regarding Requests 16 and 17 is not warranted.

Requests 19-21 and 34-36 are for documents demonstrating that the late fee and default interest provisions were in accordance with standard terms used in the Plaintiff's loan agreements. These Requests are also denied as the Plaintiff stated that it does not use standard commercial

terms as set forth above. In addition, the propriety of the damage award, which includes these provisions, was already decided in the Minnesota Action and its appeal.

Requests 50, 51-52-58, 68-76, 77-86, 87-95, 99-100, 116-122, 124, 127-133, 134-140, 141-146, and 150-151 are for documents reflecting the Plaintiff's incorporation of the late fee and default interest provisions from the Agreement to the Note, Payment Guaranty, and Limited Recourse Guaranty. Mr. Kalikow provided two affidavits indicating that the Plaintiff did not have additional paper records and that the Plaintiff did not have additional documents. In addition, during the Plaintiff's deposition on February 20, 2020, Mr. Kalikow testified that he did not believe that there were documents regarding the incorporation of certain provisions in the relevant loan documents because the agreements would have spoken for themselves (NYSCEF Doc. No. 88 at 63-69). In any event, the damage award was already litigated in the Minnesota Action and its appeal, which included the propriety of the late fee and default interest provisions. Accordingly, the Plaintiff is not required to produce any further response to the aforementioned Requests.

Requests 156-163 are for documents showing the Plaintiff's estimated and actual damages. Inasmuch as the Guarantors refer to the deposition of Mr. Kalikow where he testified that he did not know if the Plaintiff produced documents as to actual losses incurred, the Guarantors do not identify what, if any, relevance this information beyond the amount of the Judgment and the loss of the benefit of the bargain pursuant to the loan documents would have to the defense of this case or their counterclaims. This is particularly problematic the Minnesota Court of Appeals has already affirmed the Judgment (NYSCEF Doc. No. 105). Accordingly, the branch of the

Guarantors' motion to compel the production of further documents is denied. For the avoidance of doubt, the branch of the Guarantors' motion to strike the Plaintiff's reply to the Guarantors' counterclaims is also denied.

D. The Plaintiff's Privilege Log

To the extent that the Guarantors seek materials concerning negotiations between the Plaintiff and the Borrower over the inclusion of the late fee provision in the Loan Agreement, the Guarantors argue that these materials should have been disclosed because they are not subject to attorney-client privilege or work-product privilege, and are not listed in the Plaintiff's privilege log. However, the Guarantors' argument fails.

Communications exchanged between counsel for the Plaintiff and the Borrower are not privileged and are subject to disclosure. As a result, such communications would never be listed in the Plaintiff's privilege log and would fall within the purview of the Plaintiff's discovery obligations. In its opposition papers, the Plaintiff asserts that it would have produced these documents if they existed. Further, as discussed above, Mr. Kalikow has previously attested that the Plaintiff has produced all responsive documents to this litigation and specifically confirmed at his deposition that documents concerning the parties' dispute over the late fee provision would have been produced if they existed (NYSCEF Doc. No. 83, ¶ 10; NYSCEF Doc. No. 88 at 43:8-44:15). In addition, as also discussed, the propriety of the damage award was already litigated in the Minnesota action. Accordingly, this request is denied.

E. Spoliation of Evidence

The Guarantors argue that the Plaintiff should be sanctioned for the deletion or inadvertent withholding of relevant evidence in this litigation. In its opposition papers, the Plaintiff argues that sanctions are not justified because there is no evidence of its failure to preserve relevant evidence. The court agrees.

Pursuant to CPLR § 3126, a court has broad discretion to provide relief if a party has destroyed evidence that ought to have been disclosed. Such relief may include the preclusion of evidence, costs for replacement evidence, an adverse inference, or the striking of pleadings (*Ortega v City of NY*, 9 NY3d 69, 76 [2007]).

A party that seeks sanctions for spoliation of evidence must demonstrate: "(1) that the party with control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed with a 'culpable state of mind'; and finally, (3) that the destroyed evidence was relevant to the party's claim or defense such that the trier of fact could find that the evidence would support that claim or defense" (*VOOM HD Holdings LLC v EchoStar Satellite LLC*, 93 AD3d 33 [1st Dept 2012]). A party can only be sanctioned for the destruction of evidence after the duty to preserve the same has been triggered, which duty arises when that party reasonably anticipates litigation or a litigation hold is issued (*id.*, citing *Zubulake v UBS Warburg LLC*, 220 FRD 212 [SD NY 2003]).

The Guarantors fail to establish the critical elements of the first and second steps of the legal test set forth in *VOOM* because they do not explain (1) when litigation should have been reasonably anticipated, thus triggering the Plaintiff's duty to preserve evidence, and (2) that the Plaintiff's

lack of a document retention policy resulted in the destruction or deletion of any evidence by the Plaintiff (*contra VOOM*, 93 AD3d at 39-46 [imposing spoliation sanctions upon finding that defendant acted with gross negligence and in bad faith by failing to suspend the automatic deletion of emails after litigation was reasonably anticipated]). As the Guarantors have not met their burden in establishing either of these essential elements so as to be entitled to this drastic remedy, the branch of the Guarantors' motion for spoliation sanctions is denied.

For the avoidance of doubt, the Plaintiff's request to sanction the Guarantors for bringing the instant motion is denied because the motion cannot be said to be entirely without merit.

II. Motion Sequence 002 (the Guarantors' Motion to Vacate Note of Issue)

The Guarantors argue that note of issue should be vacated because discovery has not been completed. In their opposition papers, the Plaintiff argues that note of issue should not be vacated because there was no extension of the court ordered deadline for filing the note of issue and that the Guarantors did not timely file the instant motion before the note of issue was due.

A note of issue may be "vacated when it is based on upon a certificate of readiness that contains erroneous facts" (*Comer v Yellen,* 268 AD2d 381, 381 [1st Dept 2000]). Here, the certificate of readiness stated that discovery was complete, but noted that the instant discovery motion was pending when the note of issue was filed. As the additional discovery now ordered with respect to the discovery motion is limited to standard pre-trial admissions and will be completed within 20 days, the Guarantors' motion to vacate the note of issue is denied (*see Fuisz v. 6 E. 72nd St. Corp.*, 2020 NYLJ LEXIS 1298, *4 [Sup Ct NY County, August 5, 2020, O'Neill-Levy, J.]

[denying motion to vacate note of issue where outstanding discovery limited and disclosed on certificate of readiness]).

Accordingly, it is

ORDERED that the Guarantors' motion to compel (Mtn. Seq. 001) is granted solely to the extent that the Plaintiff shall respond in accordance with the above within 20 days of this Decision and Order; and it is further

ORDERED that the Guarantors' motion to vacate the note of issue (Mtn. Seq. 002) is denied; and it is further

ORDERED that inasmuch as the note of issue was filed on June 30, 2020 and the parties had 60 days to file summary judgment motions from the date of note of issue pursuant to the Part Rules of Part 53, good cause exists to extend that time for 50 days from the date of this Decision and Order (to accommodate the 20 days for Plaintiff's responses ordered herein).

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8/28/2020
DATE

ANDREW BORROK, 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