SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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ANTHONY FRANCHI,

Plaintiff,

- v -

ENZO BIOCHEM, INC., ELAZAR RABBANI, REBECCA FISCHER, DOV PERLYSKY, MARY TAGLIAFERRI, and IAN WALTERS,

Defendants.

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INDEX NO. 656979/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

AMENDED Dec. 28, 2020

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 13, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35-55

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, it is

Plaintiff Anthony Franchi, a shareholder of defendant Enzo Biochem, Inc.[1] (Enzo), moves, pursuant to CPLR 6301 and 6311, for a preliminary injunction (1) preventing defendants from holding Enzo's annual shareholders' meeting, currently scheduled for January 4, 2021, unless either (a) defendants provide Enzo shareholders with a reasonable opportunity to nominate directors for election at such meeting or (b) there is a final determination of plaintiff's claims against defendants; and (2) permitting expedited discovery to take place immediately, in support of a hearing for a final determination of plaintiff's claims. (NYSCEF Doc. No. [NYSCEF] 2, Verified Complaint filed December 11, 2020). Plaintiff does not seek to nominate a candidate, only to open the nomination window should a qualified shareholder wish to do so. Therefore, this decision concerns whether defendants interfered with plaintiff's right to vote, not his right to nominate a director candidate. For the reasons discussed below, plaintiff's motion is denied to the extent that he seeks to prevent the January 4, 2021 meeting from being held.[2]

[1] The other defendants are the five members of the board of directors (collectively, Director Defendants).

[2] The court considered briefly opening the window for nominations this week, which was not the relief plaintiff sought, as less drastic than plaintiff's requested relief, but the court determined that it would not provide shareholders with a reasonable and meaningful opportunity to make informed decisions which is precisely the reason for the advance notice provision.

Following argument on December 23, 2020, plaintiff provided documentary proof that he owns 15 shares of Enzo stock purchased on November 3, 2020 and continued to hold through November 30, 2020. (NYSCEF 44, Transaction Confirmation; NYSCEF 45, November Fidelity Statement). However, plaintiff holds those shares in a Fidelity account, making him a beneficial owner. Defendants challenge whether plaintiff is the holder of record for the purposes of voting and nominating. Accordingly, the court invited the parties to brief the issue on an expedited basis. The court concludes that plaintiff has standing because he is a shareholder entitled to vote, albeit his right to vote is by proxy. (BCL §609[d]; *see* NYSCEF 22, By-Laws, Art. I, §9, 4[b] [to propose business at the annual meeting, "a shareholder of record (and, with respect to any beneficial owner, if different"); Art. I, §4[d] (defines "proposing person" to include "the beneficial owner or beneficial owners ...on whose behalf the notice of the business proposed to be brought before the annual meeting is made."]; Art II, §12 [voting to remove a director, the votes of beneficial shareholders count]; NYSCEF 41, Enzo's 2020 Proxy Statement, Ex. 4; NYSCEF 47, Enzo's 2019 Proxy Statement; NYSCEF 48, Enzo's 2015 Proxy Statement). Likewise, the court rejects defendants' argument that plaintiff somehow loses his rights as a shareholder because he has been named in 25 prior securities litigations; it is simply not relevant.

This case raises the inherent conflict between the business judgment rule[3] and the shareholders' fundamental right to nominate candidates to join the board of directors. The business decision at issue here is defendants' failure to waive the facially valid by-law that limits a shareholder's right to nominate a director for election to the board when the composition of the five-member board changed because two recently elected independent directors resigned and the board filled the seats after the nomination window closed. The court rejects plaintiff's proposition that he also has a right to have a choice among candidates when shareholders vote for members of the board of directors; it is for shareholders to nominate competing candidates.

A corporation may not take action that is legally permissible but inequitable toward their shareholders. (*Accipiter Life Sciences Fund, L v Helfer*, 905 A2d 115, 124 [Del Ch 2006]).[4] "Because of the fundamental importance of shareholder voting rights to our system of corporate governance, . . . director conduct intended to interfere with or frustrate shareholder voting rights is presumptively inequitable and will be invalidated, unless the directors are able to rebut that presumption by showing a compelling justification for their actions." (*Hubbard v Hollywood Park Realty Enterprises, Inc.*, 1991

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[3] Plaintiff was invited to reply to defendants' business judgment rule argument on an expedited basis.

[4] As there is but one reported case in New York addressing an advance notice provision for shareholders to nominate a director for election to a board of directors, the court looks to the law in Delaware where there is a plethora of decisions. (*See Matter of Xerox Corp. Consol Shareholder Litig.*, 61 Misc 3d 176 [Sup Ct, NY County 2018] *revd, Deason v Fujifilm Holdings Corp.*, 165 AD3d 501 [1st Dept 2018]; *see also Int'l Banknote Co., Inc. v Muller*, 713 F Supp 612, 623 [SDNY 1989]).

WL 3151, *8 [Del Ch 1991]). The conduct at issue here is defendants' failure to open the nominating window after the resignation of two of five directors from the board; the two dissident directors elected last year during a proxy fight. However, plaintiff is not entitled to this presumption without some evidence of impropriety or unfair manipulation, not evident to the court here at this early juncture; defendants have yet to answer the complaint.

The court rejects plaintiff's proposition that the business judgment rule does not apply. "That doctrine bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes." (*Auerbach v Bennett*, 47 NY2d 619, 629 [1979]). In *Matter of Xerox Corp. Consol Shareholder Litig.,* an action for breach of fiduciary duty, after the advance notice window closed for nomination of directors to the board, the board approved a transaction pursuant to which Fuji would acquire the controlling interest in Xerox without any cash payment. (61 Misc 3d 176 [Sup Ct, NY County 2018]). After expedited discovery and a hearing, the court found likelihood of success on the merits that board breached fiduciary duty and irreparable harm because shareholders would lose the potential opportunity to receive a superior control premium. (*Id.*) The First Department reversed based on the business judgment rule and dissolved the preliminary injunction enjoining defendants from taking any further action to consummate the change of control transaction, including the annual meeting, where plaintiffs failed to show bad faith or a disabling interest on the part of the majority of the directors of Xerox. (*Deason v Fujifilm Holdings Corp.*, 165 AD3d 501, 502 [1st Dept 2018]). A "plausible and legitimate explanation for the board's decision" will defeat any allegation of bad faith. (*In re MeadWestvaco Stockholders Litig.*, 168 A3d 675, 684 [Del Ch 2017]).

The Advance Notice provision (ANP), which shortens the period of time during which a shareholder may nominate a director to run for election to the board of directors (Nomination Window), is set forth in Section II, Article 15 of Enzo's By-Laws:

> "any shareholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a meeting only if written notice of such shareholder's intent to make such nomination or nominations has been given . . . (i) with respect to an election to be held at an annual meeting of shareholders, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the earlier of the date of the meeting or the corresponding date on which the immediately preceding year's annual meeting of shareholders was held."

(NYSCEF 22, By-Laws). The focus here is on defendants' decision not to open the Nominating Window, not the enactment of the ANP itself. The by-Laws also provide that the annual meeting is to be held "during the sixth month following the close of [Enzo's] fiscal year as designated by resolution of the Board." (NYSCEF 22, By-Laws, Article I, Section 1). For the last ten years, Enzo's fiscal year has ended in July and its

annual meeting has been held the following January. (NYSCEF 21, Bench[5] aff, ¶11). The 2019 meeting was held on January 31, 2020, and adjourned to February 25, 2020, when an insurgent shareholder nominated a slate of directors for election to the board. (NYSCEF 2, Verified Complaint ¶37).

Enzo's board consists of five members. (NYSCEF 22, By-Laws Art II, §2). In February 2020, following a proxy fight, Fabian Blank and Peter Clemens were elected to three-year terms on the board. (NYSCEF 2, Verified Complaint ¶37). However, Clemens and Blank resigned from the board on November 9 and 10, 2020 respectively. (*Id.,* ¶¶38-39). Consistent with Article II, §11 of the By-Laws,[6] the remaining board members filled the seats with Mary Tagliaferri, M.D. on November 18, 2020 and Ian B. Walters, M.D. on November 25, 2020. (*Id.*, ¶40). Both are up for election at the next annual meeting as required by NY Business Corporation Law §705(c). Until these resignations, only Elazar Rabbiani, Ph.D., the leader of Enzo since 1976, was up for re-election to the board. (NYSCEF 21, Bench aff ¶10).

On November 27, 2020, Roumell Asset Management, LLC (RAM), which holds approximately 5.8% of Enzo's stock, nominated two directors to stand for election at the January 4, 2020 annual meeting. (NYSCEF 2, Verified Complaint, ¶42). Measured from the anniversary of the previous year's annual meeting (*i.e.*, February 25, 2020), November 27, 2020 was the last day that shareholders could nominate directors (*i.e.*, 90 days prior to February 25, 2021).

However, also on November 27, 2020, Enzo filed its proxy statement announcing that the next annual meeting would be held on January 4, 2021.[7] (*Id.,* ¶43). Since January 4, 2021 was just 38 days after the date the meeting was noticed, Enzo set the Nomination Window such that it closed on October 6, 2020 (the Notice Deadline). (*Id.*, ¶46). Accordingly, the Nomination Window closed well before the window set based on the prior year's annual meeting even opened. Under the ANP, October 6, 2020 is the earlier of the two dates, and thus, the last day on which shareholders may nominate a director.

On December 1, 2020, Enzo rejected RAM's nomination. Enzo declares here that RAM was not a record owner and it did not deliver its nomination by personal delivery or U.S. mail by November 2, 2020. (NYSCEF 21, Bench ¶¶26, 27). However,

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[5] David A. Bench is Enzo's CFO.

[6] The By-Laws set no deadline for the board to fill seats. By filling the seats before issuing its Definitive Proxy Statement thereafter, defendants' preferred directors Tagiaferri and Walters will run as incumbents. However, Enzo explains that NYSE rules require Enzo to have at least three independent directors on its audit committee. (NYSCEF 21, Bench aff ¶19). Bench asserts that Director Defendants Rebecca Fischer and Dov Perlysky are independent directors. (*Id.*).

[7] Enzo listed the date of the annual meeting as January 4, 2021 in its 161-page annual report filed with the SEC on October 19, 2020. (NYSCEF 28, Enzo's Form 10K Annual Report at 2).

Enzo also admits that RAM has been a shareholder of Enzo since September 7, 2018, and that on July 23, 2020, RAM informed its own investors that it re-acquired a stake in Enzo. (NYSCEF 25, RAM's history of owning Enzo stock). Moreover, RAM supported the insurgent proxy fight in 2019 and increased its position as a result of the election of Blank and Clemens. (NYSCEF 21, Bench Aff ¶9). RAM notified the SEC requesting the SEC require Enzo to stop soliciting proxies and refile Enzo's definitive proxy statement including RAM's candidates. (NYSCEF 8, 9,10, SEC Schedule Ds filed by RAM on November 27, December 4, and 7, 2020). On December 23, 2020, RAM filed a definitive proxy statement offering two candidates to challenge Tagliaferri and Rabbani; RAM is not challenging Walters. (NYSCEF 39, RAM Proxy). However, this case is about plaintiff's right to vote on January 4, 2021, not RAM. Accordingly, even if plaintiff is seeking to litigate the validity of RAM's nominations, as defendants suggest, (NYSCEF 55, Defendants' MOL at 7), RAM is not before the court.

In the first cause of action in his verified complaint, plaintiff asserts a claim for breach of fiduciary duty:

> "59. By failing to provide stockholders notice of the date of the 2020 Annual Meeting before the Notice Deadline, the Director Defendants acted for the disloyal and inequitable purpose of preventing Enzo stockholders from taking action that would threaten the Director Defendants' continued positions as Company directors."

(NYSCEF 2, Verified Complaint). In order to establish a breach of fiduciary duty, a plaintiff must prove the existence of a fiduciary relationship, misconduct by the defendant, and damages that were directly caused by the defendant's misconduct. (*Ozelkan v Tyree Bros. Envtl. Servs. Inc.,* 29 AD3d 877, 879 [2d Dept 2006]).

> "This court is 'vigilant in policing fiduciary misconduct that has the effect of impeding or interfering with the effectiveness of a stockholder vote.' 'This is particularly the case in matters relating to the election of directors.' Thus, when advance notice bylaws unduly restrict the stockholder franchise or are applied inequitably, they will be struck down."

(*Openwave Sys. Inc. v Harbinger Capital Partners Master Fund I, Ltd.*, 924 A2d 228, 239 [Del Ch 2007] [citations omitted] [judgment entered]). Here, the question is whether the board breached its fiduciary duty with an inequitable application of the ANP by refusing to open the Nomination Window following a material change. The application is inequitable if: there was a change after the Nomination Window closed; the change was material; and the board caused the material change. (*AB Value Partners LP v Kreisler Manufacturing Corp.*, 2014 WL 7150465 *5, 2014 Del. Ch. LEXIS 264 [Del Ch 2014]). A change is material if it is a "radical shift in position" caused by the directors. (*Hubbard*, 1991 WL 3151, *6).

In his second cause of action, Franchi seeks a declaratory judgment that (1) the Director Defendants have breached their fiduciary duties by failing to provide

stockholders notice of the date of the 2020 Annual Meeting before the Notice Deadline;[8] and (2) the Director Defendants caused material changes to the Company after the Notice Deadline, entitling Company stockholders to nominate directors prior to the 2020 Annual Meeting. (NYSCEF 2, Verified Complaint ¶¶62-65). "[A] declaratory judgment requires a 'justiciable controversy,' in which not only does the plaintiff 'have an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to plaintiffs.'" (*Touro Coll. v Novus Univ. Corp.*, 146 AD3d 679, 680 [1st Dept 2017] [citation omitted]). The second declaratory judgment plaintiff seeks is essentially one of the elements necessary for his fiduciary duty claim.

"A preliminary injunction is an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor" under CPLR 6301. (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). "With respect to likelihood of success on the merits, the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action." (*1234 Broadway LLC v West Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d 18, 23 [1st Dept 2011] [citation omitted].) The proponent "need not tender conclusive proof beyond any factual dispute establishing ultimate success in the underlying action" but "establish a clear right to that relief under the law and the undisputed facts upon the moving papers." (*Id.* [internal quotation marks and citations omitted].) Relief will be denied "[i]f key facts are in dispute" or plaintiff's proof rests solely on "speculation and conjecture." (*Faberge Intl. Inc. v Di Pino*, 109 AD2d 235, 240 [1st Dept 1985] [citation omitted]). "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite." (*Spectrum Stamford, LLC v 400 Atlantic Title, LLC*, 162 AD3d 615, 617 [1st Dept 2018] [citaion omitted]).

The relevant period of time here is when the directors resigned and were almost quickly replaced – November 9 to 25, 2020. Whether Enzo noticed the January 4, 2021 annual meeting on October 19 or 27, 2020 or not until November 27, 2020 is irrelevant. All of these dates are undeniably after the ANP's October 6, 2020 Nomination Window closed. Shareholders had little to no time to study the situation, find qualified candidates and nominate them.

Plaintiff has failed to demonstrate the elements for a preliminary injunction. First, plaintiff has not offered anything but conjecture as to the Defendant Directors' intent in failing to open the Nominating Window following the material event of the resignations of two dissident directors. To show the Director Defendants' misconduct or bad faith, plaintiff "must allege particularized facts, and not merely conclusory statements, that

[8] As Enzo's by-laws have no such requirement, as so many other corporations' by-laws do, the court does not address whether plaintiff can establish likelihood of success on this claim. (See e.g. (*Hubbard*, 1991 WL 3151, *2).

would raise a reason to doubt whether the board's action was taken on an informed basis or whether the directors honestly and in good faith believed that the action was in the best interests of the corporation." (*Cent. Laborers' Pension Fund ex rel. Goldman Sachs Grp., Inc. v Blankfein*, 34 Misc. 3d 456, 468-69 [Sup Ct, NY County 2011] [citations omitted], *affd sub nom. Cent. Laborers' Pension Fund v Blankfein*, 111 AD3d 40 [1st Dept 2013]). Therefore, plaintiff has not established a likelihood of success on the merits for breach of fiduciary duty.

Likewise, plaintiff has not demonstrated a likelihood of success on his declaratory judgment claim. It is undisputed that the resignations occurred after the Nomination Window closed. Certainly, the directors caused the change since it was two directors who resigned; the test is not limited to the Director Defendants as plaintiff asserts. Bench denies that Enzo demanded or caused the resignations and the resigning directors provided no explanation to Bench. (NYSCEF 21, Bench aff ¶17). However, Bench is not a member of the board and fails to explain the source of his information. Moreover, Bench fails to state whether the resigning directors informed Enzo or the board prior to their resignations and if so when.

Further, the board's action must be impermissible; the board must have acted "with the intent of influencing or precluding a proxy contest for control of the corporation." (*Accipiter Life Scis. Fund, L.P. v Helfer*, 905 A2d 115, 125 [Del Ch 2006]). Plaintiff asserts that the resignation of 2/5 board members is a radical change especially because the directors were recently elected after insurgent shareholders challenged incumbent directors in an effort to influence the direction of the corporation. Rather, for this court make such a finding now, it must impermissibly infer relationships between the resigning directors and the remaining directors and between the new directors and the remaining directors.

The remaining issue is material change. Examples of such a material shift was found in *Icahn Partners LP v Amylin Pharmaceuticals, Inc*, where the court enjoined application of an advance notice by-law where the board refused to consider a potential sale of the company with a substantial premium. (2012 WL 1526814 [Del Ch 2012]). In *Hubbard*, the court waived the advance notice requirement to allow any shareholder an opportunity to nominate a slate of candidates to the board because after the nomination widow closed, the dissident shareholder joined the board, abandoned its proxy fight and succeeded in changing the board's philosophy all without a shareholder vote. (1991 WL 3151, *6). This case is distinguished, from those in which the court enjoined the application of the advance notice provision. There is no allegation "that the company unfairly manipulated the voting process in such a serious way as to constitute an evident or grave incursion in the fabric of the corporate law." (*Accipeiter Life Sciences Fund LP v Helfer*, 905 A2d 115, 127 [Del. Ch 2006). At this stage plaintiff has not identified such an actual shift on the board; only a perceived shift by the roles of the resigning directors.

However, even if the court were to presume a likelihood of success that the change was material, both the business judgment rule and the material change test invite defendants to offer a plausible legitimate explanation for its decision. (*See*

Openwave Sys. Inc. v Harbinger Capital Partners Master Fund I, Ltd., 924 A2d 228, 242 [Del Ch. 2007] [waiving advance notice by-laws would "be unfair to the remaining stockholders" and would cause "the bylaws [to] lack meaning"]). Here, defendants assert that the By-Laws and NYSE rules guided decisions. Less persuasive is Bench's suggestion that cost informed defendants' decision. Bench asserts the cost to postpone the annual meeting is $856,000 including: transfer agent $12,000 + legal advice to prepare new proxy statement and additional solicitations $150,000 + printing and mailing new proxy statements and additional proxies $167,000 + investor relations for press release $15,000 + background checks of RAM's two candidates $44,000 + proxy solicitor services $80,000 + proxy contest consulting expenses $350,000 + Broad Ridge Financial Solutions for virtually hosting meeting and tabulation $38,000.[9] Therefore, plaintiff has not established a likelihood of success on the merits for either breach of fiduciary duty or a declaratory judgment.

While a shareholder's right to nominate and to vote for nominees to a corporate board of directors is sacrosanct, and thus, any board interference with that right may be presumptively inequitable, the court cannot find irreparable harm on this record. The wrongful denial of the shareholder franchise results in irreparable harm to stockholders. (*See, e.g.*, *Broadway Assn. v Park Royal Owners, Inc.*, 2002 WL 34452788, 487 [Sup Ct, NY County 2002] ["A corporate shareholder who has been wrongfully denied the fundamental right to vote their shares and gain representation on the board of directors is presumed to be threatened with irreparable harm."]; *International Banknote Co., Inc. v Muller*, 713 F Supp 612, 623 [SDNY 1989] [citations omitted] [where shareholders challenged New York corporation's adoption of 45 day notice provision, 58 days before the already noticed annual meeting, the court held that "Courts have consistently found that corporate management subjects shareholders to irreparable harm by denying them the right to vote their shares or unnecessarily frustrating them in their attempt to obtain representation on the board of directors"]). However, plaintiff has not proffered a candidate for election and has failed to offer any explanation, e.g. not enough time to identify a qualified candidate. The court cannot conclude on this record that plaintiff will be irreparably harmed since he can seek to set aside the election of January 4, 2020 if he secures such proof. (NY BCL §619). Plaintiff is not without a remedy. He could also withhold his vote for a candidate. (*Sherwood v Ngon*, 2011 WL 6355209 *10 [Del Ch 2011]). Further, plaintiff has not established harm to his right to vote; the only right at issue here. (*See Broadway Assoc. v Park Royal Owners, Inc.*, 2002 WL 34452788 [Sup Ct, NY County 2002] [court declared election result a nullity because sponsor's votes were not counted at cooperative's annual meeting]). Defendants' failure to open the Nominating Window before the annual meeting affects plaintiff's right to nominate, but he does not seek to nominate a candidate, and thus, it is moot. The court will not infer in a right to vote, the right to select from an array of candidates. Corporations are

[9] Bench fails to support his "conservative estimate" with any documentary support or even offer a factual basis. Enzo has had two prior proxy contests. (NYSCEF 21, Bench Aff,§§26-49). As Enzo adjourned its January 30, 2020 meeting to February 25, 2020, it certainly has recent relevant data available.

not required to provide a choice of candidates. It is up to the shareholders to nominate competing candidates.

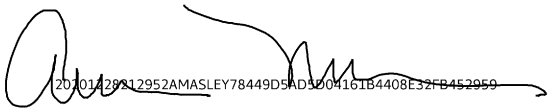
The balance of the equities will favor the shareholder where the board denies the shareholders' ability to nominate a dissident slate of directors which contradicts the underlying purpose of the ANP. The function of an ANP is to assure "that stockholders and directors will have a reasonable opportunity to thoughtfully consider nominations and to allow for full information to be distributed to stockholders, along with the arguments on both sides." (*Hubbard*, 1991 WL 3151, *13). However, denying shareholders the ability to nominate directors entirely ensures "that there will be no 'arguments on both sides' for shareholders to consider." (*Id.*) However, plaintiff does not seek to nominate a director for election to the board. His suggestion that others may wish to so nominate is speculative which is insufficient for a mandatory preliminary injunction.

Plaintiff's effort to divorce his right to vote from a right to nominate candidates for election to the board of directors is fatal to this application. As of the date of this decision, plaintiff is not a shareholder of record, and thus, could not represent otherwise as required by Art. II, §15 in order to nominate a candidate for election as a director. Plaintiff's assertion that beneficial holders could easily become record holder during a brief opening of the nominating window is without explanation as to how or the basis for his opinion. Moreover, it is moot because plaintiff does not seek to nominate a candidate.

The court compliments counsel on their presentations on such short notice and over a holiday weekend.

Accordingly, it is

ORDERED that plaintiff's motion is denied.



12/28/2020
DATE

ANDREA MASLEY, 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**