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

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ALROSE STEINWAY, LLC,

Plaintiff,

- v -

JASPAN SCHLESINGER, LLP, STEPHEN EPSTEIN, and STEVEN SCHLESINGER,

Defendants.

INDEX NO. 151482/2017

MOTION DATE 05/04/2020

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 242, 243, 244, 245, 287, 288

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, it is

In motion sequence number 006, defendants Jaspan Schlesinger LLP (JS LLP) and Stephen Epstein move, pursuant to CPLR 3212, for an order granting summary judgment in their favor dismissing plaintiff Alrose Steinway, LLC's verified complaint for legal malpractice that JS LLP and Epstein negligently advised plaintiff to enter into an amendment to a lease.

Background

On February 1, 2014, plaintiff, as tenant, entered a 10-year ground lease covering two properties in Astoria, Queens (the Premises) with nonparty Steinway Holding Corp. (Landlord), as landlord. (NYSCEF Doc. No. [NYSCEF] 156, Ground Lease.) Nonparty Allen Rosenberg, as plaintiff's manager, and nonparties Cheryl

Holtzman and Regina Martins, Landlord's president and secretary, respectively, executed the lease. (*Id.*). The lease grants plaintiff the option to purchase the Premises after February 1, 2024, i.e. ten years from the date of the ground lease, for $11 million "subject to any increase in the purchase price as a result of the Landlord's Notice to Tenant to Purchase, under Article XXXII." (*Id.* at §§ 30.01, 1.01 [e], [f].)

The lease also confers a right of first refusal on plaintiff. (*Id.*, § 31.01.) Specifically, section 31.01 states,

> "[i]f the Landlord received a bona fide offer to purchase the Premises, at any time on or after the Commencement Date and prior to the expiration of the term of the lease, which it desires to accept, the Landlord shall notify the Tenant in writing and furnish it with a copy of the offer and proposed agreement to purchase the Premises. The Tenant shall have the right to purchase the Premises at the price and upon the terms provided for in the offer, except as otherwise provided herein. If the Tenant wishes to exercise its right of first refusal, it shall do so by executing and delivering to the Landlord within ten (10) days after receipt of the notice and copy of the offer, the proposed agreement to purchase the Premises upon the same terms and conditions contained therein, including:
>
> i. The price at which the terms of payment upon which the Tenant may elect to purchase such interest; and
>
> ii. The closing date which shall be not less than sixty (60) days, no more than ninety (90) days after the date of notice upon which the closing of such premises is to occur. The purchase price specified in the Notice to the Landlord is sum certain (that is, no contingent payment shall be permitted).
>
> iii. If the Tenant does not exercise its right of first refusal to purchase, the Landlord shall be free to accept the offer and dispose of the Premises. However, if for any reason the Landlord does not sell to the party who made the offer, the provisions of this clause shall apply to any other offer the Landlord may thereafter receive for the Premises."

(*Id.* at 44-46.)

Section 31.02 provides what would happen to the option if plaintiff failed to exercise its right of first refusal.

> "Notwithstanding anything to the contrary contained herein, if the Landlord received a bona fide offer to purchase the Premises and notifies the Tenant in writing and furnishes it with a copy of the offer and proposed agreement to purchase the Premises, and Tenant fails to exercise its right of first refusal hereunder, Tenant's option to purchase during the final lease year under Article XXX shall be *unaffected* and Tenant will have the Right to purchase as provided in Article XXX. If Tenant fails to exercise its right of first refusal hereunder the Landlord and the prospective third-party purchaser fail to close, Tenant's option to purchase under Article XXX shall be deemed revived and valid as to any future proposed sale by Landlord."

(*Id.* at 46, § 31.02 [emphasis added].)

On September 1, 2015, Landlord's counsel, Wayne Edwards, emailed defendant Epstein, plaintiff's counsel, and asked to discuss several issues and directed Epstein to look at the "former version" of Section 31.02 of the lease, the text of which he quoted. (NYSCEF 159, 9/1/15 Email.) A few hours later, Landlord's counsel emailed Epstein again to inform Epstein that Edwards' "client Regina Martins, apparently she believes I mis represented [sic] her because the lease draft of 1/21 was cleaned up the night we met at my office on 1/24 -even though there were no substantive changes she is now upset that I made those changes." (NYSCEF 161, 9/1/15 Email [2:52PM].) On October 16, 2015, Martins sent an email to Epstein, Edwards, Holtzman and Rosenberg stating, in part,

> "On 1/21/14, we all received the most current lease from many months worth of discussions. On 1/24/14, the paralegal from Wayne Edwards office attached an older version of the lease that was identical to a draft In

> December 2013. This error was discovered recently, and given there were multiple parties included who have these two emails, this is easily verifiable. More importantly, It reflects the intention of the parties and remedies the failure at the clerical level. If you have not already done so, please review your own email history from Jan 21, 2014, 9:47 AM sent by Mr Epstein (correct) and resent by Mr Edwards on Jan 21, 2014, 12:15 PM (same correct version), as opposed to the incorrect version (forwarded from Mr Edwards' paralegal) and emailed out by Mr Edwards at Jan 24, 2014, 5:17 PM (incorrect) to verify the digital paper trail. I can forward these emails if you do not have copies in your history. In the interest of keeping the lease physically unmodified from its form, I've attached an older print of an executed signature page from the 1/21/14 lease so we can continue with the correct lease. That said, it might be more appropriate to append the last page of the document to include signature lines and dates for total clarity."

(NYSCEF 162, 10/16/15 Email.)

With Martins not pleased with the lease, on November 6, 2015, Edwards sent Epstein an email stating "I finally got [Martins] to agree that is [sic] article 31.02 was changed back to the original language that this would satisfy her, can you review it with [Rosenberg] and if acceptable have him sign 4 copies. This will go a long way in getting the food market lease accomplished."[1] (NYSCEF 164, 11/6/15 Email.) That evening, Epstein forwarded this email to Rosenberg. (*Id.*). Rosenberg testified that Epstein advised him that the lease amendment was simply "housekeeping" and intended only to "clean[] up language in the lease." (NYSCEF 137, Rosenberg deposition tr at 126-127.)

On December 14, 2015, Epstein emailed Edwards to inform him of the substantial progress plaintiff had made on securing the sublease. (NYSCEF 170, 12/14/15 Email.) Edwards responded that he would forward the terms to Landlord but stated that the lease amendment would help. (*Id.*). On December 28, 2015, Rosenberg's project manager, Maria Gonzales, sent Landlord an email, stating "[a]s per

[1] As parties were going back and forth on the lease, plaintiff had a prospective subtenant, Foodtown Supermarket. (NYSCEF 163, 10/27/15 Email.) Plaintiff also had another prospective subtenant, Dania Meat Corp. (NYSCEF 181, 2/19/16 Email.)

[Rosenberg], Please see attached signed Amendment of Lease." (NYSCEF 174, 12/28/2015 Email and Amendment of Lease.) The lease amendment provides that

> "[i]t is AGREED, that Article 31.02 in the Lease hereby deleted and replaced as follows:
>
> 1. Notwithstanding anything to the contrary contained herein, if the Landlord received a bona fide offer to purchase the Premises and notifies the Tenant in writing and furnishes it with a copy of the offer and proposed agreement to purchase the Premises, then Tenant's option to purchase during the final lease year under Article XXX shall be *void.* If the Landlord and the prospective third-party purchaser fail to close, then the Tenant's option to purchase under Article XXX shall be deemed revived and valid."

(*Id.* [emphasis added].) Despite already having sent the signed lease amendment, Rosenberg emailed Epstein on December 30, 2015, stating that he did not sign the amendment yet and wanted his recognition agreement signed first. (NYSCEF 175, 12/30/15 Email.) On January 6, 2015, Landlord fully executed the lease amendment. (NYSCEF 178, 1/7/16 Email and Executed Lease Amendment.) However, as of January 26, 2016, Landlord had not approved the subtenant. (NYSCEF 180, 1/26/15 Email.)

Plaintiff's business plan was to sublet the Premises at higher rates than it payed to Landlord. (NYSCEF 147, Rosenberg aff ¶ 2.) However, plaintiff twice entered into potential leases with subtenants, but Landlord delayed "approving those [sub]tenants until the [sub]tenants exercised their right to cancel their leases." (*Id.* ¶ 3.) Rosenberg testified that "the [Landlord was] unreasonable" and that "[it] unreasonably withheld permission to … sublet." (NYSCEF 137, Rosenberg deposition tr at 86:17-25.)

Rosenberg affirms that the cancellation of the sublets drained plaintiff's finances as the relevant spaces "stood vacant." (NYSCEF 147, Rosenberg aff ¶ 3.)

By letter dated July 25, 2016, Landlord informed plaintiff of a *bona fide* offer to purchase the buildings and enclosed a copy of the proposed purchase and sale agreement (Proposed Agreement). (NYSCEF 148, 7/25/2016 Letter and Proposed Agreement.) Landlord reiterated that "you, the Tenant, have the right to purchase the Property at the price and upon the terms of the Offer set forth in the Proposed Agreement." (*Id.*) The Proposed Agreement stated a purchase price of $14,500,000. (*Id.*)

On July 21, 2016, four days prior to Landlord's written notice of an offer, plaintiff entered into a contract of sale (COA) with Landlord for the purchase of the Premises in the amount of $14,500,000. (NYSCEF 149, Contact of Sale.) On October 21, 2016, the sale closed. (NYSCEF 217, Closing Statement.)

On February 15, 2017, plaintiff filed this legal malpractice action against Epstein, JS LLP, Epstein's law firm, and Steven Schlesinger, JS LLP's managing partner.[2] Plaintiff asserts that Epstein failed to advise or lacked due care when he advised plaintiff about the lease amendment's consequences. (NYSCEF 134, Complaint ¶¶ 64-76.) Plaintiff alleges two claims of legal malpractice against Epstein and JS LLP. (*Id.*) Plaintiff also alleges a third claim of negligent supervision against JS LLP. (*Id.* ¶¶ 77-85; NYSCEF 31, Decision and Order at 3.)

Defendants now move for summary judgment dismissing all causes of action.

[2] Schlesinger was dismissed from this action. (NYSCEF Doc. No. 31, Decision and Order.)

II. Discussion

To obtain summary judgment, the movant must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. (CPLR 3212 [b].) This standard requires the movant to make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) The court views this evidence in the light most favorable to the non-moving party opposing summary judgment and draws all reasonable inferences in that party's favor. (*Flomenbaum v New York Univ.*, 71 AD3d 80, 91 [1st Dept 2009].) Should the movant make a *prima facie* showing of entitlement to summary judgment, the burden shifts to the non-moving party to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action. (*Vermette v Kenworth Truck Co.*, 68 NY2d 714, 717 [1986].)

A. Legal Malpractice

"An action for legal malpractice requires proof of three elements: (1) that the attorney was negligent; (2) that such negligence was a proximate cause of plaintiff's loss; and (3) proof of actual damages." (*Brooks v Lewin*, 21 AD3d 731, 734 [1st Dept 2005] [citation omitted].)

> "In an action to recover damages for legal malpractice, a plaintiff must demonstrate that the attorney failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession and that the attorney's breach of this duty proximately caused plaintiff to sustain actual and ascertainable damages. To establish causation, a plaintiff must show that he or she would have prevailed in the underlying action or would not have incurred any damages, but for the lawyer's negligence."

(*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007] [internal

quotation marks and citations omitted].) "Contentions underlying a claim for legal malpractice which are 'couched in terms of gross speculations on future events and point to the speculative nature of plaintiffs' claim,' are insufficient as a matter of law to establish that defendants' negligence, if any, was the proximate cause of plaintiffs' injuries." (*Phillips-Smith Specialty Retail Group II v Parker Chapin Flattau & Klimpl*, 265 AD2d 208, 210 [1st Dept 1999] [citations omitted].)

The third element requires proof of "actual or ascertainable" damages that are "clearly calculable". (*Gallet, Dreyer & Berkey, LLP v Basile*, 141 AD3d 405, 406 [1st Dept 2016].) "Vague, unclear, speculative" damage will not suffice. (*Id.* [citation omitted.]) Indeed, "[d]amages in a legal malpractice case are designed 'to make the injured client whole.'" (*Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 443 [2007] [citation omitted].)

Here, JS LLP and Epstein make a *prima facie* showing of entitlement to judgment as a matter of law dismissing plaintiff's first and second legal malpractice claims by submitting proof that defendants were not negligent. As previously stated, the defendants contend that they did not fail to advise nor lack due care in advising plaintiff about the lease amendment. JS LLP and Epstein maintain that the plaintiff understood that the lease amendment was a bargaining chip to incentivize the Landlord into approving subtenants.

In support, JS LLP and Epstein submit the November 6, 2015 email that Epstein received from Edwards informing Epstein that execution of the lease amendment would "go a long way in getting the food market lease accomplished." (NYSCEF 164, 11/6/2015 Email.) Epstein then forwarded the email to Rosenberg and stated "[w]e can discuss this next week." (*Id.*). On November 17, 2015, Epstein emailed Rosenberg an

attachment that contained the article of the lease at issue but with handwritten edits. (NYSCEF 167, 11/17/2015 Email.) As modified by the handwritten edits, that version stated,

> "[i]f the Landlord receives a bona fide offer to purchase the Premises and notifies the Tenant in writing and furnishes it with a copy of the offer and proposed agreement to purchase the Premises, and Tenant fails to exercise its right of first refusal hereunder, Tenant's option to purchase during the final lease year under Article XXX shall be *void.*"

(*Id.* [emphasis added]) Epstein wrote in the body of that email, "[t]he attached show that changes requested by Regina … [T]his may be necessary for 'shalom bayit.'" (*Id.*) "Shalom Bayit," according to Rosenberg's deposition testimony, is "Hebrew for peace in the house." (NYSCEF 137, Rosenberg deposition tr at 136:9-11.) The following testimony concerning Rosenberg's understanding of "Shalom Bayit" was elicited at his deposition,

> "[Defendants' Counsel] What did that mean?
>
> [Rosenberg] It means when a husband and wife are having an … argument or there is a war going on and you want to make peace in the house, you give in. This will make peace in the house, if I sign this document, I'll get you approval."
>
> [Defendants' Counsel] Of the subtenants?
>
> [Rosenberg] Something like that.
>
> [Defendants' Counsel] Okay. Is that what you understood that to mean when Mr. Epstein sent that to you?
>
> [Rosenberg] I simply – yes, I understood that if I signed it, we are going to get closer to getting approval."

(*Id.* 136:12 - 137:3.)

On November 30, 2015, Epstein sent another email to Rosenberg, this time writing "[t]ime to make nice to [Martins] (taxes and lease amendment)?" (NYSCEF 168, 11/30/2015 Email.) On December 24, 2015, Martins wrote to Rosenberg, "I am delighted that you have identified an appropriate tenant for the Broadway property … Please email me the proposed lease for the new tenant. We are still waiting for the … ground lease amendment to be signed." (NYSCEF 172, 12/24/2015 Email.) As previously stated, four days later, on December 28, 2015, Rosenberg's project manager sent an email to Landlord attaching the lease amendment executed by Rosenberg. (NYSCEF 174, 12/28/2015 Email and Lease Amendment.)

The evidence shows that Epstein and Rosenberg corresponded about the lease amendment for weeks. In one of those communications, Epstein indicated that the Landlord requested a change that voided the option and that Rosenberg's assent to the change would be necessary for a peaceful resolution. Rosenberg testified that he understood that if he signed the lease amendment, he would get close to receiving Landlord's approval of subtenants. His understanding is supported by Martins' December 24, 2015 email where she appears to leverage Rosenberg by inviting him to email the proposed subtenant lease while noting that she is still waiting on the lease amendment to be signed. (NYSCEF 172, 12/24/2015 Email.) Rosenberg's understanding also comports with Epstein's deposition testimony, specifically that (1) Epstein told Rosenberg "[t]hat the lease amendment terminates the option if the right of first refusal is triggered" and (2) Rosenberg told Epstein he was prepared to sign the amendment giving away the option "in exchange for approval of his new tenant." (NYSCEF 197, Epstein deposition tr at 184:16-20, 175:17-22.) Thus, defendants have

demonstrated that surrendering the option was a bargaining chip that Rosenberg understood could secure the approval of subtenants, which plaintiff needed as it was struggling to pay bills on the Premises.

Defendants have also demonstrated that plaintiff's theory of proximate cause is couched in gross speculations on future events. Defendants argue that plaintiff's claims are wholly speculative and depend on too many uncertainties. Defendants point to the uncertainty associated with the requirement that plaintiff would be in compliance with all of its obligations under the ground lease before it could finally exercise the option in 2024. In support, defendants rely on Section 30.01 of the lease which states "[*p]rovided that Tenant is not in material default beyond any applicable grace period* … at the time of the exercise of this option to purchase, the Landlord grants to the Tenant … at any time *during the last year of the term of this lease*, the right to purchase the entire Premises leased hereunder." (NYSCEF 156, Ground Lease § 30.01 [emphasis added].)

Because plaintiff's theory of proximate cause is based on the assumption that it would not have been in material default four years from now, and that it would have the funds to exercise the option four years from now, defendants maintain that the theory is 'couched in terms of gross speculations on future events.'" (*Phillips-Smith Specialty Retail Group II*, 265 AD2d at 210.) Therefore, defendants posit that the theory is insufficient as a matter of law to establish proximate cause. (*Id.*)

Defendants also maintain that plaintiff's damages are speculative because whether plaintiff would be able to purchase the Premises four years from now in the amount of $11,000,000 is, by definition, speculation. Lastly, defendants contend that the damages as alleged are not clearly calculable because, although plaintiff orchestrated the purchase of the Premises four years ago for $14,500,000, it is unclear

what, if any, purchase price would exist in 2024. (*Gallet, Dreyer & Berkey, LLP*, 141 AD3d at 406.)

The burden shifts to plaintiff. However, plaintiff fails to demonstrate by admissible evidence the existence of a factual issue as to the second and third elements of the legal malpractice claims: proximate cause and damages. Instead, plaintiff argues that, when it came time to exercise the right of first refusal, it immediately cured all monetary defaults and had the financial wherewithal to raise $14.5 million to purchase the Premises. However, this point does not sufficiently address the fact that plaintiff could only exercise the option in 2024 and, at that time, plaintiff would not be in any material default beyond any applicable grace period. No one disputes that plaintiff was effective in orchestrating the purchase of the Premises four years ago, but that does not relieve plaintiff of its obligation to demonstrate proximate cause that is not couched in gross speculation on future events and actual ascertainable damages.

Although plaintiff submits an expert report in opposition, the report is insufficient to raise an issue of fact. (NYSCEF 216, Expert Report.) The expert, a certified public accountant, states that "we have made certain assumptions as to factual matters" and "I have been requested by Counsel to assume liability on the part of the Defendants." (*Id.* § II [b], § III.) The certified public accountant then opines

> "[i]t is my opinion that, but for the negligence of the Defendants in advising [plaintiff] to sign the Lease Amendment, [plaintiff] would have been able to acquire the Properties for less than $14.5 million (an amount between $11.0 million beginning in 2017 and $11.4 million as late as 2024) and as a result has sustained damages as further discussed below."

(*Id.* § III.) First, the certified public accountant admits that he is assuming liability. Therefore, plaintiff cannot rely on this report to establish liability specifically in its attempt to raise an issue of fact on the threshold legal questions of whether proximate cause and damages exist. Second, an "'[e]xpert opinion as to a legal conclusion is impermissible.'" (*Russo v Feder, Kaszovitz, Isaacson, Weber, Skala & Bass*, 301 AD2d 63, 69 [1st Dept 2002] [citation omitted].) To the extent that plaintiff is relying on the accountant's report to establish proximate cause and non-speculative damages as a legal conclusion, the report is impermissible. (*Id.*)

Because plaintiff fails to raise any issues of fact as to the second and third elements of a legal malpractice claim, defendants' summary judgment motion dismissing the two malpractice causes of action in their entirety is granted.

B. Negligent Supervision

Defendants' motion for summary judgment dismissing the third claim for negligent supervision against JS LLP is also granted.

An employer is liable for negligent retention when it places "the employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in making its decision concerning the hiring and retention of the employee." (*Sheila C. v Povich*, 11 AD3d 120, 129 [1st Dept 2004] [citations omitted].) "An essential element … is that the employer knew, or should have known, of the employee's propensity for the sort of conduct which caused the injury." (*Id.* at 130 [citations omitted].) Moreover, "where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention."

(*Karoon v New York City Tr. Auth.*, 241 AD2d 323, 324 [1st Dept 1997] [citation omitted].)

Facts supporting a claim for negligent retention may also support a claim for negligent supervision. (*See Weinberg v Mendelow*, 113 AD3d 485, 487 [1st Dept 2014].) Accordingly, "[a]n employer may be liable for a claim of negligent … supervision if an employee commits an 'independent act of negligence outside the scope of employment' and the employer 'was aware of, or reasonably should have foreseen, the employee's propensity to commit such an act.'" (*Lamb v Baker*, 152 AD3d 1230, 1231 [4th Dept 2017] [citation omitted].) Indeed, a claim for negligent supervision cannot be sustained where the plaintiff fails to establish that the employee acted outside the scope of his or her employment. (*Berkowitz v Equinox One Park Ave., Inc.* 181 AD3d 436, 437 [1st Dept 2020].)

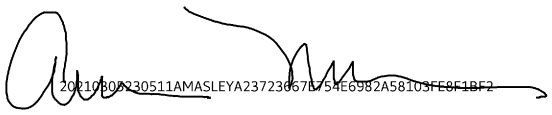
At the very least, plaintiff fails to dispute, or even address, defendants' argument that the record fails to show that Epstein, a real estate attorney, acted outside the scope of his employment with JS LLP when he advised plaintiff on the lease amendment. (*Id.*) The parties do not dispute that Epstein counseled Rosenberg in connection with the lease amendment even though they dispute the quality and extent of the advice. (NYSCEF 137, Rosenberg deposition tr at 54:9-19, 134:13-23; NYSCEF 197, Epstein deposition tr at 179-184.) Therefore, advising on the lease amendment cannot be an "independent act of negligence outside the scope of employment" for Epstein because he was specifically engaged to provide counsel on the lease amendment. (*Lamb*, 152 at 1231 [citation omitted].) Because Epstein was acting within the scope of his employment, plaintiff's claim for negligent supervision fails. (*Marshall v Darrick E. Antell, MD, P.C.*, 147 AD3d 478, 479 [1st Dept 2017].)

Summary judgment is granted and the third cause of action for negligent supervision against JS LLP is dismissed.

The court has considered the balance of the parties' arguments and they do not yield an alternative result.

Accordingly, it is

ORDERED that motion sequence number 006 for summary judgment dismissing the complaint is granted.



3/5/2021
DATE

ANDREA MASLEY, J.S.C.

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