

<b>Parekh v Maxwell Kates Inc.</b>
2021 NY Slip Op 31540(U)
May 5, 2021
Supreme Court, New York County
Docket Number: 159127/2014
Judge: Richard G. Latin
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. RICHARD G. LATIN PART IAS MOTION 46**

*Justice*

-----X

ROXANNE HILLMAN PAREKH, AS ADMINISTRATRIX OF  
THE ESTATE OF GLORIA HILLMAN A/K/A GLORIA C.  
HILLMAN, AND ROXANNE HILLMAN PAREKH,  
INDIVIDUALLY,

Plaintiffs,

**INDEX NO.**

- v -

159127/2014

MAXWELL KATES INC.,315 SEVENTH RESIDENTIAL L.L.C.,  
THE 315 SEVENTH AVENUE CONDOMINIUM,

**MOTION DATE**

02/11/2021

Defendants.

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**MOTION SEQ. NO.**

009

**DECISION + ORDER ON MOTION**

315 SEVENTH RESIDENTIAL L.L.C.,

Third-Party Plaintiff,

-against-

ANIL PAREKH,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 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, 203, 204, 205, 206, 207, 208, 209, 210, 211

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, defendant 315 Seventh Residential LLC’s motion for, inter alia, summary judgment pursuant to CPLR 3212, is determined as follows:

Plaintiff Roxanne Hillman Parekh is the daughter of decedent Gloria Hillman and administratrix of her estate. Gloria Hillman was a rent stabilized tenant/occupant of apartment 3D in the premises located at 315 7<sup>th</sup> Avenue, New York, New York. This wrongful death action involves a fire that broke out in decedent’s apartment while she was sleeping on March 11, 2014 at approximately 4:00-4:30 a.m. Plaintiff alleges that decedent’s apartment had non-functional battery-operated smoke detectors, and in the hallway, there were non-functional smoke detectors because the owners had previously placed covert cameras in place of smoke detectors. It is also alleged that defendant 315 Seventh Residential LLC violated NYC Building Code, 1 RCNY Section 28-01, 28-

02, 29-01, Smoke Detecting, NYC Building Code Local Law 62, 2014 Construction Codes Chapter 9, 27 and OSHA Fire Prevention Plans 1910 for failing to hot wire smoke alarms, maintaining the fire alarm system, servicing the smoke detectors, and failing to replace faulty batteries in smoke detectors, among other allegations.

Defendant 315 Seventh Residential LLC asserts that there is no evidence that it violated any of the code provisions, and that the pleadings do not allege that it created or had actual or constructive notice of the dangerous condition. Defendant 315 Seventh Residential LLC also takes the position that the fire was not caused as a result of an issue with the building's electrical system and/or outlets, but by compromised extension cords which were the personal property of the decedent and third-party defendant Anil Parekh, decedent's grandson.

By way of background, the aforementioned apartment building was once a fur factory before becoming a residential property. From 1975-1977, the building converted into an apartment building creating ninety-four new residential units. In 1998, the building began to convert to condominium ownership.

Prior to August of 2013, decedent's apartment was owned by sponsor, Nature Nurture Foundation. During that time, 315 Seventh Avenue Residential LLC, a real estate LLC, purchased nineteen unsold condominium units from the Nature Nurture Foundation, including decedent's apartment. At the date and time of decedent's death, March 11, 2014, ABC Properties was the managing agent for the apartments owned by 315 Seventh Avenue Residential LLC, an investment property located within The 315 Seventh Avenue Condominium. The management company for The 315 Seventh Avenue Condominium is Maxwell Kates.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movants satisfy its *prima facie* burden will the burden shift to the opponent "to lay bare his or her proof and demonstrate the existence of triable issues of fact" (*Alvarez*, 68 NY2d at 324; *see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Defendant 315 Seventh Residential LLC now seeks summary judgment dismissing plaintiff's complaint, all claims, and cross claims, and any counterclaims, on the grounds that there are no triable issues of fact and that they are entitled to summary judgment, as a matter of law.

In support of 315 Seventh Residential LLC's motion, defendant herein submits, inter alia, the deposition testimony of third-party plaintiff, Anil Parekh, the FDNY incident report, plaintiff's administratrix, Roxanne Hillman Parekh, Neil Levin, Senior Vice President and Account Manager for defendant Maxwell, Roman Vargas for 315 Seventh Avenue Condominium, Myles Horn for 315 Seventh Avenue Residential LLC, and the expert affidavit of Jonathan R. Lebow.

Anil Parekh, decedent's grandson testified that from 1990 until the date of the fire, he lived with the decedent. Anil claimed that at the time of the decedent's death, she could not walk without the assistance of a cane, and since 2012 she was wheelchair bound outside of the apartment. Anil

testified that as a result, he would help his grandmother with the household chores, however, she prevented him from cleaning the apartment and remedying the hoarder situation. In March of 2014, he stated that there were three extension cords in the living room of the apartment where the fire occurred. He testified that before the night of fire, sparks would emit from the outlet where the extension cord was plugged in next to his grandmother's chair, where the fire occurred. Anil explained that each time he tried to remove the plugs or extension cords from the outlet, his grandmother would plug it back in and wanted the superintendent to fix it. Anil averred that in April of 2010, he complained to Ramon Vargas, the building's superintendent, about the spark emitting from the outlet in the living room and he never came to look at the outlet. Although Anil admitted that his grandmother would refuse access to her apartment, she would not refuse access to the superintendent.

As to the smoke detectors, he stated that they were battery- powered and stopped working in 2012. Anil testified that he attempted to replace the batteries, but his grandmother prevented him from doing so from 2012 up until the date of the fire. Additionally, he claimed that he purchased a new smoke detector in 2014 prior to the fire, but his grandmother would not permit him to install it. Anil, who stated that he was not present at the time of the fire, acknowledged that the fire report stated that an extension cord could have caused the fire. He averred that a week prior to the accident, his grandmother asked him to test the detectors and they did not emit any audible alarm. He stated that he reminded Vargas numerous times of issues with the alarms and outlets, but he never came to the apartment to address either concern.

According to the Fire Incident Report, the owner of the structure is Miles Horn, for 315 Seventh Avenue Residential, LLC. The cause of the fire is listed as "electrical" with a description stating, "multiple points of origin" and "NFA(Not Fully Ascertained) electrical in the area of assorted electrical wiring (power strip)." The report also states under Origin and Extension, "Examination showed fire originated inside the subject premises, on the 3<sup>rd</sup> floor, in apartment 3D, in the TV room, approximately 12 feet west of the main entrance...in combustible material (electrical wiring, plastic, cloth) in heat sufficient to sustain combustion. Fire extended to the floor, walls, ceiling, and contents of the TV room."

Defendant herein also submits the affidavit of Jonathan R. Lebow, a fire investigations expert. In his report, he stated that he physically went to the building on March 12, 2014 and met with the superintendent Vargas. Additionally, he returned on March 31, 2014 to determine the origin of the fire and conduct a physical examination of the fire scene. He stated that the building is 22 stories and consists of ninety-four condominium units. He opined that there was no evidence of any type of electrical malfunction between the main circuit breaker panel and the decedent's apartment circuit breaker panel. Lebow observed that outside of decedent's apartment, there were two "smoke detectors" but later learned that they were in fact covert cameras monitoring the hallway. As to the interior of the apartment, Lebow stated that after speaking with Vargas, the door to the apartment was unlocked at the time of the fire. He observed the "melted remains of a smoke detector...on the ceiling dividing the dining area from the living room." Additionally, he noticed that at the entryway to the bedroom there was a melted smoke detector still hanging from the ceiling.

As to the extension cords, Lebow stated that in the foyer/dining area there were several extension cords, one of which was connected to a power strip which was in the "on" position. Also,

he observed that some of the wiring was inside a melted mass of plastic. He opined that the flexible wiring that was examined showed no evidence of adverse electric activity at the receptacle or within the walls of the apartment. This wiring, which was isolated to the extension cords, appears to have frayed and melted as observed by Lebow. He opined that the decedent's recliner was examined, and it appeared that the fire came up from behind it. Lebow believed that, "the fire originated on the third floor in the apartment, in the foyer/dining area, approximately ten feet west of the front entrance door and two feet south of the north wall in combustible material, in the area of the tenant's flexible electrical wiring." Lebow also believed that, "the most probable cause of the fire was heat due to an unknown failure, such as a short circuit in the flexible electrical wiring (extension cords) igniting nearby combustible materials. He further stated that it "did not start as a result of a condition associated with the building's electrical system."

Roxanne Hillman Parekh, daughter of the decedent and administratrix of her estate, testified that her mother first moved into the aforementioned premises in 1979. She stated that she lived with her mother in the apartment at the time and moved out in 1988. Her mother has since lived in the same apartment. Roxanne testified that in 2014, the superintendent of the building was Ramon Vargas. She stated that Vargas' duties included repairs, fixing smoke alarms, dishwashers, and other appliances. She further attested that for years, her mother told her that she needed a smoke alarm and the outlets by her chair and table needed to be replaced. However, she testified that Vargas never fixed these issues. She stated that her mother would tell Vargas in person that the alarm needed to be installed. With respect to the outlets, she explained that they needed to be fixed, since every time she tried to plug something in, it would spark. Roxanne also testified that her mother's door lock was broken and broke so often that the owners placed cameras above her door.

Roxanne was asked about the outlets in the apartment, she testified that she knew they were defective for two or three years but, were still being used. Roxanne stated that the outlets would cause appliances to burn and that a power strip may have been plugged into one of the defective outlets. She believed that the defective outlet was the cause of the fire since it would always spark. She also averred that she did not know if any complaint was made about the alleged sparking to 315 Residential or its managing agent, ABC Properties Equities, LLC.

At the deposition, Roxanne was shown numerous photographs of her mother's apartment and recalled that there was a battery-operated smoke detector to the side of the dining room area. She stated that for three years her mother informed her that it was not operational and needed batteries, and communicated same to Vargas, and he failed to address the issue.

Ramon Vargas, the superintendent employed by The 315 Seventh Avenue Condominium, also testified. He stated that in 2014, he was the superintendent for Maxwell Kates. His duties included maintaining the cleanliness of the building and making sure everything functions well. Vargas averred that if someone in the condominium had a complaint, they would either come to him or the managing agent, ABC Properties. He claimed that once the rentals were converted into condominiums, he would not be responsible for repairs inside the unit, the unit owner would be responsible. Vargas stated that if the owner of a sponsored apartment approached him to repair something, he would report same to ABC Properties. With respect to the electrical sockets in each condominium located within 315 Seventh Avenue, Vargas averred that the circuit breaker inside and throughout the apartment is the

responsibility of the unit owner. If Vargas received complaints from any of the rental stabilized apartments, he stated that he would contact Debbie Skylar from ABC Properties who would either hire someone to take care of an issue, or direct Vargas to handle the issue. Vargas testified that he knew the decedent since the late 1970's when she lived in another apartment in the building. He described the decedent as a hoarder and found it difficult to walk through her apartment. He stated that approximately ten years ago, he spoke to the Nature Nurture Foundation regarding the condition of the decedent's apartment but, was not sure if they did anything about the condition. Additionally, he testified that neither the decedent nor her grandson reported that the outlet near the decedent's chair was sparking.

Vargas further stated that the owner of the decedent's apartment, ABC Properties, was responsible for providing carbon monoxide and smoke detectors in the unit. He also explained that he installed the detectors in all the rent stabilized apartments and the renter acknowledged the work by signing a document after the detectors were installed. Vargas testified that two to three years prior to the accident, he personally installed two smoke detectors in the decedent's apartment, one in the foyer near the kitchen and the other in the bedroom. Prior to the accident, he also placed batteries in each of the detectors and tested them to confirm that they were working. He also stated that it was not his responsibility to repair the detectors, however, if they were not working, he would have to report same to the owner. Vargas testified that neither the decedent nor her grandson informed him that either the smoke detector was not working or that an outlet was sparking. If the batteries stop working, Vargas explained that it is the tenant themselves that have to replace them.

He averred that on the date of the fire, he was informed by the fire marshal or the FDNY, that an overloaded extension cord caught fire. Even though there was excessive clutter in the decedent's apartment, Vargas stated that he never refused to go to her apartment. He explained the he would go there to change a light bulb or unclog a toilet, nothing electrical related. Even though he worked for The 315 Seventh Avenue Condominium, the Nature Nurture Foundation would ask him to check on their apartments for a monthly fee and same for ABC Properties, when they replaced the Nature Nurture Foundation.

Myles Horn, testified on behalf of 315 Seventh Avenue Residential LLC, as a member of the LLC. He stated that the LLC purchased nineteen unsold condominium units from the Nature Nurture Foundation in August of 2013. Horn stated that as part of the process of acquiring these units, the LLC inspected them where they could gain access. He further averred that they could not gain access to any of the rent stabilized apartments but, inspected vacant or free market apartments. As to the rent stabilized units, Horn explained that they did not issue new lease agreements, but they accepted the leases that were in place. Moreover, he testified that when the LLC acquired the apartments from the Nature Nurture Foundation, they notified all the tenants of the nineteen units. He opined that the rent would either be payable to ABC Properties or 315 Seventh Avenue Residential LLC. Horn also averred that ABC Properties was the managing agent for 315 Seventh Avenue Residential LLC for the nineteen aforementioned units. He stated that ABC Properties would collect the rent, take care of repairs, and handled tenant complaints. As to the maintenance of the electrical wiring in each condominium unit, Horn stated that the electrical systems and wiring are the responsibility of the condominium association.

Horn testified that he spoke with Vargas as to the decedent's apartment and admitted he was told that she was a hoarder. He claimed that the LLC attempted access on numerous occasions and was denied. He was asked if anybody communicated to him any other possible causes of the fire, and he replied that he was unsure where he heard it, but it was said that it may have been an electrical fire. Horn also averred that 315 Seventh Avenue Residential LLC was the owner and landlord of the decedent's unit on the date of the accident and was provided with a smoke detector affidavit as part of the initial transfer and purchase of the unit. He further explained that pursuant to the affidavit it was the prior owner's responsibility to install smoke detectors in the decedent's unit. Horn explained that the basis of attestation of knowledge of the individual who signs the affidavit is stating that they know there are smoke detectors, but it does not state whether they have seen the detectors or if they have ever been inside of the unit. As to the maintenance of extension cords, he stated that they are the responsibility of the individual tenant. Moreover, he attested that if a tenant made 315 Seventh Avenue Residential LLC or ABC Properties aware that a smoke detector was out of order, they would replace it.

Neil Levin, Senior Vice President and Account Manager for Maxwell Kates, the management company for the condominium association, also testified. Levin stated that in 2014 he was an account manager, and managed approximately six or seven residential buildings, one of them being the aforementioned premises. He stated that his duties included visiting the properties and reporting back to his office. He testified that Ramon Vargas was the superintendent in the building and was employed by 315 Seventh Avenue Condominium. Levin attested that on the evening of the incident, he was contacted by Ramon Vargas and informed of the fire. He stated that when he arrived at the building, he asked the fire marshal as to the cause of the fire. Levin alleges that the fire marshal told him the cause of the fire was that one of the decedent's extension cords, of which she had many, caught fire. He also claims that he was told by the fire department representative that there was a great deal of flammable material in the apartment, and that this was the reason why the fire was as bad as it was. He further stated that the decedent did not own her unit but, was in a rent stabilized unit owned by the sponsor, either Nurture Nature Foundation or 315 Seventh Avenue Residential LLC.

With respect to maintaining the smoke detectors in the hallway, Levin testified that Vargas would be responsible, however, if the smoke detectors were located inside the individual unit, the responsibility would fall on the condominium unit holder. As to the electrical supply, he stated that the supply that goes from the main power source in the basement up to the apartment is the responsibility of the building. Levin further explained that from the circuit breaker panel through the apartment is the responsibility of the apartment owner. Levin further testified that after the fire, a public adjuster determined the cause of the fire. He averred that the public adjuster agreed with the FDNY fire marshal that the fire was caused by an extension cord. He was also asked if in March of 2014, decedent's apartment was equipped with a smoke detector at the time of the fire and answered in the affirmative. Levin was also shown a compliance document confirming that in August of 2013 there was a smoke alarm in the decedent's apartment. Additionally, Levin stated that if the smoke alarm were to no longer work, it is the apartment owner's responsibility to change the batteries.

The plaintiff's bill of particulars alleges that defendants herein violated numerous Administrative Codes, among them,

Administrative Code Section 27-2045(a)(1), which provides that:

- a. It shall be the duty of the owner of a class A multiple dwelling which is required to be equipped with smoke detecting devices pursuant to article six of chapter seventeen of chapter one of this title to:
  - (1) provide and install one or more approved and operational smoke detecting devices in each dwelling unit, such devices shall be installed in accordance with the requirements of reference standard 17-12.

Ordinarily, when the owner fulfills its statutory obligation and install an operable smoke detector, the occupant of the dwelling unit then has sole responsibility for maintenance and repair of the device (*see Peyton v State of Newburgh, Inc.*, 14 AD3d 51, 52, 786 NYS2d 458 [2004]). A landlord is not liable for a violation of the statute governing smoke detectors unless such violation is the proximate cause of the tenant's injury/death during a fire. Thus, plaintiff must show the cause of the fire, where the deceased was at the time of the fire, and whether the deceased was alerted to the fire by means other than a smoke detector (*see Acevedo v Audubon Mgmt.*, 280 AD2d 91 [1st Dept 2001]). A landlord was able to obtain dismissal of a case where it showed that it had no duty to maintain, repair or replace the smoke detector in the tenant's apartment. The landlord submitted evidence that it had installed a functional smoke detector in the tenant's apartment within one year of the subject fire, and had not received written notice of an inoperable detector within one year of the installation (*see Vanderlinde v 600 West 183<sup>rd</sup> Street Realty Corp.*, 101 AD3d 583 [1st Dept 2012]).

New York City Administrative Code Section 27-980 provides that:

Dwelling units shall be equipped with smoke detecting devices receiving their primary power from the building wiring and there shall be no switches in the circuit other than the over-current device protecting the branch circuit; provided, however, that dwelling units in existing buildings may, in the alternative, be equipped with battery-operated smoke detecting devices except where such buildings are substantially improved or altered on or after January first, nineteen hundred eighty two.

Section 28-01 (b)(4) defines "substantial improvement" as an "improvement or alteration of the building' [not apartment] that exceeds the sum of \$150,000.

Superintendent Vargas testified that he installed battery-operated smoke detectors 2-3 years prior to the 2014 fire. Superintendent Vargas did not wire the smoke detectors into the building's electrical grid, which would be necessary for power-operated smoke detectors. At the time that Superintendent Vargas installed battery-powered smoke detectors in Ms. Hillman's apartment,

substantial improvement to the building had already occurred. In 2005-2006 there were improvements that exceeded the cost of \$150,000. Plaintiff's expert Michael Dugan says in his affidavit that these improvements triggered the mandate, under the Administrative code, to wire the smoke detectors that were installed in decedent's apartments, into the buildings wiring. The opinion of both of plaintiffs' experts, Michael Dugan and James Pugh P.E. was that the failure to utilize power-operated smoke detectors in Ms. Hillman's apartment created a fire hazard and/or was a code violation. Simply put, no battery should have been required to insure a functioning smoke detector.

Installing battery operated smoke detectors raises issues of negligence (*see Taylor v. New York City Hous. Auth.*, 35 Misc. 3d 697, 701, 940 N.Y.S.2d 844 (Sup. Ct.2012), *aff'd* 116 A.D.3d 695, 983 N.Y.S.2d 583 (2d Dept 2014) (denying summary judgment where Plaintiff alleged Defendant failed to comply with Administrative Code 27-980 by failing to provide building-powered smoke detectors).

Although the defendant herein did not inspect the decedent's apartment, they did in fact purchase 18 other units some of which they admittedly, did in fact inspect. To a sophisticated real estate investment LLC, the fact that the apartments only had battery operated smoke detectors should have raised a red flag and put them on notice that the building did not wire the detectors into the buildings electric power.

Turning to New York City Administrative Code Section 901.4.4., it provides that:

It shall be unlawful to install or maintain any device that has the physical appearance of fire protection equipment but that does not perform the fire protection function, in any building, structure or premises where it may be confused with actual fire protection equipment.

As and for the faux smoke detectors in the hallway, that were converted to cameras, the defendant owners should have been aware that they were cameras and hence unlawful. If in fact the units in the hallway were smoke detectors, the neighbor that called 911 might have done so sooner if the alarms had sounded, possibly saving Gloria Hillman, the decedent from a horrible death. It is Mr. Pugh's opinion that had functional smoke detectors been in Ms. Hillman's apartment or in the hallway where the covert cameras were located, then Ms. Hillman likely would have been alerted in sufficient time as to safely exit the apartment and escape death.

Turning to New York City Administrative Code Section 107.5 which states that:

The owner shall be responsible at all times for the safe maintenance of a building, structure, and premises in accordance with this code. Correction and abatement of violations of this code and the rules shall be the responsibility of the owner. If an occupant creates, or allows to be created, hazardous conditions in violation of this code

or the rules, the occupant shall also be responsible for the abatement of such hazardous condition.

It is well established that a landowner is under a duty to maintain its property in a reasonably safe condition under the extant circumstances, including the likelihood of injury to others, the potential for any such injuries to be of a serious nature and the burden of avoiding the risk (*see Basso v Miller*, 40 NY2d 233, 241 [1976]). This duty is, of course, tempered, by the necessity that a party, as a prerequisite for recovering damages, must establish that the landlord created or had either actual or constructive notice of the hazardous condition that precipitated the injury (*see Piacquadio v Recine Rlty. Corp.*, 84 NY2d 967, 969 [1994]). To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit the owners to discover and remedy it (*id.*).

Here, the condition of Gloria Hillman's apartment was well known for many years. The superintendent Vargas who personally saw the fire hazard created by Ms. Hillman, told Myles Horn a member of the defendant LLC, and he admitted he was aware of the problem.

Plaintiff's expert Michael Dugan's opined that the excessive clutter in the apartment created a fire hazard because the clutter included easily flammable materials and also obstructed a path to exiting. It is Mr. Dugan's opinion that even if only the building superintendent was aware of the excessive clutter, then the owner had an independent obligation to address and remove said fire hazard from the multi-dwelling building, pursuant to NYC Administrative Code Section 107.5.

It is Mr. Pugh's opinion that had functional smoke detectors been in Ms. Hillman's apartment or in the hallway where the covert cameras were located, then Ms. Hillman likely would have been alerted in sufficient time as to safely exit the apartment and escape death.

Here, defendant 315 Seventh Residential LLC has failed to establish its entitlement to summary judgment. They have failed to establish that they had no notice of the potentially hazardous condition of the apartment, of the outlets, or the smoke detectors and no duty to fix or repair said conditions. Defendant 315 Seventh Residential LLC has failed to establish compliance with the Administrative Code provisions. Plaintiff's opposition through expert testimony create issues of fact. Since Vargas informed Myles Horn of the alleged hazardous conditions of the potential fire hazard in the apartment defendant was on notice of the condition. Plaintiff's evidence also raises issues as to whether 315 Seventh Residential LLC knew, or with due diligence should have known, that the smoke detectors were defective.

Accordingly, defendant 315 Seventh Residential LLC's has not met their burden; and it is further

ORDERED that, defendant 315 Seventh Residential LLC motion for Summary judgment is denied in its entirety.

Plaintiff shall serve a copy of this order upon all parties within thirty (30) days of the date of this order, together with notice of entry.

This constitutes the decision and order of this Court.

Index No. 159127/14

5/5/2021

DATE



RICHARD G. LATIN, 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