

Davidoff v Hershfield

2021 NY Slip Op 34211(U)

August 27, 2021

Supreme Court, Westchester County

Docket Number: Index No. 68477/2019

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
JONATHAN DAVIDOFF,

Plaintiff,

-against-

BRUCE HERSHFIELD and VICKI HERSHFIELD,

Defendants.
-----X

LEFKOWITZ, J.

DECISION & ORDER

Index No. 68477/2019
Motion Seq. Nos. 6, 7, 8, 9

The following papers were read on the motion (sequence 6) of plaintiff Jonathan Davidoff for an order: (1) pursuant to CPLR § 2221(a)(2) vacating the Compliance Conference Referee Report and Order in this action dated March 12, 2021; and (2) for such other and further relief as this Court deems just and proper:

- Notice of Motion; Affirmation in Support; Exhibits A-G
- Memorandum of Law in Support
- Affirmation in Opposition; Exhibits 1-4
- Memorandum of Law in Opposition
- Reply Affirmation; Exhibits H-J
- Memorandum of Law in Reply
- NYSCEF File

The following papers were read on the motion (sequence 7) of plaintiff for an order: (1) pursuant to CPLR § 3124 compelling the defendants Bruce Hershfield (“Mr. Hershfield”) and Vicki Hershfield (“Mrs. Hershfield”) (together, the “defendants”) and non-party Stefanie Davidoff to appear for their depositions; (2) pursuant to CPLR § 3124 compelling the defendants to produce all responsive documents in connection with plaintiff’s First Demand to Defendants for Discovery and Inspection dated March 23, 2021; (3) requiring the defendants to pay the plaintiff’s attorneys’ fees incurred in bringing this motion and relating to Mr. Hershfield’s deposition; and (4) for such other and further relief as this Court deems just and proper:

- Notice of Motion; Affirmation in Support; Exhibits A-F
- Memorandum of Law in Support
- Letter from counsel for defendants dated May 26, 2021
- NYSCEF File

The following papers were read on the motion (sequence 8) of plaintiff for an order: (1)

pursuant to CPLR § 2221(a) vacating the Trial Readiness Referee Report and Order in this action dated May 24, 2021; (2) permitting plaintiff to conduct discovery in preparation for trial; (3) transferring this action out of the Compliance Part and directing that the Justice presiding over the trial of this action oversee all discovery herein; and (4) for such other and further relief as this Court deems just and proper:

Notice of Motion; Affirmation in Support; Exhibits A-J
Memorandum of Law in Support
Affirmation in Opposition; Exhibit 1
Memorandum of Law in Opposition
Letters from counsel for plaintiff dated June 28, 2021 and July 15, 2021
Letters from counsel for defendants dated June 29, 2021 and July 12, 2021
NYSCEF File

The following papers were read on the motion (sequence 9) of plaintiff for an order: (1) pursuant to 22 NYCRR § 202.21(e) vacating the Note of Issue filed on June 28, 2021; (2) permitting plaintiff to conduct discovery in preparation for trial; (3) transferring this action out of the Compliance Part and directing that the Justice presiding over the trial of this action oversee all discovery herein; and (4) for such other and further relief as this Court deems just and proper:

Notice of Motion; Affirmation in Support; Exhibits A-K
Memorandum of Law in Support
Affirmation in Opposition
Memorandum of Law in Opposition
Memorandum of Law in Reply
Letter from counsel for defendants dated July 12, 2021
Letter from counsel for plaintiff dated July 15, 2021
NYSCEF File

Upon the foregoing papers, these motions are determined as follows:

Relevant Facts and Procedural History

The plaintiff commenced this action by filing a Summons and Complaint on November 7, 2019. The defendants, Mr. and Mrs. Hershfield, are the parents of the plaintiff's spouse, non-party Stefanie Davidoff. The plaintiff and Mrs. Davidoff are parties to a divorce action, and this related action asserts causes of action for, *inter alia*, fraud, fraudulent misrepresentation and unjust enrichment in connection with certain assets allegedly belonging to Mrs. Davidoff and/or the defendants.

As relevant to the four motions addressed herein, on February 24, 2020, this Court issued a Preliminary Conference Order directing, *inter alia*, that all discovery be completed by December 9, 2020. Although the COVID-19 pandemic understandably delayed discovery to some extent, the plaintiff as well as his attorney of record appeared, along with counsel for defendants, at a March 12, 2021 Virtual Compliance Conference and reported that in the nearly 13 months since the Preliminary Conference, discovery had not been taken. In light of the

parties' blatant failure to engage in written discovery or to take any depositions, this Court issued a Compliance Conference Referee Report and Order dated March 12, 2021, in which it directed, *inter alia*, that all discovery, including virtual depositions, must be completed prior to a May 10, 2021 Virtual Compliance Conference.¹ The Order dated March 12, 2021 further stated in unambiguous terms: **"This action has been inactive on the Court's inventory for approximately one year and the parties have failed to pursue discovery during this time. No further extensions shall be granted. The case will be certified as trial ready at the next conference"** (emphasis in original). Additionally, in light of the plaintiff's actions in appearing in this action on his own behalf notwithstanding that he was represented by counsel of record, this Court in the Order dated March 12, 2021 noted that "The Compliance Part does not recognize any 'co-counsel' arrangement and there has been no order issued permitting same."²

Subsequently, when the Court Attorney-Referee assigned to this action was made aware that she had been copied on a certain email that referenced the plaintiff in connection with a different litigation, such Court Attorney-Referee voluntarily recused herself from this matter by Recusal dated April 9, 2021. The Recusal stated in relevant part: **"In order to avoid the appearance of impropriety, however unmerited, the undersigned does hereby recuse herself from any and all judicial proceedings and determinations in this action forthwith"** (emphasis added). Relatedly, by Order of Reference dated May 24, 2021, this action was referred to a different Court Attorney-Referee, who conducted a Virtual Compliance Conference and issued a Trial Readiness Referee Report and Order dated May 24, 2021. This Order noted that "all discovery has been completed or waived and the matter is ready for trial," and directed the plaintiff to file a Note of Issue and Certificate of Readiness for Trial within 20 days thereof. In light of the plaintiff's failure to timely file same as directed by this Court, on June 28, 2021, counsel for the defendants filed a Note of Issue and Certificate of Readiness for Trial.

Motions and Contentions of the Parties

As set forth herein, between April 20, 2021 and July 12, 2021, the plaintiff, acting as "co-attorney" with his counsel of record, filed four discovery motions that were never previously addressed with this Court, respectively bearing sequences 6 through 9. Specifically, on April 20, 2021, plaintiff moved (sequence 6) for an order pursuant to CPLR § 2221(a)(2) vacating the Compliance Conference Referee Report and Order dated March 12, 2021. In support thereof, the plaintiff contends that the March 12, 2021 Order should be vacated because it was entered *sua sponte* without a request from the parties, without good cause, and without providing the parties

¹ In accordance with operative Administrative Orders of the Ninth Judicial District and in light of the COVID-19 pandemic, since the Spring of 2020 all depositions for matters pending in the Compliance Part have been proceeding virtually.

² The plaintiff, who is an attorney, has been improperly filing documents in this action via his law firm, Davidoff Law Firm, LLC, purportedly as "co-attorneys" with plaintiff's counsel of record, McLoughlin O'Hara, Wagner & Kendall, LLP (the "McLoughlin Firm"), which McLoughlin Firm replaced plaintiff's prior counsel of record, Harold, Salant, Strassfield & Spielberg (the "HSSS Firm").

an opportunity to be heard on the issues addressed in the Order. The plaintiff further asserts that the March 12, 2021 Order failed to take into consideration delays caused by the COVID-19 pandemic and hindrances caused by a stay in the divorce action pending between the plaintiff and Mrs. Davidoff. The plaintiff also contends that the Court erred in concluding that co-counsel arrangements were improper, and that the March 12, 2021 Order should therefore be vacated.

In opposition, the defendants contend that the plaintiff's motion should be denied on three grounds. First, the defendants assert that the plaintiff's motion is procedurally defective, as it fails to comply with the DCM Protocol in that the plaintiff filed the motion without first requesting a pre-motion conference, and without the Court addressing any such motion with counsel nor issuing any briefing schedule. Second, the defendants contend that the Court has discretion to control the discovery process, and after the plaintiff wholly neglected to prosecute this action for over one year and failed to respond to the defendants' discovery demands, the Court in the March 12, 2021 Order properly limited the remaining time to conduct and complete discovery herein. Third, the defendants assert that the March 12, 2021 Order correctly noted that the plaintiff has appeared in this action on behalf of himself despite also having counsel of record, reflecting an improper "co-counsel arrangement"; and accordingly, vacatur of the Order is wholly unwarranted.

On May 24, 2021, the plaintiff made another motion (sequence 7) for an order: (1) pursuant to CPLR § 3124 compelling the defendants and Mrs. Davidoff to appear for their depositions; (2) pursuant to CPLR § 3124 compelling the defendants to produce all responsive documents in connection with plaintiff's First Demand to Defendants for Discovery and Inspection dated March 23, 2021; and (3) requiring the defendants to pay the plaintiff's attorneys' fees incurred in bringing this motion and relating to Mr. Hershfield's deposition. In support thereof, the plaintiff contends that the defendants and Mrs. Davidoff have failed to appear for their respective depositions, and that the defendants have neglected to produce documents responsive to the plaintiff's document requests. The plaintiff further asserts that the defendants and their counsel should be sanctioned for their "frivolous" conduct in not complying with the Court-ordered deposition schedule and in failing to produce responsive documents as demanded by the plaintiff.

In opposition, the defendants contend via letter from counsel that the plaintiff's procedurally defective motion should be denied, as the plaintiff did not request a pre-motion conference as required by the DCM Protocol and nor did the Court address any such motion with counsel and nor did it issue a briefing schedule. The defendants assert that the motion is in any event substantively meritless, as it seeks to undermine the Trial Readiness Referee Report and Order dated May 24, 2021, which unambiguously stated that "all discovery has been completed or waived and the matter is ready for trial." Accordingly, the defendants contend that the plaintiff's procedurally defective motion should be summarily denied.

On June 24, 2021, the plaintiff made a third motion (sequence 8) for an order: (1) pursuant to CPLR § 2221(a) vacating the Trial Readiness Referee Report and Order dated May 24, 2021; (2) permitting plaintiff to conduct discovery in preparation for trial; and (3) transferring this action out of the Compliance Part and directing that the Justice presiding over the trial of this action oversee all discovery herein. In support thereof, the plaintiff contends that the May 24,

2021 Order should be vacated because significant discovery sought by the plaintiff remains outstanding, and the Order contains a purported misstatement of fact in noting that “all discovery has been completed or waived.” The plaintiff further asserts that the Order should be vacated because the plaintiff is unable to file a Note of Issue and Certificate of Readiness for Trial in light of the outstanding discovery. The plaintiff also contends that this action should be transferred out of the Compliance Part because of this Part’s alleged bias.

In opposition, the defendants contend that the plaintiff’s procedurally defective motion should be denied, as the plaintiff did not request a pre-motion conference as required by the DCM Protocol and nor did the Court address any such motion with counsel and nor did it issue a briefing schedule. The defendants assert that the motion is in any event substantively meritless, as the plaintiff was given ample opportunity to prosecute his case and to progress through the discovery stage thereof, and instead let the case sit dormant for over one year after the defendants served their initial discovery demands. The defendants further contend that the plaintiff himself obstructed discovery, as the defendants produced Mr. Hershfield for his deposition, but the plaintiff attended the deposition and persistently interfered therewith, notwithstanding that the plaintiff is represented by counsel of record. The defendants therefore contend that the plaintiff’s procedurally defective motion should be denied, as there is no basis for vacating the directive that discovery is complete as set forth in the May 24, 2021 Order.

On July 12, 2021, the plaintiff made a fourth motion (sequence 9) for an order: (1) pursuant to 22 NYCRR § 202.21(e) vacating the Note of Issue filed on June 28, 2021; (2) permitting plaintiff to conduct discovery in preparation for trial; and (3) transferring this action out of the Compliance Part and directing that the Justice presiding over the trial of this action oversee all discovery herein. In support thereof, the plaintiff contends that the Note of Issue should be vacated because the plaintiff has been denied his right to conduct discovery in this action, and the Note of Issue is defective because discovery is not complete and the action is not ready for trial. The plaintiff further asserts that this action should be transferred out of the Compliance Part because of this Part’s alleged bias.

In opposition, the defendants contend that the plaintiff’s procedurally defective motion should be denied, as the plaintiff did not request a pre-motion conference as required by the DCM Protocol and nor did the Court address any such motion with counsel and nor did it issue a briefing schedule. The defendants assert that the motion is nonetheless without merit, as the plaintiff was given ample opportunity to prosecute his case and to take discovery, and instead let the case sit dormant for over one year after service of the defendants’ first discovery demands. The defendants further contend that the plaintiff personally obstructed discovery, as he improperly interfered with the deposition testimony of Mr. Hershfield, who had been produced by the defendants to be questioned by the plaintiff’s counsel of record. Accordingly, the defendants contend that the plaintiff’s procedurally defective motion should be denied, as there is no basis for vacating the Note of Issue herein.

Analysis

As an initial matter, the Court notes that pursuant to the DCM Protocol, (Revised

Effective February 1, 2021), a motion shall not be interposed in the Compliance Part unless a pre-motion conference has been requested by the party seeking to make the motion. These rules are not designed to prevent a party from making a motion, but were implemented in an effort to allow the Court to resolve issues without the necessity of filing a motion, or at least, to narrow the issues presented in a potential motion. Here, the plaintiff did not request a pre-motion conference prior to filing motion sequences 6, 7, 8 or 9, and nor were any of such motions accompanied by a briefing schedule, as is required per the DCM Protocol. Furthermore, there is no indication that the plaintiff conferred in good faith in an effort to resolve any apparent dispute with respect to motion sequences 6, 7, 8 or 9, in violation of 22 NYCRR § 202.20-f. Accordingly, the plaintiff's motions (sequences 6 through 9) are procedurally defective and should be denied (*see Westchester Auto. Co. v Kea Adver.*, 2020 N.Y. Misc. LEXIS 13816, **1-2, n. 1 [Sup. Ct., Westchester Cty., Jan. 29. 2020]; *Reyes v 4 Herriot Place*, 2018 N.Y. Misc. LEXIS 12652, *3 [Sup. Ct., Westchester Cty. Sept. 26, 2018]).

As an additional procedural matter, this Court in the Order dated March 12, 2021 properly noted that “[t]he Compliance Part does not recognize any ‘co-counsel’ arrangement and there has been no order issued permitting same.” It is undisputed that notwithstanding that the plaintiff has at all times herein been represented by counsel of record, starting with the HSSS Firm and subsequently by the McLoughlin Firm, the plaintiff has taken it upon himself to act as co-counsel in this action by, *inter alia*, filing motions on his behalf and actively taking part in the deposition of Mr. Hershfield. Indeed, such conduct is expressly prohibited by CPLR § 321(a), which provides in relevant part: “If a party appears by attorney such party may not act in person in the action except by consent of the court.” Where, as here, the plaintiff did not obtain the consent of this Court, he improperly engaged in a co-counsel arrangement, as set forth in the March 12, 2021 Order (*see, e.g., Matter of Cassini*, 182 AD3d 13, 42 [2d Dept 2020] (noting that “absent special circumstances, there may be only one attorney of record for a party in a single action”); *Stinnett by Stinnett v Sears Roebuck & Co.*, 201 AD2d 362, 364 [2d Dept 1994] (stating that “[w]here a case such as this does not involve special circumstances or highly complex litigation, a party may not be represented by more than one attorney of record”); *Fruhling v Westreich*, 2020 N.Y. Misc. LEXIS 3033, **5-6 [Sup. Ct., N.Y. Cty. June 26, 2020]; *see also Matter of Warden v Southampton Town Newspapers, Inc.*, 171 AD3d 1194, 1195 [2d Dept 2019] (noting that even for *pro se* litigants, this designation does “not entitle them to any rights greater than those of any other litigants”)).

In addition to the aforementioned procedural deficiencies with the plaintiff's motions, all four of the plaintiff's motions (sequences 6 through 9) are substantively without merit. Collectively, the plaintiff's motions seek to vacate various Orders of this Court, i.e., the Orders respectively dated March 12, 2021 and May 24, 2021, and to vacate the Note of Issue, all in an effort to permit the plaintiff to conduct additional discovery herein. Given that the plaintiff was provided ample opportunity to prosecute his case and to progress through the discovery stage thereof, and instead let the action sit dormant for over one year after the defendants served their initial discovery demands, the branches of the plaintiff's motions seeking to reopen discovery in this case are without merit and should be denied.

CPLR § 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted

liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; see *Matter of Kapon v Koch*, 23 NY3d 32, 37 [2014]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L’Inyonei Chinuch Inc. v Sharf*, 59 AD3d 408, 410 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531, 531 [2d Dept 2007]; see *Gomez v State of New York*, 106 AD3d 870, 872 [2d Dept 2013]). Indeed, “unlimited disclosure is not required, and supervision of disclosure is generally left to the Supreme Court’s broad discretion” (see *McMahon v Manners*, 158 AD3d 616, 617 [2d Dept 2018]; see also *Ligoure v City of New York*, 128 AD3d 1027, 1028 [2d Dept 2015]; *Allen v Yertle Operations LLC*, 70 Misc. 3d 934, 942 [Sup. Ct., Westchester Cty. 2020]).

CPLR § 3126 provides that if any party “wilfully fails to disclose information which the court finds ought to have been disclosed,” the court may, *inter alia*, issue an order of preclusion or an order striking the pleadings, dismissing the action, or rendering judgment by default against the disobedient party. In a decision issued earlier this year, the Appellate Division, Second Department reiterated in *Kopelevich & Feldsherova, P.C. v Geller Law Group, P.C.*, 191 AD3d 853, 854-855 (2d Dept 2021) that:

Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR § 3126 are matters within the sound discretion of the motion court. Absent an improvident exercise of discretion, the determination to impose sanctions for conduct that frustrates the purpose of the CPLR should not be disturbed.

If a party refuses to obey an order for disclosure or willfully fails to disclose information, the court may dismiss the action. Before a court invokes the drastic remedy of striking a pleading, or even of precluding evidence, there must be a clear showing that the failure to comply with court-ordered discovery was willful and contumacious. A court can infer that a party is acting willfully and contumaciously through the party’s repeated failure to respond to demands or to comply with discovery orders (internal quotations and citations omitted).

Moreover, as noted by the Court of Appeals, “if the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Kihl v Pfeffer*, 94 NY2d 118, 123 [1999]; see also *Gibbs v St. Barnabas Hospital*, 16 NY3d 74, 81 [2010]). “The failure to comply with deadlines not only impairs the efficient functioning of the courts and the adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines also breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution” (*Gibbs*, 16 NY3d

at 81).

Effective February 1, 2021 the Uniform Rules for the Supreme and County Courts were modified in part for the purpose of streamlining general civil practice. The revised rules include, as is relevant herein, 22 NYCRR § 202.20-e regarding “Adherence to Discovery Schedule,” which provides in relevant part:

Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR 3126.

Applying the foregoing statutes, court rules and case law to the issues presented herein, it is clear that the plaintiff in this matter has failed to timely provide Court-ordered discovery to the defendants. Indeed, the plaintiff blatantly violated the terms of the Preliminary Conference Order that was issued on February 24, 2020 by neglecting to participate in Court-ordered discovery, and subsequently failed to comply with the Compliance Conference Referee Report and Order dated March 12, 2021, which unambiguously stated: **“This action has been inactive on the Court’s inventory for approximately one year and the parties have failed to pursue discovery during this time. No further extensions shall be granted. The case will be certified as trial ready at the next conference”** (emphasis in original). Despite this clear warning, the plaintiff appeared at the subsequent conference over two months later having still not completed discovery, and then baselessly objected to the issuance of the Trial Readiness Referee Report and Order in this action dated May 24, 2021.

The plaintiff’s conduct in wasting his more than ample opportunity to conduct discovery, and then making no less than four motions seeking to vacate various Court orders, has resulted in added expense to the defendants and a gross waste of already scarce judicial resources. Given the adequate time afforded to the plaintiff to engage in the discovery process, and in light of the plaintiff’s failure to abide by unequivocal Court directives and discovery deadlines, there is no merit to those portions of his motions seeking to vacate the Note of Issue or the Orders respectively dated March 12, 2021 and May 24, 2021 (*see Cioffi v S.M. Foods, Inc.*, 178 AD3d 1003, 1006 [2d Dept 2019] (noting that the plaintiffs “had been given every opportunity to conduct discovery,” and holding that “where the Supreme Court has directed the completion of discovery by a certain date or where the party seeking vacatur has failed to timely comply with court orders and discovery demands, denial of a motion to vacate is proper”); *see also Encarnacion v Monier*, 81 AD3d 875, 876 [2d Dept 2011]; *Ford v J.R.D. Mgmt. Corp.*, 238 AD2d 307, 307 [2d Dept 1997] (affirming the trial court’s refusal to strike an action from the trial calendar where “the discovery which had not been made was due to the appellant’s own inaction”)).

Furthermore, there is no basis for awarding the plaintiff attorneys’ fees and costs as requested in motion sequence 7, when in fact it is the plaintiff whose contumacious conduct has

undoubtedly resulted in the defendants incurring increased litigation expenses, and which conduct, if continued in the future, may warrant the imposition of sanctions upon the plaintiff (see 22 NYCRR § 202.20-e[a]; see also *Kopelevich & Feldsherova, P.C.*, 191 AD3d at 854-855).

Additionally, the branches of the plaintiff's motions (sequence numbers 8 and 9) seeking to transfer this action out of the Compliance Part and requesting that the Justice presiding over the trial of this action oversee all discovery herein are entirely without merit and should be denied. The Compliance Part has overseen discovery in this action, and as set forth above, has afforded the plaintiff abundant opportunity to engage in the discovery process in this nearly two-year-old litigation. This Court in the Trial Readiness Referee Report and Order dated May 24, 2021 stated that "all discovery has been completed or waived and the matter is ready for trial," and the defendants filed a Note of Issue and Certificate of Readiness for Trial on June 28, 2021. Accordingly, this matter is ready for trial and will be tried by the Justice presiding therein, subject to such Justice's determination of any summary judgment motions timely brought by the parties.³

Moreover, the Court is troubled by the plaintiff's unfounded and meritless allegations of bias. As noted above, when the Court Attorney-Referee assigned to this action was made aware that she had been copied on a certain email that referenced the plaintiff in connection with a different litigation, such Court Attorney-Referee voluntarily recused herself from this matter so as to avoid any appearance of impropriety. The Recusal dated April 9, 2021 stated in relevant part: "In order to avoid the appearance of impropriety, however unmerited, the undersigned does hereby recuse herself from any and all judicial proceedings and determinations in this action forthwith" (emphasis added). Given the circumstances, it is evident that there is no merit to any allegation by the plaintiff that this Court, or any Court Attorney-Referee herein, harbors any bias concerning the plaintiff. To the contrary, the relevant Court Attorney-Referee went above and beyond to avoid even the mere appearance of impropriety by voluntarily recusing herself from this matter. Accordingly, the plaintiff's allegations of bias are entirely without merit, and the related relief sought by the plaintiff is denied (see *Matter of Khalia R.R. v Evans D.*, 188 AD3d 544, 545 [1st Dept 2020] (stating that "the record does not support respondent's contention that the referee was biased against him"); *Willoughby Rehabilitation & Health Care Ctr., LLC v Webster*, 134 AD3d 810, 811 [2d Dept 2015] (holding that the Supreme Court "properly denied that branch of the defendant's motion which was, in effect, to vacate all of the orders issued by the referee" as the "defendant failed to set forth any proof that the referee was biased or prejudiced against her"))).

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Based upon the foregoing, it is hereby,

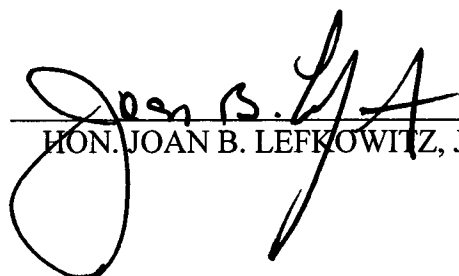
³ According to NYSCEF records, the defendants have moved (sequence 11) for partial summary judgment in their favor, which motion is returnable before the Justice presiding over the trial of this action.

ORDERED that the motions of plaintiff (sequence 6, 7, 8 and 9) are denied; and it is further

ORDERED that counsel for the defendants shall serve a copy of this Order with notice of entry upon all parties and upon non-party Stefanie Davidoff via NYSCEF within five (5) days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, NY
August 27, 2021



HON. JOAN B. LEFKOWITZ, J.S.C.

Service upon all counsel via NYSCEF

cc: Compliance Part Clerk