SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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NUANCE INDUSTRIES, INC.,

Plaintiff,

- v -

UNION APPAREL GROUP, LTD., BUDMARK TEXTILES INTERNATIONAL, INC., THOMAS LAM A/K/A TOMMY LAM AND/OR THOMAS SHU KWONG LAMUNIO, and CLARENCE GELBER,

Defendants.

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INDEX NO. 655882/2017

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

In this breach of contract action, plaintiff Nuance Industries, Inc., moves, pursuant to CPLR 3212, for summary judgment against defendants Union Apparel Group, Ltd. ("Union"), Budmark Textiles International, Inc. ("Budmark"), and Clarence Gelber ("Gelber") (collectively, the "Union Defendants") and defendant Thomas Lam a/k/a Tommy Lam and/or Thomas Shu Kwong Lamunio ("Lam") (together with the Union Defendants, "defendants"). Lam cross-moves for summary judgment dismissing the complaint against him.

Background

The relevant facts are set forth in the court's prior decision and order dated March 23, 2021, familiarity with which is presumed. Briefly, this action arises out of the purported breach of a settlement agreement (the "Settlement Agreement") reached between plaintiff and Union, Budmark and non-party Ashley Stewart, Inc. ("Ashley"), in a copyright infringement action

brought in federal district court. The Settlement Agreement defines the "Parties" to the agreement as plaintiff, Ashley, Union and Budmark; and the "Defendants" as Ashley, Union and Budmark (NYSCEF Doc No. 61 at 21 [Exh. C]). Section 3.1 set forth the "Settlement Amount" as follows: (1) $100,000 total in cash payments to plaintiff from Union and Budmark by June 30, 2016, and (2) $1 million in completed textile purchases by Union from plaintiff between April 30, 2016 and April 30, 2017 (the "Settlement Term") (*id.* at 21-22). If Union completed less than $1 million in textile purchases by April 1, 2017, then "a final payment totaling 15% of the difference between the $1,000,000 in purchases and the actual amount of purchases shall be payable by April 30, 2017" (the "Shortfall Amount") (*id.* at 22). Section 5, titled "**Personal Guarantee and Stipulated Judgment**," reads:

> **5.1** As further consideration for the release set forth below, and as a condition of NUANCE entering into this Agreement, Tommy Lam agrees to personally guarantee payment of any shortfall in the Settlement Amount, as set forth at the end of this Agreement.
>
> **5.2** Furthermore, the Parties agree that in the event of a default in payment that is not remedied in full within ten (10) days of written notice from NUANCE to DEFENDANTS, NUANCE shall be entitled to immediate judgment against defendants Union Apparel Group, Ltd. and Budmark Textiles International, Inc. and against Tommy Lam and Clarence Gelber jointly and severally, but in no event against defendant Ashley Stewart, Inc., in an amount equal to any shortfall in the remaining balance due of the Settlement Amount at the time of the breach. [*Guarantors initial here*: ___ ___]

(*Id.*)

The Settlement Agreement states that any notice in connection with the agreement shall be given by mail and email to counsel for the Parties, Carlos M. Carvajal, Esq. ("Carvajal"), and to Michael Abate ("Abate"), Ashley's Treasurer/Secretary (*id.* at 25 [§ 19]). Section 8 provides, in part, that "[i]n the event of any subsequent litigation to enforce the terms of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other

relief" (*id.* at 24). The Settlement Agreement was executed by Samy Nimroody ("Nimroody") as plaintiff's president, Lam as Sales Manager for Union, and Abate for Ashley (*id.* at 26 and 28).

The personal guarantee (the "Guaranty") signed by Lam and attached to the Settlement Agreement provides:

> The undersigned absolutely guarantees the prompt payment of the shortfall portion of Settlement Amount payable by DEFENDANTS under the above-executed Agreement and, in the event of default in payment of any portion thereof, the undersigned promises to pay the full amount of such indebtedness in full. It is further agreed that the liability of the undersigned shall not be affected by the discharge or release of the indebtedness, liability, obligation of DEFENDANTS, other than through satisfaction of the Agreement. In the event of death of the undersigned guarantor, this guarantee shall be discharged.

(*Id.* at 29.)

Union and Budmark satisfied the cash payment portion of the Settlement Agreement, but Union purchased only $126,507.49 in textile products within the Settlement Term (NYSCEF Doc No. 64, ¶¶ 9-10).

Procedural History

Plaintiff commenced this action by filing a summons and complaint asserting a single cause of action for breach of contract against all defendants. After the Union Defendants and Lam interposed answers, plaintiff moved for summary judgment, and Lam cross-moved for summary judgment on his cross claim for indemnification against Union (NYSCEF Doc Nos. 27 and 34). In a decision and order dated March 23, 2021 (the "March Order"), this court denied plaintiff's motion on the ground that its evidence regarding Union's breach was inadmissible, granted plaintiff leave to renew upon the submission of admissible evidence consistent with CPLR 4518, and denied Lam's cross-motion in its entirety (NYSCEF Doc No. 54).

Plaintiff now renews its motion for summary judgment, and Lam cross-moves for summary judgment dismissing the complaint against him.

Positions of the Parties

In support of its motion, plaintiff relies on an affidavit from Nimroody, who avers that Union and Budmark have made the cash payment as required under the Settlement Agreement, but Union has purchased only $126,507.49 in textile products within the Settlement Term, as indicated in the five invoices annexed to his affidavit (NYSCEF Doc No. 64, ¶¶ 9-10). Although Union later placed an additional $26,094.10 in textile orders, these purchases were made after April 30, 2017 (*id.*, ¶ 11). He submits that $131,023.88 is due and owing from defendants (*id.*, ¶ 13). Plaintiff also relies on an affirmation from its counsel, Burroughs, who declares that on June 16, 2017, he informed Carvajal of the Shortfall Amount and demanded payment, but there has been no response (*see*, NYSCEF Doc No. 61, ¶¶ 13-15, 59 [Ex E]). Plaintiff acknowledges that the copy of the Settlement Agreement submitted on the motion lacks signatures from Gelber and Budmark (NYSCEF Doc No. 60 at 6 n 3]). However, it urges the court to ignore the absence of these signatures because correspondence between counsel shows that Gelber intended to execute the Settlement Agreement (NYSCEF Doc No. 61 at 30), and Budmark made the cash payments required under the agreement.

The Union Defendants urge the court to deny the motion as plaintiff failed to tender a statement of material facts in violation of Uniform Rules for Trial Courts (22 NYCRR) § 202.8-g; the Settlement Agreement is unenforceable because Budmark and Gelber have not signed it; Nimroody's unsworn affidavit is inadmissible; the documents annexed to Nimroody's affidavit lack a proper foundation; and the motion is premature as there has been no discovery.

Lam argues that the complaint fails to state a cause of action against him, and argues the complaint should be dismissed on this ground. He, too, contends that the Settlement Agreement is not binding because Budmark never signed it. Lam also claims that the motion is premature as only minimal discovery has been exchanged. Lam's affidavit submitted on his cross-motion is nearly identical to the affidavit he submitted with his earlier cross-motion.

Standard of Review

A party moving for summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the moving party has met this *prima facie* burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324). The moving party's "[f]ailure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*id.*).

Discussion

As explained in the March Order, the complaint pleads a single cause of action for breach of contract, with the obligations of Lam and Gelber isolated to Section 5 of the Settlement Agreement and the separate Guaranty (NYSCEF Doc No. 54 at 6).

A. Breach of the Settlement Agreement

A settlement agreement, like the one at issue, is a contract (*Brad H. v City of N.Y.*, 17 NY3d 180, 175 [2011]). Thus, to prevail on a cause of action for breach of contract, the four elements the plaintiff must plead and prove are the existence of a contract, the plaintiff's

performance, the defendant's breach, and damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). As set forth in the March Order, plaintiff has satisfied the first two elements, namely, the existence of a contract between Plaintiff and the Union Defendants and plaintiff's performance thereunder, and the Union Defendants and Lam did not dispute those elements of the claim (NYSCEF Doc No. 54 at 6). On this motion, plaintiff has demonstrated that Union breached the Settlement Agreement and that it has been damaged by the breach. Nimroody's affidavit and the attached invoices show that Union completed $126,507.49 in textile purchases within the Settlement Term, which falls far short of the $1 million it had agreed to complete. In addition, Nimroody's affidavit establishes a Shortfall Amount of $131,023.88 (NYSCEF Doc No. 64, ¶¶ 10-13).

The Union Defendants and Lam fail to raise a triable issue of fact in opposition. To begin, the court declines to deny the motion for plaintiff's failure to tender a statement of material facts. Uniform Court Rules for Trial Courts (22 NYCRR) § 202.8-g (a) provides that "[u]pon any motion for summary judgment, … there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried." The rule came into effect on February 1, 2021, and plaintiff filed its motion three months later. Plaintiff did not submit a separate statement of material facts with its moving papers, although Burroughs' affirmation contains a recitation of the facts and refers to specific documents in the record. While the better practice would have been to submit a separate concise statement, or at least, to attempt to correct this defect after the Union Defendants filed their opposition (*see Birds & Bubbles NYC LLC v 100 Forsyth LLC*, 74 Misc 3d 1212[A], 2022 NY Slip Op 50106[U], *2 [Sup Ct, NY County 2022]), the Union Defendants do not claim to have suffered any prejudice from the omission of a

more formal statement (*see Gurwitz v Claridge House*, 2022 NY Slip Op 31338[U], *2 [Sup Ct, NY County 2022]; *Bonaguro v. Old Firehouse No. 4 LLC*, 2022 NY Slip Op 30109[U], *6 [Sup Ct, Kings County 2022]; *cf. Amos Fin. LLC v Crapanzano*, 73 Misc 3d 448, 453 [Sup Ct, Rockland County 2021]).

Regarding Nimroody's affidavit, the Union Defendants initially submitted it without signature or notarization. An affidavit that is not notarized is inadmissible (*see Capsouto v Capsouto*, 202 AD3d 587, 588 [1st Dept 2022]). However, plaintiff corrected this defect by later filing a signed and notarized affidavit, which is acceptable (*see Wager v Rao*, 178 AD3d 434, 435 [1st Dept 2019]).

Turning to the documentary evidence, CPLR 4518 (a) states, in relevant part:

> Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.

Plaintiff has set forth a proper foundation for the admissibility of the five invoices (*see A&W Egg Co., Inc. v Tufo's Wholesale Dairy, Inc*., 169 AD3d 616, 617 [1st Dept 2019]). "A proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures" (*Autovest, LLC v Cassamajor*, 195 AD3d 672, 673 [2d Dept 2021] [internal quotation marks and citation omitted]). Here, Nimroody avers that he has personal knowledge of plaintiff's business and recordkeeping practices, maintains and regularly accesses those records and is intimately familiar with plaintiff's internal system for generating, maintaining, and retaining documents in its ordinary course of business, including the documents about the transactions at issue (NYSCEF Doc No.

64, ¶ 3). He further avers that he is authorized to certify that the records referenced in his affidavit are accurate versions of those documents (*id.*, ¶ 4).

Defendants also argue that the Settlement Agreement is not enforceable because it was not signed by all "Parties," as that term is defined in the agreement. They point to Section 4 in the agreement, which reads as follows:

> **Execution by All Parties**. The Parties acknowledge that this Agreement is not effective as to any Party unless and until it has been signed by all of the Parties. Unless otherwise expressly stated in this Agreement, the rights, promises and obligations made in this Agreement shall each become effective and enforceable immediately upon the execution of this Agreement by all Parties.

(NYSCEF Doc No. 61 at 22). The copy of the Settlement Agreement submitted on the motion shows that Lam initialed the first blank line for Guarantors, but the second line is blank (*id.* at 27). The line for Gelber's signature on the Guaranty is also blank (*id*. at 29).

Ordinarily, "if the parties to an agreement do not intend it to be binding upon them until it is reduced to writing and signed by both of them, they are not bound and may not be held liable until it has been written out and signed" (*Scheck v Francis* (26 NY2d 466, 469-470 [1970]). Section 4 makes plain that the "Parties," as that term is defined in the agreement, did not intend to be bound unless and until the agreement had been signed by all of them (*see ADCO Elec. Corp. v HRH Constr., LLC*, 63 AD3d 653, 654 [2d Dept 2009]; *Jordan Panel Sys., Corp. v Turner Constr. Co.*, 45 AD3d 165, 169 [1st Dept 2007]), and plaintiff readily admits that it did not submit a fully executed Settlement Agreement on the motion. However, in correspondence to the court dated January 31, 2022, Lam submitted a copy of the Settlement Agreement and Guaranty executed by Gelber and Budmark, and requested that this court disregard the misstatements in his affidavit and other filings alleging that Budmark had not signed the documents (NYSCEF Doc Nos. 85-86, Lam 1/31/22 letter and attachment). No party filed a

response to the letter challenging the authenticity of the documents. Thus, defendants' argument that the Settlement Agreement and accompanying Guaranty are not binding lacks merit.

Even if Lam had not submitted copies of the executed documents, the law of the case doctrine precludes defendants from opposing plaintiff's renewed motion on the ground that the Settlement Agreement and Guaranty are not enforceable because they are unsigned. The law of the case doctrine "is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned" (*Martin v City of Cohoes*, 37 NY2d 162, 165 [1975], *rearg denied* 37 NY2d 817 [1975], *mot to amend remittitur denied* 37 NY2d 818 [1975] [citations omitted]). The doctrine precludes a party "from relitigating 'an issue decided in an ongoing action where there previously was a full and fair opportunity to address the issue'" (*Aspen Specialty Ins. Co. v RLI Ins. Co*., 194 AD3d 206, 212 [1st Dept 2021] [citation omitted]). Whether an enforceable agreement exists is a key element the plaintiff must prove on a breach of contract claim, and in the March Order, this issue was necessarily decided when this court determined that plaintiff's proof was sufficient to demonstrate the existence of a contract. Defendants also opposed plaintiff's prior motion. Therefore, they had a full and fair opportunity to raise the issue of whether the unsigned Settlement Agreement is enforceable at that time but failed to do so. None of the defendants challenged the first element on a breach of contract claim on the earlier motion nor have they sought timely reargument under CPLR 2221. Moreover, renewal of plaintiff's summary judgment motion was limited to the submission of admissible proof on the last two elements of its claim, namely defendants' breach and damages. As determined above, plaintiff has satisfied these two elements.

Nor have defendants demonstrated that plaintiff's motion was premature. First, Lam contends the motion is premature because his company, nonparty Global Direct Consulting LLC ("Global"), made $248,408.70 worth of textile purchases from plaintiff (NYSCEF Doc No. 77, Lam aff, ¶ 32; NYSCEF Doc No. 78, Lam aff, Ex 1). But, as discussed in the March Order, this argument is unavailing because the Settlement Agreement expressly required Union to make the purchases, and Lam conceded that his business relations with Union ended in or about July 2016 (NYSCEF Doc No. 77, ¶ 20). Also, information on whether Union timely completed textile purchases within the Settlement Term and in the amount required under the Settlement Agreement would be within the Union Defendants' possession and knowledge. As such, "defendants failed to identify outstanding discovery that would enable them to oppose the motion" (*Harlington Realty Co., LLC v Lawrence Plumbing Supply Inc.*, 201 AD3d 435, 436 [1st Dept 2022]). Accordingly, plaintiff is entitled to summary judgment on its cause of action for breach of the Settlement Agreement.

C. Breach of Guaranty

"On a motion for summary judgment to enforce an unconditional guaranty, the creditor must prove the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty" (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]). As determined in the March Order, plaintiff failed to furnish evidence in admissible form regarding the debt (NYSCEF Doc No. 54 at 11). Plaintiff has now corrected this deficiency.

Lam and Gelber fail to raise a triable issue of fact in opposition. Counter to Lam's assertion, the complaint pleads a breach of Section 5 of the Settlement Agreement and the separate Guaranty. Specifically, the complaint alleges that Lam agreed to act as a personal guarantor for the Shortfall Amount (NYSCEF Doc No. 61 at 65 [Ex F]). In addition, Lam does

not dispute that he executed the Guaranty, the terms of which, as stated in the March Order, "constitute a deliberately stated, unambiguous and separate expression personally obligating Lam for 'prompt payment' of any shortfall amount owed as a result of Union Apparel's failure to purchase $1,000,000 in textiles during the Settlement Term" (NYSCEF Doc No. 54). Gelber's assertion that he did not execute the Guaranty likewise fails in view of the submission of a copy of the fully executed document (NYSCEF Doc No. 86 at 7). Accordingly, plaintiff is entitled to summary judgment on its cause of action for breach of the Guaranty, and Lam's cross-motion for summary judgment dismissing the complaint against him is denied.

D. Attorneys' Fees

It is well settled that attorneys' fees are incidents of litigation and are not recoverable fees unless authorized by agreement, statute, or court rule (*Hooper Assocs. v AGS Computers*, 74 NY2d 487, 491 [1989]). Here, Section 8 of the Settlement Agreement expressly allows the prevailing party to recover its reasonable attorneys' fees from "Parties," defined in that agreement as Ashley, Union, and Budmark, in any subsequent litigation to enforce the agreement's terms. The Guaranty, though, only obligates the individual defendants, Lam and Gelber, to pay the Shortfall Amount, without any mention of attorneys' fees (*see*, NYSCEF Doc No. 86 at 6-7). Accordingly, plaintiff is entitled to recover its attorneys' fees from Union and Budmark, only. Plaintiff, however, has not yet established the reasonableness of its attorneys' fees. Furthermore, counsel's statement that plaintiff has incurred $12,000 in legal fees is wholly unsupported by any testimonial or documentary evidence as to how those fees were calculated (*see Matter of Freeman*, 34 NY2d 1, 9 [1974] [discussing the factors the court may consider in fixing fees]). The amount of the reasonable attorneys' fees plaintiff is entitled to recover from

Union and Budmark is, therefore, severed and referred to a Judicial Hearing Officer or Special Referee for hearing and determination.

E. Post-Settlement Interest

Plaintiff also moves for post-settlement interest under CPLR 5003-a. "The purpose of CPLR 5003-a is to encourage the prompt payment of damages in settled actions" (*Davila v Cornelia 1731 Corp*., 139 AD3d 999, 999 [2d Dept 2016]). The statute establishes a 21-day period after the settling defendant receives a duly executed release and a stipulation discontinuing an action from the settling plaintiff within which to pay the settlement (CPLR 5003-a). If the settling defendant fails to timely pay the settlement within 21 days, then under CPLR 5003-a (e), the plaintiff "may enter judgment, without further notice, against such settling defendant who has not paid."

Here, plaintiff has not established that it tendered a duly executed stipulation of discontinuance to defendants as required under CPLR 5003-a (a) (*see Cunha v Shapiro*, 42 AD3d 95 [2d Dept 2007], *lv dismissed* 9 NY3d 885 [2007] [vacating a judgment entered under CPLR 5003-a (e) where the plaintiff failed to establish his compliance with CPLR 5003-a (a)]). The federal docket in the copyright action reads only that the court had been advised that a settlement had been reached (NYSCEF Doc No. 61 at 18 [Ex B]). Furthermore, CPLR 5003-a (e) contemplates entry of judgment in the action that was settled as opposed to entry of judgment in a separate plenary action for breach of a settlement action.

Plaintiff, however, is entitled to prejudgment interest (*see Kellman v Mosley*, 60 AD3d 457, 458 [1st Dept 2009]). CPLR 5001 (a) allows the prevailing party in an action for breach of contract to recover pre-judgment interest, and CPLR 5001 (b) provides that pre-judgment interest "shall be computed from the earliest ascertainable date the cause of action existed." Plaintiff has

demonstrated that the cause of action accrued on June 26, 2017, which is 10 days after plaintiff furnished Union's counsel with notice of its default (NYSCEF Doc No. 61 at 61).

Accordingly, it is

ORDERED that the motion brought by plaintiff Nuance Industries, Inc., for summary judgment (motion sequence no. 003) is granted; and it is further

ORDERED that the cross-motion brought by defendant Thomas Lam a/k/a Tommy Lam and/or Thomas Shu Kwong Lamunio for summary judgment dismissing the complaint against him is denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants Union Apparel Group, Ltd., Budmark Textiles International, Inc., Thomas Lam a/k/a Tommy Lam and/or Thomas Shu Kwong Lamunio, and Clarence Gelber in the amount of $ $131,023.88, jointly and severally, together with interest at the rate of 9% per annum from the date of June 26, 2017, until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees incurred by plaintiff Nuance Industries, Inc., in this action, to which it is entitled to recover from defendants Union Apparel Group, Ltd., and Budmark Textiles International, Inc., is to be heard and determined by a Judicial Hearing Officer ("JHO") or Special Referee; and it is further

ORDERED that the issue of such reasonable attorneys' fees is severed and a JHO or Special Referee shall be designated to conduct an inquest and hear and determine the amount of

attorneys' fees incurred by plaintiff Nuance Industries, Inc., which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of filing of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until

completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

This constitutes the decision and order of the court.

ENTER:

7/1/2022
DATE

LOUIS L. NOCK, 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**