

Sefina Indus. Ltd. v Tishman Constr. Corp. of N.Y.
2022 NY Slip Op 33330(U)
October 1, 2022
Supreme Court, New York County
Docket Number: Index No. 160375/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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SEFINA INDUSTRIES LIMITED,

Plaintiff,

- v -

TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, FEDERAL INSURANCE COMPANY, AMERICAN WOODCRAFT LLC, SKYLINE STEEL CORP., R&S UNITED SERVICES, INC., ART WOODWORK, INC., FIVE STAR ELECTRIC CORP., COMPONENT ASSEMBLY SYSTEMS, INC., ALMAR PLUMBING & HEATING CORP., RLI INSURANCE COMPANY, W & W GLASS, LLC, and AMTECH TANK LINING & REPAIR LLC

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 291, 292, 293, 294, 295, 309, 310, 493

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 484, 485, 486, 497, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 614, 618, 652, 655, 659

were read on this motion to/for DISMISS.

Defendant Tishman Construction Corporation of New York (Tishman) continues to ignore its discovery obligations in this action, forcing the parties to continue to incur expenses and engage in unnecessary motion practice. Three parties have renewed their prior motion against Tishman. The relief requested includes striking Tishman’s pleadings and sanctions.

Background

This action arises out of a construction of a 43 storey residential tower at 1 WestEnd Avenue in New York City known as Residential Building No. 5 (Project) owned by nonparty Riverside Center 5 Owner, LLC (Owner). (NYSCEF Doc. No. [NYSCEF] 42, Amended Complaint ¶ 12.) A summary of the factual and procedural background is set forth in the court's July 16, 2020 Order (July 16 Order). (NYSCEF 497, Decision and Order [Motion Seq. Nos. 002, 003, 004, 005, 006, 007].)

In motion sequence number 002, plaintiff Sefina Industries Limited (Sefina) and defendants Almar Plumbing & Heating Corp. (Almar) and Five Star Electric Corp. (Five Star) moved to compel Tishman to comply with prior court orders and demands by (1) identifying each back charge for Five Star and Sefina identified in Tishman's January 20, 2020 First Amended Answers to Interrogatories, (2) identifying all additional costs and damages due to delays, responding to ESI demands served on September 23, 2019, (3) producing all documents that Tishman submitted under the Builder Risk Policy and Subcontractor Default Insurance Policy, (4) producing all documents related to Tishman's \$24 million lien against the Project's real property, and (5) producing all documents in support of Tishman's counterclaims in the related action, *Riverside Center 5 Owner LLC v Tishman*, Index No. 656364/2017 (2017 Riverside Action).¹ (NYSCEF 205, Order to Show Cause [OSC] [Motion Seq. No. 002].) Movants also sought costs associated with their OSC. (*Id.*)

¹ This action was discontinued by the parties in 2018. (Index. No. 656364/2017, NYSCEF 13, Stipulation of Discontinuance.) In 2020, the Owner filed a new action against Tishman.

In motion sequence number 006, movants moved to strike Tishman's pleadings (Verified Answer with Counterclaims to Amended Complaint filed by Sefina [NYSCEF 61]; Verified Answer with Cross Claims to Cross Claims asserted by Almar [NYSCEF 78]; Verified Answer with Cross Claims to Cross Claims asserted by Five Star [NYSCEF 83]), or alternatively, preclude evidence or apply an adverse inference instruction in regard to back charges and defenses not supported by documentation. (NYSCEF 431, OSC [motion seq. no. 006].) Movants also sought to impose sanctions and extend discovery deadlines. (NYSCEF 431, OSC [006].)

In the July 16 Order, the court ordered Tishman to comply with the movants' discovery demands within 30 days and permitted movants to renew the motion if Tishman failed to do so.² (NYSCEF 497, July 16 Order.) Movants' counsel subsequently filed an affirmation of noncompliance with exhibits, asserting that Tishman had failed to comply with the July 16 Order and seeking renewal of motions 002 and 006. (NYSCEF 516-549, McDermott aff and exhibits.) On July 2, 2021, the court

² Defendants R&S United Services, Inc. (R&S) also moved to strike Tishman's answer and counterclaims against R&S based on Tishman's failure to comply with discovery demands and court orders (NYSCEF 206, OSC [Motion Seq. No. 003]) and filed an affirmation of noncompliance to renew that motion. (NYSCEF 573, Hellman aff.) Subsequently, the parties entered into a partial stipulation of discontinuance with prejudice, discontinuing all claims by and against R&S. (NYSCEF 650, Partial Stipulation of Discontinuance.) Thus, R&S's application is moot. Defendant W&W Glass, LLC (W&W) moved for similar relief (NYSCEF 411, OSC [Motion Seq. No. 007]) and filed an affirmation of noncompliance to renew its motion. (NYSCEF 551, McDonough aff.) On August 31, 2022, Tishman's counsel informed the court via email that Tishman and W&W agreed to a settlement. The court is awaiting a stipulation of discontinuance. Thus, W&W's application is held in abeyance pending submission of a stipulation.

ordered the General Clerk's Office to restore motion sequence number 006 to the calendar.³ (NYSCEF 655, Decision and Order [Motion Seq. Nos. 006 and 007].)

On September 17, 2021, the court heard argument on the renewed motions. (NYSCEF 659, Transcript of Proceedings⁴.) During the argument, the court directed Tishman's counsel to (1) produce an analysis of back charges requested by the movants within 60 days (*id.* at 34:10-21) and (2) contact a former Tishman employee (Carriero) for additional documents related to the delays Tishman has claimed are attributable to the movants (*id.* at 21:15-16, 33:22-25); the court further directed the parties to start scheduling depositions. (*id.* 34:20-23.) The court stated that it would issue a written order. (*id.* at 34:24-35:1.) According to movants, Tishman has done nothing further in response to their outstanding discovery demands. (NYSCEF 660, May 24, 2022 Letter.)

Discussion

Unauthorized Sur-Reply Filed by Tishman

On November 20, 2020, Tishman's counsel filed an affirmation in reply to the reply affirmation of noncompliance filed by movants (NYSCEF 614, Rosen aff). Tishman did not seek permission prior to filing these documents.

Rule 18 of the Commercial Division rules states:

"Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation

³ Motion sequence number 002 should have also been restored to this court's calendar; although it is marked decided, the court will address it in this decision for a final disposition.

⁴ There was a delay in receiving the transcript, which was e-filed on December 23, 2021.

hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.” (emphasis and italics added)

Because Tishman failed to request permission prior to filing NYSCEF 614, the court will not consider those papers on these applications. Moreover, even if Tishman had properly requested permission to submit a sur-reply, this request would have been denied, because movants’ reply does not contain any arguments that are not related to those in their initial memoranda of law, and the sole purpose of Tishman’s sur-reply appears to be to have the last word. The only arguments in movants’ reply which may go beyond those made in their memoranda are those concerning Tishman’s position in *In the Matter of the Application of Riverside Center Site 5 Owner LLC against Tishman Construction Corporation of New York*, Index No. 155441/2020 (2020 Riverside Action). (NYSCEF 582, McDermott aff ¶¶ 23-29.) However, the court finds movants’ argument that Tishman’s position in this action is inconsistent with its position in the 2020 Riverside Action irrelevant to the motions at issue. Thus, it will not be considered.

Renewed Motions 002 and 006

Movants assert that Tishman has still failed to produce all: (1) documents related to Tishman’s claims for additional damages and costs due to movants’ delay on the project; (2) emails from custodians included in the movants’ ESI demands; and (3) documents related to numerous back charges asserted by Tishman. Movants seek to strike Tishman’s pleadings and impose sanctions. In connection with the portions of the motions seeking sanctions, movants request an in camera inquest of their attorneys’ and consultant’s invoices.

Documents Related to the Delay Damages

In its initial responses to the movants' interrogatories, Tishman asserted that, in addition to "damages referenced includ[ing] the back charges and credits asserted against and transmitted to [movants]", Tishman "incurred damages and additional costs due to delay" of the movants. (NYSCEF 344, 345, and 346, Tishman Responses to Movants' Interrogatories at 5 [Answer to Q. 3].) However, movants claim that Tishman did not provide information about damages based on delay or how they were attributable to each of the movants. (NYSCEF 335, McDermott aff ¶ 18.)

Based on this response to movants' interrogatories, the court directed Tishman to "identify all additional damages and additional costs due to delays alleged caused by Sefina, Almar and Five Star." (NYSCEF 497, July 16 Order at 7.) Subsequent to the July 16 Order, Tishman produced "a series of over 20 emails with links to various productions" which contained "a paucity of description of the production and the relevance to the issues being litigated." (NYSCEF 516, McDermott aff ¶ 26.) In one of these emails, Tishman's counsel provided documents bates stamped 1 to 176, stating these relate "to delay and Tishman's counterclaim in the dismissed action by the owner." (*Id.* ¶ 27.) Movants assert that this production is insufficient because it does not contain an analysis relating to a March 14, 2019 memo submitted by Tishman to the Owner concerning attribution of the 504 day delay on the Project (the March 14, 2019 Letter). (*Id.* ¶ 30.) Movants argue that Tishman's production lacks "any analysis that demonstrates which of the 504 days of delay Tishman found were excusable and compensable" or "any analysis which set forth which 24 days of delay Tishman claimed were attributable to Sefina, Almar and/or Five Star, or any other trade" (*Id.* ¶ 30.)

Tishman asserts that it is no longer seeking any delay damages from movants since the 2017 Riverside Action was dismissed with prejudice, and Tishman stated the same in its amended answers to interrogatories served after the July 16 Order. (See NYSCEF 527, 528, and 529, Amended Responses to Movants' Interrogatories at 5 [Answer to Q. 3] ["Tishman is not asserting direct claims against [movants] for damages due to delay on the project"].) However, the Owner filed a second action against Tishman, the 2020 Riverside Action, and Tishman reserved its rights to seek indemnification and/or contribution in regard to that action. (*Id.* ["However, on June 24, 2020, the owner of the project filed an action against Tishman in Supreme Court, New York County (Index No. 652700/2020) asserting claims for damages due to delay on the project. Tishman reserves its right to assert claims for indemnification and/or contribution in the event those claims relate to the actions or inactions of (movants)"].)

Tishman, by its own admission, is not seeking damages based on delay. Therefore, delay damages are not at issue in this action, and any claims by Tishman seeking such damages are dismissed. Tishman is also precluded from relying on any documents supporting its assertions of delays by movants that it has not already produced. The only exception to this is that Tishman, as directed during the argument, must inquire with Carriero, a former Tishman employee, who allegedly drafted the March 14, 2019 Letter, whether he has additional documents related to the analysis in the Letter. (NYSCEF 659, tr at 33:22-25.) Tishman has 5 days from the date of this order to contact Carriero and 5 days from Carriero's production to produce any responsive documents that Carriero provides. If Tishman fails to contact Carriero or

produce Carriero documents within 30 days of the date of this order then an appropriate penalty will issue.

The ESI Demands

In the July 16 Order, the court directed Tishman to respond to the demands for ESI served on September 23, 2019 within 30 days. (NYSCEF 497, July 16 Order at 8.) Movants assert that while Tishman made supplemental ESI productions after the July 16 Order, it has not provided any productions for four of the custodians on Almar's custodians list and one of the custodians on Five Star's custodian list. (NYSCEF 516, McDermott aff ¶ 41.) Tishman also produced documents from custodians who were not on the movants' custodians lists but failed to provide any information about these custodians. (*Id.* ¶¶ 40, 43.) The movants request reimbursement for their ESI consultant fees charged for sorting through Tishman's ESI production, including documents from custodians movants did not request. (*Id.* ¶ 44.)

Tishman argues that it "has fully produced all documents and ESI for all custodians demanded by the moving parties including any omissions identified after issuance of the [July 16, 2020 Order]." (NYSCEF 575, Rosen aff ¶ 12.) Specifically, Tishman states that two of the custodians, Raymond Totillo and Ron Miller, left the company in November 2015 and June 2019, respectively, and their emails were expunged in accordance with Tishman's and Aecom's policy, while no accounts were found for two of the other custodians, Bernadette Amarosa and Bruce Silver. (*Id.* ¶ 13.) Tishman's counsel further states that it did find 26 hits for one custodian, Steve Miller, nine of which were privileged and 17 of which were non-responsive, because they were related to a different project than the one at issue in this action. (*Id.*)

In a Jackson Affidavit filed on August 17, 2020, Richard Ortiz, a Vice President of Tishman, affirms that Bruce Silver left Tishman prior to the commencement of this action, and “Tishman cannot identify a Tishman employee named Bernedette Amarosa.” (NYSCEF 514, Ortiz aff ¶¶ 2, 3.) Tishman does not address the documents provided for custodians that were not requested.

However, movants assert that their ESI consultant searched the email addresses for those custodians in the ESI production Tishman provided and found 608 emails where Bernedette Amarosa’s address appeared and 664 emails where Bruce Silver’s address appeared. (NYSCEF 582, McDermott aff ¶¶ 32-34.) A review of Tishman’s production showed 78 emails with Ron Miller’s address and 542 emails with Raymond Totillo’s address. (*Id.*) Finally, movants contend that they found 4,857 emails with Steve Miller’s address in the production to Five Star. (*Id.*)

The court finds that Tishman has willfully failed to comply with its ESI obligations, warranting sanctions. (*U.S. Bank Natl Assn v Sirota*, 189 AD3d 927, 929 [2d Dept 2020] [citations omitted] [finding “the plaintiff’s repeated failures, without an adequate excuse, to comply with discovery demands and with the Supreme Court’s discovery order, gives rise to an inference that its behavior was willful and contumacious.”].) Tishman’s assertion that Raymond Totillo’s and Ron Miller’s emails were “expunged” in accordance with company policy when they left is shocking and concerning, particularly since Tishman’s counsel states that Ron Miller left the company in 2019, after this action was initiated. In addition, even though Tishman asserts that it could not find accounts for four custodians or that those accounts were “expunged,” movants have demonstrated Tishman produced hundreds of emails for those custodians. Even more

shocking is Ortiz's sworn statement that Tishman could not identify an employee named Bernedette Amarosa (NYSCEF 514, Ortiz aff ¶ 3), when Tishman, in fact, produced emails which included an email address for a Bernedette Amarosa with the same domain name as Ortiz, "aecom," as well as email exchanges directly between Amarosa and Ortiz in 2014. (NYSCEF 589, Amarosa Emails at 4.) This contradiction renders Ortiz's Jackson Affidavit unreliable.

In regard to emails involving Steve Miller, although Tishman asserts that his emails were not responsive or were privileged, any privileged documents should have been identified in a privilege log and produced with redactions or slipsheets. Moreover, it is clear that Tishman did not properly search for Steve Miller's emails, since movants found 4,857 emails where his address appeared in the production to Five Star.

Accordingly, pursuant to 22 NYCRR 130-1.1, movants are awarded costs and reasonable attorneys' fees incurred by reviewing Tishman's ESI productions. (See *U.S. Bank Natl Assn v Sirota*, 189 AD3d at 931 [awarding costs and fees where "plaintiff's failure to disclose that it was in possession of the insurance funds, and its lengthy delay in complying with the August 2017 order directing it to release the funds, resulted in the defendants incurring unnecessary costs and attorney's fees."].) Movants' request for an order directing Tishman to pay movants' ESI consultant fees is granted. Within 30 days of the date of this order, movants shall submit an affirmation of services as well as bios and invoices for the legal work performed. The request for an *in camera* review is denied. Movants are permitted to make appropriate redactions, if any, to the invoices. Movants shall also submit the consultant invoices with appropriate redactions, if any.

Tishman will have five days after receipt of movants' affirmation of services to submit opposition to the fee amount only.

Furthermore, because Tishman has repeatedly failed to comply with the movants' ESI demands, Tishman is precluded from using at any point in this litigation, any documents responsive to movants' ESI demands that it has not already produced.

Documents Concerning the Back Charges

In the July 16 Order, the court directed Tishman to correctly identify each listed back charge for defendants Five Star and Sefina identified in Tishman's First Amended Answers to Interrogatories dated January 22, 2020 by the respective back charge number assigned by Tishman. (NYSCEF 497, July 16 Order at 7.) Subsequent to the July 16, 2020 Order, Tishman filed amended responses to interrogatories, listing 288 back charges with a total value of \$7,379,606.67 against all three movants. (NYSCEF 516, McDermott aff ¶¶ 49-50.) Movants assert that Tishman also sent a link to documents bates stamped TISHFIVEADDOCS 145-278 on August 17, 2020 which included new back charges against Five Star. (*Id.* ¶ 79.) Tishman also produced a spreadsheet prepared in real time throughout the project assessing the back charges. (*Id.* ¶¶ 59-60.)

However, movants assert that Tishman failed to identify the corresponding proof of payment for each back charge, thus, requiring them to search through thousands of pages of project requisitions and financial records produced by Tishman, in addition to its production on August 17, 2020. (*Id.* ¶¶ 61-63.) Movants contend that Tishman also failed to produce documents demonstrating "how [movants] are responsible for the back

charges and project documents, including drawings and specifications that demonstrate responsibility for the back charges.” (*Id.* ¶ 71.)

Tishman argues that it “has produced documents that support and substantiate the back charges.” (NYSCEF 575, Rosen ¶ 24.) Specifically, Tishman asserts that the allocations and determinations of responsibility for the back charges “were made by Tishman and/or owner project personnel based upon their observation of the conditions in the field and the work in question” and “[t]here are no other documents that reflect the allocations.” (*Id.* ¶ 26.) Tishman also asserts that “there are not discrete, specific checks in payment of each specific invoice from a trade that is being back charged to one of the moving parties,” but rather the invoices were “rolled up into payments made to the applicable trades as reflected on that trades’ payment requisitions” and “were produced in a specific link and were specifically identified on the spread sheet” provided on August 17. (*Id.* ¶ 29.) Tishman further states that it has “updated the spread sheet to reference the specific bates number for those applicable requisition [sic].” (*Id.*) Finally, Tishman asserts that it has “produced the drawings and specifications for the project” and the “back charges themselves specifically identify the work at issue and the basis for the back charge.” (*Id.* ¶ 35.)

As stated during oral argument, Tishman’s dumping of documents related to the back charges, with no explanation of the allocations asserted against movants, is inexcusable. (NYSCEF 659, tr at 29:6-20.) Tishman is directed to produce a spreadsheet explaining each of the back charges asserted against Sefina, Almar, and Five Star, which should, at the very least, set forth the reason for each charge and percentage allocated to each movant, what was actually paid to the subcontractors who

did the repair, and how much of that work is related to the movant's work. (*Id.*) The chart should reference bates numbers of specific documents demonstrating proof of payment. Tishman has 10 days from the date of this order to comply or its defenses will be stricken and claims based on back charges will be dismissed.

Movants also argue that Tishman failed to produce contractually-required notices as back up documentation for the back charges. (NYSCEF 516, McDermott ¶ 69.) Specifically, after the July 16 Order, Tishman sent a link with documents bates stamped 1 through 1268 "relating to notice" that was "devoid of any semblance of order either by applicability to Sefina, Almar or Five Star or to any specific back charges." (*Id.* ¶¶ 67-68.) Tishman responds that it did produce "a separate link of notice letters organized by each trade" for Five Star, Almar, and Sefina. (NYSCEF 575, Rosen aff ¶ 33.) Tishman further responds that there is no notice requirement in the parties' subcontract with regard to the majority of the back charges, which related to damages "caused to surrounding work and finishes in the apartments and common areas at the project." (*Id.* ¶¶ 31-32.) Because Tishman has delayed producing documents related to notice and now asserts that it has produced them or that they were not required, it is precluded from producing or using at any point in this litigation, any documents responsive to Sefina, Almar, and Five Star's notice demands dated prior to September 17, 2021, the date of the argument, that it has not already produced.

Possible Destruction of Documents Concerning the Back Charges

In his affirmation in opposition to motion sequence number 006, Tishman's counsel avers that certain documents regarding the back charges that it produced later, may not have been "captured in the prior productions [because] Besa Shehu, the

person at Tishman that coordinated the records regarding the back charges and typically forwarded them to the trades had a major computer issue and had to have her computer replaced.” (NYSCEF 468, Rosen aff ¶ 13.) Movants seek to compel Tishman to provide information about any other documents that it believes may have been destroyed or lost because of the computer issue. (NYSCEF 516, McDermott aff ¶¶ 46-47.) In response, Tishman’s counsel references the Ortiz’s “Jackson Affidavit” which states that “[t]he documents for this project were stored electronically on a limited-access shared drive on a Tishman server, and were recently moved to a cloud-based system.” (NYSCEF 514, Ortiz aff ¶ 2.) Ortiz further states that “[t]o my knowledge none of the project documents on the shared drive have been deleted or destroyed.” (*Id.*)

As explained above, Ortiz’s affidavit is not reliable as an affirmation of Tishman’s compliance with its electronic discovery obligations. Moreover, the affidavit does not even reference the documents that may have been lost because of Besa Shehu’s computer issues. However, because Tishman states that it did later produce the documents that were not initially captured, and there is no evidence or suggestion that a computer issue caused the destruction of any other documents, the court will not apply any sanctions at this time.

Document Dumping and Production Bolstering

In its December 12, 2019 Conference Order, the court stated that “the court will entertain motions for sanctions, costs and other penalties if a party ‘document dumps’ on or near the end-date for production after the following status conference.” (NYSCEF 140, December 2019 Conference Order ¶ 7.) Movants assert that Tishman has engaged in document dumping and has reproduced portions of its document

productions. (NYSCEF 516, McDermott aff ¶¶ 72-78, 82-85.) In response, Tishman asserts that movants' document demands were broad and resulted in "voluminous" productions. (NYSCEF 575, Rosen aff ¶¶ 15-23)

As set forth above, Tishman's dumping of documents, particularly related to the delays and back charges asserted, without explanation of these documents to movants, and where Tishman has delayed producing these documents to the point that movants have had to file motions and again renew those motions, is unacceptable. Movants have thus demonstrated that Tishman's reproduction of documents and document dumping has resulted in the expenditure of undue legal fees and costs. Therefore, the court sanctions Tishman in the amount of the movants' legal fees and costs spent on renewing motion 006. Movants shall submit invoices evidencing their legal fees and costs within 30 days.

Extension of Discovery Deadlines

Movants also request an extension of time to complete discovery in this action. Based on Tishman's continued failure to comply with this court's orders and its discovery obligations to the parties, these requests are granted. The parties shall meet and confer to determine reasonable extensions of the current schedule to present to the court. Either a joint stipulated schedule shall be submitted within 10 days of the date of this order or the parties may submit competing schedules.

Accordingly, it is hereby:

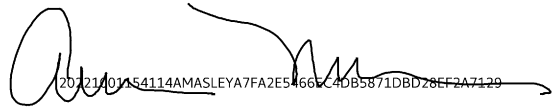
ORDERED that motion sequence number 002 is granted; and it is further

ORDERED that Tishman is directed to make any remaining productions and provide any analysis within the deadlines stated in this decision; and it is further

ORDERED that motion sequence number 006 is granted, in part, and Tishman is directed to pay the costs and attorneys' fees incurred by movants in bringing motion sequence number 006 and in renewing that motion; and it is further

ORDERED that movants' shall submit an affirmation of services, bios, and invoices demonstrating their attorneys' fees and costs and their ESI consultant's fees within 30 days of this decision's filing on NYSCEF by the court; Tishman shall have 5 days after submission to oppose; and it is further

ORDERED that the parties shall submit a reasonable revised discovery schedule to the court within 10 days of the date of this order.



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10/1/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE