SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **42**

Justice

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TUCKAHOE REALTY, LLC

Plaintiff,

- v -

241 EAST 76 TENANTS CORP.,

Defendant.

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INDEX NO. 656414/2019

MOTION DATE 09/29/2022

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 150

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 144, 146, 147, 148, 149

were read on this motion to/for JUDGMENT - SUMMARY.

I. INTRODUCTION

The plaintiff tenant, Tuckahoe Realty, LLC, seeks, *inter alia*, a declaration that defendant landlord, 241 East 76 Tenants Corp., is not permitted to charge additional rent for any of plaintiff's cold water usage and that plaintiff is not in default of the parties' commercial lease agreement for failure to make such payments. Defendant now moves pursuant to CPLR 3212 for an order granting it summary judgment dismissing the complaint and issuing a reverse declaration vacating the *Yellowstone* injunction previously issued in this action and compelling plaintiff to cure its default by paying the outstanding amounts due on the lease (MOT SEQ 002). Plaintiff opposes the motion and separately moves, pursuant to CPLR 3212, for summary judgment on its first cause of action for declaratory relief and, pursuant to CPLR 3211, to

dismiss defendant's affirmative defenses (MOT SEQ 003), which motion is in turn opposed by defendant. For the reasons that follow, defendant's motion is granted in part and plaintiff's motion is denied. Essentially, the court declares that the parties' lease requires plaintiff to pay for any use on the premises of cold water in unusual quantities or for other than ordinary lavatory purposes, as determined by the defendant.

II. BACKGROUND

Defendant, a cooperative housing corporation, owns and operates the mixed use building located at 241 East 76th Street in Manhattan (the Building) (Doc. No. 142, plaintiff's response to statement of material facts, ¶ 1).[1] On or about November 15, 1984, defendant's predecessor in interest, 241 Associates, and plaintiff's predecessor in interest, DSJFMZ Realty Corp. (DSJFMZ), entered into a long-term commercial lease (the Lease) for ground floor commercial space in the Building (the Premises) (Doc. No. 147, defendant's response to statement of material facts, ¶ 3). The Lease provides that annual base rent shall be calculated as a percentage of the Building's total operating expenses (*id.*, ¶ 7).

Paragraph 28 of the Lease, titled "Services Provided by Landlord – Water, Elevators, Heat, Cleaning, Air Conditioning," reads, in relevant part, as follows:

> 28. As long as Tenant is not in default under any of the covenants of this lease, Landlord shall provide . . . (c) water for ordinary lavatory purposes, but if Tenant uses or consumes water for any other purposes or in unusual quantities (of which fact Landlord shall be the sole judge), Landlord may install a water meter at Tenant's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered, and on Tenant's default in making such payment, Landlord may pay such charges

[1] Citations herein to "Doc. No." refer to document numbers as they appear on the docket for this matter on the New York State Courts Electronic Filing (NYSCEF) system.

> and collect the same from Tenant. Such a meter shall also be installed and maintained at Tenant's expense if required by Law or Governmental Order. Tenant, if a water meter is so installed, covenants and agrees to pay its proportionate share of the sewer rent and all other rents and charges which are now or hereafter assessed, imposed or may become a lien on the demised premises or realty of which they are a part. . . .
>
> (Doc. No. 91, Drew Pakett [Pakett] affidavit, exhibit A at 4).

A rider to the Lease (the Rider) contains several provisions relevant to this action. Paragraph 37 states that, "[t]he costs of heat and hot water are included in the rent" (*id*. at 7). Paragraph 39 provides that, "Tenant shall be entitled to those services regularly provided in the building by the Landlord" (*id.*). Under Paragraph 40, Tenant has the absolute right to sublet all or part of the Premises (*id.*). Paragraph 41 allows the Landlord to terminate the Lease "for Tenant's failure to make any rent payment within thirty (30) days after written notice of default and for failure to perform or to commence performance of any other obligation of Tenant within sixty (60) days after notice of default" (*id.*). Last, Paragraph 35 states that, "[i]n the event of any inconsistency between the provisions of this Rider and those set forth in the Lease to which this Rider is attached, the provisions of this Rider shall govern and be binding" (*id.*). The Lease and Rider have been amended three times since 1984, with the Lease term now set to expire on November 30, 2045 (*id*. at 43).

Plaintiff acquired the Lease in 2001 (Doc. No. 147, ¶ 4). At present, the Premises is divided into six commercial storefronts, which plaintiff has subleased to several subtenants who operate a nail salon, café, dry cleaner, locksmith, pizzeria and hair salon therein (Doc. No. 142, ¶¶ 5-6). The riders in the plaintiff's subleases with the nail salon, locksmith and pizzeria all contain the following provision, which mirrors Paragraph 28 of the parties' Lease in regard to water usage:

> "If the Tenant shall use the water at the Demised Premises for other than ordinary lavatory purposes or if the [Co-op] installs a water meter for all or any part of the Demised Premises under the [Lease], of which fact in either case Owner shall be the sole judge, Owner can require Tenant, at Tenant's expense, to install a water meter to measure the consumption of water at the Demised Premises whereupon Tenant shall be required to obtain and pay for water consumed at the Demised Premises."
>
> (Doc. Nos. 95, 98, 99, Subleases)

In 2017, defendant installed a submeter to measure plaintiff's cold-water consumption at the Premises, pursuant to Paragraph 28(c) of the Lease (*id.*, ¶ 11; Doc. No. 147, ¶ 9). After the submeter was installed at plaintiff's expense, defendant sent monthly invoices to plaintiff for its cold-water usage at the Premises (Doc. No. 142, ¶¶ 12-13). When plaintiff failed to pay the invoices, defendant served it with a notice of default, dated September 17, 2019 (the Notice of Default) (Doc. No. 118, Richard Scharf [Scharf] affidavit, exhibit 6). The Notice of Default advised plaintiff that, if it failed to pay $109,787.52 in additional rent for cold water usage by October 31, 2019, defendant would take legal action (*id*. at 1-2). Defendant later served plaintiff a notice of termination, dated November 1, 2019, purporting to terminate the Lease pursuant to Paragraphs 27 and 41 thereof (Doc. No. 124, Scharf affidavit, exhibit 12).

Plaintiff commenced this action on October 30, 2019, by filing a summons and complaint. The complaint's first cause of action seeks a declaration that: at all relevant times, no default existed under the Lease; defendant is not permitted to charge additional rent for cold water usage; plaintiff is capable of curing any alleged default; to the extent a default exists, the applicable cure period has not expired; and defendant cannot terminate the Lease because

plaintiff has or will cure the alleged default. The second cause of action seeks a *Yellowstone* injunction (Doc. No. 1, complaint at 7-8).[2]

Plaintiff also filed an order to show cause seeking a *Yellowstone* injunction (Doc. No. 15). The court granted the motion for a *Yellowstone* injunction pending final resolution of this action and directed plaintiff to deposit the disputed cold-water charges, inclusive of past and future charges, into an interest-bearing escrow account maintained by plaintiff's attorney (Doc. No. 65, Decision and Order dated Oct. 30, 2020). The defendant appealed that order, which was affirmed by the Appellate Division, First Department (Doc. No. 74, Decision and Order dated December 28, 2021).

Defendant interposed an answer asserting ten affirmative defenses. Plaintiff filed a note of issue on June 10, 2022.

Plaintiff and defendant now separately move for summary judgment. The parties submit, *inter alia*, the subject Lease, Rider and amendments, subleases for plaintiff's subtenants at the Premises, deposition transcripts and affidavits.

On its motion, defendant argues that plaintiff is obligated under Paragraph 28(c) of the Lease to pay for water used for any purpose other than ordinary lavatory purposes or for water used or consumed in unusual quantities. John Fryer (Fryer), the president of the Board of Directors of 241 East 76 Tenants Corp., avers that plaintiff has failed to pay the monthly invoices issued to it for its cold-water consumption at the Premises after the submeter to measure such usage was installed (Doc. No. 100, Fryer affidavit, ¶¶ 4-6). Defendant seeks summary judgment dismissing the complaint, a reverse declaration vacating the *Yellowstone* injunction, and an order

[2] See generally First Natl. Stores v Yellowstone Shopping Center, 21 NY2d 630 (1968).

compelling plaintiff to cure its default under the Lease within ten (10) days of entry of the court's order.

Plaintiff moves for summary judgment on its first cause of action seeking a *Yellowstone* injunction and for an order dismissing defendant's affirmative defenses. Plaintiff argues it is not obligated to pay for its cold-water usage because the base rent for the Premises already includes this cost, and that charging twice for the same service is commercially unreasonable. Plaintiff similarly asserts that it is contractually entitled, pursuant to Paragraph 39 of the Rider, to the services regularly provided in the Building, which includes the provision of cold water, for which it already pays in its base rent. Plaintiff also maintains that Paragraph 37 of the Rider, which specifies that its rent includes the cost of hot water, is inconsistent with, and invalidates, the additional rent charges contemplated by Paragraph 28(c) of the Lease, which does not distinguish between hot and cold water. Plaintiff further submits that defendant has waived its right to charge for cold-water usage at the Premises because it waited until 2017 to levy any charges, and because it executed two estoppel certificates in which it represented that plaintiff was not in breach or default of the Lease. Additionally, plaintiff contends the Notice of Default is defective because defendant never served the Notice upon plaintiff's lender, as required by the Rider and a 2006 lease amendment, argues that defendant's affirmative defenses should be dismissed because they are pleaded in conclusory terms and urges the court to deny defendant's motion on the ground that defendant relies on the affidavit of its attorney, who lacks personal knowledge of the facts.

III. LEGAL STANDARD

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence

to eliminate any triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). In opposition, the nonmoving party must demonstrate by admissible evidence the existence of a triable issue of fact. See Alvarez v Prospect Hospital, 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). However, if the initial burden is not met by the movant, summary judgment must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York Univ. Med. Ctr., supra; Giaquinto v Town of Hempstead, 106 AD3d 1049 (2nd Dept. 2013); O'Halloran v City of New York, 78 AD3d 536 (1st Dept. 2010).

Pursuant to CPLR 3211(b), a "party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." The burden is on the plaintiff to demonstrate that the defenses are without merit as a matter of law. See Granite State Ins. Co. v Transatlantic Reinsurance Co., 132 AD3d 479 (1st Dept. 2015); 534 East 11th Street Housing Dev. Fund v Hendrick, 90 AD3d 541 (1st Dept. 2011). In reviewing such a motion, "the allegations set forth in the answer must be viewed in the light most favorable to the defendant." Granite State Ins. Co. v Transatlantic Reinsurance Co., supra at 481; see 182 Fifth Avenue LLC v Design Development Concepts, Inc., 300 AD2d 198 (1st Dept. 2002).

IV. DISCUSSION

At the outset, plaintiff's argument that defendant's motion should be denied based on its submission of an attorney's affidavit not based on personal knowledge, is unpersuasive. An attorney's affidavit or affirmation may be used to introduce admissible evidence. See Melniker v Melniker, 170 AD3d 448, 449 (1st Dept. 2019). Defense counsel's affidavit, together with John Fryer's affidavit, is sufficient to satisfy CPLR 3212(b)'s requirement of an affidavit in support of

a summary judgment motion. See Fischer v VNO 225 W. 58th St. LLC, 215 AD3d 486, 487 (1st Dept. 2023).

A. The First Cause of Action - Declaratory Judgment

It is well settled that a lease must be construed according to the "rules of construction applicable to any other agreement." George Backer Mgt. Corp. v Acme Quilting Co., 46 NY2d 211, 217 (1978). "A fundamental tenet of contract law is that agreements are construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract." Goldman v White Plains Ctr. for Nursing Care, LLC, 11 NY3d 173, 176 (2008). Because a contract should not be read to render any portion of it meaningless (Cortlandt St. Recovery Corp. v Bonderman, 31 NY3d 30, 39 [2018]), "conflicting contract provisions should be harmonized, if reasonably possible, so as not to leave any provision without force and effect" (Isaacs v Westchester Wood Works, 278 AD2d 184, 185 [1st Dept. 2000]). "[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." Greenfield v Philles Records, 9 NY2d 562, 569 (2002); see also W.W.W. Assocs. v Giancontieri, 77 NY2d 157, 162 (1990).

Here, Paragraph 28(c) plainly and unambiguously provides that defendant shall provide water for ordinary lavatory purposes, but if plaintiff uses water for any other purpose or in unusual quantities as determined by defendant, then plaintiff shall pay for such consumption. It is not disputed that at least three of the commercial businesses occupying the Premises consume water for purposes other than ordinary lavatory purposes. Defendant points to plaintiff's submissions in its application for a *Yellowstone* injunction, which revealed that the hair salon, dry cleaner and pizzeria subtenants had installed water-cooled HVAC units connected to the Building's water supply (Doc. No. 61), and that the café's kitchen was equipped with two reach-

in coolers with water-cooled condensers (Doc. Nos. 50 and 62). Defendant also points to testimony from Scharf, one of plaintiff's owners, wherein he admitted that the café and pizzeria used water for refrigeration, cooking and air conditioning, and that the "hair salon certainly uses water" (Doc. No. 92, Pakett affidavit, exhibit B, Scharf tr. at 119-20). A plain reading of the Lease requires plaintiff to pay for such water consumption, as it is outside the scope of what constitutes ordinary lavatory purposes. Further, the plaintiff does not and cannot reasonably dispute that per the clear language of Paragraph 28, it was agreed that the defendant "shall be the sole judge" of what constitutes excessive or unusual water usage. Indeed, that language is mirrored in the plaintiff's subleases with its subtenants.

Plaintiff's argument that Paragraph 28(c) conflicts with Paragraphs 37, 39 and 43 of the Rider is unpersuasive. With respect to Paragraph 39, that provision states only that plaintiff is entitled to the same services that defendant regularly provides in the Building. Although "services" is not defined, the gravamen of plaintiff's complaint does not concern whether defendant has provided a service, *i.e.*, supplied water to the Premises, but whether defendant may recover additional monies for water consumed other than for ordinary lavatory purposes, or in unusual quantities, as set forth in Paragraph 28(c) the Lease. Paragraph 39 is thus not inconsistent with Paragraph 28(c). Furthermore, while plaintiff makes much of the fact that the cost of the Building's residential tenants' water usage is encompassed within their monthly maintenance fees, plaintiff is not a signatory to the proprietary leases between defendant and the Building's residential tenants. As such, the manner in which the Building's residential tenants pay for their water usage has no bearing on the issue of whether plaintiff is contractually obligated to pay additional rent for water used at the Premises other than for ordinary lavatory purposes or consumed in unusual quantities.

Contrary to plaintiff's contention, Paragraph 43 also does not conflict with Paragraph 28(c). Paragraph 43 concerns readjustments in annual rent based on changes to the Building's total operating expenses. The clause does not preclude defendant from seeking additional rent for water usage at the Premises.

Paragraph 37 is likewise not at odds with Paragraph 28(c). As plaintiff correctly notes, Paragraph 28(c) makes no distinction between hot and cold water. Consequently, absent modification by other terms of the agreement, Paragraph 28(c) would require plaintiff to pay additional rent for applicable water usage regardless of whether the water used was hot or cold. Paragraph 37 effectively modifies Paragraph 28(c) by stating that the cost of providing hot water to the Premises is included in plaintiff's rent, thereby removing plaintiff's hot water consumption from the scope of Paragraph 28(c)'s metering and additional rent provisions.

Plaintiff's contention that Paragraph 37 should be read to mean that the cost of providing both hot *and cold* water are included in plaintiff's rent is contrary to basic principles of contract interpretation. Plaintiff's interpretation is at odds with the plain meaning of Paragraph 37, which on its face concerns only the cost of providing hot water to the Premises (see Greenfield v Philles Records, supra), and, moreover, would unnecessarily render Paragraph 28(c)'s metering and additional rent provisions meaningless and without effect (see Isaacs v Westchester Wood Works, supra). Had the parties intended to include in plaintiff's base rent the cost of *all* water plaintiff consumed, both hot and cold, they could have expressly stated as much in the Rider. They did not do so. Instead, the Rider singles out only the cost of hot water for inclusion in plaintiff's rent, making clear the parties' intent that plaintiff pay for cold water used at the Premises consistent with the purpose and quantity conditions set forth in Paragraph 28(c).

Defendant has thus demonstrated that the Lease permits it to charge additional rent for plaintiff's use of cold water in unusual quantities or for other than ordinary lavatory purposes. In addition, defendant has demonstrated that plaintiff has failed to pay the additional rent charges associated with its cold-water usage.

For the reasons discussed above, plaintiff, in opposition, fails to raise a triable issue of fact as to whether its rent includes the cost of its cold-water usage based on its interpretation of the Lease and Rider. Nor does plaintiff demonstrate that defendant waived its right to charge for cold water consumed at the Premises.

"A waiver is the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it." Matter of Professional Staff Congress-City Univ. of N.Y. v New York State Pub. Empl. Relations Bd., 7 NY3d 458, 465 (2006) (internal quotation marks and citation omitted). Plaintiff contends that defendant's waiver is established by its conduct. However, "the parties to a commercial lease may mutually agree that conduct, which might otherwise give rise to an inference of waiver, shall not be deemed a waiver of specific bargained-for provisions of a lease." Excel Graphics Tech. v CFG/AGSCB 75 Ninth Ave., 1 AD3d 65, 70 (1st Dept. 2003). Here, Paragraph 24 of the Lease contains an express "No Waiver" clause, which provides, in relevant part:

> The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease … shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and *no provision of this lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord*."

(Doc. No. 91 at 4) (emphasis added). Plaintiff does not produce any writing signed by defendant as evidence of a waiver. Consequently, plaintiff's waiver argument is barred by the Lease's "No Waiver" clause, which precludes a finding of waiver based on defendant's conduct. See Excel Graphics Tech. v CFG/AGSCB 75 Ninth Ave., supra at 69-70 (landlord's acceptance of rent despite its knowledge of tenant's breach of the lease did not constitute a waiver because the lease required any waiver to be memorialized in a writing signed by the landlord).

Accordingly, defendant is entitled to a judgment declaring that the Lease requires plaintiff to pay for the provision of cold water to the Premises that is not used for ordinary lavatory purposes or that is consumed in unusual quantities.

However, defendant is not entitled to an order compelling plaintiff to cure its default within 10 days of entry of the decision on this motion. Paragraph 41 of the Rider provides that defendant may terminate the Lease for plaintiff's failure to make a rent payment within 30 days after written notice of default has been served (Doc. No. 91 at 8). An amendment to the Lease executed in May 1986 between 241 East 76 Tenants Corp., as landlord, and Jodel Company, DSJFMZ's successor in interest as tenant, states that North Side Savings Bank had given a leasehold mortgage loan to DSJFMZ, and that "[t]he Landlord hereby agrees and acknowledges that the [North Side Savings] Bank shall have the right to cure any of Tenant's defaults under the Lease upon reasonable notice from the Landlord"[3] (Doc. No. 115, Scharf affidavit, exhibit 3 at 9-10). A third amendment to the Lease, dated July 31, 2006, adds a new Paragraph 46, which reads, in part:

> 46. In connection with any leasehold financing obtained by Tenant during the Lease term from any lender ("Lender"), the following shall apply:

[3] This amendment is missing from the copy of the Lease submitted on defendant's motion.

> (a) The Landlord hereby agrees to give Lender notice of any of Tenant's defaults under the Lease, provided Tenant shall have furnished Landlord with the name and address of the Lender.
>
> (b) The Landlord hereby agrees and acknowledges that Lender shall have the right to cure any of Tenant's defaults under the Lease upon reasonable notice from Landlord and that in the event Lender shall succeed to Tenant's interest under the Lease, that upon Lender's, as successor tenant, attornment to Landlord, the Landlord shall recognize Lender as the tenant under the Lease
>
> (Doc. No. 91 at 47).

Although defendant asserts that plaintiff has not furnished it with the name and address of its lender, plaintiff has shown that defendant executed two estoppel certificates in 2007 and 2013, both of which identify plaintiff's lenders as North Fork Bank, A Division of Capital One, N.A., and Capital One, National Association (Doc. Nos. 116-17, Scharf affidavit, exhibits 4-5). Significantly, the estoppel certificate executed on September 17, 2007 states that default notices shall be sent to North Fork Bank at 275 Broadhollow Road, Melville, New York 11747 (Doc. No. 116 at 1-2). Defendant provides no proof that it served the Notice of Default upon plaintiff's lenders, and its attorney's affirmation stating that plaintiff never gave defendant the name of its lender is insufficient. Thus, defendant is not entitled to an order compelling plaintiff to cure its default. Nevertheless, defendant may apply to the court for the release of the disputed cold-water charges currently held in an interest-bearing account maintained by plaintiff's attorney, as defendant is entitled to those funds under the Lease.

B. The Second Cause of Action - *Yellowstone* Injunction

In view of the foregoing, the *Yellowstone* injunction previously issued pending final resolution of this action (NYSCEF Doc. No. 65) is vacated.

C. Defendant's Affirmative Defenses

The court need not reach that branch of plaintiff's motion seeking dismissal of defendant's ten affirmative defenses but notes that these affirmative defenses are improperly asserted in a conclusory manner in the answer without any detail. See CPLR 3013; Commr. of State Ins. Fund v Ramos, 63 AD3d 453 (1st Dept. 2009); Mfrs.Hanover Trust Co. v Restivo, 169 AD2d 413 (1st Dept. 1991).

The parties remaining contentions have been considered and do not require a difference result.

V. CONCLUSION

Accordingly, it is

ORDERED that the motion of defendant 241 East 76 Tenants Corp. for summary judgment (MOT SEQ 002) is granted to the extent that defendant is entitled to a declaratory judgment in its favor on plaintiff Tuckahoe Realty LLC's first cause of action seeking a *Yellowstone* injunction, and the motion is otherwise denied; and it is further

ADJUDGED and DECLARED that plaintiff Tuckahoe Realty LLC is contractually obligated under Paragraph 28 of the Lease to pay for cold water used or consumed at the leased Premises for any purpose other than ordinary lavatory purposes or used in unusual quantities of which defendant 241 East 76 Tenants Corp. shall be the sole judge; and it is further

ORDERED that the *Yellowstone* injunction previously issued in this action is hereby vacated in its entirety; and it is further

ORDERED that the motion of plaintiff Tuckahoe Realty LLC for summary judgment (MOT SEQ 003) is denied; and it is further

ORDERED that defendant 241 East 76 Tenants Corp. may file an application for the release of any disputed cold-water charges that have been deposited by plaintiff Tuckahoe Realty LLC into an interest-bearing escrow account maintained by plaintiff's attorney, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

6/28/2023
DATE

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