

Fort CRE 2022-FL3 Issuer LLC v Karasick

2025 NY Slip Op 31931(U)

May 27, 2025

Supreme Court, New York County

Docket Number: Index No. 654803/2024

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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FORT CRE 2022-FL3 ISSUER LLC, FORTRESS
LENDING II HOLDINGS L.P., FORTRESS LENDING I
HOLDINGS L.P., and FORTRESS LENDING FUND II MA-
CRPTF L.P.

Plaintiffs,

- v -

MARK KARASICK and MICHAEL SILBERBERG,

Defendants.

INDEX NO. 654803/2024

MOTION DATE 11/08/2024

MOTION SEQ. NO. MS 001

**DECISION + ORDER ON
MOTION**

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
were read on this motion to/for STAY

In this action to recover on a guaranty of a loan secured by a former department store in Minneapolis, Minnesota, defendants Mark Karasick and Michael Silberberg (together defendants or guarantors) move to stay this action pursuant to CPLR 2201 pending the outcome of a related foreclosure proceeding in Minnesota. Plaintiffs Fort CRE 2022-FL3 Issuer LLC, Fortress Lending II Holdings LP, Fortress Lending I Holdings LP, and Fortress Lending Fund II MA-CRPTF LP (together plaintiffs) oppose the motion. For the reasons below, the motion is granted and the case is stayed.

Background

In August 2021, non-party 601 W. Companies Minnesota LLC (Borrower) borrowed \$200,000,000 from plaintiffs' predecessors-in-interest pursuant to the Loan Agreement, the Payment Guaranty Agreement, and the Interest and Carry Guaranty Agreement (*see* NYSCEF # 15, Pltfs' Mol at 2). Defendants are both "owners of a substantial direct or indirect interest" in Borrower (*id.*; NYSCEF # 2, Complaint, ¶ 28).

As relevant here, the Loan Agreement (NYSCEF # 18)¹ was secured by a mortgage on "Dayton's," a former department store in Minnesota (the Dayton's

¹ For whatever reason, the Loan Agreement is attached to the First Amended Verified Complaint to an action in Minnesota (see below for Minnesota Action).
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Motion No. 001

Property) (NYSCEF # 15 at 2, citing NYSCEF # 2 ¶ 4; *see* NYSCEF # 12, Defts' mol, at 1 [Borrower "owns the former Dayton's department store building"]). The Loan Agreement provides for many and varied types of payments. Section 12.6 of the Loan Agreement defines certain "guaranteed recourse obligations of the Borrower," meaning certain obligations that Borrower "shall be personally liable for" (NYSCEF # 18 § 12.6). These obligations are more thoroughly defined in § 12.3, which also states that the lenders may recover "actual losses" and "actual damages" for a list of twenty-seven ancillary events such as specific torts, failures to comply with other loans, and failure to comply with certain non-payment provisions of the Loan Agreement (*id.* § 12.3 [b]). The Loan Agreement was assigned to plaintiffs in September 2021 (NYSCEF # 2 ¶¶ 23-25).

Under the Payment Guaranty Agreement and the Interest and Carry Guaranty Agreement (together, the Guaranty Agreements), defendants "unconditionally and absolutely" guaranteed certain "guaranteed obligations" from the Loan Agreement up to a certain amount (NYSCEF # 3 Payment Guaranty Agreement §§ 1.2 [a], 1.3, 1.4, 2.4). These "guaranteed obligations" included the (a) the payment obligations under the Loan Agreement; (b) "all amounts for which Article XII of the Loan Agreement provides that Borrower . . . shall be personally liable, including" certain obligations covered by §§ 12.6 and 12.3 of the Loan Agreement; and (c) three other cash amounts related to certain deposits (NYSCEF # 3 §§ 1.2 [a] – [e]). Following these guaranteed obligations, § 1.2 of the Payment Guaranty provides:

"Notwithstanding the language of 1.2(b) above and the provisions of Section 12.6 of the Loan Agreement, the Guarantor shall only be liable for *actual losses, actual damages, liabilities, claims, actions, judgments, court costs, and legal and other expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the Lender as a direct or indirect consequence of the matters set forth therein.*"

(NYSCEF # 3 § 1.2 [emphasis added]).

Defendants also agreed that plaintiffs would not need to "exhaust . . . remedies against Borrower" or enforce rights against the collateral first (*id.* § 1.5). Per § 2.10 of both Guaranty Agreements:

"The Guaranteed Obligations and the liabilities and obligations of Guarantor to Lender hereunder shall not be reduced, discharged or released because or by reason of any existing or future right of offset, claim or defense of Borrower or any other party against Lender, or any other Person, or against payment of the Guaranteed Obligations (except a defense of payment or performance of the applicable Guaranteed Obligations), whether such right of offset, claim or defense

arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.”

(*id.* § 2.10; NYSCEF # 4 Interest and Carry Guaranty Agreement § 2.10).

Regardless, plaintiffs allege that the Borrower failed to make certain interest and principal payments by the deadline as well as payments to other entities relating to the Dayton's Property (NYSCEF # 2 ¶¶ 43-44, 47). Plaintiffs paid these amounts and then issued notices of default to the Borrower and defendants (*id.* ¶ 46, 47).

On September 13, 2024, plaintiffs filed a foreclosure action against the Borrower in Minnesota in *Fort CRE 2022-FL3 Issuer LLC v 601 W Cos. Minn., LLC, et al.*, No. 27-CV-24-13659 (Minn. Hennepin Cnty. filed Sept. 13, 2024) (the Minnesota Action) (*see* NYSCEF # 18 at *2). That same day, plaintiffs filed the present action against defendants to recover under the Guaranty Agreements (*see* NYSCEF # 2). Plaintiffs did not name the Borrower as a defendant in this action, and did not name the guarantors as defendants in the Minnesota Action. As far as this court is aware, the Minnesota Action is still pending.

Defendants answered the Complaint on November 8, 2024, asserting that plaintiffs caused the underlying defaults by “(a) depriving Borrower of operating income from the Property necessary to meet operating expenses; (b) improperly rejecting Borrower's extension of the maturity date of the Loan; (c) wrongfully declaring a maturity default; (d) wrongfully commencing judicial foreclosure proceedings; and (e) otherwise wrongfully interfering with Borrower's efforts to obtain financing to repay the Loan” (NYSCEF # 7, Answer, ¶¶ 83, 84, 86, 87; *see also* NYSCEF # 12, Defts' mol, at 4). Defendants claim in their brief that these are the same defenses asserted by the Borrower in the Minnesota Action (NYSCEF # 12 at 4).

Defendants now move to stay this action during the pendency of the Minnesota Action pursuant to CPLR 2201 (*id.* at 1). Defendants argue that a stay is appropriate because the Minnesota Action will dispose of or limit the issues in this action (*id.* at 9-12). Defendants point to two such issues: first, defendants argue that § 1.2 of the Payment Guaranty limits plaintiffs to recovering “actual losses” or “actual damages” (*id.* at 4-5); second, their defenses that plaintiffs caused the default are the exact same defenses raised by the Borrower, and therefore that it would be appropriate to let these issues be first litigated in Minnesota to avoid inconsistent outcomes and wasted judicial resources (*id.* at 9, 12). Defendants liken this case to *Wells Fargo Bank, N.A. v Pena* (51 Misc 3d 241, 251 [Sup Ct, Kings County 2016]), which granted a stay in where the foreclosure action was in New Jersey and the guarantor action was in New York (NYSCEF # 12 at 10). Defendants further argue that a stay is warranted despite the lack of “complete identity” of the parties because defendants share “substantial identity” with the Borrower (*id.* at 8-

9). Defendants next argue that plaintiffs will not be prejudiced by staying this action (*id.* at 12). Finally, defendants argue that the public policy considerations underlying RPAPL 1301 (which prohibits simultaneous foreclosure and guarantor actions but which does not apply where the foreclosed property is out of state) support issuing a stay here (*id.* at 12-14).

To defendants' last point, plaintiffs' respond that RPAPL 1301 is inapplicable because that statute does not apply where the property is out of state (NYSCEF # 15 at 4-5, citing *Wells Fargo Bank Minnesota, N.A. v Cohn*, 4 AD3d 189, 189 [1st Dept 2004], and *Vaster Sub II, LLC v Safdieh*, 2024 NY Slip Op 33808[U], 7 [Sup Ct, NY County 2024] [Chan, J]). Plaintiffs next argue that defendants cannot "side-step the RPAPL's inapplicability by relying on CPLR 2201" (*id.* at 5). Plaintiffs add that none of defendants' "substantial identity" cited cases involve a mortgage and guaranty together, and that courts, in fact, deny motions to dismiss where the related actions did not include claims against the guarantors or *complete* identity of parties (*id.* at 6-7, citing *Anglo Irish Bank Corp. Ltd. v Ashkenazy*, 28 Misc 3d 1222(A) [Sup Ct, NY County 2010]).

Plaintiffs assert that there is no need to wait for the Minnesota Action to conclude because plaintiffs are not limited to actual damages given that §§ 1.2, 1.3, 1.5, and 2.4 of the Payment Guaranty state in various ways that the guaranties are absolute and unconditional (*id.* at 7). Plaintiffs also assert that defendants cannot raise the Borrower's defenses because defendants waived them under § 2.10 (*id.* at 8). Plaintiffs rely on *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro* (25 NY3d 485 [2015]), for the proposition that such absolute and unconditional guaranties are enforceable and defenses are precluded (NYSCEF # 15 at 8-9). Thus, plaintiffs conclude that there will be no duplicative efforts or judicial resources wasted between cases.

Finally, plaintiffs argue that defendants' prejudice and public policy arguments are "unfounded" because plaintiffs will be prejudiced by "potentially plac[ing] [p]laintiffs behind other creditors of [d]efendants" (*id.* at 9). Plaintiffs posit that the public policy considerations for RPAPL do not apply since the *Pena* case cited by defendants is non-binding and distinguished itself on the basis of substantial identity and shared claims, neither of which are present here (*id.* at 10).

Defendants reply that plaintiffs misunderstand the RPAPL 1301 argument—defendants are not claiming that a stay or dismissal is mandated under the statute, but rather that the purpose of the statute (avoiding simultaneous foreclosure and guarantor actions) is advanced by staying this case (*id.* at 5-6). Responding to plaintiffs' argument that "complete identity" of the parties is necessary, defendants assert that plaintiffs' view is unsupported by the case law (*id.* at 6-7).

Defendants point out that the risk of collateral estoppel is a valid reason to stay given that this court and the Minnesota Action will evaluate the same issues

and defenses (*id.* at 7-8). Also, the waste of judicial resources is a good enough reason to stay the case (*id.* at 8). Finally, defendants argue that the only prejudice will be to them (*id.*).

Discussion

CPLR 2201 allows courts to stay cases in the face of a similar pending action when the other action is likely to “dispose of or limit issues” in the case (*see Belopolsky v Renew Data Corp.*, 41 AD3d 322, 323 [1st Dept 2007], quoting *Buzzell v Mills*, 32 AD2d 897, 897 [1st Dept 1969]). Courts consider factors (*Asher* factors) such as:

“1) which forum will offer a more complete disposition of the issues; 2) which forum has greater expertise in the type of matter; 3) which action was commenced first and the stage of the litigations; 4) whether there is substantial overlap between the issues raised in each court; 5) whether a stay will avert ‘duplication of effort and waste of judicial resources;’ and 6) whether plaintiffs have demonstrated that they would be prejudiced by a stay.”

(*Matter of PPD AI Group Sec. Litig.*, 64 Misc 3d 1208[A] [Sup Ct 2019] [Scarpulla, J.], citing *Asher v Abbott Laboratories*, 307 AD2d 211, 211-212 [1st Dept 2003]).

Many courts also require at least “substantial identity of parties ‘which generally is present when at least one plaintiff and one defendant is common in each action’ ” (*JPMorgan Chase Bank, N.A. v Luxama*, 172 AD3d 1341, 1342 [2d Dept 2019], citing *Morgulus v J. Yudell Realty*, 161 AD2d 211, 213 [1st Dept 1990]). This factor is a significant area of dispute here as the parties agree that there are no defendants in common between this and the Minnesota Action. Plaintiffs in Minnesota sue only the Borrowers whereas plaintiffs here sue only the Guarantors. Relying on this court’s decision in *Vaster Sub II, LLC v Safdieh* (2024 NY Slip Op 33808[U], 7 [Sup Ct, NY County 2024] [Chan, J]), plaintiffs underscore that there is therefore no substantial identity in the instant case.

However the lack of shared defendants is not fatal, as the First Department has repeatedly held that a lack of parties in common is not as important as common issues of law and fact (*see e.g., Uptown Healthcare Mgt., Inc. v Rivkin Radler LLP*, 116 AD3d 631, 631 [1st Dept 2014] [“[a]lthough there is not complete identity of parties and claims . . . there is a common question of law and fact”]; *Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 96 [1st Dept 2013] [finding substantial identity and dismissing under CPLR 3211 (a) (4) despite lack of defendant overlap because plaintiff sought “the same damages for the same alleged injuries relating to the same transaction from close corporate affiliates”]; *Belopolsky v Renew Data Corp.*, 41 AD3d 322 [1st Dept 2007] [same]). Indeed, at least for the purposes of a stay, it is not clear whether any substantial identity or any party overlap is still

necessary (*see Damon v Dagbid, Inc.*, 81 Misc 3d 1230(A) [Sup Ct 2024]; *Michilli, Inc. v Aquavit, Inc.*, 71 Misc 3d 1205(A) [Sup Ct 2021]). According to the briefing in *Uptown*, there were no parties in common in that case; the only connection is that all parties were subject to a binding settlement agreement and were litigating its terms in both cases (brief for defendant-respondents in *Uptown Healthcare Mgt., Inc. v Rivkin Radler LLP*, 116 AD3d 631 [1st Dept 2014], available at 2013 WL 9806455, at *4). Meanwhile, *Wells Fargo Bank, N.A. v Pena* and its concerted effort to distinguish other cases on the lack of shared identity is therefore inapplicable in this Department (*see* 51 Misc 3d 241, 251 [Sup Ct, Kings County 2016]).² In short, it appears that the greater weight is accorded to common issues of law and fact that are likely to be disposed in whole or in part by one or both cases—the fourth Asher factor (*Asher*, 307 AD2d at 212).

Defendants point to two such common issues. First, defendants claim plaintiffs are contractually limited to just their “actual losses” and “actual damages” based on § 1.2 of the Payment Guaranty and § 12.3 of the Loan Agreement, and therefore, a stay is necessary so that the Minnesota Action may determine those damages. Second, defendants argue that plaintiffs took steps to cause the very default that led to the acceleration of the loan, which they claim are the exact same defenses raised by the Borrower in the Minnesota Action. They claim a stay is necessary to evaluate those defenses.

Defendants’ first alleged common issue—that plaintiffs are limited to “actual losses” and “actual damages” under the contracts—is unpersuasive. In particular, the contract is not as unambiguous as defendants read it to be. Section 1.2 does indeed mention “actual losses” and “actual damages,” but its structure obscures its applicability (*see* NYSCEF # 3 § 1.2). Section 1.2 begins by defining the “guaranteed obligations” as any of five separate items, each with its own dedicated sub-paragraph (*see* NYSCEF # 3 §§ 1.2 [a] – [e]). Following these sub-paragraphs, § 1.2 then contains a free-floating paragraph stating:

“Notwithstanding the language of 1.2(b) above and the provisions of Section 12.6 of the Loan Agreement, the Guarantor shall only be liable for *actual losses, actual damages* . . . incurred by the Lender as a direct or indirect consequence of the *matters set forth therein*.”

(NYSCEF # 3 § 1.2 [emphasis added]). Defendants rely on this unnumbered sub-paragraph.

But the phrase –“matters set forth therein” – is ambiguous. Based on the structure of the section, this free-floating paragraph could refer to all of the

² To the extent “substantial identity” is still required, *Uptown* and cases like *Syncora* imply that such identity may be found not just where there is literal party overlap, but also where there are common or closely related contractual or other relationships whose terms will be binding on the parties in each action.

guaranteed obligations. However, “matters set forth therein” implies that it is limited to the matters set forth in § 1.2(b) and the Loan Agreement’s § 12.6, the two sections specified in the paragraph. But applying “actual losses” and “actual damages” to just those two paragraphs may not end the analysis. Section 1.2(b) refers to “all amounts for which Article XII of the Loan Agreement provides that Borrower . . . shall be personally liable,” including everything listed in § 12.6 (*id.* § 1.2[b]). Section 12.6 of the Loan Agreement implicitly refers to § 12.3, which in turn expressly allows for “actual damages” and “actual losses” for an exhaustive list of twenty-seven ancillary events (NYSCEF # 18 § 12.3 [b]). Nothing in the list resembles the remaining guaranteed obligations. This suggests that § 1.2’s actual damages and actual losses language is in fact limited to the actual damages and actual losses listed in § 12.3, which are not at issue here. This ambiguity will not be clarified by the Minnesota Action because the meaning of the Payment Guaranty is not relevant to the foreclosure.

What will be clarified by the Minnesota Action is defendants’ second alleged common issue—the validity of the Borrower’s and defendants’ defenses that plaintiffs caused the default. By definition, the Minnesota Action will decide these defenses. Moreover, looking at the other *Asher* factors, the Minnesota Action will be the better venue to resolve these defenses because they originally belong to Borrower and because the case relates to a property in Minnesota. Moreover, the Minnesota Action will more completely resolve the issues and will eliminate the risk of inconsistent judgments or wasted efforts.

Plaintiffs counter that defendants are barred from bringing these defenses. Citing the Court of Appeals decision in *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro* (25 NY3d 485 [2015]), plaintiffs claim that “absolute and unconditional” guaranties like the ones at issue here “are enforceable and ‘preclude guarantors from asserting a broad range of defenses’” (NYSCEF # 15 at 8, quoting *Cooperatieve*, 25 NY3d at 494). Plaintiffs argue that defendants specifically waived the Borrower’s defenses under § 2.10 of the Payment Guaranty Agreement and implicitly waived them through the “absolute and unconditional” language in §§ 1.3, 1.4, and 2.4 of the Guaranty Agreements (*id.*). In most circumstances, plaintiffs would be correct, as the First Department routinely enforces defense waivers and “absolute and unconditional” guaranty language (*see, e.g., Museum Bldg. Holdings, LLC v Schreiber*, 236 AD3d 526, 527 [1st Dept 2025] [affirming summary judgment and rejecting defendants’ defenses as waived by guaranty agreement]).

However, not all defenses can be so easily waived. As the *Cooperatieve* court recognized in dicta, “an absolute and unconditional guaranty does not foreclose a guarantor’s challenge that the creditor’s wrongful post-execution conduct triggered the event that accelerates or causes the guarantor’s liability” (*Cooperatieve*, 25 NY3d at 496). This principle was drawn from the Third Department’s decision in *Canterbury Realty and Equipment Corp. v Poughkeepsie Savings Bank*, in which a

bank repeatedly increased a debtor's credit limit only to suddenly about-face and stop honoring checks drawn on the line of credit, effectively pushing the debtor into default (135 AD2d 102, 104-105 [3d Dept 1988]; *see Cooperatieve*, 25 NY3d at 496 [discussing *Canterbury*]). The Third Department ruled that this post-execution conduct could defeat otherwise-binding language in a guaranty.

While relegated to dicta in *Cooperatieve, Canterbury's* principle has been repeatedly applied by courts in this State (*see, e.g., Cheung v Sunrise Plaza, LLC*, 237 AD3d 799, 799 [2d Dept 2025] [absolute waiver in guaranty did not preclude defense that obligations under guaranty were not triggered]; *Sterling Natl. Bank v Goldberg*, 277 AD2d 45, 47 [1st Dept 2000] [citing *Canterbury* to reinstate counterclaim where creditor "precipitously cut off the debtors' line of credit without notice," causing a default]; *cf. Vandergrand Properties Co., L.P. v Warnock*, 206 AD3d 597, 598 [1st Dept 2022] [*Canterbury* did not apply where debtor failed to show "detrimental reliance" on offending conduct]; *Red Tulip, LLC v Neiva*, 44 AD3d 204, 211 [1st Dept 2007] [*Canterbury* did not apply where debtor was "already in default when the (wrongful) conduct started"]; *see also NY 2015 Boat LLC v Shapiro*, 234 AD3d 554, 557 [1st Dept 2025] [finding *Cooperatieve* inapplicable where defendant guarantors were "unsophisticated" and "the transaction, about which the (guarantors) knew nothing until shortly before the closing and which was structured by (guarantors' broker), allegedly acting as plaintiff's agent, was designed to dress a consumer transaction as a commercial one").

The point here is not that defendants have established a *Canterbury* defense. Instead, the point is that if this court were to find for plaintiffs and reject a stay, it would then need to evaluate whether the Borrower's defenses really were waived under the Guaranty Agreements, then evaluate whether defendants have nevertheless established sufficiently culpable conduct by plaintiffs to apply *Canterbury*. And perhaps the court in the Minnesota Action also comes to the same conclusion. But by allowing a stay in these circumstances where defendants have adopted Borrower's defenses that plaintiffs caused the default, most or all of that analysis would be avoided. If the Minnesota Action denies the defenses, this entire analysis becomes unnecessary. If the Minnesota Action accepts the defenses, then this court need only evaluate waiver. Thus, the Minnesota Action will significantly limit the issues in this case. Stay is therefore appropriate.

Plaintiffs nevertheless counter that this court's decision in *Vaster Sub* requires a different conclusion, again relying primarily on the substantial identity factor. But *Vaster Sub* is distinguishable for a host of reasons. First, the guarantor in *Vaster Sub* did not adopt a borrower's defense that the lender caused the underlying default. Indeed, the *Vaster Sub* defendant did not even challenge the plaintiff's facts (*see Vaster Sub*, 2024 NY Slip Op 33808[U], 3 [defendant's "briefing dispenses with a facts section"]). Second, the guarantor in *Vaster Sub* also did not request a stay, instead moving to dismiss under CPLR 3211(a)(4) (*id.* at 1). Third,

on the substantial identity issue in particular, the guarantor in *Vaster Sub* did not make any persuasive arguments, eschewing not only a facts section but also any “case law explaining why this court should nevertheless find substantial identity” despite the lack of shared defendants (*id.* at 5). The guarantor in *Vaster Sub* did not even mention *Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87 [1st Dept 2013] [finding substantial identity and dismissing under CPLR 3211 (a) (4) despite lack of defendant overlap because plaintiff sought “the same damages for the same alleged injuries relating to the same transaction from close corporate affiliates”]), the most on-point of the CPLR 3211(a)(4) cases. Finally, stays under CPLR 2201 and dismissals under CPLR 3211(a)(4) are discretionary, and the reasons above compel the court to exercise its discretion here differently than *Vaster Sub*.

Plaintiffs also have failed to establish prejudice that outweighs the above considerations. Even if plaintiffs risk falling behind other creditors in line, the Minnesota Action is still the best venue to evaluate the defenses plaintiffs are facing. There is no reason to rush to a judgment that may be at odds with the Minnesota Action’s ultimate decision.

Finally, there is no need to reach the RPAPL arguments. It is true that RPAPL 1301 “does not apply where, as here, the property securing the loan is located outside of New York State” (*Wells Fargo Bank Minnesota, N.A. v Cohn*, 4 AD3d 189, 189 [1st Dept 2004]). Here, a stay is necessary on the *Asher* factors alone.


The remaining arguments are unavailing and will not be addressed.

Conclusion

Pursuant to the above, it is hereby

ORDERED that defendants’ motion to stay pursuant to CPLR 2201 is granted, and this case is stayed pending resolution of the Minnesota Action; and it is further

ORDERED that the parties shall inform the court in writing of the status of the Minnesota Action by September 30, 2025.



5/27/2025
DATE

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