Bizfund, LLC v Elks Constr., LLC
2026 NY Slip Op 32089(U)
June 10, 2026
Supreme Court, Monroe County
Docket Number: Index No. E2025010939
Judge: Daniel J. Doyle
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STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

BIZFUND, LLC,

Plaintiff,

-vs-

Decision

Index No. E2025010939

ELKS CONSTRUCTION, LLC DBA ELKS CONSTRUCTION, AND JRS CARWASH SERVICES LLC, AND COCHRAN STATION LLC, AND CWMG, LLC, AND ELKS CONSULTING AND MANAGEMENT GROUP, LLC, AND DUBLIN CARWASH STATION, LLC, AND MACON CARWASH STATION, LLC, AND ELKS & RODGERS CONSTRUCTION LLC, AND EATONTON STATION, LLC, AND FT VALLEY STATION, LLC, AND CHARLES SANDERS ELKS,

Defendants.

Appearances:

Adam R. Nichols, Esq., Murray Legal PLLC, for the Plaintiff
James Graber, Esq., and Anne C. Marren, Esq., RUPP PFALZGRAF LLC, for the Defendants

Daniel J. Doyle, J.

Plaintiff initiated this action by filing summons and complaint in May of 2025.

The complaint alleged that the defendants breached a sale of receivables agreement

(hereinafter "agreement") and seeking resultant damages.[1] Defendants answered the complaint and asserted numerous affirmative defenses.[2]

Plaintiff now moves pursuant to CPLR Rule 3211 (b) to dismiss the defendants' affirmative defenses, and for summary judgment. The defendants move to dismiss the complaint pursuant to CPLR Rule 3211 (a)(1) and (7). For the reasons set forth below, the plaintiff's motion to dismiss the affirmative defenses is partially GRANTED, the plaintiff's motion for summary judgment is partially GRANTED, and the defendants' motion to dismiss is DENIED. Upon a review of the record, the Court awards partial summary judgment to the defendants on the issue of the default fee dismissing same. Attorneys' fees are awarded but shall be determined by the Court.

Summary of Affirmative Defenses and Relevant Facts

The plaintiff and defendants entered into the agreement on April 15, 2025. Pursuant to the agreement, the plaintiff purchased $217,500 of the defendants' future receivables in exchange for $150,000 with a weekly remittance of $11,447 representing 7.39% of the defendants' weekly revenue.

[1] The Verified Complaint contains three causes of action: (1) breach of contract; (2) liability on a personal guarantee; and (3) attorney's fees. (NYSCEF Docket # 1.)
[2] NYSCEF Docket # 4.

Relevant herein, the agreement stated that the "[defendants] hereby sells, assigns, transfers and delivers to Purchaser absolutely, without recourse, all of its right, title and interest in, to and under its future Receipts in the amount specified above (the "Purchased Amount") for the purchase price specified above (the "Purchase Price")". Additionally, the agreement stated "[defendants] and Purchaser acknowledge that the [defendants'] Receipts will depend upon [defendants'] success in selling its products and services and the collection of payment therefor, that [defendants'] average daily Receipts from and after the date of this Agreement may be more or less than the average of [defendants'] daily Receipts during the four (4) months prior to the date of this Agreement and that there is no assurance that the Specified Percentage of [defendants'] Receipts will be sufficient to enable Purchaser to collect Receipts in a total amount equal to the Purchased Amount."

The agreement required the defendants to maintain a single depository account into which their receipts were deposited.

Defendants plead the following affirmative defenses: (1) failure to state a claim; (2) "Defendants have an absolute defense based on documentary evidence"; (3) agreement was an usurious loan; (4) plaintiff's claims as to Defendant Charles Sanders Elk are barred "as he is an individual, he is a separate legal entity from Company Defendants"; (5) the fees charged by the plaintiff are unenforceable penalties; (6) plaintiff failed to satisfy conditions precedent to bringing suit; (7)

plaintiff's claims are barred by waiver, estoppel, laches, unclean hands, and/or in pari delicto; (8) failure to mitigate damages; and (9) lack of consideration.

The Motion to Dismiss the Affirmative Defenses is Partially Granted

The plaintiff adequately plead the causes of action in the complaint. The 1st affirmative defense is dismissed.

The 2nd affirmative defense is dismissed as the Court herein denies the defendants' motion to dismiss brought pursuant to CPLR Rule 3211 (a)(1).

The 4th affirmative defense is dismissed. Plaintiff's cause of action alleging breach of a personal guarantee executed by Defendant Charles Sanders Elk is related to enforcement of the guarantee and states a valid cause of action.

The 6th affirmative defense – that the plaintiff did not satisfy the necessary conditions precedent to bring suit- is dismissed as it fails to allege any facts in support of the defense. (*1199 Hous. Corp. v. Int'l Fid. Ins. Co.*, 14 AD3d 383, 384 [1st Dept. 2005].)

The 7th and 8th affirmative defenses are dismissed. They are not sufficiently supported by factual allegations.

The 3rd, 5th, and 9th affirmative defenses are sufficiently plead. The 3rd and 9th affirmative defense allege that the agreement is – in effect- a usurious loan or not based upon future receivables. (*See e.g., Bridge Funding Cap LLC v. SimonExpress*

Pizza, LLC, 240 AD3d 1186, 1191 leave to appeal denied, 243 AD3d 1379 [4th Dept. 2025, concurring op.]: "In our view, the more appropriate test under these circumstances—where the parties agree to a fixed daily or weekly payment as an "estimate" of revenue—is to evaluate: (1) whether the "estimate" of the defendant's revenue is reasonably based upon the defendant's prior accounts receivable or anticipated future earnings (rather than simply conjured from the void)[.]")

The 5th affirmative defense sufficiently notifies the plaintiff that the defendants are alleging that the fees charged are inflated or otherwise excessive. "If, however, the amount of actual damages that would be suffered upon a breach is readily ascertainable when the contract is entered, or the amount fixed as liquidated damages is conspicuously disproportionate to the foreseeable losses, the liquidated damages provision is unenforceable as a penalty." (*Cent. Irr. Supply v. Putnam Country Club Assocs., LLC*, 57 AD3d 934, 935 [2nd Dept. 2008].) "Where, however, a liquidated damages provision is found to be an unenforceable penalty, the recovery is limited to actual damages proven." (*Id.*)

The motion to dismiss these defenses is denied.

The Motion for Summary Judgment is Partially Granted

A party seeking summary judgment pursuant to CPLR 3212 must make prima facie showing of entitlement to judgment as a matter of law and submit sufficient evidence to demonstrate the absence of any material issue of fact. (*Iselin & Co. Inc*

v Landau, 71 NY2d 420 [1988].) Summary judgment may only be granted when "it has been clearly ascertained that there is no triable issue of fact outstanding; issue finding, rather than issue determination, is its function". (*Suffolk County Dep't of Soc. Servs. v James M.*, 83 NY2d 178, 182 [1994].) Only when the proponent demonstrates entitlement to summary judgment, the opposing party must then demonstrate, generally by admissible evidence, the existence of an issue of fact requiring a trial. (*Zuckerman v City of New York*, 49 NY2d 851 [1985].)

"'It is equally well established that the motion should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility' (*Scott v. Long Is. Power Auth.*, 294 A.D.2d 348, 348, 741 N.Y.S.2d 708; *see Ruiz v. Griffin*, 71 A.D.3d 1112, 1115, 898 N.Y.S.2d 590)." (*Katz v. Beil*, 142 AD3d 957, 964 [2nd Dept. 2016].) ""When reviewing a motion for summary judgment the focus of the court's concern is issue finding, not issue determination, and the affidavits should be scrutinized carefully in the light most favorable to the party opposing the motion". (*Goldstein v County of Monroe*, 77 AD2d 232, 236; *Renda v Frazer*, 75 AD2d 490.)" (*Robinson v. Strong Mem'l Hosp.*, 98 AD2d 976, 976 [4th Dept. 1983]; *see also Gitlin v. Chirinkin*, 98 AD3d 561 [2nd Dept. 2012].)

Plaintiff submits the affirmation of Raymond Mizrahi (hereinafter "Mizrahi") to establish the necessary foundation to admit the agreement dated April 15, 2025,

proof of funding, and the transaction history as business records. Mizrahi also submits copies of text messages with Defendant Charles Sanders Elk.

Mizrahi also attaches as an exhibit a copy of the complaint in a related action, *Seamless Funding v. Elks Construction et al*, Index Number E2025010915. In *Seamless Funding LLC v. Elks Construction et al* it is alleged that Defendants Elks Construction, CWMG LLC, Elks Consulting and Management Group, LLC, Elks and Rodgers Construction LLC, and Charles Sanders Elks (as guarantor) entered into a "Future Receivables Sale and Purchase Agreement" with Seamless Funding LCC on or about April 23, 2025. ""This Court may take judicial notice of undisputed court records and files" (*Matter of Moynihan v. New York City Health & Hosps. Corp.*, 120 A.D.3d 1029, 1041 n 2, 993 N.Y.S.2d 260 [1st Dept. 2014, Moskowitz, J., dissenting in part]; *see also Travelers Cas. & Sur. Co. v. Vale Can. Ltd.*, 215 A.D.3d 507, 509 n 1, 186 N.Y.S.3d 199 [1st Dept. 2023]; *Hartman v. Joy*, 47 A.D.2d 624, 625, 365 N.Y.S.2d 182 [1st Dept. 1975])." (*Franco v. 800 E 173 LLC*, 240 AD3d 446, 446 [1st Dept. 2025].)

Mizrahi avers that:

> . . .Among the post-funding transactions that constitute express breaches of the Agreement, Defendants further encumbered Business Defendant's receivables without the Plaintiff's consent on April 23, 2025, when Business Defendant sold $149,900.00 of its business receivables to Seamless Funding LLC. See Index No. E2025010915, see also Exhibit J, pp.1-9, ¶¶12-13; p.10 (party verification); pp.14-41 (future receivables purchase and sale agreement). As is evident from the pending action, Defendants also breached their agreement with Seamless Funding LLC.

24. Defendants thus breached the Agreement and the personal guaranty of performance no later than April 23, 2025, almost immediately after entering into the Agreement, by entering into an unapproved sales agreement of Business Defendant's future receivables without the Plaintiff's consent, in violation of the covenant in Section 6.9 ("Merchant...shall not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts...with any Person other than Purchaser without Purchaser's prior express written consent...") wherein Business Defendant specifically covenanted against this very act and agreed that the violation thereof would constitute an Event of Default pursuant to Section 7.1. Exhibit F; Exhibit H; Exhibit J. Defendants did not seek Plaintiff's consent to sell these receivables, nor did Plaintiff ever provide any consent. The parties' Agreement expressly prohibited entering into such transactions without consent because further encumbrances radically alter the risks underwritten and assumed by the Plaintiff.

The agreement contained the following provision:

> 6.9 Working Capital Funding. Merchant has not (unless previously disclosed to Purchaser in advance) and shall not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser's prior express written consent, which Purchaser may or may not give in its sole discretion. Purchaser may share information regarding this Agreement with any third person in order to determine whether Merchant is in compliance with the provisions of this Section.

The agreement contains a personal gurantee signed by Charles Sanders Elk. The personal guarantee stated that the gurantor guaranteed "prompt and complete performance of the obligations of Merchant under this Agreement, including the following . . . Merchant's obligation to not enter into any arrangement, agreement

or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser's prior express written consent".

"The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach" (*Wilsey v. 7203 Rawson Rd., LLC*, 204 A.D.3d 1497, 1498, 168 N.Y.S.3d 198 [4th Dept. 2022])." (*Marinaccio v. Town of Clarence*, 215 AD3d 1289, 1290 [4th Dept. 2023].) With this evidence, the plaintiff met its initial burden in establishing entitlement to summary judgment.

In opposition, the defendants submit the affirmation of Charles Sander Elks (hereinafter "Elks"). He avers that he signed the agreement herein. He further avers that although the defendants' receivables fluctuated as to the amounts received, the plaintiff withdrew the same amount each week from the defendants' account. He further avers that he did not have the authority to enter into the agreement with the plaintiff on behalf of Defendants JRS Carwash Services LLC, Cochran Station LLC, CWMG, LLC, and Dublin Carwash Station, LLC. He does not state that he requested a reconciliation on behalf of the defendants.

The Court rejects the defendants' argument that the agreement is a usurious loan. To determine whether a transaction constitutes a usurious loan: "The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan. Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy" (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d at 665-666 [citations and internal quotation marks omitted])." (*Principis Cap., LLC v. I Do, Inc.*, 201 AD3d 752, 754 [2nd Dept. 2022].)

The agreement between plaintiff and defendants contained a right of mandatory reconciliation. The agreement required reconciliation to occur upon request. (Section 3.) Additionally, the agreement did not have a finite term and was subject to a "downturn" in Defendants' business. Finally, the agreement did not make as a condition of default the Defendants filing for bankruptcy (Section D.1). Thus, the agreement was not a loan contract, and it is not subject to the usury laws. (*Principis Cap., LLC v. I Do, Inc.*, 201 A.D.3d 752 [2nd Dept. 2022].)[3]

[3] The Court also rejects the argument that requiring a personal guaranty is evidence that the agreement was a loan. ""However, "[u]nder ... New York law, a guarantee agreement is separate and distinct from the contract between lender and borrower" (*Kinville v. Jarvis*

The Court rejects the argument that the reconciliation provision is illusory. Defendants do not allege that they sought a reconciliation, and this argument is precluded. (*See Apollo Funding Co. v. Dave Reilly Constr., LLC*, 241 AD3d 1508[2nd Dept. 2025].)

As to the defendant's claim that the plaintiff's "fraudulent misrepresentations" induced Elks to enter into the agreement, Elks provides no evidence of these misrepresentations. To establish an issue of fact requiring denial of the motion, Barros must submit evidence that the plaintiff made a "(1) a misrepresentation or an omission of material fact which was false and known to be false by the [plaintiff], (2) the misrepresentation was made for the purpose of inducing the [defendant] to rely upon it, (3) justifiable reliance of the [defendant] on the misrepresentation or material omission, and (4) injury" (*CANBE Props., LLC v. Curatola*, 227 A.D.3d 654, 656, 211 N.Y.S.3d 133 [internal quotation marks omitted]; *see Israel v. Progressive Cas. Ins. Co.*, 222 A.D.3d 733, 734, 202 N.Y.S.3d 359)." (*53 Spencer Realty, LLC v. Fid. Nat'l Title Ins. Co.*, 236 AD3d 716, 720 [2nd Dept. 2025].) Elks does not allege anything that would support this defense and create an issue of fact necessitating denial of the

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Real Estate Holdings, LLC, 38 A.D.3d 1225, 1227, 833 N.Y.S.2d 773 [4th Dept. 2007] [internal quotation marks omitted]). Thus, a financing company and a merchant should be free to agree to a guarantee, which may reduce the interest required by the merchant, without the risk that the existence of the guarantee might convert the parties' otherwise legitimate agreement to exchange immediate funds for future accounts receivable into a usurious loan." (*Bridge Funding Cap LLC v. SimonExpress Pizza, LLC*, 240 AD3d 1186, 1191 [4th Dept. 2025], concurring op.)

motion. Although he avers that the weekly remittance amount did not accurately reflect the defendants' receivables, he does not allege that he sought a reconciliation and nothing in the parties' agreement required the plaintiff to unilaterally reconcile the remittance payments.

However, Elks does allege sufficient facts necessitating denial of the motion as to Defendants JRS Carwash Services LLC, Cochran Station LLC, CWMG, LLC, and Dublin Carwash Station, LLC only. He avers that he did not have authority to bind these entities. The plaintiff does not submit any evidence in opposition to this averment nor makes any arguments that Elks was an agent of Defendants JRS Carwash Services LLC, Cochran Station LLC, CWMG, LLC, and Dublin Carwash Station, LLC, or that those defendants – through words or conduct- conveyed to the plaintiff the appearance that Elks had authority to bind them. (*See gen. Standard Funding Corp. v. Lewitt*, 89 NY2d 546 [1997].)

Thus, summary judgment is denied as to these defendants. However, summary judgment is awarded to the plaintiff on its causes of action in the complaint as to the other defendants.

Upon its authority to search the record and award summary judgment to a non-moving party,[4] the Court finds the default fee to be an unenforceable penalty. "Newco has not shown—or attempted to show—that these fees constitute a

[4] See CPLR Rule 3212(b).

reasonable advance estimate of difficult-to-calculate damages, as required for the fees to be collectible liquidated damages, rather than impermissible penalties. (*See Forever Funding LLC v S.F. Meats, Inc.*, 2022 NY Slip Op 513056[U], at *2-3 [Sup Ct, NY County Dec. 22, 2022]; *Irwin Funding, LLC v Dexter Young Cattle Feeding*, 2022 NY Slip Op 51035[U], at *2 n 1 [Sup Ct, NY County Oct. 21, 2022].)" (*Newco Cap. Grp. VI LLC v. La Rubia Rest. Inc.*, 81 Misc. 3d 1203A [N.Y. Sup. Ct. 2023.])

With respect to the fees "[a] contractual provision fixing damages in the event of breach will be sustained if the amount liquidated bears a reasonable proportion to the probable loss and the amount of actual loss is incapable or difficult of precise estimation." (*Truck Rent-A-Ctr., Inc. v. Puritan Farms 2nd, Inc.*, 41 NY2d 420, 425 [1977].) "If, however, the amount of actual damages that would be suffered upon a breach is readily ascertainable when the contract is entered, or the amount fixed as liquidated damages is conspicuously disproportionate to the foreseeable losses, the liquidated damages provision is unenforceable as a penalty." (*Cent. Irr. Supply v. Putnam Country Club Assocs., LLC*, 57 AD3d 934, 935 [2nd Dept. 2008].) "Where, however, a liquidated damages provision is found to be an unenforceable penalty, the recovery is limited to actual damages proven." (*Id.*) Here, the amount of damages upon a breach is readily ascertainable: it is the sum remaining due on the factoring agreement. The plaintiff seeks a "default fee" in the amount of $41,070.60, representing "20% of the balance" owed. (See "The Fee Structure".) The request for

a default fee is an unconscionable penalty as the provision is only a penalty and bears absolutely no relation to measuring the actual loss suffered by the Plaintiff. It will not be enforced.[5]

With respect to attorneys' fees, the agreement provides that the defendants are liable for attorneys' fees should plaintiff prevail in collection efforts. "An award of attorneys' fees pursuant to such a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered." (*Kamco Supply Corp. v. Annex Contracting Inc.*, 261 AD2d 363, 365 (2nd Dept. 1999].) "The fixed percentage fee, therefore, is viewed only as a maximum fee, limiting the amount of reasonable attorneys' fees which the creditor may charge upon proving the extent of the necessary services actually rendered." (*Mead v. First Tr. & Deposit Co.*, 60 AD2d 71, 78 [4th Dept. 1977].) The Fourth Department continued:

> We note that it is not the intent of the law, nor of the petitioner in this proceeding, to deprive the creditor of full payment of its actual necessary legal expenses in collecting the defaulted debt, limited only by the reasonable value of such services and the percentage provision expressed in the contract. The aim is to prevent creditors and their

[5] Mizrahi avers that the default fee is the "best estimate" of non-legal costs incurred by the plaintiff upon a defendant's default. Plaintiff does not set forth any facts or evidence justifying this fee (e.g., third-party collection costs), nor does plaintiff explain how these costs would somehow be proportional to the amount of the unpaid receivables (justifying the fee as a percentage of the unpaid balance) as opposed to a fixed cost. The plaintiff did not meet its burden in creating an issue of fact. Mizrahi's conclusory assertions are not sufficient. The Court must conclude that the default fee is simply a penalty provision.

> attorneys from receiving more than such sums, which they may otherwise be able to accomplish because of the debtors' defaults.

(*Id.*)

The amount of those fees will be determined by the Court.

The Motion to Dismiss is Denied

Plaintiff's motion seeking dismissal of the 2nd cause of action is denied.

The defendants are correct that in the guarantee signed by Elks he did not personally guarantee payment or delivery of receivables. The complaint alleges that "Defendant MERCHANT failed to perform under the terms and conditions of the Agreement, rendering Defendant PERFORMANCE GUARANTOR(S) personally liable pursuant to the terms of the guarantee". Included in the guarantee signed by Elks is the promise of "prompt and complete performance of the obligations of Merchant under this Agreement, including the following . . . Merchant's obligation to not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser's prior express written consent".

Mizrahi avers in an affirmation "[d]efendants further encumbered Business Defendant's receivables without the Plaintiff's consent on April 23, 2025, when

Business Defendant sold $149,900.00 of its business receivables to Seamless Funding LLC. See Index No. E2025010915, see also Exhibit J, pp.1-9, ¶¶12-13; p.10 (party verification); pp.14-41 (future receivables purchase and sale agreement)."[6]

The motion to dismiss is DENIED.

Based upon the foregoing, and the papers submitted herein,[7] the plaintiff's motion to dismiss the affirmative defenses is partially granted, the plaintiff's motion for summary judgment is partially granted, and the defendant's motion to dismiss is denied.

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[5] "In reviewing a motion under CPLR 3211 (a)(7), "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint ... and the criterion is whether the proponent of the pleading has a cause of action, not whether [the proponent] has stated one" (*Leon*, 84 N.Y.2d at 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 [internal quotation marks omitted])." (*Potempa v. Potempa*, 229 AD3d 1191, 1192–93 [4th Dept. 2024].) Furthermore, ""[w]hether a plaintiff can ultimately establish [their] allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19, 799 N.Y.S.2d 170, 832 N.E.2d 26 [2005]; *see Cortlandt St. Recovery Corp. v. Bonderman*, 31 N.Y.3d 30, 38, 73 N.Y.S.3d 95, 96 N.E.3d 191 [2018])." (*Burns v. C.R.B. Holdings, Inc.*, 229 AD3d 1084, 1085 [4th Dept. 2024].)

[7] Notice of Motion (NYSCEF Docket # 30); Affirmation in Support (NYSCEF Docket # 31)l Memorandum of Law in Support (NYSCEF Docket # 32); Affirmation in Opposition (NYSCEF Docket # 69); Memorandum of Law in Opposition (NYSCEF Docket # 70); Memorandum of Law in Reply (NYCEF Docket # 71); Notice of Motion (NYSCEF Docket # 41); Affirmation in Support (NYSCEF Docket # 42): Statement of Material Facts with exhibits (NYSCEF Docket #s 43-53); Memorandum of Law in Support (NYSCEF Docket # 54); Memorandum of Law in Opposition to Cross-Motion and in Further Support of Motion (NYSCEF Docket # 67); Notice of Cross-Motion (NYSCEF Docket # 56); Affirmation in Opposition to Motion and in Support of Cross-Motion with exhibits (NYSCEF Docket #s 57-63); Affirmation in Opposition to Motion and in Support of Cross-Motion (NYSCEF Docket 64); Memorandum of Law in Opposition to Motion and in Support of Cross-Motion (NYSCEF Docket # 65); Response to Statement of Material Facts (NSYCEF Docket # 66); Memorandum of Law in Opposition to Cross-Motion and in Further Support of Motion (NYSCEF Docket # 68). .

Counsel for the plaintiff shall submit a proposed order by July 14, 2026.

Dated: June 10, 2026

Hon. Daniel J. Doyle
Supreme Court Justice