Farago Advertising, Inc. v Barnes & Noble, Inc.
2020 NY Slip Op 32106(U)
July 1, 2020
Supreme Court, New York County
Docket Number: 150833/2018
Judge: Saliann Scarpulla

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 39EFM

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FARAGO ADVERTISING, INC.

Plaintiff,

- v -

BARNES & NOBLE, INC.,INDIVIDUALLY AND D/B/A BARNES&NOBLE.COM,

Defendant.

INDEX NO. 150833/2018

MOTION DATE 01/02/2020

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 135, 137, 138, 139

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

Upon the foregoing documents, it is

In this action for breach of contract, account stated, and unjust enrichment, defendant Barnes & Noble, Inc. ("B&N") moves pursuant to CPLR 3212 for summary judgment dismissing plaintiff Farago Advertising, Inc.'s amended complaint. B&N also seeks sanctions against plaintiff Farago Advertising, Inc. for fraud upon the court.

Background[1]

Plaintiff Farago Advertising, Inc. and its principal Peter Farago (collectively, "Farago") was providing design services to B&N, a retail seller of books and other merchandise, for several years. In the 2000s, Farago worked on a series of design projects

[1] Unless otherwise stated, all factual allegations are based upon Farago's amended complaint (NYSCEF Doc. No. 33) and B&N's statement of material facts (NYSCEF Doc. No. 63).

commissioned by then CEO of B&N, William Lynch ("Lynch"), including the development of B&N's eReader device, "NOOK."

The Parties' Relationship Between 2009-2012

Farago alleges that beginning in or about 2009, Farago entered into an agreement with Lynch, under which Farago would regularly provide design services for NOOK. According to Farago, pursuant to this agreement, Farago and Lynch set hourly rates and agreed that B&N would reimburse Farago for out-of-pocket costs and expenses incurred in connection with the work. The agreement was oral and was not memorialized in writing.

By 2012, B&N became concerned that Farago's billing practices had become haphazard. On April 1, 2012, Sasha Norkin ("Norkin"), a B&N vice president, wrote to Farago and demanded updated billings with a specific breakout of costs (NYSCEF Doc. No. 67 at 2). Later that year, B&N discussed conducting an audit of Farago's billing, which Farago declared he would not submit to. According to Farago, he did not have a "classic" billing process in place (NYSCEF Doc. No. 100 at 145:3-4).

In June 2012, Lynch asked Farago to sign a letter agreement which stated that B&N owned the intellectual property Farago produced for the company on a work-for-hire basis. Farago informed Lynch that he was reviewing the document and would respond shortly. Meanwhile, Farago filed certain patent applications covering the intellectual property associated with the development of NOOK. On August 7, 2012, Farago and his attorney met with B&N and shared Farago's demands: guaranteed monthly payments for five years in exchange for the transfer of ownership of the

intellectual property. A few days later, Farago's attorney offered a compromise proposal wherein B&N would pay Farago a "total monthly run rate of $300K guaranteed for 2 years" (NYSCEF Doc. No. 72 at 2).

In the meantime, B&N became increasingly concerned about Farago's billing practices. B&N scheduled a meeting with Farago's wife, Victoria Farago, who handled administrative matters for Farago. On December 18, 2012, B&N's Marketing Manager, Lauren LaDolcetta ("LaDolcetta") emailed Victoria Farago stating, "I know we have our meeting tomorrow to discuss how we can better work together on invoicing, but in the meantime, I am wondering if you had a chance to connect with Peter [Farago] on all the past and current projects that we have not been invoiced for" (NYSCEF Doc. No. 77 at 6). Victoria Farago responded by stating that they were unable to send "estimates [sic] Invoices for a while" but would bring a list of invoices to their meeting and discuss a better way of invoicing moving forward (*id.*). Norkin, who was at the meeting with Victoria Farago and LaDolcetta stated that she did not recall Victoria Farago delivering any invoices to B&N at that meeting (NYSCEF Doc. No. 99, ¶ 4).

On December 29, 2012, Norkin wrote to Peter and Victoria Farago and asked for final invoices because B&N was "trying to close out this year" (NYSCEF Doc. No. 77 at 3). On December 31, 2012, Victoria Farago emailed the "final invoices of 2012." (*Id.* at 1).

The Consulting Agreement

In January 2013, the parties agreed to formalize their working relationship through

a written contract. The parties entered into a "Consulting Agreement" wherein B&N would pay Farago a monthly retainer of $130,000 in exchange for Farago's full time availability for the next two years. The Consulting Agreement defined the scope of Farago's work as "design and other creative services as requested by B&N" (NYSCEF Doc. No. 11, ¶ 1). B&N agreed to compensate Farago for these services and for "other reasonable and necessary out-of-pocket expenses incurred by or on behalf of Consultant [Farago] in connection with the Services performed." (*Id.* at ¶ 2).

To streamline the billing process, the parties agreed that Farago would submit invoices to B&N, itemizing the services performed within 30 days of the date the services were performed and B&N would pay Farago within 30 days after receipt of the invoice (NYSCEF Doc. No. 11, ¶ 3). The Consulting Agreement also contained a provision entitled "Entire Agreement" which stated, "This Agreement sets forth the entire understanding between the parties and supersedes any oral negotiations and prior writing with respect to the subject matter hereof. This Agreement may not be amended except on writing signed by them." (*Id.* at ¶ 14). The parties signed the Consulting Agreement on January 16, 2013.

The Contested Invoices

On May 29, 2013, Victoria Farago emailed Farago with a list of invoices that she claimed B&N had failed to pay Farago *before* the Consulting Agreement went into effect (hereinafter "Contested Invoices") (NYSCEF Doc. No. 80 at 4-5). B&N maintains that certain invoices on the Contested Invoices list that were under the heading "NEW Invoices" (NYSCEF Doc. No. 80 at 4) are dated May 28, 2013, which is when the

Consulting Agreement was already in effect. According to B&N, because these NEW Invoices are dated *after* the Consulting Agreement was signed, they are covered by the monthly retainer outlined in the Consulting Agreement. However, as part of the record in this action, Farago has submitted the individual invoices that comprise the Contested Invoices list and the majority of them contain dates from 2012 (NYSCEF Doc. No. 22 at 1-28). It is B&N's position that Farago fraudulently back-dated these invoices to 2012 for work that was actually done in 2013 and deceptively submitted these invoices as part of the record. B&N maintains that Victoria Farago did not deliver these invoices to B&N until July 2013.

Starting in June 2013, Farago announced that he would refuse to deliver work product until all of the Contested Invoices were paid (NYSCEF Doc. No. 82 at 1). Two years passed and the parties chose not to renew the Consulting Agreement when it was set to expire in January 2015. Farago still maintained that the Contested Invoices had not been paid by B&N. The parties attempted to resolve the dispute but were unsuccessful.

Current Action

On January 26, 2018 Farago commenced this action based on B&N's alleged failure to pay the Contested Invoices. B&N moved to dismiss and the parties agreed that B&N would withdraw its motion so that Farago could file an amended complaint. Farago filed an amended complaint seeking to recover on only the NEW Invoices that were part of the Contested Invoices list. According to the allegations in the amended complaint, from May 15, 2012 to January 30, 2013, Farago remitted a series of invoices (the NEW invoices) to B&N for services performed and expenses incurred for the period of April

29, 2012 to January 14, 2013. The invoices totaled $862,688.00. Farago maintains that B&N received these invoices without objection but has not yet paid Farago. Farago asserts causes of action against B&N for: (1) breach of contract; (2) account stated; (3) and unjust enrichment.[2] B&N now moves for summary judgment on all three causes of action and for sanctions against Farago for fraud upon the court.

Discussion

The party moving for summary judgment "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985) (citations omitted). Once the movant has established its *prima facie* entitlement to summary judgment, the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact." *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986) (citations omitted).

First Cause of Action: Breach of Contract

In its amended complaint, Farago alleges that:

> Beginning in or about 2009, plaintiff and defendant entered into an agreement (the 'Agreement') pursuant to which plaintiff regularly provided certain design, art and other consulting services to defendant for defendant's digital tablet known as the 'NOOK' (the 'Services') at plaintiff's hourly rates which were as follows:
>
> Senior Designer -$550.00/hour
> Animator -$300.00/hour
> Studio/3d Illustrator -$250.00/hour

[2] I note that in its amended complaint, Farago does not label any of its causes of action, simply referring to them as "First Cause of Action" "Second Cause of Action" and "Third Cause of Action." My characterization of the causes of action are based on the allegations made within the amended complaint for each cause of action.

Account Service -$250.00/hour

NYSCEF Doc. No. 33, ¶ 3

The amended complaint further states, "Pursuant to the Agreement, plaintiff was to be reimbursed for out-of-pocket costs and expenses (the 'Costs and Expenses') incurred by plaintiff in connection with performing the Services." (*Id.* at ¶ 4). The record does not indicate that this "Agreement" was memorialized in writing.

Farago seeks payment for the NEW Invoices that it alleges it remitted from May 15, 2012 through January 30, 2013, totaling $862,688.00. Farago maintains that it sent a demand for payment for these invoices but B&N refused to make payment, damaging Farago in the amount of $862,688.00 plus interest from March 2, 2013.

B&N moves for summary judgment on the breach of contract cause of action, characterizing it as a cause of action for breach of an oral contract. B&N argues that Farago failed to meet the *prima facie* case for breach of an oral contract because the alleged oral contract is missing the essential term of price. In support of its argument, B&N points to Farago's deposition testimony, wherein Farago states that he never discussed hourly rates with B&N. Because hourly rates were never discussed, B&N argues that, "[t]his admission means there was no meeting of the minds, and therefore no enforceable oral agreement exists" (B&N's Memo of Law, NYSCEF Doc. No. 102 at 5).

In opposition, Farago submits a sworn affidavit from Farago wherein he states, "Farago regularly invoiced Barnes & Noble during the course of this project from a period starting April 2008 through May of 2013. The invoices were normally received without

objection" (NYSCEF Doc. No. 127, ¶ 6). Further, Farago argues that the parties had at least an implied-in-fact contract based upon a course of conduct (NYSCEF Doc. No. 111, ¶ 11). He states, "the parties had a long established relationship whereby Mr. Farago would invoice and Barnes & Noble would pay the invoices from 2009 to 2013" (*Id.* at ¶ 10). He further states, "I believe there was a clear understanding between myself and Mr. Lynch that I would be paid a monthly fee and the costs of the project would be reimbursed. The conduct of the parties exhibits the fact that the work was completed, invoiced, and partially paid" (NYSCEF Doc. No. 127, ¶ 13). With respect to the price term, Farago states, "[w]hether rates were discussed or not, the invoices were sent, and the Defendant paid them while William Lynch was the CEO of Barnes & Noble" (NYSCEF Doc. No. 111, ¶ 12).

"A contract implied in fact may result as an inference from the facts and circumstances of the case, although not formally stated in words, and is derived from the 'presumed' intention of the parties as indicated by their conduct. It is just as binding as an express contract arising from declared intention, since in the law there is no distinction between agreements made by words and those made by conduct." *Jemzura v. Jemzura*, 36 N.Y.2d 496, 503–04 (1975) (internal citations omitted). An implied-in-fact contract "still requires such elements as consideration, mutual assent, legal capacity and legal subject matter. A '[m]anifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a performance.' The conduct of a party may manifest assent if the party intends to engage in such conduct and knows that such conduct gives rise to an inference of assent. Thus, a promise may be implied when a court

may justifiably infer that the promise would have been explicitly made, had attention been drawn to it." *Maas v. Cornell Univ.,* 94 N.Y.2d 87, 93–94 (1999) (internal citations omitted).

I find that at this juncture, issues of fact remain regarding whether the parties had an implied-in-fact contract based upon the parties' conduct. Farago maintains that it had a long-established protocol by which Farago performed services for B&N, invoiced B&N for these services without hourly rates, and B&N paid the invoices. At a certain point, B&N began to refuse paying the invoices, but it is undisputed that the parties had a relationship for some period of time in which Farago performed services and B&N paid him for those services according to the invoices he submitted. Farago's sworn testimony that he believed he would be paid a monthly fee and reimbursed for expenses incurred due to the parties' conduct over several years is sufficient to create an issue of fact regarding the existence of an implied-in-fact contract. Because genuine issues of fact have been raised, summary judgment must be denied on this cause of action.

Second Cause of Action: Account Stated

Farago asserts that it rendered statements of account to B&N for an amount totaling $862,688.00 and B&N did not protest the statements of account nor did it return them to Farago, and therefore, B&N owes Farago the entire amount due on the account stated, with interest from March 2, 2013. B&N moves for summary judgment on this cause of action, arguing that Farago's chaotic invoicing practices cannot support a cause of action for account stated. B&N further argues that summary judgment is appropriate because it objected to Farago's invoices within a reasonable period of time.

In support of its argument, B&N points to Farago's deposition testimony, which B&N argues establishes that Farago did not have a regular procedure for billing. For example, B&N highlights that when Farago was asked if he kept records of the number of hours he spent working for B&N, he responded by saying, "We don't keep exact records. There are some records, but there are not accurate records." (NYSCEF Doc. No. 100 at 221:20-222:5). Farago was also asked, "So whether or not invoices were issued at particular dates calls for speculation?" to which he answered, "I believe it does. I believe it does because we didn't have, as you have noted, a process for—for doing these things" (*Id.* at 182:3-9). Lastly, B&N maintains that it had a pattern of objecting to Farago's invoicing practices. To support this assertion, B&N points to a series of emails sent by Norkin and LaDolcetta expressing that they had questions and concerns regarding some of Farago's invoices (NYSCEF Doc. No. 77).

In opposition, Farago states, without more, that "the value of the billing was determined by reviewing the finished work product and estimating time spent on each" (NYSCEF Doc. No. 111, ¶ 18) and points to Exhibit J of its moving papers, which is an almost undecipherable one-page printout of "past due" statements (NYSCEF Doc. No. 125).

"An account stated is an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and balance due." *Ryan Graphics, Inc. v. Bailin*, 39 A.D.3d 249, 250 (1st Dept. 2007) quoting *Jim-Mar Corp. v. Aquatic Const., Ltd.,* 195 A.D.2d 868, 869 (1st Dept. 1993). To prevail

on a cause of action for account stated, the account statements must be regularly submitted. *Roth Law Firm, PLLC v. Sands,* 82 A.D.3d 675, 676 (1st Dept. 2011) (In *Roth*, the Court held that plaintiff failed to establish its entitlement to recovery on a cause of action for account stated, noting that "the statements lack the regularity that is critical to establishing an account stated"). (*Id.*).

Here, B&N has made its *prima facie* showing of entitlement to judgment as a matter of law by presenting evidence indicating that Farago's billing practices did not have the regularity that is required for an account stated cause of action. Farago has failed to raise an issue of fact as to this issue, thus I grant B&N summary judgment dismissing the account stated cause of action.

Third Cause of Action: Unjust Enrichment[3]

Farago alleges that it rendered services and incurred costs for the benefit of B&N causing B&N to be unjustly enriched, and Farago to be damaged in the amount of $862,688.00. B&N moves for summary judgment on the unjust enrichment cause of action with respect to the NEW Invoices, arguing that these invoices are covered by the Consulting Agreement. Because an actual contract—the Consulting Agreement— covers

[3] As I previously noted, Farago does not label this cause of action in its amended complaint, simply referring to it as the "Third Cause of Action." However, the term "unjust enrichment" is used in the allegations made within this section of the amended complaint (NYSCEF Doc. No. 33, ¶ 21). In its summary judgment papers, B&N refers to the cause of action as "quantum meruit." In Farago's Affirmation in Opposition to Defendant's Motion for Summary Judgment, the cause of action is similarly referred to as quantum meruit. However, because the amended complaint refers to the cause of action as unjust enrichment, I will treat it as such.

the services rendered in these NEW Invoices, B&N maintains that the quasi-contractual cause of action for unjust enrichment necessarily fails. B&N further argues that the merger clause in the Consulting Agreement also prevents Farago from recovering on the NEW Invoices. B&N argues that the merger clause prevents Farago from recovering because the clause states that the Consulting Agreement "supersedes any oral negotiations and prior writing with respect to the subject matter hereof" (NYSCEF Doc. No. 11, ¶ 14). Because it is B&N's position that these NEW invoices were created and sent after the Consulting Agreement was already in effect, the Consulting Agreement effectually nulls the invoices and Farago's compensation is limited to the $130,000 per month amount outlined in the Consulting Agreement.

In opposition, Farago avers in his sworn affidavit that, "In 2013, I signed a consultation with Michael Huseby the new CEO of Barnes & Noble with the understanding that the outstanding invoices would be paid. The work had been completed and I expected as in the past Barnes & Noble would honor the relationship by compensating me for work completed" (NYSCEF Doc. No. 127, ¶ 17). In Farago's Affirmation in Opposition to Defendant's Motion for Summary Judgment and Sanctions, Farago also maintains, "Mr. Farago was provided false assurances from Michael Huseby, the new CEO of Barnes & Noble that the outstanding invoices would be paid. The date of the invoices are not relevant, the work was completed on behalf of the Defendant prior to the agreement signed in 2013" (NYSCEF Doc. No. 111, ¶ 19).

" 'The theory of unjust enrichment lies as a quasi-contract claim.' It is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned." *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142 (2009) (internal citation omitted). "A plaintiff must show 'that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered.' " *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011) (internal citation omitted).

The bases of the cause of action for unjust enrichment are the NEW invoices that B&N maintains were fraudulently backdated and are covered by the Consulting Agreement. Farago denies that these invoices are fraudulently backdated. On summary judgment, where genuine triable issues of material fact or triable issues requiring credibility determinations exist, summary judgment is not appropriate. *S.J Capelin Assoc. v. Globe Mfg. Corp.,* 34 N.Y.2d 338, 341 (1974); *see* CPLR 3212. Because I determine the authenticity of the invoices that are central to the unjust enrichment cause of action, summary judgment is denied on this cause of action.[4]

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[4] In opposition, B&N also advances the argument that summary judgment should be granted on this cause of action because, "[w]here the contract at issue contains a merger clause, the parties' written agreement can also preclude quantum meruit recovery for pre-contract services that are part of the same bargain" (NYSCEF Doc. No. 102 at 20). B&N expands upon this argument in reply, stating, New York law requires "that when pre-contract services were performed as part of the benefit of the bargain of a later contract, and when the later contract contains a merger clause, then the later contract bars recovery in quantum meruit for those prior services," citing *Valley Juice Ltd., Inc. v. Evian Waters of France, Inc.*, 87 F.3d 604 (2d Cir. 1996) (NYSCEF Doc. No. 130 at 6). However,

Fraud Upon the Court

B&N also seeks sanctions against Farago for fraud upon the court. B&N maintains that Farago's actions are sanctionable because, "[c]lear and convincing evidence shows that Farago has repeatedly lied about the central issues before this Court: whether the invoices are genuine, and how much time he worked on the projects he seeks recovery for in this action." (B&N's Memo of Law, NYSCEF Doc. No. 102 at 21).

First, B&N maintains that Farago fraudulently backdated invoices to before the Consulting Agreement went into effect, filed these allegedly fraudulent invoices as attachments to his affidavit, and used them as the factual basis for his complaint. Second, B&N asserts that when B&N served Farago with interrogatories asking Farago to support the invoices he submitted with a sworn statement evidencing the hours he and his employees worked, Farago produced responses that were contradicted by the records produced in discovery. When Farago was asked about these contradictions during his deposition, B&N states that Farago proclaimed that he based his answers on the metadata associated with his design work. After seeking production of the metadata during discovery, B&N claims that the metadata revealed that there was no information regarding the hours worked. B&N insists that Farago has engaged in a pattern of

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B&N failed to establish that Farago and B&N entered into the Consulting Agreement with the express intent that the NEW invoices would be part of the benefit of the bargain of entering into such an agreement. B&N simply points to Farago's affidavit, wherein he states that he entered into the Consulting Agreement "with the understanding that the outstanding invoices would be paid" (NYSEF Doc. No. 127, ¶ 17). Because B&N failed to establish that by signing the Consulting Agreement, Farago waived his right to recover sums due on any pre-contractual services, I find this argument unavailing.

deception and accordingly, all of Farago's causes of action should be dismissed because of the alleged fraud upon the court.

In opposition, Farago submits a sworn affidavit wherein he states, "Farago has not deceptively submitted invoices of information. Farago is a company of integrity and is known for its fair dealing since they have been in business" (NYSCEF Doc. No. 127, ¶ 10) and "I provided truthful statements at the deposition conducted in this matter. Any assertion to the contrary is false." (*Id*. at ¶ 13).

"Fraud on the court involves willful conduct that is deceitful and obstructionistic, which injects misrepresentations and false information into the judicial process 'so serious that it undermines ... the integrity of the proceeding.'" *CDR Creances S.A.S. v. Cohen*, 23 N.Y.3d 307, 318 [2014]) quoting *Baba–Ali v. State of New York,* 19 N.Y.3d 627, 634 (2012). "Characteristic of federal cases finding such fraud is a systematic and pervasive scheme, designed to undermine the judicial process and thwart the nonoffending party's efforts to assert a claim or defense by the offending party's repeated perjury or falsification of evidence. Fraud on the court warrants heavy sanctions, including striking of an offending party's pleadings and dismissal of the action." *Id*. at 319; *see also McMunn v. Memorial Sloan-Kettering Cancer Center*, 191 F. Supp. 2d 440 (SDNY 2002).

In *CDR Creances S.A.S. v. Cohen*, 23 N.Y.3d 307 (2014), the Court of Appeals stated that the nonoffending party must establish by clear and convincing evidence that the offending " 'party has acted knowingly in an attempt to hinder the fact finder's fair

adjudication of the case and his adversary's defense of the action.' " *Id*. at 320 (internal citations omitted). "A court must be persuaded that the fraudulent conduct, which may include proof of fabrication of evidence, perjury, and falsification of documents concerns 'issues that are central to the truth-finding process.' " *Id*. at 320-321 (internal citations omitted).

Pursuant to 22 NYCRR §130-1.1 sanctions are within the sound discretion of the trial court and are reserved for serious transgressions.. At this juncture, B&N has yet not produced clear and convincing evidence that Farago knowingly engaged in conduct that was willful and obstructionistic with the intent to hinder fair adjudication of the case. For this reason I deny B&N's request for sanctions with leave to renew, if appropriate, at the conclusion of the trial of the action.

In accordance with the foregoing, it is

ORDERED that B&N's motion for summary judgment is denied as to the breach of contract and unjust enrichment causes of action and granted as to the account stated cause of action; and it is further

ORDERED that B&N's request for sanctions is denied without prejudice to renew at the conclusion of the action; and it is further

ORDERED that the parties are directed to appear for a pretrial phone conference on July 29, 2020 at 2:15 p.m., or such later date as the parties and the court shall determine;

This constitutes the decision and order of the Court.

7/1/20
DATE

SALIANN SCARPULLA, J.S.C.

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