SUPREME COURT OF THE STATE OF NEW YORK
HON. CAROL EDMEAD NEW YORK COUNTY

Index Number : 100819/2009
KIM, TOM
VS
WASSERSTEIN ENTERPRISES
Sequence Number : 002
DISMISS

PART 35

INDEX NO. _____
MOTION DATE 3/29/12
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Based on the accompanying Memorandum Decision, it is hereby

ORDERED that defendant's motion for summary judgment dismissing the plaintiff's Complaint is denied; and it is further

ORDERED that defendant shall serve a copy of this Order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/13/12

J.S.C.
HON. CAROL EDMEAD

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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TOM KIM A/K/A THOMAS KIM A/K/A THOMAS KIM ILLUSTRATIONS,

Plaintiff,

-against-

WASSERSTEIN ENTERPRISES, LLC a/k/a SHEINKER WASSERSTEIN,

Defendant.

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Index No. 100819/2009

DECISION/ORDER

Motion #002

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action for breach of contract, unjust enrichment, account stated, and *quantum meruit*, defendant, Wasserstein Enterprises, LLC[1] ("defendant"),[1] moves for summary judgment, including on the documentary evidence, dismissing the Complaint of the plaintiff, Tom Kim a/k/a Thomas Kim a/k/a Thomas Kim Illustrations ("plaintiff").[2]

Factual Background

Plaintiff alleges that in 2004, he was a commercial tenant at the 6th Floor of the building located at 23 West 36th Street, New York, New York (the "36th Street Premises"), when defendant's agent, Mitchell Kaufmann ("Kaufmann"), hired him to refurbish the lobby at defendant's building located at 115 West 18th Street, New York, New York (the "18th Street Building"). (Non-party 19 West 38th Street Holding Corporation is the owner of the 36 Street Premises (hereinafter referred to as the "Landlord")). Plaintiff further alleges that when his invoices for $83,250.00 went unpaid, Kaufman, on behalf of defendant, offered "to apply this

[1] Defendant asserts that Wasserstein Enterprises, LLC, is incorrectly sued herein as "Wasserstein Enterprises, LLC a/k/a Sheinker Wasserstein."

outstanding sum to future rent." (Complaint, ¶14). However, defendant refused to apply the $83,250.00 to future rent and this amount remains due and owing to plaintiff (Complaint, ¶ 16).

According to defendant, the agreement was set forth by plaintiff in a letter invoice to defendant, dated December 11, 2004, wherein plaintiff states that the $83,250 he is allegedly owed, "shall be applied as credit towards my Option for [the 36th Street Building] 23 West 36th Street- 6th floor, New York, NY 10018 and commencing on March 1st, 2005" (the "December 11th Letter"). Plaintiff stated, "I acknowledge that this credit shall be applied monthly and against increase of my rent within my Lease Option of 5 years."

Plaintiff was then issued a renewal lease dated February 22, 2005 renewing his lease at 36th Street Premises. Paragraph 41 of the Lease provided for a two-year term commencing March 1, 2005, and ending February 28, 2007, together with a five-year renewal option "at 90% Fair Market Value."

A month before the expiration of the renewal lease, in January of 2007 (after Newmark Knight Frank became the managing agent of both the 18th Street Building and 36th Street Premises), the parties were unable to agree upon the rate of rent to be applied during the 5-year renewal option and following March 1, 2007; plaintiff failed to pay any amount of rent.

Consequently, plaintiff's Landlord commenced a non-payment petition against plaintiff, alleging that he had failed to pay rent and additional rent in the amount of $11,030.01 (the "L&T Proceeding"). Plaintiff filed an Answer to the non-payment petition, asserting the following defenses: (i) payment of rent; (ii) "monthly rent being requested is not the legal rent or the amount on current lease"; and (iii) "dispute amount of rent owed and sq. feet."

Subsequently, the parties executed a Stipulation of Settlement in New York City Civil

Court on August 15, 2007 settling the L&T Proceeding (the "L&T Stipulation"). According to the Stipulation, defendant paid $4,030, and agreed to pay an additional $2,010 by September 5, 2007 and vacate the Premises. Plaintiff also agreed to an entry of judgment for $7,970 in the event he failed to timely vacate the Premises or pay the $2,010. Upon "full performance" of the Stipulation, both parties were "released from any obligations made prior to today's date including any option to renew . . . ." As relevant herein, the Stipulation also provides that "Respondent hereby appears in the action . . . and waives any and all defenses and counterclaims which it might have in the instant proceeding."

In support of dismissal, defendant argues that plaintiff's monetary claims are barred by the doctrines of *res judicata*, collateral estoppel, and waiver. Defendant submits an affidavit from Michael Dreizen, the Senior Managing Director of defendant's Managing Agent, Newmark Knight Frank ("Newmark"). Newmark is the managing agent for both the defendant and plaintiff's Landlord. Defendant argues that plaintiff's waiver of "any and all defenses and counterclaims" necessarily would have and/or could have included any claim to an alleged, agreed-upon monthly rent credit for plaintiff's services. Such documentary evidence establishes that plaintiff's claim for the amount allegedly due for refurbishing services, which the parties agreed would be paid in the form of a monthly rent credit against rent owing under the plaintiff's renewal lease, was waived and is barred by the parties' Stipulation of Settlement in which plaintiff waived with prejudice any defenses and/or counterclaims to the rent indebtedness.

Plaintiff also waived any claim of indebtedness for refurbishing services as a matter of law, having asserted three such defenses concerning the amount of rent owing during the aforesaid option period, including (i) payment of rent; (ii) monthly rent not the amount due on

current lease, and (iii) disputing the amount of rent owed, and then having expressly waived each of the defenses, as well any counterclaims, and plaintiff could obtain the benefits of the Stipulation of Settlement in the rent nonpayment proceeding.

Further, the doctrine of *res judicata* has been applied to defenses which were not raised, but which could properly have been determined and considered in the prior action. Here, defendant has admitted, both in deposition testimony and in the December 11th Letter, that any money due to plaintiff was to be applied as a credit towards rent for the 36th Street Premises. If plaintiff had been entitled to an offset or rent reduction in the amount of $83,250 alleged in the Complaint, then plaintiff had such defense of payment and/or counterclaim or offset for rent allegedly due during the 5-year option period which was the subject of the L&T Proceeding. Plaintiff had the opportunity to assert defenses and/or counterclaims regarding the rent credit allegedly owing in the L&T Proceeding, which concerned outstanding rent to be due for the 5-year option period under the renewal lease and the final settlement and judgment in that Proceeding concluded any rights plaintiff may have had as to his instant claim.

In opposition, plaintiff asserts that in February 2005, he began to negotiate with his Landlord's agents to exercise the option to lease the 36th Street Premises for a period of five years. Plaintiff contends that Kaufman, on behalf of defendant, told plaintiff that *if* his lease is extended five years, plaintiff could be compensated for the services that he provided to defendant in one of two ways: (i) the outstanding sum of $83,250.00 could be applied to future rent if he exercises his option to lease the 36th Street Premises or he could be paid that sum due and owing. Plaintiff then continued to reside at the 36 Street Premises as a month-to-month tenant.

Plaintiff argues that the Stipulation of Settlement does not evince a desire for plaintiff to

waive his right to be compensated for the services he provided to defendant, a different corporate entity than that in the L&T Proceeding, filed by his Landlord. Plaintiff signed the Stipulation of Settlement to vacate the premises owned by his Landlord, and to say that plaintiff contemplated waiving his right to be paid for services rendered when he signed a Stipulation of Settlement to vacate a premises owned by another entity is neither objective nor a common-sense reading of the Stipulation of Settlement. The Stipulation of Settlement concerns tenancy and in such Stipulation, any waiver pertains to rights of tenancy, and not to compensation for services rendered in another building to a different corporate entity.

In addition, compensation for services paid was intended to be applied to future rent pursuant to the option agreement. The option agreement never became operative because the agents for the Landlord refused to acknowledge it and evicted plaintiff.

Defendant's motion for summary judgment also fails to include any credible extrinsic evidence from any one involved with the negotiation and execution of the Stipulation of Settlement. The affidavit of Newmark's managing director simply recites the contents of communications by other people and does not state that he was involved with negotiating the Stipulation of Settlement. Defendant failed to show that the parties intended to relieve defendant of its obligation to compensate plaintiff.

Further, the defense of collateral estoppel does not apply to this litigation. The issue in the L&T Proceeding resolved the issue of tenancy, and not plaintiff's right to be compensated for services provided to another corporate entity. The issue of compensation had no relationship to the Landlord's decision to revoke the 5-year option agreement and evict plaintiff. Compensation for services at another time and with another entity could not have possibly been resolved in the

L&T Proceeding involving different parties.

Further, the issue of compensation for services rendered to defendant was not the subject of the L&T Proceeding. In court, plaintiff's compensation was never discussed, only tenancy. While defendant argues that the only method of payment proposed to plaintiff was a future rent credit. However, plaintiff and defendant also discussed plaintiff being paid the sum due and owing directly. There are no affidavits supporting defendant's motion that the waiver provision in the Stipulation of Settlement contemplates the outstanding fees due to plaintiff. Thus, defendant's motion should be denied.

In reply, defendant argues that because (i) the parties indisputably agreed that any indebtedness due plaintiff would be payable in the form of a monthly rent credit during the renewal term of his Lease, and (ii) plaintiff defended the L&T Proceeding on the ground that the rent allegedly due during the renewal term was disputed and/or not owing at all—defenses which plaintiff then expressly waived to obtain the benefits of the final Stipulation of Settlement, plaintiff's instant claim for money damages is barred on the grounds of *res judicata* and collateral estoppel. Plaintiff indisputably had the opportunity to assert defenses and/or counterclaims in the L&T Proceeding and therefore, the final settlement and judgment in that Proceeding concluded any rights plaintiff may have had as to his instant claim as a matter of law.

Plaintiff admits that the indebtedness for refurbishing services was agreed to be paid by a rent credit (Affidavit ¶ 13), and inconsistently asserts for the first time that the indebtedness was payable either as a rent credit, or, by the direct payment for the services (Affidavit ¶ 12). Plaintiff's affidavit, the contents of which are themselves contradictory, is directly contradicted by the December 11the Letter. Summary judgment cannot be defeated by affidavits like this

which contradict the documentary evidence before the Court.

Moreover, plaintiff's affidavit is also contradicted by plaintiff's deposition testimony, where plaintiff admits that the alleged indebtedness for refurbishing services will be payable by a rent credit on monthly rent during the renewal term. Summary judgment cannot be defeated by an affidavit which contradicts previous sworn deposition testimony. Thus, such affidavit fails to raise an issue of fact to defeat summary judgment. Here, defendant has admitted, both in his sworn deposition testimony and in the December 11th Letter, that any money due to plaintiff was to be applied as a credit towards rent for the 36th Street Premises on his renewal lease- not by the defendant's direct payment for such services, as plaintiff now disingenuously alleges for the first time in his Affidavit.

Discussion

"The proponent of a summary judgment motion 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" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], *quoting Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The defendant "must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" (*Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd* 62 NY2d 686 [1984]). However, the moving party must demonstrate entitlement to judgment as a

matter of law (*Zuckerman v City of New York,* 49 NY2d 557, 562, 427 NYS2d 595, 404 N.E.2d 718; *Sillman v Twentieth Century-Fox Film Corp.,* 3 NY2d 395, 165 NYS2d 498, 144 NE2d 387), and the failure to make such a showing will result in the denial of the motion, regardless of the sufficiency of the opposing papers (*Johnson v CAC Business Ventures, Inc.*, 52 AD3d 327, 859 NYS2d 646 [1st Dept 2008]; *Murray v City of New York*, 74 AD3d 550, 903 NYS2d 34 [1st Dept 2010]).

Pursuant to CPLR 3211 [a] [l], a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "a defense is founded upon documentary evidence." A motion to dismiss on the basis of a defense founded upon documentary evidence may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law"(*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Intern.*, 80 AD3d 448, 914 NYS2d 145 [1st Dept 2011] *citing Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]). The test on a CPLR 3211 [a][1] motion is whether the documentary evidence submitted "conclusively establishes a defense to the asserted claims as a matter of law" *(Scott v Bell Atlantic Corp.*, 282 AD2d 180, 726 NYS2d 60 [1st Dept 2001] *citing Leon v Martinez*, 84 NY2d 83, 88, *supra*; *IMO Indus., Inc. v Anderson Kill & Olick, P.C.*, 267 AD2d 10, 11, 699 NYS2d 43 [1st Dept 1999]).

Where a written agreement unambiguously contradicts the allegations of a breach of contract cause of action, the contract itself constitutes documentary evidence warranting dismissal of the complaint, pursuant to CPLR 3211(a)(1), regardless of any extrinsic evidence or self-serving allegations offered by the plaintiff (*Prichard v 164 Ludlow Corp.*, 14 Misc 3d 1202, 831 NYS2d 362 [Sup Ct New York County 2006] *citing 150 Broadway N.Y. Assoc., L.P. v*

Bodner, 14 AD3d 1 [1st Dept 2004]). However, affidavits and deposition transcripts do not qualify as "documentary evidence" for purposes of this rule ((see *Williamson, Picket, Gross v Hirschfeld*, 92 AD2d 289, 290 [1st Dept 1983] [stating that affidavits do not qualify as "documentary evidence" for purposes of this rule]; *Realty Investors v Bhaidaswala*, 254 AD2d 603, 679 NYS2d 179 [3d Dept 1988] [rejecting use of reply affidavit to support a motion to dismiss based on documentary evidence]; *Kearins v Gruberg, McKay & Stone*, 2 Misc 3d 1001, 2004 WL 316521 [Supreme Court Bronx County 2004] [affidavits and depositions cannot be the basis for this motion]).

Res judicata and collateral estoppel are related doctrines that are designed to limit or preclude relitigation of matters that have already been determined (*Fusco v Kraumlap Realty Corp.*, 1 A.D.3d 189, 767 N.Y.S.2d 84 [1st Dept 2003] *citing People v Evans*, 94 N.Y.2d 499, 502, 706 N.Y.S.2d 678, 727 N.E.2d 1232). *Res judicata* generally precludes relitigation of claims, while collateral estoppel precludes relitigation of issues (*id.*).

Res judicata, or claim preclusion, is invoked when *parties* seek to relitigate entire causes of action *between them* and applies to matters which were actually litigated or could have been litigated in the earlier action (*DaimlerChrysler Corp. v Spitzer,* 6 Misc 3d 228, 782 NYS2d 610 [Sup. Ct., Albany County, 2004]; *see Hyman v Hillelson*, 79 AD2d 725, 726 [3d Dept 1980], *affd* 55 NY2d 624 [1981] (emphasis added)). Pursuant to the doctrine of *res judicata*, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357; *see also, Smith v Russell Sage Coll.*, 54 NY2d 185; *Matter of Reilly v Reid*, 45 NY2d 24; *Feigen v Advance Capital Mgt. Corp.*, 146 AD2d 556,

558; Restatement [Second] of Judgments § 24). The courts have previously approved the pragmatic approach in determining what constitutes a single transaction or series of transactions for the purposes of applying the doctrine of *res judicata*. In *Braunstein v Braunstein (*114 AD2d 46, 53), the court stated: "Res judicata serves to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same 'factual grouping' or 'transaction', and which should have or could have been resolved in the prior proceeding.

Collateral estoppel, or issue preclusion, is invoked when the cause of action in the second proceeding is different from that in the first and applies to a prior determination of an issue which was actually and necessarily decided in the earlier case (*DaimlerChrysler Corp. v Spitzer, supra)*. It is confined to the point actually determined and applies only to issues which were actually litigated, not to those which could have been litigated (*id.*). In order for the doctrine of collateral estoppel to apply, two requirements must be satisfied: the party seeking the benefit of the doctrine must prove that the *identical issue* was decided in the prior action and is decisive in the current action, and that the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior determination (*DaimlerChrysler Corp. v Spitzer*). "[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identicality and decisiveness of the issue" *(Ryan, supra* 62 NY2d at 501; *Capital Telephone Co., Inc. v Pattersonville Telephone Co., Inc.*, 56 NY2d 11, 18; *Schwartz v Public Admin.*, 24 NY2d 65, 73).

As to waiver, it is axiomatic that waiver "is an intentional relinquishment of a known right and should not be lightly presumed" (*Echostar Satellite L.L.C. v ESPN, Inc.*, 79 AD3d 614, 914 NYS2d 35 [1st Dept 2010] *citing Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 968,

525 NYS2d 793 [1988]). Such intention "'must be unmistakably manifested, and is not to be inferred from a doubtful or equivocal act'" (*Echostar Satellite L.L.C. v ESPN, Inc. supra, citing Navillus Tile v Turner Constr. Co.*, 2 AD3d 209, 211, 770 NYS2d 3 [2003], *quoting Orange Steel Erectors v Newburgh Steel Prods., Inc.*, 225 AD2d 1010, 1012, 640 NYS2d 283 [1996]).

Defendant failed to establish, as a matter of law, that the doctrines of *res judicata*, collateral estoppel or waiver applies to plaintiff's claims by virtue of the Stipulation of Settlement, or that his claims against defendant herein were otherwise resolved in the L&T Proceeding.

According to the affidavit of defendant's managing agent, Kaufman was the purported agent of defendant who "previously managed" both defendant's 18th Street Building and the Landlord's building in which plaintiff was a tenant. (Affidavit, ¶5). Based the terms of the December 11th (2004) Letter, which was addressed to Kaufman and defendant, defendant agreed to apply the monies defendant owed to plaintiff, for work he performed at the 18th Street Building, "monthly and against increase of [plaintiff's] rent within [his] Lease Option of 5 years" at the 36 Street Premises. While plaintiff claims that at this time, he requested to exercise his 5-year option (see handwritten letter seeking a request to "please exercise my option for 5 years" and Affidavit in Opposition, ¶13), he also states that he "continued to reside" "on a month-to-month tenancy." (Affidavit, ¶13-14).

The record indicates that plaintiff renewed his lease with the Landlord in February 2005 for 2 years. The February 2005 "renewal" lease ended by its terms on February 28, 2007, but contained a "5 yr. Option." According to defendant's managing agent, in January 2007, the "parties were unable to agree upon the rate of rent to be applied during the renewal option" and

plaintiff failed to pay rent following March 1, 2007, thereby precipitating the Landlord's L&T Proceeding.

The Court notes that defendant, who allegedly failed to pay plaintiff for work he performed at defendant's 18th Street Building, was *not a party* to the L&T Proceeding. The May 2007 "Non-Payment Business Petition" submitted by defendant, indicates that the petitioner was not the defendant herein, but the Landlord of the 36 Street Premises. Nor does it not appear from the record that defendant's monetary obligations to plaintiff were ever contemplated by either plaintiff or the Landlord/petitioner in that proceeding.

Further, it cannot be determined, as a matter of law, that the subject matter of the L&T Proceeding concerned the nonpayment of rent for any period of the 5-year option, to which the credit (arguably) solely applied. It is plausible that the L&T Proceeding was premised upon plaintiff's failure to pay rent and additional rent since March 1, 2007, *as a holdover, month-to-month tenant*; the renewal lease terminated by its terms on February 28, 2007 and defendant asserts that plaintiff did not agree to the rental terms of the option, and failed to pay after March 1, 2007. Thus, the record is unclear as to whether plaintiff's tenancy at the 36 Street Premises ever existed pursuant to the 5-year option. As such, it cannot be said, as a matter of law, that the Stipulation of Settlement resolving all issues between plaintiff and the Landlord concerning plaintiff's tenancy at the 36 Street Premises, likewise resolved, by plaintiff's waiver or otherwise, defendant's obligations under the December 11th Letter to credit plaintiff for rent accruing during the 5-year Option Period.

Moreover, under the circumstances, the documentary evidence and record fail to establish that the Stipulation of Settlement, between the Landlord and plaintiff, reflects an unmistakable

manifestation of an intent by plaintiff to waive his right to the 83,250.00 owed by defendant herein, especially in light of the fact that defendant agreed to pay the Landlord thousands of dollars and vacate the Premises.

As to defendant's motion for summary judgment generally, notwithstanding any alleged discrepancies between plaintiff's deposition testimony and his affidavit, it cannot be said that plaintiff seeks to *relitigate* his claims against the instant defendant as to a matter that was actually litigated or could have been litigated in the L&T Proceeding, or that defendant's indebtedness to plaintiff was actually or necessarily decided in (or waived by virtue of) the L&T Proceeding.

In any event, issues of fact exist as to whether the plaintiff and defendant intended to apply the monies allegedly due the plaintiff solely to 5-year option period or to the renewal lease period of 2 years. The deposition testimony of plaintiff reveals the following:

Q. The last sentence says below:

The following submitted invoices shall be applied as credit toward my lease.

Is it your understanding that the $83,250 would be applied toward your lease at 23 West 36th Street?

MR. BROWN: Objection.

A. At the time it was my understanding that it was supposed to be applied.

MR. BROWN: The document speaks for itself.

MR. TILTON: Okay.

Q. Did you come to this understanding because of the discussion you had with Mitch Kaufman?

MR. BROWN: Objection.

A. Of course.

(EBT, p. 37)

Q. Can you give me your interpretation [of the 2004 letter]?

A. The document is basically an agreement or acknowledgment, actually, that the amount that was owed for the work that I did on 115 West 18th Street that is outstanding, that is listed on this document, for those three invoices were to be applied as credit toward my lease, toward my rent to offset.

(EBT, p. 72).

Therefore, as issues of fact exist as to the intent and scope of the December 11th Letter, which impacts the degree to which the Stipulation of Settlement, if at all, addresses the indebtedness of the defendant to plaintiff, summary judgment is unwarranted.

Conclusion

Based on the foregoing, it is hereby

ORDERED that defendant's motion for summary judgment dismissing the plaintiff's Complaint is denied; and it is further

ORDERED that defendant shall serve a copy of this Order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: April 13, 2012

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD