SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

----------X

ALMAH LLC

Plaintiff,

-against-

AIG EMPLOYEE SERVICES, INC., *et al.*,

Defendants.

----------X

DECISION AND ORDER

Index No. 652117/2014

Mot. Seq. 004

HON. ANIL C. SINGH, J.:

In this action for breach of contract under a commercial lease, Almah LLC ("Almah" or "plaintiff"), claims it is entitled to $20 million in damages from its former tenant AIG Employee Services, Inc. ("AIG Services") and the parent company American International Group, Inc. ("AIG Inc." and together with AIG Services, "AIG" or "defendants"). Plaintiff alleges that when AIG Services vacated the premises, it failed to comply with certain obligations under the lease including not maintaining the property in good condition.

Defendants moves to dismiss plaintiff's first cause of action for failure to take good care of the electrical busways and fourth cause of action for failure to operate the cafeteria, pursuant to CPLR 3211(a)(1) and (a)(5) (mot. seq. 004). Alternatively, defendants' move for summary judgment pursuant to CPLR § 3212. Plaintiff opposes.

Facts

The property at issue in this case is a commercial office building located at 180 Maiden Lane, New York, New York. Compl., ¶1. TCL Acquisition Corp., originally entered into a lease with Goldman Sachs Group, L.P. ("Goldman") as the original tenant to occupy about 800,000 square feet of space in the building. Id. at ¶3, 5. Almah, a limited lability company formed under Delaware law and authorized to do business in New York, purchased the building in question on or around August 19, 2004. Id. ¶2. AIG Services, a Delaware corporation formed and doing business in New York, became the tenant through an assignment of the lease from Goldman as per the "Assignment and Assumption Agreement" as of June 30, 2008. Id. AIG, also a Delaware corporation doing business in New York, became the guarantor on "all payment and performance of AIG's obligations under the lease" as of May 29, 2008. Id. at ¶4.

During the original lease term, Goldman Sachs installed 17 "electrical busways" within the space in order to "transport supplement and/or emergency electrical power" from sources [such as back-up generators] to regular office outlets.[1] Id. at ¶6. In conformance with the lease, the tenant was required to "(a) install the busways properly; (b) take good care of the busways as now constituting

[1] Goldman continued to occupy and use some of the space of the building until May 31, 2010, and also maintained the busways during that time. See Compl. ¶6.

part of the premises; and (c) upon expiration of the lease, to turn-over the busways to the owner in good condition." Id. at ¶7.

On July 1, 2009, after the assignment of the lease to AIG, Goldman filed suit against Almah for breach of contract due to Almah's failure to pay a commission fee to Goldman for entering into the Assignment and Assumption Agreement. See Barrett Aff., ¶2-7. This suit arose out of a dispute between Almah and Goldman over "a certain brokerage fee, per a separate letter-agreement" that was payable from Almah to Goldman upon Goldman's waiver of its early-termination option[2], and whether Almah was entitled to fifty percent of the "consideration" Goldman obtained from its assignment to AIG. Opp. Br. at 4. Goldman prevailed on that case on appeal to the First Department and the remaining issue of attorney's fees was referred to a JHO. Opp. Br. at 5-7. The parties entered into a settlement agreement dated November 7, 2013 (the "Settlement Agreement"). See Barrett Aff., Ex. A.

Pursuant to the Settlement Agreement, Almah agreed to release

> [Goldman] Parties, their parent companies, subsidiaries, affiliates, predecessors, successors, transfers and **assigns**... (the "GS Releasees") from any and all known and unknown claims, demands, actions, causes of actions, whatever legal theory, which Almah Releasors ever had, now have, or hereafter can, shall, or **may have against any of the GS Releasees**, from the beginning of the world through the date of this Agreement, with respect to **any matters arising out of** or relating to the Lease, the Premises and/or the Action **including but not limited to**

[2] Instead of exercising the option under the lease, Goldman elected to assign the remainder of the lease term to AIG in 2008.

> the Claims, the Attorney's Fee Claim and the Counterclaims and Defenses (collectively, the "Almah Released Claims")...(emphasis added)
>
> Settlement Agreement, §5(a).

Further, Almah stipulated to a "Covenants Not To Sue" which stated

> Almah hereby covenants and agrees... each of the Almah Releasors shall forever refrain, and is hereby estopped from instituting, prosecuting, asserting or otherwise pursuing or pressing against any of the GS Releasees any of the Almah Released Claims, whether by direct claim, cross-claim, counterclaim, appeal, or otherwise.
>
> Settlement Agreement, §6(a).

AIG vacated the premises on the "surrender date" of the lease on April 30, 2014. Compl. ¶5. Almah filed the current action against AIG alleging damages for the costs of the busways and the failure to comply with obligations of the lease about use of a cafeteria in the building. See Barrett Aff., ¶1-2. Almah claims that the busways were not properly installed, maintained, or repaired. Compl. ¶12-14. Additionally, Almah claims that if the busways had been in "good and operational condition," the building would have attracted new tenants to utilize that space and be far more profitable in the marketplace. Id. ¶15.

According to Almah, the busways as presently left pose a dangerous and hazardous condition to the space and must be removed or replaced. Id. ¶16. In addition, Almah alleges that AIG Services did not comply with the lease in terms of operating a certain cafeteria on the third and fourth floors that was supposed to be

accessible to other tenants as well. Id. ¶33. After receiving complaints from other tenants, Almah claims that it incurred liability of $630,000 after October 1, 2013 when "[AIG] ceased to operate the cafeteria in conformance with the Lease." Id. ¶¶35-37.

In a decision, dated August 31, 2015, this court denied defendants' original motion to dismiss on the grounds that the complaint sufficiently alleged that AIG failed to take good care of the busways under the terms of the lease when it vacated the premises with the busways in a state of disrepair. See Decision and Order, dated August 31, 2015 (NYSCEF #68). On December 22, 2015, AIG filed a motion for necessary joinder to add Goldman as a party to this present action because the busways were originally installed by Goldman. Barrett Aff. ¶¶2-7. AIG maintains that after communicating with Goldman's counsel it became aware of the Settlement Agreement on September 13, 2016. Id.

AIG argues that Almah's claims are barred against AIG as an assignee under the terms of the Settlement Agreement.

Analysis

Legal Standard

On a motion to dismiss on the ground that defenses are founded upon documentary evidence, the evidence must be unambiguous, authentic, and undeniable. CPLR 3211(a)(1); Fountanetta v. Doe, 73 A.D.3d 78 (2d Dept 2010).

"To succeed on a [CPLR 3211(a)(1)] motion ... a defendant must show that the documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitively disposes of the plaintiff's claim." Ozdemir v. Caithness Corp., 285 A.D.2d 961, 963 (2d Dept 2001), leave to appeal denied 97 N.Y.2d 605. Alternatively, "documentary evidence [must] utterly refute plaintiff's factual allegations, conclusively establishing a defense as a matter of law." Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314, 326 (2002).

On a motion to dismiss on the ground that the cause of actions may not be maintained because of a prior release, a claim must be barred if the release is valid on its face and properly executed. CPLR 3211(a)(5); Toledo v. West Farms Neighborhood Housing Development Fund Co., Inc., 34 A.D.3d 228, 229 (1st Dept 2006) (internal citation omitted). "It is well established that further litigation following a release should not be permitted except under circumstances ... which would render any other result a grave injustice." Toledo, 34 A.D.3d at 229. "It is for this reason that the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake, must be established or else the release stands." Id.

[N]evertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration. Quatrochi v. Citibank, N.A., 210 A.D.2d 53,

53 (1st Dept 1994) (internal citation omitted). It is well settled that on any motion pursuant to CPLR 3211, the court "must take the allegations [of the complaint] as true and resolve all inferences which reasonably flow therefrom in favor of the pleader." Cron v. Hargro Fabrics, Inc., 91 N.Y.2d 362, 366 (1998). This standard applies to claims brought under CPLR 3211(a)(5) as well where the release clearly and unambiguously bars the claims at issue. Tavoulareas v. Bell, 292 A.D.2d 256 (1st Dept 2002).

Whether AIG constitutes an "Assignee" under the Release

As a threshold matter, plaintiff argues that AIG is not an "assignee" under the terms of the release because there is a distinction between "assign" as a verb and "assign" as a noun. See Opp. Memo, p. 17. Plaintiff alleges that "assign" as a noun refers to a stock phrase in a corporate context that necessarily entails "assigning corporation as an ongoing business entity" or "a type of successor company to a settling party's business operations as a whole, whether by merger, or asset purchase, or other form of corporate takeover." Id. citing Schlesinger & Co., LLC v. SLG 220 News Owner LLC, 143 A.D.3d 619 (1st Dept 2016).

Plaintiff's reliance on case law in this context of "assign" is misguided. An assignment in the commercial lease context is where a tenant "demised its entire interest in the entire premises for the entire time remaining on the prime lease, notwithstanding a contingent right of re-entry." Banque Nationale de Paris v. 1567

Broadway Ownership Assocs, 202 A.D.2d 251, 251 (1st Dept 1994) (internal citation omitted). Similarly, Black's Law Dictionary clearly defines "assign" as "in conveyancing. To make or set over to another; to transfer; as to assign property, or some interest therein." Further, "assignee" in Black's Law Dictionary is defined as "a person to whom an assignment is made."[3] Under these definitions, it is clear that Goldman assigned its interest in the Lease to AIG, who acted as the assignee.

Basic contract interpretation principles require that, "when interpreting a contract, the court should arrive at a construction which will give fair meaning to all of the language employed by parties to reach a practical interpretation of the expression of the parties so that their reasonable expectations will be realized." Patsis v. Nicolia, 120 A.D.3d 1326, 1327 (2d Dept 2014). As plainly stated in the Assignment and Assumption Agreement, Goldman is defined as the "Assignor" and AIG Services as "Assignee." See Assignment and Assumption Agreement, p. 1. Throughout the entire Assignment and Assumption Agreement, AIG Services is referenced as the "assignee" and Goldman assigns to AIG Services all its obligations under the lease as tenant.

[3] Black's Law Dictionary definition of assignment is almost identical to assign and states: "The act by which on person transfers to another, or causes to vest in that other, the whole of the right, interest, or property which he has in any realty or personalty, in possession or in action, or any share, interest, or subsidiary estate therein."

There is no ambiguity in the Assignment and Assumption Agreement or the Settlement Agreement as it relates to the term "assigns". A contract is not ambiguous if, on its face, it is definite and precise and reasonably susceptible to only one meaning. White v Continental Cas. Co., 9 N.Y.3d 264, 267 (2007); Greenfield v Philles Records, 98 N.Y.2d 562, 569 (2002). An ambiguous contract is one that, on its face, is reasonably susceptible of more than one meaning. Chimart Assoc. v Paul, 66 N.Y.2d 570, 573 (1986). During oral argument, plaintiff represented to the court that, in fact, on its face the term "assign" is unambiguous. See Oral Argument Transcript, p. 24 ("I don't think [assign is] really ambiguous.").

"Parol evidence – evidence outside the four corners of the document – is admissible only if a court finds an ambiguity in the contract." Schron v. Troutman Sanders LLP, 20 N.Y.3d 430, 433 (2013). Therefore, this court will not consider plaintiff's parol evidence purporting to clarify the intent of the parties in drafting the release. See also Unisys Corp. v. Hercules Inc., 224 A.D.2d 365, 367 (1st Dept 1996); Knopf v. Sanford, 123 A.D.3d 521 (1st Dept 2014); Johnson v. Stanfield Capital Partners, LLC, 68 A.D.3d 628 (1st Dept 2009).[4]

[4] Plaintiff argues that the parol evidence seeks to clarify the business context and the intent of the drafting parties in including certain language in the release. Plaintiff relies on Cahill v. Regan, 5 N.Y.2d 292 (1959), for the proposition that a release cannot be read to include a claim which the parties never intended to release and therefore, the parol evidence should be used to discern this intention. Specifically, plaintiff contends that the parties never intended to release the busway claims or any other claims against AIG. See Oral Argument Transcript, p. 24. The intention of the parties was only to release Goldman Sachs, the Goldman Sachs entities and Almah. Id.

Plaintiff's reliance on East Alabama Railroad Co. v. Doe is without merit. In that case, "the right granted was merely a right of way for a railroad. What [the successors and/or assigns] acquired was merely an easement in the land... No fee in the land was conveyed, ... or separate from the franchise to make and own and run a railroad." 114 U.S. 340, 350 (1885). Also, plaintiff cites to Schlesinger, which simply differentiates between a "successor entity to the original Tenant" and "any assignee of the lease." 143 A.D.3d 619 (1st Dept. 2016). Schlesinger holds that the lease in question in that case had a specific limitation on an option to renew and only a certain "successor in interest" to the original tenant could exercise the option. Id. There is no discussion as to what the terms "assign" or "assignee" mean in the commercial lease context and here, AIG sought to be an "assignee" under the lease and not a "successor entity" from acquiring assets to takeover part of Goldman's business.

Plaintiff's reliance on Morales v. Rotino, 27 A.D.3d 433 (2d Dept 2006) is also misguided. The court in Morales dealt with an automobile consumer lease and release from liability according to a tortfeasor statute under New York General Obligations Law and held that the plaintiffs "heirs, executors, administrators, successors, and assigns" did not include Ford Motor Credit Company because "the release plainly referred to an administrator of an estate and someone who may have stepped into [the plaintiffs] shoes in another capacity with respect to the plaintiff's

action against her." Id. These cases set forth by Almah have no bearing on the issue of whether AIG is an "assignee" of Goldman under the lease. It is clear from the terms of the unambiguous Assignment and Assumption Agreement as well as the Settlement Agreement that Goldman did "assign" its obligations under the lease to AIG.

Therefore, as AIG is an assignee under the release, this court may consider whether the release bars the present action.

Whether the Release in the Settlement Agreement is Clear and Unambiguous

Defendants' motion to dismiss plaintiff's first and fourth causes of action on the grounds that the release as part of the Settlement Agreement bars the present action is granted. Generally, "a valid release constitutes a complete bar to an action on a claim which is the subject of the release." Centro Empresarial Cempresa S.A. v. America Movil, S.A.B. de C.C., 17 N.Y.3d 269, 276 (2011). If "the *language of a release is clear and unambiguous*, the signing of a release is a 'jural act' binding on the parties." Id. (emphasis added) (internal citations omitted). A release is "governed by principles of contract law and one that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." Sicuranza v. Phillip Howard Apts. Tenants Corp., 121 A.D.3d 966, 967 (2d Dept 2014); see also Allen v. Riese Org., Inc., 106 A.D.3d 514, 516 (1st Dept 2013) (an unambiguous release will bar a plaintiff's claim).

To determine the meaning of a contract, a court looks to the intent of the parties as expressed by the language they chose to put into their writing. Ashwood Capital, Inc. v OTG Mgt., Inc., 99 A.D.3d 1 (1st Dept 2012); Bank of Tokyo-Mitsubishi, Ltd., N.Y. Branch v Kvaerner a.s, 243 A.D.2d 1, 6 (1st Dept 1998). A clear, complete document will be enforced according to its terms. Ashwood Capital, 99 A.D.3d at 7. When the parties have a dispute over the meaning, the court first asks if the contract contains any ambiguity, which is a legal matter for the court to decide. Id. Whether there is an ambiguity "is determined by looking within the four corners of the document, not to outside sources." Kass v Kass, 91 N.Y.2d 554, 566 (1998).

The court examines the parties' obligations and intentions as manifested in the entire agreement and seeks to afford the language an interpretation that is sensible, practical, fair, and reasonable. Riverside S. Planning Corp. v CRP/Extell Riverside, L.P., 13 N.Y.3d 398, 404 (2009); Abiele Contr. v New York City School Constr. Auth., 91 N.Y.2d 1, 9-10 (1997); Brown Bros. Elec. Contr. v Beam Constr. Corp., 41 N.Y.2d 397, 400 (1977). A contract is not ambiguous if, on its face, it is definite and precise and reasonably susceptible to only one meaning. White, 9 N.Y.3d at 267; Greenfield, 98 N.Y.2d at 569. An ambiguous contract is one that, on its face, is reasonably susceptible of more than one meaning. Chimart Assoc. v Paul, 66 N.Y.2d 570, 573 (1986).

Plaintiff's argument that the release at issue is ambiguous on its face is without merit. As discussed, *supra*, the release includes AIG as an assign. Additionally, the release,

> Hereby irrevocably and unconditionally release[d] and forever discharged... from any and all known and unknown claims, demands, actions, causes of actions, whatever legal theory, which Almah Releasors ever had, now have, or hereafter can, shall, or may have against any of the GS Releasees, from the beginning of the world through the date of this Agreement, with respect to any matters arising out of or relating to the Lease [or] the Premises... Almah agrees that this release shall be a full, final and complete release... and that it may be pleaded as an absolute bar to any or all suit or suits pending or which ay thereafter by filed or prosecuted by any of the Almah Releasors...
>
> Settlement Agreement, §5.

A release is determined to be unambiguous when it contains clear language absolving future liability from one party against another such as releases "from any and all causes of action... which [the company] ever had or now has" arising out of the same premises such as the building at issue in this case. Beys Specialty, Inc. v. Euro Const. Services, Inc., 39 Misc.3d 1205(A) (Sup. Ct. Kings Cnty. Mar. 28, 2013); see also Schuman v. Gallet, Dreyer & Berkey, L.L.P., 689 N.Y.S.2d 628, 629 (Sup. Ct. N.Y. Cnty. Apr. 13, 1999) (holding that release language containing discharge of "releasee's heirs, executors, successors and assigns, from all causes of action...whatsoever, in law, ... or equity which against the release... ever had, now have or hereinafter can, shall or may, have..." is unambiguous); NTA, Inc. v.

Tableua Television, Ltd., 169 N.Y.S.2d 395, 396-397 (Sup. Ct. N.Y. Cnty. Nov. 18, 1957) (similar release language plus the words "from the beginning of the world" also found to be specific and clear).

Almah argues that since AIG was not a party to the Settlement Agreement and the "past tense statement" in the Settlement Agreement was "erroneous" and not intended to cover any rights or obligations that AIG assumed after the assignment of the lease. See Opp. Br. at 8. This argument is unavailing. It is proper that "the coverage of a release necessarily depends, as in the case of contracts generally, upon the controversy being settled and upon the purpose for which the release was actually given." Long v. O'Neill, 126 A.D.3d 404, 406 (1st Dept. 2015) citing Cahill v. Regan, 5 N.Y.2d 292 (1959). If the language of a release specifically includes an "exhaustive list of the entities who the release covered, as well as broad sweeping language, [it indicates] that the parties 'intended to leave no loose ends.'" Long, 126 A.D.3d at 407. The purpose of the release must also be taken into consideration in order to ensure that the language is not "reasonably susceptible of more than one interpretation" because a party "cannot now be heard to say that he did not intend to release what the contract language says he is releasing." Id.

Although plaintiff relies on Cahill for the proposition that a release should be construed in its appropriate "business context" and only cover matters that were actually in dispute, plaintiff's interpretation of Cahill is misconstrued. In Cahill, the

general release dealt exclusively with a replevin action of a piece of machinery while the cause of action at issue after the release was about whether the employer had an assignment or at minimum a "shop right" of a patent to an invention made by the employee. Cahill, 5 N.Y.2d at 296-298. There were two completely different disputes between the parties in Cahill because the release was settled more than a year before the patent was ever issued to the employee. Id. at 299.

Cahill stands for the proposition that "a release may not be read to cover matters which the parties did not desire or intend to dispose of." Id. However, the facts here are readily distinguishable. The Goldman "Releasees" included, *inter alia*, any "predecessors, successors, transfers, and assigns" whereby each party "irrevocably and unconditionally release and forever discharge" all claims *arising out of the lease or relating to the premises*. It would now be contradictory for plaintiff to assert that the release in the Settlement Agreement would not cover a claim that accrued from Goldman as the original tenant under the same lease even though the Settlement Agreement was initially over a commission fee. The Settlement Agreement was entered into for the purpose of discharging one another from future litigation over the same property five years after the lease was assigned to AIG with knowledge by both parties. See Settlement Agreement, p. 1 Recitals ("GS Parties and Almah now wish to memorialize their agreement concluding and resolving *any* and *all* disputes regarding the Action, the Lease or the Premises and

enter into this Agreement freely"). A merger clause stipulating the "entire agreement" of the parties is also present in the Settlement Agreement. See Settlement Agreement, p. 6 §11(f).

Section 5 of the Settlement Agreement is not only clear and unambiguous but also specific. Almah and Goldman agreed to bar any claim "arising out of or relating to the Lease [or] the Premises" from further litigation. The timetable for the release makes it readily apparent that no past, present, or future matter between the parties and its affiliates concerning 180 Maiden Lane can establish any kind of future liability so long as the cause of action accrued prior to the date of the agreement. The release provisions contain explicit language such as the words "irrevocably", "unconditionally", "all known and unknown claims, causes of actions, damages, and compensation whatsoever, of whatever kind…" in order to make the intent of the parties unambiguous.

Under the clear terms of the release, any causes of action that existed at the time of the signing of the release and that relate to the lease or the premises are barred. In the complaint, plaintiff alleges that AIG ceased to properly operate the cafeteria on October 1, 2013. Compl. ¶36. Therefore, this cause of action, existed at the time of the signing of the release and related directly to the lease and the premises. Plaintiff is barred from bringing this cause of action under the clear and

unambiguous language of the release. Accordingly, defendants' motion to dismiss plaintiff's fourth cause of action is granted.

As to the busway claims, it is undisputed that the claim arises from the lease and is part of the premises. See Compl., ¶¶10-12, 18. Almah alleges in its complaint that the damage to the busways began upon the improper installation in 2000 and 2001. See Compl, ¶16. This damage allegedly occurred over the course of many years and was incapable of being maintained by either tenant. Id. Therefore, any damages arising under the fourth cause of action and related to the improper installation and improper maintenance of the busways is barred under the express terms of the release because it existed prior to the execution of the release and was contemplated by the parties.

Finally, plaintiff alleges that it is entitled to damages that relate to AIG's failure to leave the busways in "good condition" upon the surrender date as required under the lease. However, the release clearly states that AIG is released from "any and all known and unknown claims, demands, actions, causes of action, rights, damages, costs expenses and compensation…through the date of [the] Agreement…" Settlement Agreement, §5(a). In its complaint, plaintiff admits that the damages to the busways existed at the time of the release's execution. Therefore, plaintiff is precluded from alleging any claims for damages related to AIG's failure to leave the busways in "good condition".

Additionally, released claims can include future claims that mature after the execution of the settlement agreement. See Vornado Realty Trust v. Marubeni Sustainable Energy, Inc., 987 F.Supp.2d 267, 278 (E.D.N.Y. 2013). It is well settled "that a general release is to be construed most strongly against the releaser." Id. When the release contains clear language that shows intent to cover *any* and *all* claims that have happened or may occur in the future arising out of the same matter, a court will find the general release to be unambiguous and uphold it. Id. Section 6 of the Settlement Agreement states

> each of the Almah Releasors shall forever refrain, and is hereby estopped from instituting, prosecuting, asserting or otherwise pursuing or pressing against any of the GS Releasees any of the Almah Released Claims, whether by direct claim, cross-claim, counterclaim, appeal, or otherwise.
>
> Settlement Agreement §6(a).

This court has already found that the language of the release is clear and unambiguous. A release "should never be converted into a starting point for renewed litigation except under circumstances and under rules which would render any other result a grave injustice." Mangini v. McClurg, 24 N.Y.2d 556, 563 (1969). The present action arises out of the busways that were originally installed by Goldman in the building, and it clearly falls under the purview of section 6 of the Settlement Agreement. See also Settlement Agreement, §§5(a) and (b). Since the release is clear

and unambiguous, any damages to the busways were contemplated by the parties at the time of executing the release.

Accepting the allegations of the complaint as true and providing plaintiff the benefit of every possible favorable inference, as this court must on a motion to dismiss, plaintiff's claims are barred by the release. See AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co., 5 N.Y.3d 582 (2005). The release contained in the Settlement Agreement was "voluntarily entered into by the parties, it was unambiguous on its face, and its coverage was not limited to particular claims." Trama v. Eugene & Shirley Drach Realty Corp., 37 A.D.3d 454, 455 (2d Dept 2007). Almah is barred from seeking damages related to AIG's alleged failure to return the busways in good working condition.

Therefore, AIG's motion to dismiss plaintiff's first and fourth causes of action is granted.

Accordingly, it is hereby

ORDERED that AIG's motion to dismiss plaintiff's first cause of action is granted; and it is further

ORDERED that AIG's motion to dismiss plaintiff's fourth cause of action is granted.

Date: May 23, 2017
New York, New York

Anil C. Singh