

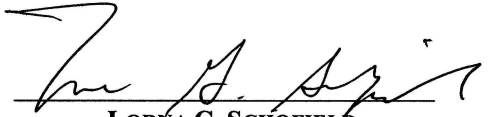
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Application DENIED. No circumstances warrant changing the prior ruling. With or without such a motion, AvalonBay represents that it will have to establish that the Master Agreement is valid and enforceable. The adjudication of that issue will be law of the case. At that time, AvalonBay may renew its request to seek summary judgment on the issue of contractual indemnification by Judy Painting.

VIA CM/ECF

The Honorable Lorna G. Schofield
United States District Court for the
Southern District of New York
500 Pearl Street, Room 640
New York, New York 10007

Dated: January 15, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Re: Kiss v. Clinton Green North, LLC, et al.
Docket No. 17 Civ. 10029 (LGS)
Newman Myers Ref. No.: NABV 22303

Dear Judge Schofield:

We represent Defendants Clinton Green North, LLC, Dermot Clinton Green, LLC and AvalonBay Communities, Inc. and Third-Party Plaintiff Clinton Green North, LLC (collectively "AvalonBay") in the above-referenced matter. Per the instructions from Your Chambers we are seeking permission to file a Cross-Motion for Summary Judgment in this matter.

By way of background, pursuant to the Court's Brief Scheduling Order, [Dkt. #159], on January 10th Third-Party Defendant, Judy Painting Corp. ("Judy Painting") filed its Motion for Summary Judgment, in which it argued that AvalonBay's contractual indemnification claim against Judy Painting must be dismissed because the Operational Master Services Agreement (the "Master Agreement") between the parties is not valid and is unenforceable. [Dkt. # 166 at pp. 21-25]. To address this, AvalonBay must establish that the Master Agreement is valid and enforceable - the very arguments that AvalonBay would make if it filed a Cross-Motion for Summary Judgment. As the Court will recall, AvalonBay previously requested permission to file a Motion for Summary Judgment seeking contractual indemnification from Judy Painting [Dkt. # 163]. The Court allowed Judy Painting to file an Opposition, [Dkt. # 164], wherein Judy Painting argued that AvalonBay's request was untimely. In its Order dated December 16, 2019, the Court agreed with Judy Painting that AvalonBay's request was untimely and on that basis denied AvalonBay's request to file a Motion for Summary Judgment for contractual indemnification. [Dkt. # 165].

Exhibit A

