

Blue Fountain Media, Inc. v Metasense, Inc.
2013 NY Slip Op 31405(U)
June 21, 2013
Sup Ct, NY County
Docket Number: 154454/12
Judge: Joan A. Madden
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MADDEN Justice

PART 11

Index Number : 154454/2012
BLUE FOUNTAIN MEDIA INC.
vs.
METASENSE INC.
SEQUENCE NUMBER : 001
OTHER RELIEFS

INDEX NO.
MOTION DATE
MOTION SEQ. NO. 001

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 decided in accordance with the annexed Memorandum Decision and order.

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

Dated: June 21, 2013

[Signature], J.S.C.

- 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

-----X
BLUE FOUNTAIN MEDIA, INC. INDEX NO. 154454/12

Plaintiffs,

- against -

METASENSE, INC. and ALYSIA ANTONELLI,

Defendants.

-----X
JOAN A. MADDEN, J

Plaintiff Blue Fountain Media, Inc. (“Blue Fountain”) moves for an order granting a preliminary injunction enjoining defendants’ use of Blue Fountain’s records and trade secrets, including client lists, potential client lists, client databases, and any other confidential or proprietary information. Defendant Metasense, Inc. (“Metasense”) opposes the motion and cross moves to dismiss the complaint for lack of personal jurisdiction, for failure to state a cause of action, and based on documentary evidence.¹ For the reasons set forth below, Blue Fountain’s motion is denied, and Metasense’s cross motion is granted in part and denied in part.

Background

Blue Fountain is a corporation engaged in website design and marketing. Metasense is a competitor of Blue Fountain in the field of website design and marketing. Defendant Alysia Antonelli (“Antonelli”) held the position of Associate Business Consultant at Blue Fountain from April 1, 2011 to February 10, 2012. During the course of her employment at Blue Fountain, Antonelli allegedly had access to Blue Fountain’s

¹Defendant Alysia Antonelli failed to answer or otherwise respond to the complaint and by order dated May 6, 2013, this court granted Blue Fountain’s motion for a default judgment against Alysia Antonelli to the extent of setting the matter down for an inquest and assessment at the time of trial.

client database, and Client Relationship Manager (“CRM”), which contains information regarding Blue Fountain’s current and potential customers.

Blue Fountain alleges that it intended to keep the CRM list secret and took significant measures to guard the secrecy of the CRM list by maintaining password protection. It further alleges that the information, procedures and methods constituting the CRM list are not ascertainable outside Blue Fountain’s organization, have always been treated as proprietary and confidential, and constitute proprietary information and trade secrets.

This action seeks, *inter alia*, damages and a permanent injunctive based on allegations that Metasense obtained its proprietary and confidential information after Matasense hired Antonelli as its employee. Specifically, Blue Fountain alleges that Antonelli became an employee of Metasense after her termination from Blue Fountain. She was allegedly hired as “President of Business Development.” Blue Fountain alleges that during her time of employment at Metasense, Antonelli violated her employment contract with Blue Fountain by contacting many of Blue Fountain’s clients and potential clients, via emails and/or phone calls.

In addition to a claim for a permanent injunction, Blue Fountain alleges the following causes of action against defendants: (1) misappropriation of trade secrets against all defendants; (2) breach of contract against defendant Antonelli; (3) tortious interference with contract against defendant Metasense; (4) unfair competition against all defendants; (5) defamation against all defendants; (6) tortious interference with economic relations against all defendants; (7) unjust enrichment against all defendants; and (8) trespass to chattels against all defendants.

Motion for a Preliminary Injunction

Blue Fountain moves for a preliminary injunction, enjoining defendants from using its records and trade secrets, including client lists, potential client lists and CRM list information and/or other confidential or proprietary information of Blue Fountain. In

support of its motion, Blue Fountain submits the affirmation of its counsel Rebecca Adhoot, who alleges that Antonelli called Blue Fountain's clients and/or potential clients using the pseudonym "Lisa Janowitz" and stated that she "works for a subsidiary of Blue Fountain Media," but that "Blue Fountain Media overcharges its customers" and that the clients "would be better suited to work with" Antonelli's current employer.

Blue Fountain also submits an employment agreement entered into between it and Antonelli at the start of Antonelli's employment on April 1, 2011, under which, *inter alia*, Antonelli agreed to keep certain information, including information regarding customers confidential² and to not solicit Blue Fountain's customers while she was employed and for three years thereafter.³

² Paragraph 4 of the Employment agreement, entitled Confidential Information, states, in part, that:

(a) Employee agrees that all business, technical, creative and financial information Employee learns or obtains during Employee's employment with the Company that relate to the Company or its clients or that are received by or for the Company in confidence, constitute "Confidential Information." By way of example, and not limitation, Confidential Information means Company's corporate books and records, financial information, personnel information, data, lists of and information concerning customers....

(b) Employee agrees, upon termination of his or her employment with Employer or upon the written request of company, whichever is earlier, to promptly deliver to Company all records, notes, and other written, printed, or tangible media or materials in possession of Employee, embodying or pertaining to the Confidential Information, or, if requested by the Company, to destroy such information.

³ Paragraph 5 of the Employment Agreement, entitled No Solicitation of Customers or Employees, provides that:

During the term of Employee's employment, and for a period of three (3) years thereafter, Employee will not, directly or indirectly, whether as an employee, employer, consultant, or in any other capacity, and whether for Employee or another's benefit (a) engage or solicit (other than in the performance of the employee's

Blue Fountain also relies on an email from Antonelli to a business contact dated April 11, 2012, showing Antonelli's contact information at Metasense and on an email dated March 22, 2012, from a prospective client describing a telephone call she received from "Lisa Janowitz," on March 19, 2012. The prospective client states, "I don't know how she [i.e. Antonelli] got my contact information and I find it very strange that she knew all of the information that I placed in your contact form. She must have access to either your leads or the email account that the contact us form is being sent to."

Metasense opposes the motion, arguing, *inter alia*, that the names and identities of Blue Fountain's potential customers are in the public domain. Metasense also denied that it was given any information obtained by Antonelli, who, it asserts, was not an employee of Metasense, but an independent sales representative with no position of authority or direct oversight or control by the company. Metasense also states that it terminated Antonelli's independent contractor agreement after 35 days as a result of Antonelli's conduct. In support of its position, Metasense submits a copy of an April 5, 2012 agreement identifying Antonelli as "an independent sales representative," and stating that she is "an independent contractor and not an employee." Metasense also

employment duties with Company) with any of Company's customers who were at such time during Employee's employment with Company to induce them to cease doing business with Company, or; or (b) induce, persuade or otherwise cause (or attempt to induce, persuade or otherwise cause) any of Company's employees or representatives (or an employee of Company's representative) to terminate his or her employment or relationship with a view to joining Employee or any business, firm, partnership, individual, corporation or other entity with which Employee may at any time be associated, directly or indirectly, in any individual or representative capacity as described in this Paragraph. Any such employee or representative (or employee of a representative) who, within such three (3) year period, terminates with Company and joins Employee or any such other entity, shall be presumed to have been solicited or induced by Employee in violation of this Paragraph.

asserts that the email from the client complaining about “Lisa Janowitz’s” conduct was dated March 22, 2012, which is before it entered into an agreement with Antonelli.

In support of its opposition, Metasense submits the affidavit of its Chief Executive Officer, Sushanta Basu. Basu states that Antonelli was an outside/independent contractor who worked, “without my company’s approval, oversight, direction, control or acquiescence.” (Basu Affidavit at 1). Basu asserts, “[n]either Metasense, Inc., nor any of its officers, principals, employees, etc. had any notice or knowledge that defendant Antonelli was claiming to be and holding herself out as ‘President of Business Development,’ nor was she entitled to do so by the terms of her contract.” (Basu Aff. at 3). Basu also states, “Metasense Inc. did not obtain any information identifying plaintiff’s clients or proprietary information from or as a result of defendant Antonelli’s activities or conduct.” (Basu Aff. at 3). Basu further asserts, “[a]dditionally, Metasense, Inc. engages partially in the business of web design, which field has clients in multiple locations such that granting an injunction of contacting one such client blindly, without any information received from plaintiff’s customer lists is a very real possibility as such names are within the public domain.” (Basu Aff. at 3).

A preliminary injunction is a drastic remedy, and thus should not be granted unless the movant demonstrates “a clear right” to such relief. City of New York v. 330 Continental, LLC, 60 AD3d 226, 234 (1st Dep’t 2009); Peterson v. Corbin, 275 AD2d 35 (2d Dep’t 2000), lv dismissed, 95 NY2d 919 (2000). Entitlement to a preliminary injunction requires a showing of (1) the likelihood of success on the merits, (2) irreparable injury absent the granting of preliminary injunction relief, and (3) a balancing of the equities in the movant’s favor. CPLR 6301; Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 NY3d 839 (2005); Aetna Ins. Co. v. Capasso, 75 NY2d 860 (1990). If any one of these three requirements is not satisfied, the motion must be denied. Faberge Intern., Inc. v. Di Pino, 109 AD2d 235 (1st Dep’t 1985). Moreover, “[p]roof establishing

these [requirements] must be by affidavit and other competent proof with evidentiary detail.” Scott v. Mei, 219 AD2d 181, 182 (1st Dep’t 1996).

On the record before this court, Blue Fountain has failed to establish likelihood of success on the merits and thus is not entitled to a preliminary injunction. Next, while Blue Fountain alleges that Antonelli made numerous telephone calls and sent emails to its clients and potential clients, the only evidence Blue Fountain provides in support of these allegations is a single email from a Blue Fountain client, stating that “Lisa Janowitz” called her on March 19, 2012 after obtaining access to Blue Fountain’s proprietary information. Moreover, this email is dated March 22, 2012, or before Antonelli entered into a business relationship with Metasense in April 2012 and makes no reference to Metasense. The other email simply identifies Antonelli as being associated with Metasense based on contact information. Under these circumstances, Blue Fountain has not submitted sufficient proof to demonstrate that it is likely to succeed on its claim that Metasense used its confidential information, and its motion for a preliminary injunction is denied.

Metasense’s Motion to Dismiss

a. Personal Jurisdiction

Metasense moves to dismiss on the ground that Blue Fountain lacks personal jurisdiction over it, since Metasense is a New Jersey corporation and its sporadic solicitation of business within the State of New York is insufficient to confer jurisdiction over it, especially as its allegedly tortious conduct alleged bears little connection to the terms of the underlying agreement with Antonelli.

In support of its cross-motion, Metasense relies on statements in Basu’s affidavit that Metasense is a New Jersey corporation, is wholly owned by New Jersey residents, and has its offices in New Jersey. Basu also states that Metasense has no offices or locations in New York, has never advertised its services in New York, and has not

availed itself of the laws of the State of New York. He further notes that the Metasense's agreement with Antonelli is governed by the law of the State of New Jersey.

In opposition to the cross motion, Blue Fountain argues that Metasense is subject to jurisdiction in New York as its website is highly interactive and as it committed a tort outside of the state affecting plaintiff, a New York corporation, while deriving substantial revenue from interstate commerce such that it is "doing business" in New York for the purposes of CPLR 301 and subject to long arm jurisdiction under CPLR 302(a)(1). Specifically, Blue Fountain alleges that Metasense's website is highly interactive, which allows it to interact, interface, and conduct business with New York residents based upon the following features: (a) the blog page, which provides information and constantly updated blog entries to inform clients; (b) the login page for customers, which contains a document manager to approve, review, or publish critical documents; (c) the request a quote page, which allows potential customers to submit inquiries with specific information regarding their identities and project specifications; (d) the contact us page; and (e) the pages containing specific information regarding services provided by Metasense. Blue Fountain claims the interaction on the website is "both significant and unqualifiedly commercial in nature" because the website provides information that is useful to customers, contains a customer login whereby a customer can approve, review, and publish documents, allows potential customers to contact Metasense employees, and allows potential customers to request quotes.

Blue Fountain's argument that there is personal jurisdiction over defendants under the "doing business test" provided by CPLR 301, based on Metasense's interactive website, is unavailing. "A foreign corporation is amenable to suit in New York under CPLR 301 if it has engaged in such a continuous and systematic course of 'doing business' here that a finding of 'presence' jurisdiction is warranted." Lanoil Resources Corp. v. Alexander & Alexander Services, Inc., 77 N.Y.2d 28, 33-34 (1990). Here, Metasense's interactive website, permitting New York customers to obtain information,

communicate with Metasense, and edit and approve their documents, is insufficient to establish jurisdiction under CPLR 301, in the absence of evidence that the website allowed customers to purchase goods and services or other evidence of its systematic course of business in New York. See Arouh v. Budget Leasing, Inc., 63 AD3d 506 (1st Dept 2009)(holding that “Defendant's website, which described available cars and featured a link for email contact but did not permit a customer to purchase a car, was not a projection of defendant into the State”); Haber v. Stadium, Inc., 22 Misc.3d 1129(A)(Sup Ct NY Co. 2009)(finding that interactive website, which, *inter alia*, provided a forum for customers to ask and receive answers to questions and a vehicle to obtain a price quote from defendant was insufficient to satisfy the “doing business” test under CPLR 301 when the website did not enable user to order or purchase products and a relatively limited volume of business was generated in New York); compare, Thomas Publishing Company v. Industrial Quick Search, Inc., 237 F. Supp 489, 492 (SD NY 2002)(finding defendant did business in New York based on allegations that defendant regularly solicited business in New York through interactive website, lists 269 New York entities on the website, contacted 75 sales associates in New York, and features 75 paid advertisers from New York).

On the other hand, courts have held that a foreign corporation transacts business in New York for the purposes of establishing long arm jurisdiction under CPLR 302(a)(1), by maintaining Internet websites allowing New York residents to communicate on line. Citigroup, Inc. v. City Holding, Inc., 97 F. Supp.2d 549 (SD NY 2000); Deer Consumer Prods., Inc. v. Little Group, 35 Misc3d 374 (Sup Ct NY Co. 2012). The long arm statutes also requires “an articulable nexus between the business transacted and the claim.” McGowan v. Smith, 52 NY2d 268 (1981).

Here, the record raises factual questions as to whether this court has long arm jurisdiction over Metasense. In particular, in opposition to the dismissal motion Blue Fountain raises factual questions as to whether long arm jurisdiction may be exercised

over Metasense under CPLR 302(a)(1) based on the interactive nature of the Metasense website,⁴ and the potential nexus between Metasense's business transactions and its claim that Metasense misappropriated Blue Fountain's proprietary information and customer lists for the purposes of conducting such business.

Next, as Blue Fountain argues, Metasense is potentially subject to personal jurisdiction pursuant to CPLR 302(a)(3)(ii) based on allegations that Metasense allegedly committed a tort outside the state which affects Blue Fountain, a New York corporation, with New York clients, and that it derives substantial revenue from interstate commerce based on its website which shows that it does business with clients throughout the United States.

As there are factual questions as to whether Blue Fountain can exercise long arm jurisdiction over Metasense, this issue will be referred to a Special Referee to hear and report with recommendations as directed below.

Failure to State a Cause of Action

Metasense also moves to dismiss the complaint for failure to state a cause of action. On a motion pursuant to CPLR 3211(a)(7), the court is limited to ascertaining whether a pleading states any cause of action and not whether there is any evidentiary support for the complaint. Guggenheimer v. Ginzburg, 43 NY2d 268, 275 (1977). The complaint must be liberally construed in a light most favorable to the plaintiff, and all factual allegations must be accepted as true. Id. At the same time, "[i]n those circumstances where the legal conclusions and factual allegations are flatly contradicted by documentary evidence, they are not presumed to be true or accorded every favorable inference," and dismissal is appropriate pursuant to CPLR §3211(a)(1). Ark Bryant

⁴Based on this record, it cannot be determined if the website is highly interactive or occupies a middle ground in which case "the exercise of jurisdiction... is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site." Deer Consumer Products v. Little, 35 Misc3d at 385.

Park Corp. v Bryant Park Restoration Corp., 285 AD2d 143, 150 (1st Dep't 2001)(internal citations omitted). In such cases, the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one." Id., quoting, Guggenheimer v. Ginzburg, 43 NY2d at 275. However, dismissal based on documentary evidence may only result when the documentary evidence "utterly refutes [a] plaintiff's 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).

As a preliminary matter, while the agreement between Antonelli and Blue Fountain identifies Antonelli as "an independent sales representative," and the agreement states that she is retained as "an independent contractor and not an employee" such language is insufficient to establish that Antonelli was an independent contractor. Areneo v. Town Bd. for Town of Clarkstown, 55 AD3d 516, 519 (2d Dept 2008)(noting that "[t]he fact that a contract exists designating a person as an independent contractor is to be considered, but is not dispositive"). Rather, "the determination of whether [Antonelli] is an employee or an independent contractor requires examination of all aspects of the arrangement between the parties." Id., at 518. The court also notes that the verified complaint seeks to hold Metasense liable for its own acts in addition to those committed by Antonelli, and alleges that those acts continued after it terminated Antonelli's employment.

Next, contrary to Metasense's position, the complaint adequately states causes of action for a permanent injunction based on allegations that Metasense misappropriated Blue Fountain's proprietary and confidential information, and that such use will result in irreparable damage. See generally, U.S. Reins Corp. v. Humphreys, 205 AD2d 187 (1st Dept 1984). Likewise, the complaint adequately states a claim for misappropriation of trade secrets based on allegations of Metasense's use of Blue Fountain's customer lists, CRM lists and other proprietary and confidential information. In this connection, while Metasense denies that the information is entitled to trade secret protection, at this early

stage of the proceeding, this determination cannot be made as a matter of law. Ashland Mgt. v. Janian, 82 NY2d 395, 407 (1993)(whether information constitutes a trade secret is generally a question of fact).

The cause of action for tortious interference with contract is also adequately stated as it alleges the existence of a valid contract between Antonelli and Blue Fountain, Metasense's knowledge of the contract, its intentional procurement of its breach without justification and damages. Foster v. Churchill, 87 NY2d 744, 749-750 (1996). While Metasense asserts that it is speculation as to whether it knew of the contract and asserts that Antonelli committed her wrongful acts before Matasense's hired her, such assertions do not provide a basis for dismissal prior to discovery..

As for the claim for tortious interference with prospective business relations, Metasense argues that it must be dismissed as Antonelli's wrongful conduct occurred before Metasense was involved in the matter. However, as with the tortious interference claim, it is premature to dismiss the tortious interference with prospective business relations claim prior to discovery as the complaint adequately alleges that Metasense intentionally used wrongful means to interfere with prospective business relationships with clients. See WFB Telecom., Inc. v. NYNEX Corp., 188 AD2d 257 (1st Dept 1992), lv denied, 81 NY2d 709 (1993).

The unfair competition claim likewise cannot be dismissed at this juncture as the complaint adequately pleads such a claim based on various allegations, including that Antonelli emailed Metasense Blue Fountain's client list. See ITC Ltd. v. Punchgini, Inc., 9 NY3d 467, 476 (2007)(A claim of unfair competition sounding in misappropriation usually concerns the taking and use of [a party's] property to compete against the [party's] own use of the same property..). Moreover, while Metasense denies it knew of Antonelli's wrongful conduct, Blue Fountain is entitled to discovery with respect to this issue as to whether Metasense was involved in, or benefitted from, Antonelli's alleged conduct.

The defamation claim is based on the March 22, 2012 email from a Blue Fountain client who reported that “Lisa Janowitz” called her and told her that “Blue Fountain Media overcharges its customers.” Metasense argues that it cannot be held responsible for the statement as it pre-dated its contract with Antonelli and, in any event, Antonelli is an independent contractor and therefore it cannot be held liable for her statements. Although Metasense cannot be held liable for a tort committed by Antonelli outside the scope of her employment (Carnegie v. J.P. Phillips, Inc., 28 AD3d 599 (2d Dept 2006)), Blue Fountain is entitled to discovery with respect to the issues of when Antonelli’s relationship with Metasense began and whether Antonelli was an employee or an independent contractor.

The unjust enrichment claim alleges that defendants have been unjustly enriched by their conduct. To prevail on a claim of unjust enrichment, the plaintiff must establish that (1) the other party was enriched, (2) at that party’s expense, and (3) that it is against good conscience and equity to permit the other party to keep what is sought to be recovered. Cruz v McAneney, 31 AD3d 54, 59 (2d Dept 2006). Moreover, in order to plead unjust enrichment, it must be alleged that the relationship between the parties “could have caused reliance or inducement” by the plaintiff. Mandarin Trading Ltd v. Wildenstein, 16 NY3d 173, 182 (2011). Here, as there is no relationship between Blue Fountain and Metasense that would have induced reliance, it cannot be said that the enrichment was unjust. Id. Accordingly, the cause of action for unjust enrichment as against Metasense must be dismissed.

As for the claim for trespass to chattels, such claim “consists of intentionally dispossessing another of the chattel or using or intermeddling with a chattel in another’s possession.” Hecht v. Components International, Inc., 22 Misc3d 360, 369 (Sup Ct Nassau Co. 2008), citing Restatement (Second) of Torts § 217; see also, School of Visual Arts v. Kuprewicz, 3 Misc3d 278 (Sup Ct New York Co. 2003). Here, the

allegations in the complaint are insufficient to state a claim for trespass to chattel based on allegations the customer information was taken from Blue Fountain.

In view of the above, it is

ORDERED that plaintiff Blue Fountain Media, Inc.'s motion for a preliminary injunction is denied; and it is further

ORDERED that the cross motion by Metasense Inc. to dismiss for failure to state a cause of action is granted only to the extent of dismissing the eighth cause of action against it for unjust enrichment and the ninth cause of action for trespass to chattels; and it is further

ORDERED that the cross motion by Metasense Inc. to dismiss for lack of personal jurisdiction is granted to the extent of finding that there is no jurisdiction over Metasense under the "doing business test" provided by CPLR 301, and the issue of whether long arm jurisdiction exists under CPLR 302(a)(1) and/or CPLR 302(a)(3)(ii) is hereby referred to a Special Referee to hear and report with recommendations, and this reference shall include authority to determine the nature and extent of any discovery that may be needed prior to a hearing on this issue; and it is further

ORDERED that the powers of the Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@court.state.ny.us) for placement at the earliest possible date on calendar of the Special Referee Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the References link under Courthouse procedures); and it is further

ORDERED that within 20 days of this decision and order, counsel for defendant Matasense shall submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at the References link of the Court website) containing all the information called for therein and that, as soon as practical thereafter,

the Special Referee Clerk shall advise counsel of the date fixed for the appearance on the matter upon the calendar of the Special Referee Part; and it is further

ORDERED that the parties shall appear at the hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed on the date fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee Part in accordance with the rules of that Part; and it is further

ORDERED that the hearing shall be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320(a))(the proceeding will be recorded by a court reporter, the rules of evidence apply, etc) and, except as otherwise directed by the assigned Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completed; and it is further

ORDERED that the motion to confirm or reject the Report of the Special Referee shall be made within the time specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

DATED: June 27, 2013



J.S.C.