Lion Bee Equities LLC v Citibank N.A.
2018 NY Slip Op 31733(U)
March 26, 2018
Supreme Court, New York County
Docket Number: 652033/2016
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SALIANN SCARPULLA** **PART 39**
Justice

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LION BEE EQUITIES LLC,

Plaintiff,

- v -

CITIBANK N.A.,

Defendant.

---X

INDEX NO. 652033/2016

MOTION DATE 8/4/2016

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80

were read on this application to/for Judgment - Summary.

Upon the foregoing documents, it is

In this action for, inter alia, breach of contract, defendant Citibank N.A. ("Citibank") moves for summary judgment dismissing the complaint of plaintiff Lion Bee Equities LLC ("Lion Bee") and for summary judgment on its counterclaims.

Lion Bee was the owner of real property located at 252-29 Northern Boulevard, Little Neck, New York (the "Premises"). On November 12, 2012, Lion Bee entered into a written lease agreement for the Premises with Citibank (the "Lease"). The Lease term

was for a period of ten years (with the right to extend the Lease for four consecutive terms of five years each) and provided that landlord Lion Bee was to construct a new building for a retail bank in accordance with specifications provided by tenant Citibank.

A letter attachment to Exhibit C of the Lease, entitled "Landlord's Required Work," stated that "Landlord shall be required to perform the following work in accordance with Tenant plans, specifications and procedures reasonably approved by Tenant at Landlord's sole cost and expense." It further provided:

> 6. Floors: 1) Floor shall be able to withstand a minimum 100 pound per square foot live load capacity....2) structural slab SHALL BE A LEVEL AND smooth surface, free of any defects and ready for Tenant's finishes.
>
> ***
>
> 11. HVAC: 1) Landlord shall provide means and connection for fresh air intake, toilet exhaust as required by applicable codes within demised premises for Tenant to connect to... 2) Landlord shall provide new steel dunnage on the roof to house new HVAC units and roof penetrations for supply and return ductwork as per Tenant's design and specification.
>
> ***
>
> All items listed above shall be delivered to Tenant prior to the date Tenant accepts possession of the demised premises.

In section 1.3, the parties agreed that the "Commencement Date" of the Lease was the date that

> all of the following have occurred (and Landlord has provided Tenant with not less than 30 days notice of the date Landlord reasonably anticipates that all of the following shall occur): (x) Landlord has delivered actual possession of the Premises to Tenant, broom clean and free of all leases and occupants, other than this Lease; (y) Landlord's Work (as defined in Section 1.13) has been substantially completed (subject only to minor punchlist items of a cosmetic nature approved by Tenant)... and Landlord has obtained and delivered to Tenant a temporary certificate of occupancy for the Premises which shall be conditioned only upon Tenant's completion of Tenant's Initial Work... and not on the completion of any unfinished items of Landlord's Work or the cure of any violations of Law...

Further, the Lease set the "Outside Commencement Date" as July 31, 2014 and stated that

> if the Commencement Date shall not occur on or before the Outside Commencement Date, then until the Commencement Date occurs, Tenant shall have the right to terminate this Lease, by notice to Landlord, whereupon this Lease shall terminate, and Landlord and Tenant shall have no further obligations or liabilities under this Lease…except that Landlord shall reimburse Tenant for its reasonable out-of-pocket costs in connection with this Lease (including architectural and legal fees and costs to pursue the Banking Approvals and Tenant's Permits) up to but not exceeding $50,000. …Notwithstanding the foregoing, if the Landlord's Work relating to the Building is at least 80% completed by the Outside Commencement Date, then Tenant shall not have the right to terminate this Lease so long as all Landlord's Work is substantially completed (and the Commencement Date occurs) by not later than 60 days after the Outside Commencement Date (failing which, Tenant shall have the right to terminate this Lease as aforesaid), but Tenant's remedies in the foregoing clauses (a) and (b) shall remain in full force and effect during such 60 day period and thereafter, until the Commencement Date occurs.

Lion Bee alleges that, because there were delays in obtaining approvals for a temporary certificate of occupancy ("TCO"), the parties orally agreed to extend the Commencement Date to "such time as the TCO was approved by the Buildings Department of the City of New York." Lion Bee alleges that construction on the Premises continued, at Citibank's request, beyond July 31, 2014.

In August 2015, Citibank sent a letter to Lion Bee which included an extensive list of items for Lion Bee to address before Citibank could occupy the Premises. In that letter Citibank also stated that

> Tenant hereby reserves all rights and remedies which may be available to it pursuant to law, in equity, or under the Lease, *including without limitation the right to terminate the Lease and seek reimbursement of [Citibank's] out-of-pocket costs and prepaid rent, together with interest thereon.*

(Emphasis supplied.)

Lion Bee claims that it addressed all the items listed in the August letter, but Citibank sent a second uncompleted items list, containing 14 items, to Lion Bee in September 2015 (the "September punch list"). Further, Citibank stated that "Citibank will not be able to take possession even upon your receipt of the TCO, unless and until these 1-14 items are also resolved." Lion Bee allegedly completed the September punch list items and obtained a TCO in October 2015.

On October 26, 2015, Citibank sent an email to Lion Bee advising it that Citibank would not take possession of the Premises, notwithstanding that Lion Bee had obtained the TCO, until the resolution of three remaining "basic/major issues." One of the issues concerned leveling the floor and two issues concerned the HVAC, all of which were part of the Landlord's Required Work under the Lease.

In response, Lion Bee stated that it had "provided a space that satisfied both DOB and the lease." Lion Bee also stated that the floor leveling issue was being addressed, and it suggested a resolution to the HVAC issues. Citibank again responded that the three issues had to be resolved before it would take possession of the Premises.

Afshin Hedvat ("Hedvat"), the managing member of Lion Bee, sent an email to William Hammond ("Hammond"), a Vice President of Citibank, dated November 10, 2015, asking "[p]lease give me an update regarding taken [sic] possession of the space. The comments to the installation of your new units was sent to you last week." An email, dated November 12, 2015, from Hedvat to Hammond, stated "[p]lease take note that the floor has been patched and leveled."

Citibank informed Lion Bee that it still could not take possession, in an email dated November 27, 2015, based on the results of a November 17th site visit which revealed several unresolved items.

On December 4, 2015, Citibank sent Lion Bee a letter reminding Lion Bee that it had "failed to deliver to [Citibank] the Premises in the condition required by the Lease, which was to have occurred not later than the Outside Commencement Date of July 31, 2014." Citibank continued that it "hereby reserves all rights and remedies which may be available to it pursuant to law, in equity or under the Lease, including without limitation the right to terminate the Lease and seek reimbursement of . . . out-of-pocket costs and prepaid rent, together with interest thereon."

Meanwhile, from November 1, 2014 through June 30, 2015, Citibank sent rental payments to Lion Bee even though the Commencement Date had not yet occurred. Citibank discovered its error in July 6, 2015 and demanded that Lion Bee return its payments of $213,333.36 (the "Prepaid Rent").

The parties entered into a letter agreement, dated December 11, 2015 (the "Prepaid Rent Agreement"), which begins by noting that "despite the fact that neither the Commencement Date nor the Rent Commencement Date has occurred pursuant to the Lease," Citibank sent payments to Lion Bee. According to the Prepaid Rent Agreement, if the Lease terminated before full repayment of the Prepaid Rent, then Lion Bee was to repay the remaining balance of the Prepaid Rent within thirty days. The Prepaid Rent Agreement also provided that "[u]ntil the Prepaid Rent is fully repaid or offset against

Rent, whichever first occurs, [Citibank] may exercise any and all remedies in connection with the Prepaid Rent available to it under the Lease, at law or in equity."

On January 5, 2016, Hedvat sent an email to Susan Abbracciamento ("Abbracciamento"), a Senior Vice President of Citibank, stating that "all the items have been addressed" and asking for a reinspection date. Abbracciamento responded the following day that "[w]e are working on a schedule to re-inspect the space and I will get back to you shortly with a date."

However, by letter dated February 4, 2016 (the "Termination Notice"), more than three years after execution of the Lease, and at a time when there were still unresolved issues concerning the Landlord's Required Work, Citibank informed Lion Bee, that

> As of the date hereof, Landlord has failed to cause the Commencement Date to occur, which was to have occurred not later than the Outside Commencement Date of July, 31, 2014... Consequently, pursuant to Section 3.2 of the Lease, Tenant hereby elects to terminate the Lease effective as of the date hereof.

In the Termination Notice Citibank also demanded the return of Prepaid Rent.

Lion Bee rejected Citibank's Termination Notice in a letter dated February 9, 2016 and commenced this action on April 15, 2016. In the complaint, Lion Bee alleges causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing and promissory/equitable estoppel.[1]

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[1] Rather than seeking attorneys' fees on its breach of contract cause of action, Lion Bee asserts a separate cause of action for attorneys' fees pursuant to the Lease. Under section 12.3 of the Lease, either party may recover attorneys' fees if the other party defaults under the Lease.

Citibank answered the complaint, denying all material allegations, and pled two counterclaims. In its first counterclaim Citibank seeks a declaration that it properly terminated the Lease, and for reimbursement of its architectural and attorneys' fees, pursuant to section 3.2 of the Lease. In its second counterclaim, Citibank alleges that Lion Bee breached the Prepaid Rent Agreement by failing to make the payments thereunder.

Citibank now moves for summary judgment dismissing the complaint and for judgment on its counterclaims.

Citibank's Motion for Summary Judgment Dismissing the Complaint

A party moving for summary judgment "must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Tompa v. 767 Fifth Partners, LLC*, 113 A.D.3d 466, 470 (1st Dept. 2014). If the movant makes a prima facie showing, then "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.'" *Grasso*, 50 A.D.3d at 545 (citation omitted). The opposing party must "'show facts sufficient to require a trial of any issue of fact'" in order to defeat a summary judgment motion. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980) (citation omitted).

Breach of Contract Cause of Action

Lion Bee alleges that it fully performed under the Lease and that Citibank's refusal to take possession and termination of the Lease constituted a breach of the agreement. On this summary judgment motion Citibank points out that the Lease

expressly permitted it to terminate, in writing, if Lion Bee did not provide it with a written notice establishing the Commencement Date. Citibank argues that, because Lion Bee did not set a Commencement Date, its termination of the Lease was not a breach.

It is a fundamental contract principle that "when parties set down their agreement in a clear complete document, their writing should . . . be enforced according to its terms." *TAG 380, LLC v. ComMet 380, Inc.*, 10 N.Y.3d 507, 512-513 (2008) (internal quotations and citation omitted); *see also Gladstein v. Martorella*, 71 A.D.3d 427, 429 (1st Dept. 2010).

The Lease, in section 3.2, plainly states that "if the Commencement Date shall not occur on or before the Outside Commencement Date, then until the Commencement Date occurs, Tenant shall have the right to terminate this Lease, by notice to Landlord, whereupon this Lease shall terminate, and Landlord and Tenant shall have no further obligations or liabilities under this Lease." Thus, under the Lease Citibank had the absolute right to unilaterally terminate the Lease if Lion Bee did not complete its work by the Outside Commencement Date - July 31, 2014.[2]

Lion Bee does not dispute that construction was not close to completion by July 31, 2014, the Outside Commencement Date. Therefore, under the Lease Citibank was permitted to unilaterally terminate the Lease in February 2016, at a time when Lion Bee had still not issued a written notice setting a Commencement Date. Accordingly, I grant

[2] Under the Lease Citibank would only lose its termination right if Lion Bee had completed at least 80% of the Landlord's Work by July 31, 2014, and the remaining Landlord's Work was substantially completed within 60 days of that date.

Citibank's motion for summary judgment dismissing Lion Bee's first cause of action for breach of contract.[3]

Breach of Implied Covenant of Good Faith and Fair Dealing Cause of Action

Lion Bee alleged that "[b]y refusing to take possession of the Premises and by unilaterally and improperly terminating the Lease without cause or justification, Defendant has acted in bad faith and has deprived Plaintiff of its bargain and its right to receive the benefits of the Lease agreement."

This second cause of action is entirely duplicative of the breach of contract cause of action and is therefore dismissed. *Netologic, Inc. v. Goldman Sachs Group, Inc.*, 110 A.D.3d 433, 433-434 (1st Dept. 2013).

Promissory and Equitable Estoppel Cause of Action

Lion Bee alleges that the parties orally modified the Lease and therefore Citibank is estopped from claiming that Lion Bee breached the Lease, and is estopped from terminating the Lease. For a plaintiff to establish a claim for promissory estoppel, it must prove: "'(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the

[3] Contrary to Lion Bee's contention, because the Lease is unambiguous, there is no need for discovery on the issue of how to interpret the Lease. *See Bentick v. Gatchalian*, 147 A.D.3d 890, 892 (2d Dept. 2017) (summary judgment motion not premature "since the defendant failed to demonstrate that discovery might lead to relevant evidence or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the plaintiff" and a "'mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion'") (citation omitted).

promise.'" *Sabre Int'l Sec., Ltd. v. Vulcan Capital Mgmt., Inc.*, 95 A.D.3d 434, 439 (1st Dept. 2012) (citation omitted).

"The doctrine of equitable estoppel prevents a party from pleading or proving an otherwise important fact because of something which it has done or omitted to do." *E.F.S. Ventures Corp. v. Foster*, 71 N.Y.2d 359, 368 (1988). Where a party "rightfully relies upon [another party's] word or deed and, as a result, changes position to his injury," it is inequitable to allow the other party to enforce rights inconsistent with its own words or deeds. *Id.* at 368-369.

Lion Bee contends that the elements of estoppel are present here because: 1) Citibank, "by its promise and conduct confirming such promise," induced Lion Bee to continue performing and completing construction work after July 31, 2014 as well as addressing "punch list" items; 2) Lion Bee relied on Citibank's conduct from July 31, 2014 to February, 2016 including Citibank's direction to continue construction, provision of punch lists, and inspections of the Premises; and 3) Lion Bee changed its position by "continuing to perform and complete Plaintiff's Construction Work as well as the additional items of construction requested by Defendant at the Premises" at a cost of more than $6,000,000.00.

According to Lion Bee, the only "plausible" explanation for the continuation of the project after July 31, 2014 is that the parties orally agreed "to modify the Outside Possession Date upon issuance of a TCO [temporary certificate of occupancy]" and this extracontractual, oral agreement was fully or substantially performed.

Citibank argues that Lion Bee's estoppel cause of action fails as a matter of law because the Lease provides that it may only be modified by a writing signed by the parties. Moreover, under the Lease, Lion Bee was explicitly permitted to extend the Commencement Date based on unavoidable delays, including delays caused by Citibank, upon written notice, but Lion Bee never did so. Further, Citibank argues that Lion Bee has failed to produce proof of the Lease modification, other than allusions to a "vague, unspecified promise."

As Citibank notes, the Lease contained a "no oral modification" provision, stating that "[e]xcept as provided in this Lease, no modification of this Lease shall be binding on Landlord or Tenant unless in writing and signed by and delivered by both Landlord and Tenant." Citibank did not agree in a writing to modify its right to unilaterally terminate the Lease if Lion Bee did not complete the Landlord's Required Work by the Commencement Date, nor did it agree in a writing to extend the Commencement Date to an unspecified date after the issuance of a TCO. Citibank has therefore demonstrated its entitlement to summary judgment dismissing the promissory/equitable estoppel cause of action based upon an alleged oral modification of the Lease.

A party may overcome a contractual "no oral modification" provision and enforce an oral modification to a written contract by showing that "the oral modification 'has in fact been acted upon to completion'; or, where there is only partial performance, that 'the partial performance [is] unequivocally referable' to the alleged oral modification." *Eujoy Realty Corp. v. Van Wagner Commc'ns*, 22 N.Y.23d 413, 425 (2013) (citation omitted). If parties dispute the existence of an oral agreement, "the conduct of the party advocating

for the oral agreement [] is 'determinative,' although the conduct of both parties may be relevant." *Id.* at 426.

To show that it complied with the alleged oral modification that Citibank would take possession of the demised premises upon some unspecified date after the issuance of the TCO, Lion Bee refers to a series of emails between the parties. The emails, contrary to Lion Bee's contention, do not show that the parties agreed to a new Commencement Date. Instead, these emails simply reflect continued discussions concerning progress (or lack thereof) in the Landlord's Required Work and Citibank's hope that there would be a Commencement Date.

Indeed, in December 2015, two months before it terminated the Lease, Citibank explicitly, and in writing, reserved "all rights and remedies which may be available to [Citibank] pursuant to law, in equity or under the Lease, including without limitation the right to terminate the Lease and seek reimbursement of . . . out-of-pocket costs and prepaid rent, together with interest thereon."

Additionally, Lion Bee does not submit any evidence specifying the new, modified Commencement Date under the alleged oral modification. At bottom, Lion Bee has not submitted evidence raising an issue of fact as to whether Citibank "provided a specific, identifiable promise" to forego its right to terminate the Lease or accept a Commencement Date well after the July 2014 Outside Commencement Date. *Massachusetts Mut. Life. Ins. Co. v. Gramercy Twins Assoc.*, 199 A.D.2d 214, 217 (1st Dept. 1993) (finding that defendant failed to establish either estoppel or waiver because plaintiff's alleged promise to negotiate did not show that plaintiff waived its right to

foreclosure beyond the time that negotiations continued and plaintiff could always have ceased negotiating.)

Lion Bee's argument that Citibank orally agreed to modify its right to terminate the Lease, and agreed to take possession of the Premises whenever Lion Bee successfully completed the Landlord's Required Work (which had not occurred more than three years after the Lease signing and one and a half years after the Outside Commencement Date) is neither credible nor supported by the exhibits submitted by Lion Bee. A "nonbreaching party should not have to litigate [promissory estoppel] based only on the breaching party's unsupported and uncorroborated representation that it orally waived a provision." *Paramount Leasehold, L.P. v. 43rd Street Deli, Inc.*, 136 A.D.3d 563, 569 (1st Dept. 2016).

Further, Lion Bee failed to raise an issue of fact showing that the parties' continuation of the project after July 31, 2014 was "unequivocally referable" to the alleged oral modification. *See Rose v. Spa Realty Assoc.,* 42 N.Y.2d 338, 343-344 (1977); *Paramount Leasehold, L.P.*, 136 A.D.3d at 569 (holding that the tenant failed to establish that its conduct was unequivocally referable to an alleged oral agreement waiving a lease requirement and therefore lease was not deemed modified). In fact, the parties' post July 31, 2014 conduct was entirely consistent with their respective obligations under the Lease. For example, Lion Bee states that Citibank's inspections and preparations to perform Tenant's Initial Work evidence that the Commencement Date was extended. However, the Lease plainly contemplated that Citibank would take those actions while retaining the right to terminate the Lease. Carrying out these actions

out simply evidenced the parties' performance under the Lease even though the Commencement Date was not met.[4] Significantly, Lion Bee does not present evidence of any new obligations it undertook due to the alleged oral modification agreement. *Id.*

And, given that the parties had already invested time and money on the Premises, the Lease contemplated that they would continue to meet, conduct inspections, exchange punch lists, and perform work on the project after July 31, 2014. See *Nassau Beekman, LLC v. Ann/Nassau Realty, LLC*, 105 A.D.3d 33, 41 (1st Dept. 2013) (finding that continued meetings and negotiations by parties did not establish that an extension was orally agreed to but rather indicated an "attempt to salvage the deal despite the expiration of the closing deadline").

Finally, Lion Bee alleges that Citibank "sat on its right to terminate the Lease Agreement when it intentionally and repeatedly extended the Plaintiff's time to complete the work at the premises" and that this conduct constituted a waiver of Citibank's right to terminate the Lease.

Section 23.3 of the Lease states that

> The waiver by Landlord or Tenant of any provision or breach of a provision of this Lease shall not be deemed a waiver of any other provision or any subsequent breach of the same provision. No provision of this Lease shall

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[4] The Lease stated:

> Prior to the Commencement Date, Landlord shall, upon reasonable notice, allow Tenant and Tenant's agents and contractors reasonable access to the Premises during reasonable times to inspect the Premises, conduct reasonable testing and measurements and to otherwise prepare for the performance of Tenant's Initial Work.

> be deemed waived unless the waiver is in a writing signed by the party against whom enforcement of the waiver is sought.

Citibank's conduct does not suffice as a waiver as a matter of law, given the Lease's clear requirement that waivers be in writing. *Jefpaul Garage Corp. v. Presbyterian Hosp. in City of N.Y.*, 61 N.Y.2d 442, 446 (waiver cannot be inferred to "frustrate the reasonable expectations of the parties embodied in a lease when they have expressly agreed otherwise.")

For the reasons set forth above, Citibank has demonstrated entitlement to dismissal of Lion Bee's promissory estoppel/equitable estoppel/waiver cause of action, and Lion Bee has failed to raise an issue of fact on the claim. I therefore grant Citibank's motion to dismiss Lion Bee's third cause of action alleging promissory/equitable estoppel.[5]

Citibank's Summary Judgment Motion on its Counterclaims
For Out-of-Pocket Costs and Prepaid Rent Repayment

Citibank's Out-of-Pocket Costs

In its first counterclaim Citibank seeks a declaration that it did not breach the Lease, and reimbursement of its reasonable out-of-pocket costs associated with the Lease. Paragraph 3.2 of the Lease states that if Citibank terminates the Lease:

> Landlord shall reimburse Tenant for its reasonable out-of-pocket costs in connection with this Lease (including architectural and legal fees and costs to pursue the Banking Approvals and Tenant's Permits) up to but not exceeding $50,000.

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[5] Because I have found that Citibank did not breach the Lease, I also grant Citibank summary judgment dismissing Lion Bee's fourth cause of action for attorney's fees under the Lease.

Because I find that Citibank properly terminated the Lease, I award Citibank its reasonable out-of-pocket costs in an amount to be determined at a hearing.

In its second counterclaim Citibank seeks repayment of the Prepaid Rent in accordance with the Prepaid Rent Agreement. Once the Lease was terminated, the Prepaid Rent Agreement required Lion Bee to repay $213,333.36 plus interest within thirty days. As I have found that Citibank properly terminated the Lease in February 2016, Lion Bee has breached the Prepaid Rent Agreement by failing to repay Citibank the Prepaid Rent upon expiration of the thirty days. Pursuant to the terms of the Prepaid Rent Agreement, Lion Bee is obligated to repay $213,333.36, plus 10% annual interest from the time of rent payment (November 1, 2014).

In accordance with the foregoing, it is

ORDERED that the Court grants Citibank's motion for summary judgment dismissing Lion Bee's complaint and the Clerk is directed to enter judgment in favor of Citibank dismissing the complaint; and it is further

ORDERED that the Court grants summary judgment on Citibank's counterclaim for the return of the prepaid rent, and the Clerk is directed to enter judgment in favor of Citibank and against Lion Bee in the amount of $213,333.36, together with 10% interest from November 1, 2014 until the date of the decision on this motion; and it is further

ORDERED that the portion of the Citibank's motion that seeks the recovery of out-of-pocket costs as against Lion Bee is severed and the issue of the amount of reasonable out-of-pocket costs that Citibank may recover against Lion Bee is referred to a Special Referee to hear and report, except that, in the event of and upon the filing of a

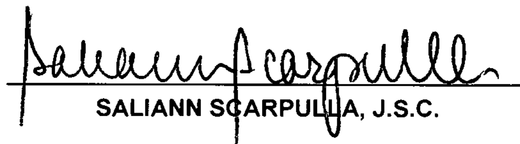
stipulation of the parties, as permitted by CPLR § 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine that issue; and it is further

ORDERED that counsel for Citibank shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the Motion Support Office (Room 119M, 60 Centre Street), who is directed to place this matter on the calendar of the Special Referee's Part (Part 50 R) for the earliest convenient date; and it is further

ORDERED that Citibank's request for out-of-pocket costs is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 to confirm the Special Referee's Report. Upon such motion I will enter a separate judgment on Citibank's claim for out-of-pocket costs.

This constitutes the decision and order of the Court.

3/26/2018
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED			[X] NON-FINAL DISPOSITION		
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