SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2

Justice

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INDEX NO. 155955/2017

GREGORY JONES,

Plaintiff,

MOTION SEQ. NO. 001 002

- v -

DAK EQUITIES CORP., UNTIED CONSTRUCTION WEATHERPROOFING CO., INC., EVEREST SCAFFOLDING INC., and FSI ARCHITECTURE PC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 87

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 77, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 93

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, the motions are decided as follows.

Plaintiff Gregory Jones leases a sixth-floor apartment at 510 West End Avenue (510 WEA) in Manhattan (verified complaint [VC], ¶ 9 [NYSCEF Doc. No. 9]). He asserts that, under his lease, he has rights to the use of "a deck or balcony" located on the rooftop outside his apartment (*see id.*, ¶ 12). His lease (NYSCEF Doc. No. 10) identifies his apartment but makes no reference to such deck or balcony, or any rights he may have to its use.

Defendant DAK Equities Corp. (DAK) owns the building at 514 West End Avenue (514 WEA), which is adjacent to 510 WEA (*see* VC, ¶¶ 9, 13).

Plaintiff alleges that DAK hired co-defendants United Construction Weatherproofing Co. (United) as its weatherproofing contractor, Everest Scaffolding Inc. (Everest) as its scaffolding

contractor, and FSI Architecture PC (FSI) as its architecture contractor, to collaborate on the restoration of 514 WEA's façade (Project) (*id.*, ¶ 13).

The Project commenced on or about July 9, 2014 (*id.*, ¶ 10). At approximately the same time, plaintiff's landlord, nonparty 510 West End Avenue LLC, signed a license agreement with DAK (License Agreement), granting DAK and its codefendant contractors access to 510 WEA's roof to perform work on the Project (*id.*, ¶ 11).

Plaintiff alleges that, on or before September 5, 2014, Everest placed a wooden pallet outside his apartment, which "occupied approximately one-half (½) of the deck, rendering it unusable" (*id.*, ¶ 14). Plaintiff further alleges that the pallet was left on the deck from the beginning of the Project in July 2014 until on or about February 17, 2017, when it was removed (*id.*, ¶ 16).

Plaintiff also contends that the Project caused dust, odors, fumes and noxious gases to emanate from 514 WEA, which entered his apartment through its ventilation system, making it impossible for him to open his windows or to entertain guests in his apartment (*id.*, ¶ 18).

In addition, plaintiff alleges that between July 9, 2014 and July 31, 2016, the Project caused a great deal of noise between the hours of 8:00 a.m. to 4:00 p.m., awakening him on numerous occasions (*id.*, ¶ 19). Plaintiff also claims that the Project caused him pain and suffering, as well as stress, physical and emotional illnesses and "other damage" to his health (*id.*, ¶¶ 24-27).

Plaintiff asserts five causes of action against all defendants: (1) nuisance; (2) trespass; (3) trespass on land; (4) trover; and (5) negligence. He seeks an award of actual damages, consequential damages, incidental damages, damages for the loss of use and enjoyment of his

apartment and deck resulting from trespass and nuisance, and damages for physical and mental pain and suffering of at least $35 million.

DAK, United and Everest have all answered, denying the claims made against them and asserting cross-claims against each other. Counsel for plaintiff and defendant FSI entered a stipulation, e-filed on August 9, 2017, discontinuing this action as to FSI, without prejudice and without impact on plaintiff's claims against the other defendants (NYSCEF Doc. No. 5).

In motion sequence number 001, DAK seeks summary judgment on its cross-claims for contractual indemnification and breach of contract against United, including reimbursement from United arising from its (United's) refusal to pay the attorneys' fees and costs DAK has incurred in defending plaintiff's claims. DAK also seeks summary judgment dismissing United's cross-claim for common law indemnification.

In motion sequence number 002, Everest seeks summary judgment pursuant to CPLR 3212, dismissing plaintiff's complaint against it in its entirety, and dismissing all cross-claims made against it.

Summary Judgment Standard

A movant seeking summary judgment "has the burden to establish a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. If the moving party fails to meet this initial burden, summary judgment must be denied regardless of the sufficiency of the opposing papers" (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] [internal quotation marks and citations omitted]).

To prevail, the movant must produce evidentiary proof in admissible form sufficient to warrant granting summary judgment in its favor (*GTF Mktg. v Colonial Aluminum Sales,* 66 NY2d 965, 967 [1985]). Once the movant makes its showing, the burden shifts to the opposing party to submit proof in admissible form sufficient to show a question of fact exists, requiring trial (*Kosson v Algaze,* 84 NY2d 1019, 1020 [1995]). On a summary judgment motion, "mere speculation and conjecture, rather than admissible evidence, is insufficient to sustain the action" (*Caraballo v Kingsbridge Apt. Corp.*, 59 AD3d 270, 270 [1st Dept 2009] [citations omitted]).

In deciding the motion, the court must view evidence in the light most favorable to the nonmovant (*Prine v Santee*, 21 NY3d 923, 925 [2013]). Party affidavits and other proof must be examined carefully "because summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue" (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978] [citation and internal quotation marks omitted]). Still, "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment" (*id.*).

DAK's Motion for Summary Judgment (Motion Sequence No 001)

DAK moves for summary judgment on its cross-claims against its codefendant United for contractual indemnification and breach of contract, seeking an order directing United to reimburse DAK and its indemnitors for attorneys' fees and defense costs incurred to date, for claims plaintiff has asserted arising from United's work on the Project. DAK also seeks summary judgment dismissing United's cross-claim against DAK for common law indemnification.

By letter dated April 11, 2018, United's attorneys informed this Court that United had consented to dismissal of its cross-claim against DAK for common law indemnification (NYSCEF Doc. No. 78). United's counsel also opposed dismissal of United's cross-claim for contribution against DAK, "to the extent such a request is within the scope of DAK's motion" (*id.*). In his reply affirmation (NYSCEF Doc. No. 87), DAK's counsel stated that DAK does not seek dismissal of United's cross-claim for contribution. Thus, the scope of DAK's summary judgment motion is limited to its cross-claim for contractual indemnification and breach of contract and seeking reimbursement of its attorneys' fees and costs.

DAK entered an agreement with United dated July 10, 2013 (Agreement [NYSCEF Doc. No. 32]), governing United's work on the Project. Among other things, the Agreement provides, in broad language, that United is obligated to indemnify DAK and hold it harmless from certain losses and liabilities, including the attorneys' fees and costs DAK may incur "arising out of or related to claims of injury, property loss, property damage or death, occasioned, in whole or in part, by acts or omissions" of United (*id.*, ¶ 10 [a]). DAK asserts that it is entitled to indemnification for the defense costs it has incurred occasioned by United's work on the Project because this provision encompasses the causes of action plaintiff asserted against DAK.

In opposition, United argues that DAK's motion for summary judgment must be denied because its claim for contractual indemnification is not yet ripe. Citing *RCDolner LLC v Samson Mgt., LLC* (21 Misc 3d 1141[A], 2008 NY Slip Op 52474[U] [Sup Ct, NY County 2008]), United claims that DAK's motion is premature because it is still possible for plaintiff's claims against DAK to encompass conduct which would not implicate United and which would thus fall outside the contractual indemnity provision.

This Court finds that the Agreement presents no reason to delay decision on this motion. DAK's indemnity provision does not condition its right to indemnification on a finding of fault or wrongdoing on United's part (*see Ezzard v One E. Riv. Place Realty Co., LLC*, 137 AD3d 648, 649 [1st Dept 2016] [citation omitted]). United's duty to indemnify DAK for its attorneys' fees and costs was triggered when claims were presented alleging that United's acts or omissions were a cause of plaintiff's injuries (*id.*, 137 AD3d at 649 [citation omitted]; *see also Cuellar v City of New York*, 139 AD3d 996, 998 [2d Dept 2016] [citations omitted]). Indeed, United cannot avoid its duty to indemnify DAK for its attorneys' fees and costs, even if it could establish that it did not cause or contribute to any injury suffered by plaintiff (*Cuellar*, 139 AD3d at 998).

In any event, *RCDolner* is inapposite. In that case, Samson Management, the managing agent for the sponsor of a building in Manhattan, hired RCDolner to perform renovation work as its construction manager and general contractor. The building's tenants asserted claims against Samson and RCDolner for relocation and disruption expenses caused by RCDolner's faulty renovation work. The tenants also asserted a cause of action against Samson for fraudulent misrepresentation, which they did not assert against RCDolner. Samson sought contractual and common law indemnification from RCDolner generally for all claims made against it by tenants and moved for summary judgment. The court denied Samson's motion for summary judgment as premature, reasoning that, because of the fraudulent misrepresentation claim, it was possible that the tenants could obtain a judgment against Samson that did not implicate RCDolner (2008 NY Slip Op 52474[U], *2-3).

Samson also sought contractual indemnification from RCDolner for its attorneys' fees and costs. The court stated that, contrary to Samson's assertions, the parties' contract did not

require RCDolner to indemnify Samson for all defense costs. Rather, it found that the provision obligated RCDolner to indemnify Samson only for attorneys' fees and costs incurred in defending complaints arising from RCDolner's faulty renovation work, and so held that this facet of Samson's motion was premature until Samson could apportion its defense costs into amounts falling within and without the contract's indemnification provision (*see id.*, *3).

Here, plaintiff asserts the same five causes of action against DAK as he does against United, which are all premised on injuries allegedly arising, in whole or in part, from United's work on the Project. United offers no reason to believe any of the attorneys' fees and costs DAK incurs in connection with this action will fall outside the Agreement's indemnity provision. United's reliance on *RCDolner LLC* is therefore misplaced.

DAK is hereby granted summary judgment on its claim for contractual indemnification, with respect to United's liability for the reasonable attorneys' fees and costs which it has incurred, and will incur, for claims occasioned, in whole or in part, by acts or omissions of United, pursuant to the indemnification provision of the Agreement. DAK's motion for summary judgment on its claim for breach of contract is denied as moot, and its motion to dismiss United's cross-claim for common law indemnification is granted on consent.

Everest's Motion for Summary Judgment (Motion Sequence No. 002)

In motion sequence number 002, Everest seeks summary judgment pursuant to CPLR 3212, dismissing plaintiff's complaint against it in its entirety, and awarding fees, costs and sanctions against plaintiff for his allegedly frivolous conduct in continuing to assert claims against Everest.

Everest also moves for summary judgment dismissing all cross-claims against it. In sum and substance, Everest asserts it is entitled to dismissal of all such claims and cross-claims because there is no evidence that it injured plaintiff in his use and enjoyment of his apartment, or that it otherwise acted negligently or violated plaintiff's rights.

DAK asserts its fourth cross-claim against Everest for contractual indemnification, its fifth cross-claim against Everest for contribution and common law indemnification and its sixth cross-claim for breaches of contract and warranty [DAK verified answer [NYSCEF Doc. No. 19]). United asserts cross-claims against Everest for common law indemnification and contribution (United verified answer [NYSCEF Doc. No. 13]).

United consents to dismissal of its cross-claim for common law indemnification against Everest but opposes dismissal of its cross-claim for contribution arguing, as it did in opposition to DAK's motion, that Everest's summary judgment motion is not ripe for determination (affidavit of Thomas J. O'Connor, Esq. [O'Connor aff], ¶ 9 [NYSCEF Doc. No. 79]). United premises its argument on its speculation that some new facts could be presented in plaintiff's opposition to Everest's motion for summary judgment or in plaintiff's answer to United's bill of particulars.

DAK opposes Everest's motion to dismiss its fifth cross-claim for common law indemnification and contribution, alleging that Everest has not shown through admissible evidence that it was not negligent and did not proximately cause plaintiff's alleged damages. DAK, however, does not oppose Everest's motion insofar as it seeks dismissal of DAK's fourth cross-claim for contractual indemnification and its sixth cross-claim for breach of contract and warranty.

Everest's Summary Judgment Motion to Dismiss Plaintiff's Causes of Action

Everest avers that it was present at the Project for only 16 days, between July and October 2014 (affidavit of Christopher Downes [Downes aff], ¶ 3-4 [NYSCEF Doc. No. 57]). Everest asserts that it was hired by United to install a sidewalk bridge and pipe scaffolding at 514 WEA (*id.*, ¶ 2), which it performed over 15 work days (*id.*, ¶¶ 4-5). Everest further asserts that it spent only one day, September 4, 2014, at 510 WEA installing roof protection (*id.*, ¶¶ 3-4; *see also* affidavit of Craig Policastro [Policastro aff], ¶ 14).[1] (NYSCEF Docs. 64 and 90). Everest contends that it had no further involvement with the Project or 514 WEA after it extended existing pipe scaffolding on October 13, 2014, and that it never had any contact with plaintiff (Downes aff, ¶¶ 3, 5-6). Indeed, United did not rehire Everest to remove the roof protection. United admits that it removed the roof protection itself on or about January 9, 2017 (Policastro aff, ¶ 21). (NYSCEF Docs. 64 and 90).

Everest argues that it did not trespass at 510 WEA because it entered that property with the permission of the property's owner, 510 West End Avenue LLC, pursuant to DAK's License Agreement with the property owner [NYSCEF Doc. No. 56].

Plaintiff's sole relevant allegations with respect to Everest are that the wooden pallet Everest installed to protect the roof of 510 WEA interfered with his use and enjoyment of the roof deck adjoining his apartment and that DAK, United and Everest failed to remove the pallet for almost three years, despite his repeated complaints (*see* VC, ¶¶ 14-17, 38).

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[1] In paragraph 15 of his affidavit, Mr. Policastro, Vice President of United, asserts that, on or about September 25, 2014, Everest was required to return to 510 WEA to reinstall the roof protection, which had been partially removed "following an incident with a tenant of 510 unrelated to this litigation" (*see also* Policastro aff, exhibit E) (NYSCEF Doc. 69).

Everest had little to do with the Project or with the conditions at 510 WEA of which plaintiff complains. Clearly, plaintiff is aggrieved not so much by Everest's one-day intrusion onto his roof deck and the installation of the pallet but rather by the continuing failure of DAK and United to complete the Project so that the pallet could be removed (*see id.*, ¶ 38). Everest's liability for plaintiff's alleged injuries is, at most, *de minimus*. Accordingly, Everest has made a prima facie showing that it is entitled to summary judgment (*see Domen Holding Co v Aranovich*, 1 NY3d 117, 124 [2003] ["not every annoyance" that interferes with property's use and enjoyment "will constitute a nuisance. Nuisance imports a continuous invasion of rights – a pattern of continuity or recurrence of objectionable conduct"] [citations and internal quotation marks omitted]; *Wing Ming Props. [U.S.A.] Ltd. v Mott Operating Corp.*, 79 NY2d 1021, 1023 [1992] [finding *de minimus* invasion of property right insufficient showing of trespass to withstand summary judgment dismissal, especially where plaintiff failed to allege or show on record that invasion negatively affected property value in any measure]).

Since plaintiff fails to oppose Everest's showing, Everest is entitled to summary judgment dismissing plaintiff's causes of action against it (*Citibank, N.A. v Furlong*, 81 AD2d 803, 803-04 [1st Dept 1981]).

Everest also seeks an award of sanctions against plaintiff, pursuant to CPLR 8303-a and 22 NYCRR §130-1.1. Everest asserts such sanctions are warranted because plaintiff acted frivolously by suing Everest despite having asserted four of the same claims in a prior action which it discontinued by stipulation. Considering that Everest voluntarily executed this stipulation, consenting to dismissal of plaintiff's prior action without prejudice (*see* NYSCEF Doc. No. 51), this Court, in the exercise of its discretion, denies Everest's motion for sanctions.

DAK's Cross-Claims for Contractual Indemnification and Breach of Contract

DAK also seeks to recover against Everest on its cross-claims for contractual indemnification and breach of contract. Noting that the right to contractual indemnification should not be found "unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances" (*George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dep't 2009]), Everest asserts that it is entitled to dismissal of DAK's contractual indemnification cross-claim as a matter of law, because the contract between them lacks *any* provision requiring Everest to defend or indemnify DAK. Everest also asserts that it is entitled to dismissal of DAK's cross-claim for breach of contract because its agreement with Everest did not require Everest to procure insurance naming DAK as an additional insured, as DAK alleged in its sixth cross-claim.

Since DAK fails to oppose dismissal of these two cross-claims, they are dismissed as abandoned (*see Patmos Fifth Real Estate Inc. v Mazl Bldg. LLC*, 40 Misc 3d 1220 (A), 2013 NY Slip Op 51246 [U], *9 [Sup Ct, NY County, 2013], *affd.* 124 AD3d 422 [1st Dept 2015], *citing, inter alia, Kronick v L.P. Thebault Co., Inc.*, 70 AD3d 648 [2d Dept 2010]).

Cross-Claims By DAK and United for Contribution

A claim for contribution arises when "two or more tort-feasors share in responsibility for an injury, in violation of duties they respectively owed to the injured person" (*Smith v Sapienza*, 52 NY2d 82, 87 [1981]). "[T]he breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought" (*Nassau Roofing & Sheet Metal Co. v Facilities Dev.*, 71 NY2d 599, 603 [1988]).

United asserts that Everest's motion for summary judgment, seeking dismissal of its contribution cross-claim, is premature because plaintiff's causes of action for nuisance and trespass fail to distinguish the acts or omissions allegedly committed by Everest from the acts or omissions of the other defendants (O'Connor aff, ¶ 10). United requests that Everest's motion not be decided until after plaintiff responds to Everest's motion and responds to United's demand for a verified bill of particulars.

DAK argues that Everest cannot prevail on its motion for summary judgment seeking dismissal of DAK's cross-claim for contribution, because Everest did not meet its burden, as movant, of showing that it was not negligent. DAK also asserts that plaintiff made "ample allegations . . . that raise the possibility of Everest's negligence, and which Everest fails to address" (affirmation of Michael L. Mangini, Esq. [NYSCEF Doc. No. 89], ¶ 6). DAK claims plaintiff specifically asserted that Everest's negligence proximately caused his injury, by alleging in his complaint that Everest installed the wooden pallet to protect the roofing outside his apartment, and failed to remove it for almost 3 years, creating a private nuisance resulting in plaintiff's injuries (*id.*, 6-7).

However, Everest has offered sufficient evidence establishing that it did not commit an actionable tort against plaintiff (*see Domen Holding Co.*, *supra,* 1 NY3d at 124; *Wing Ming Props. [U.S.A.] Ltd.*, *supra,* 79 NY2d at 1023). Everest's prima facie showing shifts the onus to DAK and United to submit admissible proof that a question of fact exists requiring trial (*Kosson, supra*, 84 NY2d at 1020). Neither DAK nor United, however, take issue with any of the facts Everest has asserted. There is no substantive allegation by DAK, United, or plaintiff, that Everest's work at 510 WEA or at 514 WEA was defective, created a hazardous condition, or

caused any physical injury to plaintiff. They also make no allegation that Everest ever returned to the Project after October 2014 or had any contact with plaintiff at any time.

In addition, a party in United's position, opposing summary judgment by claiming that the motion is premature, "must show that there is some evidentiary basis to believe that further discovery would produce relevant evidence or that facts essential to justify opposition to the motion are exclusively within the knowledge and control of the other party" (*Cueva v 373 Wythe Realty, Inc.*, 111 AD3d 876, 877 [2d Dept 2013] [citations omitted]; *see also* CPLR 3212 [f] and *Caraballo, supra*, 59 AD3d at 270 [on summary judgment motion, "mere speculation and conjecture, rather than admissible evidence, is insufficient to sustain the action"] [citations omitted]). "It must also show that it made a reasonable effort to discover that evidence" (*Cueva*, 111 AD3d at 877). [citations omitted]). United makes neither of these showings. Its position is further undercut by plaintiff, who chose not to oppose Everest's summary judgment motion.

Dismissal of United and DAK's cross-claims for contribution is therefore warranted (*id.*).

DAK's Cross-Claim for Common Law Indemnification

DAK argues, again, that Everest cannot prevail at summary judgment on its cross-claim for common law indemnification because it has not met its burden, as movant, to show that it was not negligent. As discussed, however, Everest has established that its alleged negligence was *de minimus* and so Everest is entitled to summary judgment (*see Domen Holding Co., supra,* 1 NY3d at 124; *Wing Ming Props. [U.S.A.] Ltd., supra,* 79 NY2d at 1023).

DAK also fails to establish that it could be entitled to common law indemnification from Everest. No claim for common law indemnification will lie unless the party seeking indemnity is alleged to be vicariously liable for injury resulting solely from the negligence of another

(*Chatham Towers, Inc. v Castle Restoration & Constr., Inc.*, 151 AD3d 419, 420 [1st Dept 2017]). DAK asserts that this deficiency is remedied by its own fifth cross-claim, for contribution and common law negligence, in which it alleges that Everest acted negligently and that its negligence proximately caused plaintiff's alleged injuries, without any fault or want of care on DAK's part (Mangini aff, ¶ 5]).

To reach this conclusion, DAK again ignores Everest's evidentiary showing. Everest's participation in the Project was brief and its role was peripheral. Any injuries plaintiff may have suffered as the result of the continuing failure to remove the pallet from the roof deck outside his apartment would be largely attributable to the acts and omissions of DAK and United, who continued this alleged nuisance and trespass for years after Everest's departure. Everest's motion with respect to DAK's cross-claim for common law indemnification must therefore be granted because, under the facts Everest has adduced, DAK cannot maintain that it may be held vicariously liable for injuries resulting solely from Everest's negligence (*Chatham Towers, Inc., supra*, 151 AD3d at 420).

Therefore, in light of the foregoing, it is hereby:

ORDERED that DAK's motion for partial summary judgment on its cross-claim for contractual indemnification is granted, with respect to United's liability for the reasonable attorneys' fees and costs which DAK has incurred, and will incur, for claims occasioned, in whole or in part, by United's acts and omissions; and it is further

ORDERED that DAK's motion for summary judgment on its cross-claim for breach of contract against United is denied as moot; and it is further

ORDERED that DAK's motion for summary judgment, seeking dismissal of United's cross-claim against DAK for common law indemnification, is granted, on consent; and it is further

ORDERED that Everest's motion for summary judgment, seeking dismissal of all of plaintiff's claims against it, is granted; and it is further

ORDERED that Everest's motion for summary judgment, seeking dismissal of United's cross-claim for common law indemnity, is granted on consent; and it is further

ORDERED that Everest's motion for summary judgment, seeking dismissal of United's cross-claim for contribution, is granted; and it is further

ORDERED that Everest's motion for summary judgment, seeking dismissal of DAK's cross-claims for contractual indemnification, common law indemnification and contribution, and breaches of contract and warranty, is granted; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for the parties shall appear for a preliminary conference in Part 2 of this Court on March 19, 2019, at 2:15 p.m.; and it is further

ORDERED that this constitutes the decision and order of the court.

11/15/2018
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE