

**Board of Mgrs. of the 200 Chambers St.
Condominium v Braverman**

2019 NY Slip Op 33066(U)

October 11, 2019

Supreme Court, New York County

Docket Number: 162556/2015

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

-----X

INDEX NO. 162556/2015

BOARD OF MANAGERS OF THE 200 CHAMBERS STREET CONDOMINIUM,

Plaintiff,

MOTION SEQ. NO. 002

- v -

ERIC R. BRAVERMAN, DARYA BRAVERMAN, RAOUL FELDER AND PARTNERS PC, SUSAN BENDER, AND JOHN DOE NO. 1 THROUGH JOHN DOE NO. 15, the true name of said defendants being unknown to plaintiff, the parties intended to be those persons having or claiming an interest in the lien premises described in the complaint by virtue of being tenants, or occupants, or judgment creditors, or lienors of any type or nature in all or part of said premises,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 79, 85

were read on this motion to/for SUMMARY JUDGMENT

In this action to recover for unpaid common charges, the plaintiff Board of Managers of the 200 Chambers Street Condominium ("the Board") moves: 1) pursuant to CPLR 3212, for summary judgment striking the answers of defendants Eric R. Braverman ("Eric") and Darya Braverman ("Darya"); 2) pursuant to CPLR 603, 3211, and/or 3212, dismissing or severing the affirmative defenses, counterclaims and cross-claims in the answers of Eric and Darya; 3) pursuant to CPLR 3215, granting a default judgment against defendant Raoul Felder and Partners PC ("Felder"); 4) to dismiss all claims against defendants Susan Bender ("Bender") and John Does 1-15; 5) pursuant to RPAPL 1321, directing that a referee be appointed to determine the amount owed to the Board; and 6) for such other and further relief as this Court deems just and proper.

Darya cross-moves: 1) pursuant to CPLR 3212, for summary judgment striking Eric's answer to her crossclaim and granting summary judgment on her crossclaim against Eric; 2) pursuant to CPLR 603, 3211, and/or 3212, dismissing Eric's crossclaims against her; 3) entering a judgment in her favor and against Eric in an amount equal to any judgment entered against her by the Board; and 4) for such other relief as this Court deems just and proper.

After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motions are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

On or about September 19, 2007, Darya and Eric, who were married in 2001, purchased apartment 26C at the 200 Chambers Street Condominium in Manhattan ("the apartment"). Doc. 37; Doc. 65. Eric also purchased storage unit 14 at the building ("the storage unit"). Doc. 39.

Section 6.1.1 of the By-Laws permitted the Board to determine the amount of common charges to be paid by the building's residents. Doc. 40. Section 6.1.4 allowed the Board to levy and collect special assessments. Doc. 40. Section 6.3.1 provided that the Board was to have a lien for any unpaid common charges. Doc. 40. Section 8.10 of the By-Laws provided that no unit owner was permitted to sell his or her apartment unless "it shall have paid in full to the Board all unpaid Common Charges and other amounts required by the Board to be paid and theretofore assessed by the Board against such Unit and until such Unit Owner shall have satisfied all unpaid liens against its Units . . ." Doc. 44.

In December 2015, the Board commenced this action to foreclose on liens for unpaid common charges filed against the apartment. Doc. 1. In its complaint, the Board alleged that Darya and Eric owned the apartment and were both responsible for paying the common charges

and assessments charged to it. Id. The Board further alleged that Eric owned the storage unit and was responsible for paying the common charges relating thereto. Id. As a first cause of action, the Board alleged that it has not been paid common charges and assessments for the apartment since November 1, 2014 and that, on October 5, 2015, it filed a lien against the apartment in the amount of \$35,203.69, which was recorded on October 8, 2015. Doc. 1. The Board further alleged that Eric defaulted on his obligation to pay common charges for the storage unit and, on October 28, 2015, the Board filed a lien against the storage unit in the amount of \$632.65, which was recorded on October 30, 2015. Doc. 1. The Board demanded judgment against Darya and Eric for the outstanding common charges on the apartment, plus interest. Doc. 1. It further alleged that it was entitled to recover from Eric the outstanding common charges on the storage unit, plus interest. Doc. 1.

The Board also named as defendants Felder, Bender, and John Does 1-15, entities which allegedly had, or may have had, a claim against the apartment and/or the storage unit by virtue of a money judgment. Doc. 36.¹ Felder was served with process on December 14, 2015. Docs. 4, 48.

Bender joined issue by service of her answer filed January 4, 2016, which contained as an exhibit a satisfaction of the judgment she had against Eric. Doc. 7; Doc. 36 at par. 59.

Eric, who joined issue by his answer filed January 6, 2016, asserted as an affirmative defense “prevention and frustration” and also counterclaimed against the Board for violation of the covenant of quiet enjoyment. Doc. 9.

¹ Despite naming as defendants John Does 1-15, the Board failed to identify any other entities which had a lien on the apartment and/or the storage unit. The Board’s motion papers reflect that Felder’s lien arose from his representation of Eric. Doc. 36 at par. 17.

Darya joined issue by her answer filed April 26, 2016. Doc. 13. As affirmative defenses, she asserted failure to state a cause of action, that she paid all amounts owed, and that the Board had unclean hands. Doc. 13. Darya cross-claimed against Eric, alleging that he was responsible for paying all common charge payments for the apartment since a separation agreement between them gave him the sole right to reside in the apartment. Doc. 13.

In a response to Darya's cross claim, Eric denied, inter alia, that he was solely responsible for paying all expenses incurred in connection with the apartment. Doc. 20. He set forth several affirmative defenses to Darya's cross claims, including failure to state a cause of action. Doc. 20. Additionally, Eric cross-claimed against Darya for contribution and unjust enrichment. Doc. 20.

In or about October and November 2016, Darya and Eric participated in a hearing before a special referee on all financial issues in the matrimonial action.

On January 20, 2017, the Board filed the instant motion for summary judgment seeking the relief set forth above. Doc. 34. In an affirmation in support of the motion, counsel for the Board alleges, inter alia, that the Board is entitled to summary judgment against Darya and Eric since the By-Laws clearly require them both to pay common charges on the apartment. Doc. 36. Counsel further asserts that Eric, as sole owner of the storage unit, is liable to pay the common charges in connection therewith. Doc. 36. Counsel also maintains that the Board is entitled to a default judgment against Felder and that its claims against Bender and John Does 1-15 should be dismissed. Additionally, counsel maintains that Eric's affirmative defense and counterclaim must be dismissed, that Darya's affirmative defenses are without merit and must be dismissed, and that Darya's cross claim against Eric must be dismissed or severed. Doc. 36.

Further, the Board maintains that a referee be appointed to compute the amount of common charges and assessments due and owing in connection with the apartment, along with interest,

attorneys' fees, costs, and disbursements, and to determine whether the units can be sold as separate parcels or as a single parcel. Doc. 36.

In an affidavit in support of the motion, Michael Basile, Senior Vice President of Property Management for AKAM Associates, Inc. ("AKAM"), the managing agent employed by the Board, and also the Assistant Secretary of the Board, represents, inter alia, that Darya and Eric defaulted on the payment of monthly charges and assessments owed to the Board in or about January 2015. Further, Eric and Darya have not made any payments towards arrears since March and April of 2015. Doc. 35 at par. 9. Basile represents, based on statements he submits reflecting the monies owed on the apartment and the storage unit (Docs. 41, 42)² that, as of January 19, 2017, Darya and Eric owed \$168,494.74 in payments related to the apartment and Eric owed \$2,054.37 in payments related to the storage unit. Doc. 35.

On February 6, 2017, Felder filed an untimely answer to the complaint. Doc. 55.³ Although Felder represented that he "agreed with [the Board] to vacate [his] default in answering", neither the motion papers nor NYSCEF reflects that Felder received permission to answer. Doc. 55.

In a reply affirmation filed February 22, 2017, the Board argues that Felder's answer contains no affirmative defenses and does not dispute that Felder's money judgment is subordinate to the Board's liens against Darya and Eric. Doc. 56. The Board maintains that, since it requested "such other and further relief as this Court deems just and proper", it should be awarded the alternative relief of summary judgment striking Felder's answer and deeming the same to be a notice of appearance and demand for surplus monies. Doc. 56.

² AKAM's billing system still issues separate invoices for units 26C and 26D even though those units were combined to form a single unit 26C. Doc. 35.

³ Since Felder was served with process on December 14, 2016 (Docs. 4, 48), his time to answer expired on January 14, 2017.

On March 2, 2017, Darya cross-moved: 1) pursuant to CPLR 3212, for summary judgment striking Eric's answer to her cross claim and granting summary judgment on her cross claim against Eric; 2) pursuant to CPLR 603, 3211, and/or 3212, dismissing Eric's cross claims against her; 3) entering a judgment in her favor against Eric in an amount equal to any judgment entered against her by the Board; and 4) for such other relief as this Court deems just and proper. Doc. 57. In support of the motion, Darya's attorney argues that an addendum to an interim separation agreement ("the addendum") between Darya and Eric in an action pending in this Court styled *Darya Braverman v Eric Braverman*, Index Number 306221/11 ("the matrimonial action"), required Darya to vacate the apartment by April 1, 2010, and that she did so, and that Eric was to hold her harmless against any and all liabilities and obligations in connection with the apartment. Doc. 58 at par. 8; Doc. 66 at par. 1(a), (b). Darya contends that, since any change to the addendum was required to be in writing and signed by both parties, and no such writing exists, she has no obligation to pay any expenses related to the apartment. Doc. 58 at pars. 20-21; Doc. 68 at par. 12.⁴

In opposition to the cross motion filed in March 2017, Eric argues, inter alia, that an order "has not [been] issued [in the matrimonial action] directing that [he is] solely responsible for condominium expenses." Doc. 69 at par. 8.

By order dated January 11, 2017, this Court (Kaplan, J.) appointed Simon Miller, Esq. as a receiver in the matrimonial action. Justice Kaplan directed, inter alia, that Mr. Miller was authorized to sell the apartment and to use the proceeds to pay the outstanding mortgage balance and unpaid common charges. Doc. 58 at par. 27; Doc. 68 at 25. However, Eric subsequently declared bankruptcy and the sale of the apartment did not occur. By order dated November 16,

⁴ Eric does not dispute that Darya vacated the apartment in 2010.

2018, Justice Kaplan discharged Mr. Miller as receiver reasoning, inter alia, that “the Bankruptcy Court [was] presiding over [Eric’s] estate, which has effectively negated [Mr. Miller’s] role.”

In a report issued November 10, 2017, the Special Referee in the matrimonial action recommended, inter alia, that the apartment was to be sold and that, after the payment of all arrears, mortgages and costs, the proceeds of the sale were to be divided 40% to Darya and 60% to Eric. The Special Referee further recommended that Eric was to continue paying all expenses for the apartment until the entry of the judgment of divorce.

In an order in the matrimonial action dated April 18, 2018, Justice Kaplan upheld the recommendation of the Special Referee that the net proceeds of the sale of the apartment should be divided 60% to Eric and 40% to Darya. Justice Kaplan further ordered that Eric “shall receive a credit for 50% of any sums he actually paid to reduce the principal on any mortgage balances on the marital residence from the date [Darya] vacated the marital residence to its date of sale.” In so holding, Justice Kaplan explained that “[c]ontrary to [Eric’s] claims, there is no basis to grant any further credits to him for property taxes or common charges paid.” Justice Kaplan further ordered that “all debts, corporate and/or personal shall be the full responsibility of [Eric], except that the mortgages on the marital residences shall first be satisfied with the proceeds before the net proceeds are divided between the parties 60% to [Eric] and 40% to [Darya].”

By order dated March 21, 2019, the Bankruptcy Court approved a notice of proposed abandonment and deemed the apartment abandoned and no longer a part of the bankruptcy estate. Darya then moved in the matrimonial action to be appointed receiver so that she could have the authority to sell the apartment. By separate orders dated September 26, 2019, Justice Kaplan granted Darya’s motion to appoint a receiver but, instead of appointing Darya as receiver, Justice

Kaplan appointed Peter Kolodny, Esq. as a “disinterested third-party receiver” of the apartment and storage unit. Justice Kaplan held that Mr. Kolodny

“shall take possession” of the apartment and the storage unit and “shall take such steps as in his discretion he deems advisable consistent with his fiduciary duties, including the sale, payment of mortgages, taxes and other obligations and liabilities attributable to the property, to the end of selling those assets for ultimate distribution to the parties in this action in accordance with the orders of this [C]ourt.

Additionally, Justice Kaplan ordered that

The subject property shall be sequestered and sold pursuant to Domestic Relations Law § 243, with any net proceeds placed in escrow pending the determination of the [r]eceiver’s fees and costs, as well as [Eric’s] arrears, the precise amount of which is in dispute . . .

LEGAL CONCLUSIONS:

Summary Judgment Standard

It is well settled that a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. *See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The movant must produce sufficient evidence to eliminate any issues of material fact. *Id.* If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006].)

The Board's Motion for Summary Judgment Against Darya and Eric and to Strike Darya and Eric's Answers, Affirmative Defenses, Counterclaims and Cross Claims

The Board is entitled to summary judgment against Darya and Eric since they are owners of the apartment as tenants by the entirety and are thus jointly and severally liable for the payment of common charges and assessments for the apartment pursuant to section 8.10 of the By-Laws. Doc. 44. The Board is also entitled to summary judgment against Eric with respect to outstanding payments for the storage unit. Darya and Eric have failed to refute the Board's showing of unpaid common charges, which led the Board to file a lien on the apartment and the storage unit pursuant to Real Property Law section 339-z. *Board of Managers of Executive Plaza Condominium v Jones*, 251 AD2d 89, 90 (1st Dept 1998). Section 6.3.2 of the By-Laws further provides that, since they have failed to make common charge payments, Darya and Eric are obligated to reimburse the Board for attorneys' fees, interest and late charges incurred in collecting the charges related to the apartment and Eric is obligated to pay any such fees related to the storage unit. Doc. 40.

This Court hereby appoints Mr. Kolodny as receiver in the captioned action so that he can determine the amount of outstanding common charges, including attorneys' fees, costs, disbursements, and interest owed by Darya and Eric on the apartment and by Eric on the storage unit. Doc. 40. The appointment of Mr. Kolodny clearly furthers the interests of judicial economy since he has already been appointed as receiver in the matrimonial action and, thus, his familiarity with the facts of the captioned action is presumed.

As noted previously, Eric asserted as an affirmative defense "prevention and frustration." Doc. 9. Specifically, he asserted that the Board refused to allow him to sell the storage unit, thereby preventing him from using the proceeds of the sale to pay outstanding common charges. He also counterclaimed against the Board for violation of the covenant of quiet enjoyment because the Board fined him for noise violations and charged him for special assessments. Doc. 9.

The branch of the Board's motion seeking to strike Eric's affirmative defense and counterclaim is granted. The Board has established that Section 6.1.1 of the By-Laws permitted it to determine the amount of common charges to be paid by the building's residents. Doc. 40. Section 8.10 of the By-Laws provides that no unit owner is permitted to sell his or her unit unless "it shall have paid in full to the Board all unpaid Common Charges and other amounts required by the Board to be paid and theretofore assessed by the Board against such Unit and until such Unit Owner shall have satisfied all unpaid liens against its Units . . ." Doc. 44. Since the Board had the right to determine the amount of common charges and special assessments, billed Eric for the same, and he failed to pay the charges (Doc. 35), it properly determined that he could not sell the storage unit. See *Board of Managers of Brightwater Towers Condominium v Cheskiy*, 109 AD3d 944 (2d Dept 2013); *Board of Managers v Dewan*, 2019 NYLJ LEXIS 510 (Sup Ct NY County 2019). In opposition, Eric failed to raise an issue of fact. See *Board of Directors of Squire Green at Pawling Homeowners Assn., Inc. v Bell*, 89 AD3d 657, 658 (2d Dept 2011).

Darya asserted as affirmative defenses the Board's failure to state a cause of action, that she paid all amounts due, and that the Board had unclean hands because it has prohibited Eric from selling the apartment. Doc. 13. As a cross claim, Darya alleged that Eric was responsible for paying all common charge payments for the apartment since the addendum gave him the sole right to reside in the apartment. Doc. 13.

That branch of the Board's motion seeking to strike Darya's first affirmative defense, that the Board failed to state a cause of action, is granted. It is undisputed that Darya and Eric own the apartment as tenants by the entirety. Doc. 37. Although Darya represents that she vacated the apartment in 2010, and that the apartment has since been used solely by Eric, their joint ownership rendered them both liable for the payment of any common charges and assessments pursuant to

section 8.10 of the By-Laws. Doc. 44. Despite the fact that the addendum requires Eric to hold harmless Darya from “any and all liabilities and obligations in connection with the [apartment]” (Doc. 66, at par. 1[b]), the Board was not a party to that agreement and, thus, Darya cannot assert that the agreement vitiates her obligation to pay the charges in question. Doc. 66.

The Board is also entitled to summary judgment striking Darya’s second affirmative defense, that the Board has unclean hands because it refused to permit Eric to sell the apartment. Pursuant to the By-Laws, the Board clearly has the right to prohibit the sale of the apartment where, as here, all common charges and/or assessments are not paid. Doc. 44. Additionally, the Board is entitled to summary judgment dismissing Darya’s third affirmative defense, that all monies owed to the Board have been paid, since Basile represents that the money is still owed and Darya has failed to raise an issue of fact in this regard.

The branch of the Board’s motion seeking summary judgment dismissing Darya’s cross claim against Eric is denied as moot. As noted above, in her order dated April 18, 2018, Justice Kaplan elucidated precisely how the outstanding common charges for the apartment were to be paid: that Eric was to “receive a credit for 50% of any sums he actually paid to reduce the principal on any mortgage balances on the marital residence from the date [Darya] vacated the marital residence [until the] date of sale.” Justice Kaplan further held that there was no basis to grant Eric any further credits for property taxes or common charges paid, and that “all debts, corporate and/or personal shall be the full responsibility of [Eric], except that the mortgages on the marital residences shall first be satisfied with the proceeds before the net proceeds are divided between the parties 60% to [Eric] and 40% to [Darya].” Since Justice Kaplan has already deemed Eric responsible for paying the common charge arrears, less a credit for any mortgage payments he made during the time period referenced above, the cross claims between Darya and Eric are moot.

The Board's Motion for a Default Judgment Against Felder

The Board's contention that it is entitled to a default judgment against Felder is without merit. Since Felder was served with process on December 14, 2016 (Docs. 4, 48), he was in default as of January 14, 2017, by which time he still had not answered.⁵ Since the Board's motion for a default judgment was not filed until January 20, 2017, more than one year after the default, the Board's claims against Felder are dismissed. See CPLR 3215 (c).

The Board's Motion to Dismiss All Claims Against Defendants Bender and John Does 1-15

That branch of the Board's motion seeking to dismiss all of its claims against Bender and John Does 1-15 is unopposed. The Board acknowledges that Bender, in her answer, represents that she has been paid by Eric and attaches a satisfaction of judgment establishing such payment. Doc. 51. Thus, all claims against Bender are dismissed.

This Court also agrees that, since the Board represents that no additional persons or entities (other than Felder) have a judgment against Eric and Darya, the claims against John Does 1-15 must be dismissed.

Darya's Cross Motion for Summary Judgment Dismissing Eric's Cross Claim, Striking Eric's Answer to Her Cross Claim and for Summary Judgment on her Cross Claim against Eric

This Court denies the branches of Darya's motion for summary judgment dismissing Eric's cross claim, as well as his answer to her cross claim, as moot. Similarly, that branch of Darya's motion for summary judgment on her cross claim against Eric is denied as moot. This is because

⁵ Although Felder served an untimely answer on February 6, 2017 (Doc. 55), he had neither court leave nor consent of the Board to do so.

the cross claims between Darya and Eric relate to whether one, or both, of them is obligated to pay any portion of the common charge arrears for the apartment, an issue already resolved by Justice Kaplan in her April 18, 2018 order. In that order, Justice Kaplan held, inter alia, that Eric was obligated to pay all outstanding common charges related to the apartment, and therefore all such common arrears and storage unit arrears must be allocated from his 60% share of the proceeds of the sale of the apartment.

The remainder of the parties' contentions are either without merit or need not be addressed given the findings above.

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

ORDERED that the branch of the motion by the plaintiff Board of Managers of the 200 Chambers Street Condominium seeking summary judgment against defendants Darya Braverman and Eric Braverman for outstanding common charges and assessments for unit 26C/D at 200 Chambers Street, New York, New York accruing since April 2015 is granted, plus costs, disbursements, interest and attorneys' fees; and it is further

ORDERED that the motion by the plaintiff Board of Managers of the 200 Chambers Street Condominium seeking summary judgment against defendant Eric Braverman for outstanding common charges and assessments for storage unit 14 at 200 Chambers Street, New York, New York accruing since April 2015 is granted, along with costs, disbursements, interest and attorneys' fees; and it is further

ORDERED that the branch of the plaintiff's motion seeking to strike defendant Eric Braverman's affirmative defense of "prevention and frustration" and his counterclaim for breach of the covenant of quiet enjoyment set forth in his answer filed January 6, 2016 is granted, and those claims are stricken; and it is further

ORDERED that the branch of the plaintiff's motion seeking to strike Darya Braverman's first (failure to state a cause of action), second (unclean hands), and third (payment of monies owed) affirmative defenses in her answer filed April 26, 2016 is granted; and it is further

ORDERED that the branch of the plaintiff's motion seeking to dismiss Darya Braverman's cross claim against Eric Braverman for contribution and/or indemnification in her answer filed April 26, 2016 is denied as moot; and it is further

ORDERED that the branches of the motions by defendants Darya Braverman and Eric Braverman seeking summary judgment dismissing each other's cross claims against one another are denied as moot; and it is further

ORDERED that the branch of plaintiff's motion seeking a default judgment as against defendant Raoul Felder and Partners PC is denied, the complaint is dismissed as against said defendant, and the caption shall be changed to reflect the dismissal; and it is further

ORDERED that the plaintiff's claims against defendants Susan Bender and John Doe No. 1 through John Doe No. 15 are dismissed, and the caption shall be changed to reflect the dismissals; and it is further

ORDERED that Peter Kolodny, Esq., 101 Lafayette Street, 10th Floor, New York, New York 10013, Tel. (212) 349-7771, pk@kolodnylaw.com is appointed as the receiver of the parties' marital residence ("the apartment") located at 200 Chambers Street, Units 26C/D, including storage unit number 14 ("the storage unit"), with the usual powers and duties according to the laws of this State, and the practice of this Court; and it is further

ORDERED that the receiver shall take possession of the apartment and the storage unit and shall take such steps as in his discretion he deems advisable consistent with his fiduciary duties, including the sale, payment of mortgages, taxes, and other obligations and liabilities attributable to the apartment and the storage unit, to the end of selling those assets for ultimate distribution to the parties in this action and the action pending in this Court styled *Darya Braverman v Eric Braverman*, Index Number 306221/11, in accordance with the orders of this Court including, but not limited to, the orders of this Court (Kaplan, J.) dated April 18, 2018 and September 26, 2019; and it is further

ORDERED that the receiver shall ensure that the common charge arrears related to the apartment and the storage unit are paid in accordance with the order rendered by this Court in the matrimonial action between the parties (Kaplan, J.), dated April 18, 2018, which directed, inter alia, that Eric Braverman is obligated to pay all outstanding common charge arrears related to the apartment and the storage unit arears from his 60% share of the proceeds of the sale of the apartment; and it is further

ORDERED that the net proceeds of the sale of the apartment and the storage unit shall be placed in escrow pending the determination of the receiver's fees and costs, as well as the determination by the receiver of the precise amount of arrears owed by Darya Braverman and Eric Braverman, including costs, disbursements, attorneys' fees, and interest from April 2015; and it is further

ORDERED that the receiver may speak to Darya Braverman and/or Eric Braverman, and any outside professional (such as accountants and lawyers) rendering services for the parties; and it is

ORDERED that the receiver may incur, at the expense of the parties, such costs and charges, and make such disbursements as may be actually necessary for executing the duties imposed by this order, including, but not limited to, outside legal and accounting fees as are necessary to carry out his duties; and it is further

ORDERED that the receiver is authorized to institute and carry on all necessary legal proceedings to accomplish the duties imposed herein; and it is further

ORDERED that the receiver shall inform the parties' attorneys of all such costs and charges and disbursements, including outside counsel and accountant's fees, as may be necessary to execute the duties imposed by this order, including the receiver's customary fees; and it is further

ORDERED that the receiver may at any time apply to this Court for an order or instructions or powers necessary to enable him to properly fulfill his duties hereunder; and it is further

ORDERED that either party may bring an application to this Court as he or she may deem necessary and proper to implement the provisions of this order; and it is further

ORDERED that this Court retains jurisdiction to modify the provisions of the receivership contained herein (by expanding it, limiting it, or vacating it) upon appropriate application by the parties or the receiver; and it is further

ORDERED that the receiver shall continue to perform the duties set forth herein until further order of this Court; and it is further

ORDERED that the receiver shall be compensated for his services at the rate of four hundred fifty (\$450) dollars per hour; all compensation and reimbursement for disbursements billed by the receiver during the pendency of this action shall be approved by this Court in the final order of compensation, which shall be settled by the receiver, on 45 days notice, at the conclusion of the receiver's service in the action, or as otherwise directed by this Court. The receiver may make an interim application to this Court for interim compensation and reimbursement for disbursements, as needed, prior to the conclusion of his service in this action; and it is further

ORDERED that the receiver shall promptly execute and acknowledge, in the usual form, and file with the Clerk of the Court for the County of New York, an undertaking in the sum of twenty-five thousand (\$25,000) dollars conditioned on the faithful discharge of his duties and the duty of accounting for all monies and property received by him as receiver; and it is further

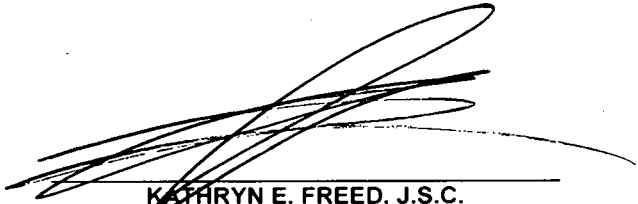
ORDERED that the receiver appointed herein shall, within 30 days of the date of this order, file with the Fiduciary Clerk of the Court, a notice of appointment and a certification of compliance with Part 36 of the Rules of the Chief Judge; and it is further

ORDERED that plaintiff's counsel is directed to serve a copy of this order, with notice of entry, on counsel for the defendants, on the Clerk of the General Clerk's Office, on the County Clerk's Office, and on the receiver, Peter Kolodny, Esq., within 30 days, and the Clerk is directed to enter judgment accordingly and to note the changes to the caption; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon all defendants and the Clerk of the Court within 20 days of entry; it is further

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

10/11/2019



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE