Alrai Naked Opportunity, LLC v Naked Brand Group Ltd.
2019 NY Slip Op 33241(U)
October 30, 2019
Supreme Court, New York County
Docket Number: 655352/2018
Judge: O. Peter Sherwood

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

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ALRAI NAKED OPPORTUNITY LLC,

Plaintiff,

-against-

NAKED BRAND GROUP LIMITED,

Defendant.

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DECISION AND ORDER
Index No.: 655352/2018

Motion Sequence No.: 001

O. PETER SHERWOOD, J.:

Defendant Naked Brand Group Limited (NBG) moves for an order, pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint.

This action arises out of a merger of two intimate apparel companies in which the shareholders of the original companies were issued the merged company shares in exchange for the surrender of their respective shares in the original companies. Plaintiff, which was not a party to the merger agreement, alleges that it did not receive the correct number of the merged company shares, and seeks recovery from NBG, the merged company, for conversion and promissory estoppel. NBG now moves to dismiss, contending that these claims must be dismissed as plaintiff fails to and cannot adequately allege the essential elements of each claim.

BACKGROUND

By Deeds for Sale and purchase dated April 2017, plaintiff Alrai Naked Opportunity LLC (Alrai) agreed to purchase from non-party EJ Group Limited (EJG) a total of 22,168 ordinary shares in non-party Bendon Limited (Bendon) for $12 million (complaint, ¶ 4; *see* exhibits C and D to defendant's notice of motion [Deeds]). At the time the Deeds were entered into, Bendon and Naked Brand Group, Inc. (Naked) had entered into a letter of intent to merge the two companies into NBG (complaint, ¶ 5). Pursuant to the Deeds, Alrai acknowledged that the terms and structure of the final merger might differ from the letter of intent, and that, prior to the merger closing date, NBG or Naked may issue further shares and that "those transactions may be both material and adverse to the rights of a holder of the Sale Shares [Alrai]" (exhibit C and D to defendant's notice of motion, Deeds § 7.1 [e]). The Deeds further provided, in section 7.3, that in the event that Alrai received less than the 9,600,000 ordinary shares of NBG, "the Vendor [EJG] undertakes to deliver

additional ordinary shares in that entity [NBG] to the Purchaser [Alrai] within 30 days for nil consideration" (*id.* § 7.3). The Deeds provide that they are fully integrated agreements (exhibits C and D to defendant's notice of motion, Deeds § 10.2). Despite these Deeds, no shares actually were issued to Alrai prior to consummation of the merger, and the Bendon Final Share Register, issued prior to the surrender by Bendon shareholders of Bendon shares in the merger, does not list Alrai as a shareholder (exhibit B to defendant's notice of motion).

On May 25, 2017, Bendon and Naked entered into the merger agreement (Merger Agreement) (exhibit A to defendant's notice of motion, Merger Agreement), pursuant to which Bendon and Naked were to become wholly-owned subsidiaries of NBG, and the Bendon and Naked shareholders were to become shareholders of NBG (*id.*, recital C). Alrai was not a party to the Merger Agreement.

Under the Merger Agreement, Bendon shareholders were to exchange their outstanding Bendon Ordinary Shares for NBG Ordinary Shares in a reverse merger. Prior to the merger, Bendon had poor financial performance over the prior few years, and was in serious need of cash. Even with the merger, NBG was forecasting a cash shortfall (compl, ¶¶ 14-15). The Merger Agreement provided in section 1.5 [b], entitled "Merger Consideration; Effect on Naked Securities," that the number of shares that Bendon Shareholders would receive in the merger depended upon Naked's Net Assets and Bendon's Net Debt (both as defined in the Merger Agreement) as of the date the U.S. Securities and Exchange Commission (SEC) informed NBG that it had no further comments on its registration statement, and on Bendon's ability to refinance certain of its debt (exhibit A to defendant's notice of motion, Merger Agreement §§ 1.5 [b] and 5.18). It identified various circumstances that could reduce the percentage of (that is, dilute) the NBG shares received by Bendon shareholders in the merger. The Merger Agreement set out "exchange procedures" pursuant to which stock certificates or book-entry shares in Naked and Bendon would be surrendered in return for NBG shares or book-entry shares (*id.*, § 1.6). Initially, the parties estimated that immediately following the merger, Naked shareholders would hold approximately 7% of the issued and outstanding NBG shares, and Bendon shareholders would hold approximately 93% (compl, ¶ 13). However, because of the variables indicated in the Merger Agreement itself, until the merger was actually finalized, the estimated number of shares issued to both Naked and Bendon, and their pro rata ownership of NBG, was subject to change.

The Merger Agreement contained an integration clause, providing that the agreements, documents, instruments, exhibits and schedules "constitute the entire agreement among the parties, with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof" (exhibit A to defendant's notice of motion, Merger Agreement § 9.4).

On February 21, 2018, Bendon and Naked entered into Amendment No. 2 to the Merger Agreement (exhibit A to defendant's notice of motion, Amendment No. 2), which, among other things, amended section 1.5(a), to reflect the revised estimate that Naked shareholders would hold approximately 9% of the outstanding NBG shares "subject to certain adjustments set forth in the Merger Agreement, which may require an adjustment to the Bendon Target Share Number" (*id.*). This amendment also amended section 5.18(c) of the Merger Agreement to require Bendon to use its "commercially reasonable best efforts" to cause the holders of certain of Bendon's debt to enter into agreements regarding the conversion of such debt into Bendon Ordinary shares, provided that the number of NBG shares Bendon would receive on the reorganization would not exceed the amounts previously agreed to between Naked and Bendon (*id.*, § 5.18[c]).

On March 19, 2018, Naked and Bendon entered into Amendment No. 3 to the Merger Agreement, amending section 1.5(a) to guarantee Naked shareholders "not . . . less than 9% of the total number of [NBG] Ordinary Shares issued and outstanding immediately following the Closing, subject to adjustment of the Bendon Target Share Number in accordance with Section 1.5(b)" (*id.*, Amendment No. 3).

Alrai alleges that NBG filed a number of registration statements with the SEC, prior to the closing of the merger, disclosing the number of shares the parties would hold post-merger (compl, ¶¶ 18-21). It alleges that in the second amendment to NBG's registration statement, NBG disclosed the number of shares that Bendon and Naked shareholders would exchange for shares of NBG with the result that Naked shareholders would hold 8% and Bendon shareholders would hold 92% of the NBG shares, "all of which would be subject to adjustment based at closing on Naked's 'Net Assets' and Bendon's 'Net Debt,' as defined in the Merger Agreement" (*id.*, ¶ 22). On April 26, 2018, the SEC filed a notice of effectiveness of NBG's registration statement (*id.*, ¶ 26). Alrai alleges that NBG's share calculations were "slightly off" because it was calculating the "reverse split ratio" improperly (as 6.101) by comparing the NBG shares allotted to Bendon shareholders in the original Merger Agreement with the NBG shares to be allotted to Bendon shareholders as

per the effective registration statement, when it should have compared the total number of all outstanding NBG shares contemplated in the original Merger Agreement with the total number of all outstanding NBG shares as reflected in the effective registration statement, resulting in a different "reverse split ratio" (of 6.00898) (*id.*, ¶ 29). Thus, Alrai alleges that NBG's share calculation was understated by 1.5% (*id.*).

Prior to closing of the merger, NBG needed more cash and needed to reduce debt to improve its balance sheet (compl, ¶32). Thus, it decided to pursue a private investment in public entities (PIPE) in order to address its significant cash needs. This PIPE, however, would also dilute the interests of both Naked and Bendon shareholders (*id.*, ¶ 33). The investors in the PIPE were allocated 19.54% of the issued and outstanding shares of NBG, and effectively reduced the Bendon shareholders' pro-rata allocation of the NBG Ordinary Shares in connection with the merger by that same amount (*id.*, ¶ 53). Alrai alleges that this dilution calculation made no sense (*id.*).

On June 19, 2018, the merger closed (*id.*, ¶ 44). As a result of the various adjustments as well as the reductions taken due to the PIPE dilution, NBG issued far fewer shares than originally estimated, issuing only nearly 23 million, instead of the over 148 million shares originally contemplated in the merger, with only over 16 million going to all Bendon shareholders (*id.*).

Alrai alleges that its shares in Bendon were exchanged in the merger for 1,482,022 shares in NBG, which shares were either in the form of certificates or book-entry shares. However, because NBG was under pressure to find additional shares to use, in addition to additional cash, to finance its growth strategy, it only registered 1,167,437 NBG shares to Alrai, allegedly skimming 314,585 shares from Alrai (*id.*, ¶ 1). Alrai contends that NBG covered this up by fabricating a share calculation to justify its theft. It points to an email three days prior to the merger, from NBG's CFO Howard Herman to NBG's CEO Justin Davis-Rice, which was then forwarded to Alrai, indicating that Alrai's shares would be 1,451,032 (not the 1,167,437 Alrai received three days later) (*id.*, ¶ 53). Alrai alleges that it was entitled to either its pro-rata share of the NBG shares for which Bendon shares were exchanged, based on Alrai's percentage ownership of Bendon, or 9.6 million NBG shares as promised in the Deeds, whichever is greater.

Alrai commenced this action against NBG alleging two causes of action: conversion and promissory estoppel. In the conversion claim, Alrai alleges that its shares in Bendon were exchanged for a total of 1,482,022 NBG shares over which Alrai has or had legal ownership, that

NBG directed that only 1,167,437 NBG shares be registered in Alrai's name, exercising unauthorized dominion and control over 314,585 of Alrai's NBG shares (*id.*, ¶¶ 63-67). In the second claim, Alrai alleges that NBG made clear promises to Alrai that its final share count was 9.6 million adjusted by a reverse split ratio to reflect the fact that NBG issued fewer shares than were originally contemplated by the original Merger Agreement, and that Alrai's shares would be registered within 30 days after the closing, that it reasonably relied on these promises, and as a result suffered damages (*id.*, ¶¶ 68-72).

NBG moves to dismiss asserting that Alrai fails to adequately allege the essential elements of each of its claims, and that the documentary evidence, which is referred to in Alrai's complaint, demonstrates that NBG's distribution of shares in the merger was made pursuant to the Merger Agreement, and that Alrai has not alleged any separately actionable wrong that could give rise to a conversion or promissory estoppel claim. Alrai was not a party to the Merger Agreement, and does not allege any breach thereof. NBG urges that, prior to the merger, Alrai did not own any shares in either Naked or Bendon, notwithstanding the Deeds, as no shares were issued or registered to Alrai (*see* exhibit B to defendant's notice of motion, Bendon Final Share Register). It argues that Alrai only had a beneficial interest in Bendon. NBG further argues that while the Deeds guaranteed Alrai a certain number of NBG shares, that guarantee was made by non-party EJG, not NBG. It urges that because Bendon raised less capital than initially projected in connection with the merger, NBG had to issue additional shares by means of the PIPE, which in turn lowered Bendon's net asset calculation, thereby reducing its ultimate pro-rata share in NBG upon completion of the merger. The Merger Agreement did not give Alrai any priority over other Bendon shareholders, and Alrai has not stated the basis an exemption from the same dilution factors applicable to all Bendon shareholders.

DISCUSSION

Defendant NBG's motion to dismiss is granted, and the complaint is dismissed.

On a motion to dismiss for failure to state a claim (CPLR 3211[a][7]), the complaint allegations are accepted as true, the plaintiff is afforded the benefit of every favorable inference, and the court need only determine whether the facts fit within a cognizable legal theory (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Bare legal conclusions and factual claims flatly contradicted by the

documentary evidence, however, are not entitled to such considerations (*see Nisari v Ramjohn*, 85 AD3d 987, 989 [2d Dept 2011]).

On a motion to dismiss based on documentary evidence (CPLR 3211[a][1]), the documentary evidence submitted must resolve all factual issues, definitively disposing of the plaintiff's claims (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002]; *Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]).

Conversion

Plaintiff's claim for conversion fails to state a claim, and is dismissed. A "conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Epiphany Community Nursery Sch. v Levey*, 171 AD3d 1, 8 [1st Dept 2019] [internal quotation marks and citation omitted]; *see Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49–50 [2006]). To establish this claim, "the plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question . . . to the exclusion of the plaintiff's rights" (*Mackey Reed Elec., Inc. v Morrone & Assoc., P.C.*, 125 AD3d 822, 824 [2d Dept 2015] [internal quotation marks and citation omitted]; *see also Giardini v Settanni*, 159 AD3d 874, 875 [2d Dept 2018] [plaintiff failed to show immediate right to possession]).

Generally, the "conversion of intangible property is not actionable" (*Austin v Gould*, 168 AD3d 626, 627 [1st Dept 2019] [no conversion by transfer of interest in company to third party]). Intangible property, however, may be considered tangible for purposes of a conversion claim where the plaintiff has a physical representation of it, i.e., stock certificates or the electronic record or registration of such stock certificates, and alleges the taking of that physical representation (*see Thyroff v Nationwide Mut. Ins. Co.*, 8 NY3d 283, 292–93 [2007] [conversion can include the taking of "electronic records that [are] stored on a computer and [are] indistinguishable from printed documents"]). Thus, to allege a claim for conversion of stock certificates, the plaintiff must allege that it was issued stock certificates, or that they were electronically recorded in plaintiff's name, and they were taken by defendant (*see LG Capital Funding, LLC v Coroware, Inc.*, 2017 WL 9250379, * 4 [ED NY, July 12, 2017, No. 16-CV-2266 (AMD)(PK)], *report adopted* 2017 WL 3973921 [ED NY, Sept. 8, 2017, No. 16-Civ- 2266 (AMD)(PK)] [allegations that defendant failed to deliver shares are insufficient to state a conversion claim]; *Jin Young Chung v Yoko Sano*, 2011

WL 1303292, * 16-17 [ED NY, Feb. 25, 2011, No. 10-CV-2301 (DLI)], *report adopted* 2011 WL 1298891 [ED NY, March 31, 2011, No. 10-CV-2301 (DLI)(CLP)] [alleged conversion of stock interests failed to state a claim]; *see also In re CIL Limited*, 582 BR 46, 113-114 [Bankr SD NY 2018] [plaintiff must allege that the physical or virtual representations of its ownership interest were converted, not simply a dilution in the value of plaintiff's interest]). The plaintiff must allege that the stock was issued to it, or that it had some other kind of possession of the shares, and that the defendant took the shares (*see LG Capital Funding, LLC v CardioGenics Holdings, Inc.*, 2018 WL 1521861, * 6 [ED NY, Feb. 20, 2018, No. 16-CV-1215 (AMD)(SJB)], *report adopted* 2018 WL 2057141 [ED NY, March 8, 2018, No. 16-CV 1215 (AMD)(SJB)], *affirmed in part, vacated and remanded in part on damage calculation* 2019 WL 4265964 [2d Cir 2019]; *LG Capital Funding, LLC v Coroware, Inc.*, 2017 WL 9250379, * 4; *Jin Young Chung v Yoko Sano*, 2011 WL 1303292, * 17; *see also LG Capital Funding, LLC v Sanomedics Inter. Holdings, Inc.*, 2015 NY Slip Op 32232[U], * 5 [Sup Ct, Kings County 2015] [mere right to be repaid in money or stock fails to show ownership, possession or control of the stock for conversion claim]). The mere right to payment may not form the basis for a conversion claim (*Zendler Constr. Co., Inc. v First Adj. Group, Inc.*, 59 AD3d 439, 440 [2d Dept 2009]). "[C]ontingent, contractual rights do not suffice to establish a present possessory interest for the purposes of a conversion claim" (*Charles Schwab & Co., Inc. v Retrophin, Inc.*, 2015 WL 5729498 at *14 [SD NY, Sept. 30, 2015, No. 14-Civ-4294 (ER)], citing, for example, *Orchid Constr. Corp. v Gonzalez*, 89 AD3d 705, 707 [2d Dept 2011] [plaintiff-contractor with contractual right to payment did not have ownership, possession, or control of the purportedly converted funds]; *Onanuga v Pfizer, Inc.*, 2003 WL 22670842, at *4 [SD NY, July 21, 2003, No. 03-Civ-5405 (CM)] [holder of stock options, before exercise of the options, does not have a sufficient possessory interest in the stock to maintain a claim for conversion]).

Here, Alrai alleges an improper conversion of its right to receive additional shares in NBG based on Alrai's beneficial interest in Bendon. Alrai fails to allege that it possessed the NBG share certificates, or any other physical manifestation of the allegedly converted shares. It also fails to allege that the shares were previously registered in its name. Alrai alleges merely a beneficial right, pursuant to its agreement with a third party, EJG, to additional NBG shares. This mere right to payment of NBG shares is not sufficient to establish a "present possessory interest for purposes of a conversion claim" (*Charles Schwab & Co. v Retrophin, Inc.*, 2015 WL 5729498 at *14;

Onanuga v Pfizer, Inc., 2003 WL 22670842 at *4; *see Selinger Enters., Inc. v Cassuto*, 50 AD3d 766, 768 [2d Dept 2008]). Indeed, Alrai cannot even allege that it possessed the Bendon shares which it was to exchange for the NBG shares. The Bendon Final Share Register issued prior to the merger does not list Alrai as the owner or possessor of Bendon shares (exhibit B to defendant's notice of motion). While the Deeds gave Alrai a beneficial interest in certain Bendon shares, at no time prior to the closing of the merger did Alrai have a possessory interest in NBG shares. Further, under the Deeds, the number of NBG shares that Alrai ultimately was going to get upon the closing of the merger was not fixed. In fact, the Deeds at section 7.1(e) specifically disclosed to Alrai that, prior to the closing, NBG and/or Naked could issue "further shares or other securities that may be convertible into shares" or which could enable the holder to buy additional shares, which contingencies "may be both material and adverse to the rights of a holder of the Sale Shares [Alrai]" (exhibits C and D to defendant's notice of motion). The PIPE was precisely that type of contingency which diluted Alrai's potential shares in NBG, and which was disclosed to Alrai in section 7.1(e) of the Deeds.

Essentially, Alrai's claim is a contract-based dispute over the number of shares that it was entitled to under the Deeds and the Merger Agreement. While Alrai may not pursue a contract claim under the Merger Agreement since it was not a party to that agreement, Alrai may pursue such a claim against EJG based on breach of the Deeds (*see* exhibits C and D to defendant's notice of motion, Deeds § 7.3 [EJG guarantee]). Alrai's conversion claim is insufficient as a matter of law.

Promissory Estoppel

The second cause of action for promissory estoppel also is dismissed.

To assert such a claim, plaintiff must establish (1) a clear and unambiguous promise; (2) reasonable reliance on the promise; and (3) injury caused by the reliance (*MatlinPatterson ATA Holdings LLC v Federal Express Corp.*, 87 AD3d 836, 841-842 [1st Dept 2011]). Where the complaint fails to allege a clear and unambiguous promise, the claim must be dismissed (*see Randall's Is. Aquatic Leisure, LLC v City of New York*, 92 AD3d 463, 464 [1st Dept 2012] [promissory estoppel claim dismissed because no clear and unambiguous promise]; *New York City Health & Hosps. Corp. v St. Barnabas Hosp.*, 10 AD3d 489, 491 [1st Dept 2004] [same]). The existence of a valid and enforceable written contract governing a particular subject matter precludes recovery on a quasi-contract theory, such as promissory estoppel, on events arising out

of the same subject matter (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]). This bars a quasi-contract claim as against both the parties to a contract and non-parties (*see 22 Gramercy Park, LLC v Michael Haverland Architect, P.C.*, 170 AD3d 535, 536-537 [1st Dept 2019]; *Melcher v Apollo Medical Fund Mgt. L.L.C.*, 105 AD3d 15, 27-28 [1st Dept 2013]; *Paragon Leasing, Inc. v Mezei*, 8 AD3d 54, 54-55 [1st Dept 2004]; *Bellino Schwartz Padob Adv. v Solaris Mktg. Group*, 222 AD2d 313, 313 [1st Dept 1995]; *Feigen v Advance Cap. Mgt. Corp.*, 150 AD2d 281, 283 [1st Dept 1989]; *MBIA Ins. Corp. v Royal Bank of Can.*, 28 Misc. 3d 1225[A] * 44-45 [Sup Ct, Westchester County 2010]).

In the instant case, Alrai's promissory estoppel claim is based on NBG's alleged promises that: (1) Alrai's final share count in the merger after exchange of its Bendon shares would be 9.6 million adjusted by a "split ratio" to reflect that less NBG shares were issued in the merger than were contemplated in the original Merger Agreement, and (2) Alrai's shares would be registered by NBG within 30 days of the merger closing (compl, ¶ 69). These allegations are covered by the Merger Agreement and the Deeds, both comprehensive written agreements covering the subject matter of the alleged promise regarding the issuance and registration of NBG shares upon the merger closing. These agreements bar this quasi-contract claim, even though the claim is asserted against a non-party to the contract (*see e.g. Norcast S.ar.l. v Castle Harlan, Inc.*, 147 AD3d 666, 668 [1st Dept 2017] [unjust enrichment claim barred by existence of valid, enforceable contract governing subject matter even though defendant nonsignatory to that agreement]; *Maor v Blu Sand Intl. Inc.*, 143 AD3d 579, 579 [1st Dept 2016] [quasi-contract claim barred against third-party nonsignatory to a contract that covers the subject matter of the dispute]; *Feigen v Advance Capital Mgt.*, 150 AD2d at 283). The Deeds determined Alrai's pre-merger interest in Bendon to be exchanged in accordance with the Merger Agreement. Under the Merger Agreement, the number of NBG shares any Bendon shareholder would receive was contingent on certain variables that could not be determined before the closing (exhibit A to defendant's notice of motion, Merger Agreement §§ 1.5, 5.18). To the extent that Alrai is seeking the 9.6 million shares allegedly promised and guaranteed in the Deeds, that claim must be asserted against EJG based on a breach of section 7.3 of the Deeds. NBG was not a party to the Deeds, and never guaranteed or promised any specific number of NBG shares.

Alrai's reliance upon emails, all sent prior to the merger closing, promising a particular number of NBG shares upon the closing (compl, ¶¶ 53), is unreasonable. The pro-rata shares that

Bendon shareholders would be allotted was subject to contingencies which would not be fully and finally calculated until the merger was closed, all of which was explicitly disclosed in the Merger Agreement (Merger Agreement §§ 1.5[b], 5.18), and in the Deeds (Deeds § 7.1[e]). While Alrai may not sue directly for an alleged breach of the Merger Agreement since it was not a party thereto, Bendon may seek such relief.

Similarly, Alrai asserts that the SEC registration statements filed by NBG specifically disclosed that Alrai would receive more than 9.6 million NBG shares, or 9.6 million shares and then the reverse share split ratio of approximately 6:1 would be applied to calculate the NBG shares (compl, ¶¶ 18-25). The complaint allegations, themselves, show the repeated amendments of the registration statements, which only highlight that the number of NBG shares issuable to both Bendon and Naked shareholders was adjustable depending on the net debt of Bendon and the net assets of Naked as finally determined in accordance with the Merger Agreement after the closing. While Alrai is correct that it need not make a detailed showing of the elements of a promissory estoppel claim to survive a pre-answer dismissal motion, that is irrelevant here. The deficiency in this claim is "not in the completeness of the allegations, but in their contradiction" (*Prospect St. Ventures I, LLC v Eclipsys Solutions Corp.*, 23 AD3d 213, 214 [1st Dept 2005]). Alrai's promissory estoppel claim fails to state a claim.

Accordingly, it is

ORDERED that defendant's motion to dismiss the complaint is granted and the complaint is dismissed in its entirety, with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendant.

This constitutes the decision and order of the court.

DATED: October 30, 2019

ENTER,

O. PETER SHERWOOD J.S.C.