

Audthan LLC v Nick & Duke, LLC
2020 NY Slip Op 32155(U)
July 2, 2020
Supreme Court, New York County
Docket Number: 652050/2015
Judge: Robert R. Reed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X		INDEX NO.	<u>652050/2015</u>
AUDTHAN LLC,			12/19/2019,
	Plaintiff,		12/05/2019,
			12/19/2019,
	- v -	MOTION DATE	<u>N/A</u>
NICK & DUKE, LLC,			014 015 016
	Defendant.	MOTION SEQ. NO.	<u>017</u>

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 014) 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 697, 698, 699, 700, 701, 702, 703, 704, 705

were read on this motion to VACATE STAY

The following e-filed documents, listed by NYSCEF document number (Motion 015) 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 674, 675, 676, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 739

were read on this motion to STAY

The following e-filed documents, listed by NYSCEF document number (Motion 016) 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 706, 707, 708, 738, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749

were read on this motion for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 017) 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 814

were read on this motion for INTERIM RELIEF

ROBERT R. REED, J.:

Motions bearing sequence numbers 014, 015, 016 and 017 are consolidated herein for disposition. This action involves a dispute between plaintiff Audthan LLC (Audthan), tenant under a long-term ground lease, dated May 24, 2013 (Lease), for real property located at 182-188

Eleventh Avenue in the County, City and State of New York (Property), and the Property's fee owner and lessor, defendant Nick & Duke, LLC (Landlord).

In motion sequence number 014, Landlord seeks an order vacating the stay imposed by the third *Yellowstone* order in this action, issued on August 28, 2018 (the 2018 *Yellowstone* Order),¹ or, in the alternative, compelling Audthan to post an additional undertaking of not less than \$5 million. Landlord also seeks to vacate the note of issue and certificate of readiness filed on September 23, 2019, alleging that the case is not ready for trial and that the certificate of readiness is not correct in that there is still outstanding discovery, or, in the alternative, asks that it be granted a further extension of the discovery deadline and various other relief.

In motion sequence number 015, brought by order to show cause entered by the court on October 31, 2019, Landlord seeks an order, pursuant to CPLR 2201 and 3212, staying further proceedings and tolling Landlord's time to complete discovery and the deadline for summary judgment motions, pending determination of Landlord's motion in sequence number 014.

In motion sequence number 016, brought by order to show cause entered by the court on November 15, 2019, Landlord seeks an order, pursuant to CPLR 2308(b), directing non-party Noam Baram to comply with its subpoena and notice of deposition and to appear for deposition, and requiring ancillary relief for non-compliance, together with an award of costs and damages against said non-party and its attorneys for the alleged prior non-compliance.

In motion sequence number 017, also brought by order to show cause, Audthan seeks, among other relief, a fourth *Yellowstone* injunction to prevent Landlord from terminating the

¹ This 2018 *Yellowstone* Order appears in this court's decision and order, dated August 28, 2018 and e-filed on NYSCEF on August 29, 2018, which resolved motions bearing sequence numbers 008 and 009 (available at NYSCEF Doc Nos. 487 and 488 and 2018 NY Slip Op 51262 [U]). The 2018 *Yellowstone* Order was affirmed by the Appellate Division in March 2020 (*see Audthan LLC v Nick & Duke, LLC*, 181 AD3d 503 [1st Dept 2020]).

Lease under its February 14, 2020 Notice of Termination (February 2020 Notice), in which it contends that Audthan failed to obtain insurance coverage required under the terms of the Lease.

Motion Sequence Number 014

On or about October 9, 2017, Landlord issued a notice of lease termination (October 2017 Notice [NYSCEF Doc No. 324]) to Audthan, premised on Audthan's alleged failure to cure several violations of "Legal Requirements," in the form of fire code violations, within the cure period provided for in the Lease (*see* affirmation of Bradley Silverbush, executed October 15, 2019 [Silverbush affirmation] ¶ 59). In response, Audthan moved by order to show cause for, among other relief, a *Yellowstone* injunction, to stay and toll termination of the Lease, to ensure that the parties' disputes are resolved on the merits. Audthan prevailed on this motion, resulting in the 2018 *Yellowstone* Order issued by the court in motion sequence number 009.

In its motion in sequence number 014, Landlord seeks to vacate the stay from the 2018 *Yellowstone* Order, alleging that Audthan has not complied with conditions of the stay, as it has not since cured the violations on which its October 2017 Notice was premised, and it has not paid the legal fees Landlord has incurred in connection with the Lease (presumably largely made up of its attorneys' fees incurred in this action), made together with accruing late fees, which Landlord contends constitute "Additional Rent" due under the Lease. In the alternative, Landlord requests that Audthan be ordered to post an additional undertaking of not less than \$5 million.

Landlord also seeks to vacate the note of issue and certificate of readiness, filed by Audthan on September 23, 2019, in compliance with an order of this court, because it contends that the case is not ready for trial and that the certificate of readiness is not correct in that there is outstanding discovery. In the alternative, Landlord requests that the court modify the prior discovery schedule to grant it an additional three weeks to complete discovery, and modify the

preliminary conference order to extend the time for filing dispositive motions until 60 days after the new discovery deadline. Landlord also requests that Audthan be compelled to produce Mr. Moshe Ziv for deposition and cooperate in the scheduling of the remaining deposition. Finally, Landlord requests that the previous stay be vacated so as to permit Landlord to commence summary proceedings to determine the various allegations asserted in this action.

Motion to Vacate the 2018 Yellowstone Order

“A *Yellowstone* injunction maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse determination on the merits the tenant may cure the default and avoid a forfeiture”

(*Graubard Mollen Horowitz Pomeranz & Shapiro v 600 Third Ave. Assoc.*, 93 NY2d 508, 514 [1999]).

“The party requesting a *Yellowstone* injunction must demonstrate that:

(1) it holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises.

These standards reflect and reinforce the limited purpose of a *Yellowstone* injunction: to stop the running of the applicable cure period”

(*id.* [internal quotation marks and citations omitted]).

Landlord claims that the 2018 *Yellowstone* Order must be vacated because Audthan has allegedly violated the 2018 *Yellowstone* Order by failing to pay additional rent due under the Lease and failing to pay the fines addressed in the 2018 *Yellowstone* Order, which payments it asserts are necessary for Audthan to comply with the Lease.

Landlord premises its claim for additional rent upon decretal language that the court used in prior *Yellowstone* orders in this action, directing “Plaintiff [Audthan] to continue to pay as use and occupancy all base rent as required by the Lease and *all additional rent as agreed to by the*

parties or determined by the Court during the pendency of this action” (see affidavit of Gurdayal

P. Kohly, sworn to October 15, 2019 [Kohly aff], ¶ 34 [emphasis added]).

The corresponding paragraph in the 2018 *Yellowstone* Order states that it is

“**ORDERED** that Audthan’s motion for a *Yellowstone* injunction is granted, to the extent of providing the same injunctive relief afforded by the temporary restraining order contained within the order to show cause dated July 29, 2015, which order was continued by this court’s decisions and orders of February 10, 2016 and May 31, 2017, as to all outstanding violations Landlord has listed in the July 2015, June 2016, and October 2017 Notices”

(*Audthan LLC*, 2018 NY Slip Op 51262 [U], *6).

Landlord asserts Section 7.01 of the Lease, entitled “General Indemnification,” as requiring Audthan to indemnify Landlord and to hold it harmless from all legal fees “relating to the Lease.” Landlord fails to specify the bases for the legal and professional fees sought in the several block invoices it sent to Audthan (see Kohly aff, exhibit G [NYSCEF Doc No. 617]). Audthan believes that they are comprised of legal fees that Landlord incurred in this action and in an action Landlord brought to overturn a harassment finding by the New York City Department of Housing Preservation and Development (see affidavit of Tracee E. Davis, Esq., sworn October 31, 2019 [Davis aff] [NYSCEF Doc No. 653], ¶ 12, citing, *inter alia*, affidavit of Jonathan Wolfert, sworn to June 25, 2015 [Davis aff exhibit I] [NYSCEF Doc No. 662], ¶¶ 17-20). Landlord does not address the accuracy of Audthan’s supposition on reply.

Audthan asserts that the Lease provides for indemnification of Landlord under only certain circumstances (Davis aff ¶ 14, citing Lease [Silverbush affirmation exhibit F] [NYSCEF Doc No. 616], Sections 7.02 [environmental indemnification], 10.07 [review of plans and specifications], and 19.03 [subordination, non-disturbance, and attornment]), and so it cannot be held responsible for all of Landlord’s litigation expenses.

The court's orders were, and are, intended to maintain the *status quo* and preserve disputed issues for trial on the merits. The court ordered "Plaintiff [Audthan] to continue to pay as use and occupancy all base rent as required by the Lease and *all additional rent as agreed to by the parties or determined by the Court during the pendency of this action*" (Kohly aff, ¶ 34 [emphasis added]). This was intended to require Audthan to pay all charges previously recognized by both parties and to leave all disputed charges for determination on the merits by the court.

The 2018 *Yellowstone* Order did not direct Audthan to pay the fines at issue in motion sequence number 009. Indeed, the court noted that the arguments Audthan presented against its alleged liability were well-taken and questioned the merit of Landlord's assertion that Audthan's nonpayment of these fines could constitute a default under the terms of the Lease (*Audthan LLC*, 2018 NY Slip Op 51262 [U], *3-4). Therefore, Audthan has not violated the 2018 *Yellowstone* Order with respect to these fines.

As to its claim for additional rent, Landlord has misinterpreted not only the relevant decretal paragraphs in the 2018 *Yellowstone* Order and preceding orders, but also the Lease. As a threshold matter, it must be noted that Landlord's claim for unpaid additional rent in the form of attorneys' fees was not raised in motion sequence 009 and so Audthan's failure to pay these amounts does not constitute a violation of the 2018 *Yellowstone* Order.

Furthermore, the fee provision on which Landlord relies is not sufficiently specific to support its claim. Section 7.01 of the Lease, entitled "General Indemnification," requires Audthan to indemnify Landlord and to hold it harmless from all legal fees "relating to the Lease" (*see* Lease [Silverbush affirmation exhibit F] [NYSCEF Doc No. 616]).

A contract provision requiring a party to indemnify another in litigation between them is invalid unless the language of the contract shows its clear intent to be bound by such an obligation. Landlord, however, fails to specify the bases for the legal and professional fees sought in the several block invoices it has sent to Audthan (*see* Kohly aff, ex G [NYSCEF Doc No. 617]).

“It is settled that the interpretation of the provisions of a lease is governed by the same rules of construction applicable to other agreements, and in those instances where the intent of the parties is clear and unambiguous from the language employed on the face of the agreement, the interpretation of the document is a matter of law solely for the court. Further, New York public policy disfavors any award of attorneys’ fees to the prevailing party in a litigation, and a provision in an agreement allowing the recovery of attorneys’ fees that are incidents of litigation should be strictly construed”

(*Horwitz v 1025 Fifth Ave. Inc.*, 34 AD3d 248, 249 [1st Dept 2006] [internal quotation marks and citations omitted]; *see also Weaver St. Props., LLC v Cold Stone Creamery, Inc.*, 86 AD3d 536, 537 [2d Dept 2011] [awarding attorneys’ fees where commercial lease clearly provided for payment of attorneys’ fees in event of default]).

As the clause at issue does not clearly and unmistakably show Audthan’s intent to indemnify Landlord for attorney’s fees incurred in litigation, especially in litigation between Audthan and Landlord, Landlord’s argument fails (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 492 [1989] [citations omitted]). Landlord’s motion to vacate the 2018 *Yellowstone* Order, including its request for an additional undertaking, is therefore denied.

Motion to Vacate the Note of Issue and Certificate of Readiness

Landlord also seeks to vacate the note of issue and certificate of readiness Audthan filed on September 23, 2019. It alleges that the case is not ready for trial and that the certificate of readiness is not correct inasmuch as there are still two depositions outstanding. In the alternative,

Landlord prays that it be granted a further extension of the discovery deadline and various other relief.

“The Uniform Rules for the Trial Courts provide two distinct methods for obtaining disclosure after a note of issue is filed” (*Schroeder v IESI NY Corp.*, 24 AD3d 180, 181 [1st Dept 2005], citing 22 NYCRR 202.21[d] and [e]; *Audiovox Corp. v Benyamini*, 265 AD2d 135, 139–140 [2d Dept 2000]).

Under subsection 202.21(e), a party may move to vacate a note of issue upon the ground that the case is not ready for trial,

“[w]ithin 20 days after service of a note of issue and certificate of readiness . . . upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect”

(22 NYCRR 202.21[e]).

The other method of obtaining post-note of issue disclosure is found in 22 NYCRR 202.21(d). This subsection permits the court to authorize additional discovery “[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness’ that would otherwise cause ‘substantial prejudice’” (*Schroeder*, 24 AD3d at 181). “Because this subsection requires both unusual and unanticipated circumstances and substantial prejudice, it has been described as the ‘more stringent standard’” (*id.* citing *Audiovox Corp.*, 265 AD3d at 140).

Subsection 202.21(e) governs here, as the depositions at issue were sought before the note of issue was filed on September 23, 2019 (*see* Kohly aff, exhibits L, M and N [NYSCEF Doc Nos. 622, 623 and 624]). Landlord noticed and/or subpoenaed the depositions of three men – Noam Baram, Moshe Ziv and Glen Bernardi – who were allegedly involved with Audthan and

its former tenants under prior iterations of the Lease and who are represented as having relevant information about Audthan's knowledge and notice of the violations at issue in motion sequence number 009 which Audthan's principals were unable to provide at their depositions.

At a hearing held on December 5, 2019, counsel for Landlord informed the court that the deposition of Mr. Bernardi had been completed and withdrew this motion as to him (tr 3: 8-12 [NYSCEF Doc No. 750]). At a hearing held on December 19, 2019, Landlord's counsel represented to the court that he could complete the depositions of Messrs. Baram and Ziv in one day, devoting a half day to each (tr 10:1-5 [NYSCEF Doc No. 753]).

In light of the above, the September 23, 2019 note of issue and certificate of readiness are vacated, and Landlord is granted the three-week discovery extension it requested in its notice of motion (NYSCEF Doc No. 608), beginning on the date this decision and order is e-filed with the NYSCEF system, to complete the two remaining half-day depositions. Landlord's motion to compel Audthan to produce Mr. Ziv for deposition is denied, as Landlord has failed to adduce evidence that Mr. Ziv is an officer, director, member, agent or employee of Audthan (CPLR 3101[a]), or that Audthan otherwise has control over him sufficient to compel his appearance (*see Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc.*, 41 AD3d 362, 364 [1st Dept 2007], *affd* 11 NY3d 843 [2008]).

This is the final extension the court will allow, absent a development warranting additional discovery under 22 NYCRR 202.21(d). Audthan is instructed to file its note of issue and certificate of readiness as soon as practicable after the expiration of the extended discovery period. Counsel to Landlord, Audthan, Mr. Baram and Mr. Ziv are directed to coordinate and expedite production, signing and service of copies of deposition transcripts, within three weeks

after the expiration of the extended discovery period. Summary judgment motions, if any, are to be served and filed within 60 days of the expiration of the extended discovery period.

Motion Sequence Number 015

Landlord moved by order to show cause on October 31, 2019, seeking a stay of proceedings until disputes raised in motion sequence number 014 are resolved, pursuant to CPLR 2201 and 3212. Resolution of motion sequence number 014 in this decision and order renders Landlord's motion in sequence number 015 moot.

Motion Sequence Number 016

Landlord moved by order to show cause on November 14, 2019, seeking an order, pursuant to CPLR 2308 (b), directing Mr. Baram to comply with a subpoena and notice of deposition and to appear for deposition. Resolution of motion sequence number 014 in this decision and order renders the substantive dispute in Landlord's motion in sequence number 016 moot. To the extent Landlord seeks costs and damages in motion sequence 016, the motion is denied, as such relief is, under the particular circumstances presented here, wholly unwarranted.

Motion Sequence Number 017

Audthan's motion for a fourth *Yellowstone* injunction, to prevent Landlord from terminating the Lease under its February 14, 2020 Notice of Termination (February 2020 Notice), which contends that Audthan failed to provide, among other things, proof of insurance coverage required under the terms of the Lease. Audthan seeks an order granting, preliminarily and permanently, a *Yellowstone* injunction, or, in the alternative, an injunction staying and tolling termination of the Lease. Audthan also requests that such order also stay and toll the cure period applicable to alleged defaults under Article 15 of the Lease, enjoin Landlord from taking any action or legal action pursuant to the February 2020 Notice, enjoin Landlord from commencing any special proceedings based on the February 2020 Notice, and sanctioning Landlord and its counsel for frivolous conduct.

The February 2020 Notice asserts that Audthan violated Article 5 of the Lease by failing to provide Landlord proof of all risk insurance, for various periods, proof of comprehensive boiler and machinery insurance for the period from March 8, 2017 to date, and proof of liability insurance for the period from February 9, 2020 to date (*see* affidavit of Tracee E. Davis, Esq., sworn to February 26, 2020, in support [Davis OSC aff] [NYSCEF Doc No. 757], exhibit A [NYSCEF Doc No. 758]). The February 2020 Notice also asserts that Audthan violated Lease

“Section 11.01(a) by failing to maintain all risk insurance and comprehensive boiler and machinery insurance required by the Lease for various periods in the Lease term, as evidenced by Audthan’s alleged failure to provide proofs of insurance for such periods;

“Section 11.01(b) by failing to maintain umbrella insurance against liability for bodily injury, personal injury and property damage within limits required by the Lease for various periods in the Lease term, as evidenced by Audthan’s alleged failure to provide proofs of insurance for such periods;

“Section 11.03 by failing to maintain a blanket insurance policy as required by subsections (a) and (c) of Section 11.01 of the Lease, as evidenced by Audthan’s alleged failure to provide proofs of such insurance for the period from February 9, 2017 to date;

“Section 11.04 by failing to deliver to Landlord complete copies of all insurance policies required by the Lease with evidence of full payment of premiums, not less than ten day prior to the expiration dates of the expiring policies, as evidenced by Audthan’s alleged failure to provide copies of such policies for various periods during the Lease term;

“Section 11.05 by failing to deliver to Landlord complete copies of all insurance policies required by the Lease with evidence of full payment of premiums, not less than ten day prior to the expiration dates of the expiring policies, as evidenced by Audthan’s alleged failure to provide copies of such policies for various periods during the Lease term; and

“Section 11.05 of the Lease by failing to name Landlord as an additional insured on any property or liability policies, as required by the Lease, as evidenced by Audthan’s alleged failure to provide copies of such policies reflecting such coverage for various periods during the Lease term”

(*id.*).

In its moving papers, Audthan asserts that it was never served a notice of default regarding these alleged breaches of the Lease, making the February 2020 Notice invalid, and that the allegations of the February 2020 Notice are unfounded, as it previously provided all, or substantially all, the proofs of insurance and other documentation which Landlord alleges Audthan failed to provide (*see* affidavit of Bhaveschchandra Shethia, sworn to February 24, 2020 [Shethia aff], ¶¶ 1-38 [NYSCEF Doc No. 768]).

As to the final item of the February 2020 Notice, contending that Audthan failed to name Landlord as an additional insured on certain property and liability policies, Mr. Shethia indicates this alleged violation is easily cured, stating that he contacted a representative of Audthan's insurance broker, who informed him that the relevant insurance carrier is willing to change Landlord's designation from loss payee to additional insured, if Landlord insists on the change (*id.* ¶ 39).

Based on these submissions, Audthan asserts it is entitled to another *Yellowstone* injunction, its fourth, or an injunction under CPLR 6301, to stay and toll the termination of the Lease and the running of the cure period applicable under the Lease, and to enjoin Landlord from taking any further legal action, including commencement of any special proceeding, relying on the February 2020 Notice. Audthan also asks that the court sanction Landlord for frivolous conduct under 22 NYCRR 130-1.1, for issuing the factually meritless February 2020 Notice to harass Audthan and delay the resolution of this action.

Landlord makes several arguments in opposition. Most notably, Landlord asserts that the *Yellowstone* application is jurisdictionally deficient because Audthan did not at the same time move to amend its amended complaint (Davis OSC aff, exhibit B), to assert a claim for a declaration regarding the parties' rights and obligations with respect to the issues raised in the

February 2020 Notice. Landlord, citing among other authority, *Zaid Theatre Corp. v Sona Realty Co.* (18 AD3d 352 [1st Dept 2005]), concludes that because no justiciable claim has been asserted addressing its current default allegations in the February 2020 Notice, granting the *Yellowstone* application must be denied.

While Landlord is wrong to assert that Audthan's substantive allegations lack merit, *Zaid Theatre Corp.* does support its contention that Audthan should have also moved to amend its amended complaint, to challenge the validity of purported violations relating to insurance set forth in the February 2020 Notice.

However, "it is well settled that the law does not favor forfeiture" (*Zaid Theatre Corp.*, 18 AD3d at 355 [citation omitted]). "Particularly, it is recognized that equity abhors forfeitures of valuable leasehold interests" (*id.* [internal quotation marks and citations omitted]).

Accordingly, Audthan's motion for a *Yellowstone* injunction is denied, without prejudice, and the temporary restraining order and the tolls and stays of the termination of the Lease, Audthan's time to cure violations alleged in the February 2020 Notice, and Landlord's commencement of any legal action or special proceeding in reliance on the February 2020 Notice, are extended for 30 days after the entry and e-filing of this decision and order, to allow Audthan to refile its motion for a *Yellowstone* injunction with its motion to amend its amended complaint.

Conclusion

Accordingly, for the reasons set forth above, it is hereby

ORDERED, with respect to motion sequence number 014, that Landlord's motion to vacate the 2018 *Yellowstone* order, including its request for an additional undertaking, is denied; and it is further

ORDERED Landlord's motion to vacate the September 23, 2019 note of issue and certificate of readiness is granted and Landlord is also granted a three-week discovery extension, beginning on the date this decision and order is e-filed with the NYSCEF system, to complete the two remaining half-day depositions it has requested; and it is further

ORDERED that Audthan is directed to file its note of issue and certificate of readiness as soon as practicable after the expiration of the extended discovery period. Counsel to Landlord, Audthan, Mr. Baram and Mr. Ziv are directed to coordinate and expedite production, signing and service of copies of deposition transcripts, within three weeks after the expiration of the extended discovery period. Summary judgment motions, if any, are to be served and filed within 60 days of the expiration of the extended discovery period; and it is further

ORDERED that Landlord's motion to compel Audthan to produce Mr. Ziv for deposition is denied; and it is further

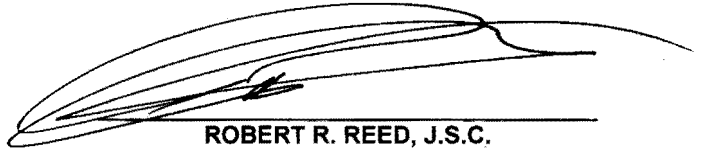
ORDERED that the motion designated sequence number 015 is denied as moot; and it is further

ORDERED that the motion designated sequence number 016 is denied as moot with respect to its substance and denied as unwarranted to the extent it seeks ancillary relief; and it is further

ORDERED Audthan's motion in sequence number 017 for a Yellowstone injunction is denied, without prejudice, and the temporary restraining order and the tolls and stays set forth in the February 26, 2020 order to show cause are extended for 30 days after the entry and e-filing of this decision and order, to permit Audthan to refile its motion for a *Yellowstone* injunction together with its motion to amend its amended complaint; and it is further

ORDERED that, absent prior approval of this court on noticed motion, Landlord is barred from issuing any further default or termination notices against Audthan while this action is pending.

7/2/2020
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE