Kinwing Kwong v City of New York
2020 NY Slip Op 34158(U)
December 15, 2020
Supreme Court, New York County
Docket Number: 152932/2013
Judge: Dakota D. Ramseur
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAKOTA D. RAMSEUR** **PART 5**

Justice

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KINWING KWONG,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF FINANCE, DAVID FRANKEL, ELAINE KLOSS, LINDA GERWIN,

Defendants.

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INDEX NO. 152932/2013

MOTION DATE 12/1/20

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number, were considered on this summary judgment motion (sequence 004): 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 86, 88, 89, 90.

Plaintiff Kinwing Kwong commenced this action against his former employer and colleagues, Defendants City of New York (the "City"), New York City Department of Finance ("DOF"), David Frankel, Elaine Kloss, and Linda Gerwin to recover damages allegedly stemming from age, gender, race, and national origin discrimination and retaliation in violation of the New York City and New York State Human Rights Law (NYCHRL/NYSHRL). Defendants, pursuant to CPLR 3212, for summary judgment dismissing the Complaint. Plaintiff opposes. For the following reasons, the motion is granted in part.

BACKGROUND[1]

Plaintiff, who identifies as an Asian American white male, has been employed by the City since 1989 (*Pl Opp* ¶ 3). At the time of the relevant allegations, he was employed as an Administrative Staff Analyst, Level 2, assigned to the DOF's Treasury Division ("Treasury") (*id.*). From April 2010 to March 18, 2012, when Plaintiff was demoted, he worked for Treasury Assistant Commissioner/Defendant Kloss, and reported to Treasury Chief of Staff/Defendant Gerwin, both identified by Plaintiff as white females (*Pl Opp* ¶ 4).

From March 2004 until March 2012, Plaintiff worked as a Director-Administrative Staff Analyst Level 2, a provisional appointment, while maintaining his Civil Service title of Associate Staff Analyst (*Pl Opp* ¶ 5). The previous Treasury Deputy Commissioner, Robert Lee, had promoted Plaintiff and given excellent evaluations before Lee's 2010 retirement (*id.*). Plaintiff alleges that Lee's retirement was followed by a "two-year campaign of discrimination,

[1] The Court, as it must on a motion for summary judgment, views the facts in the light most favorable to the non-movant (*Jacobsen v NY City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]).

hostility, and retaliation by Kloss," taking the form of a department reorganization, more work and less staff for Plaintiff, a transfer from Treasury, and a demotion and pay reduction (*id.*).

According to Plaintiff, Kloss's May 2010 reorganization resulted in Plaintiff's colleagues having fewer direct reports: 4 and 11 versus Plaintiff's 17 (*Pl Opp* ¶ 10, citing *NYSCEF 80*). In June 2010, the imbalance widened to 5 and 11 versus Plaintiff's 20 direct reports (*Pl Opp* ¶ 10). In February 2011, Kloss again reorganized the division; between reorganizations, Plaintiff attempted to meet with Kloss but, unlike similarly situated white managers, was not able to (*Pl Opp* ¶ 11, citing *Pl EBT* 104-105). The reorganization resulted in the promotion and hiring of a younger, white colleague and the demotion of two minority individuals (*Pl Opp* ¶¶ 11-12, citing *Kloss EBT* 101-105).

Defendants' explanation of the restructuring differs from Plaintiff's. For example, Defendants highlight that the February 2011 reorganization resulted in the dissolution of the Client Services unit, resulting in Plaintiff's title shifting from Director of Client Services to Director of Accounting, retaining both a directorship and the same salary (*Defs Memo* p 4, citing *Pl EBT* 23). Defendants also highlight that two new individuals were promoted to directorships: Sherri Mangham, identified by Plaintiff as a mid-40s black female, and Michael Columbe, a "40-something" white male (*Defs Memo* p 4, citing *Pl EBT* 34-35, *NYSCEF 59*). Defendants also note that a hiring decision regarding Rachel Rogers, a white female, was not made by Kloss, but by Deputy Commissioner Andrew Sulkin (*Kloss EBT* 51-52). Defendants also characterize the 2012 reorganization, which resulted in Plaintiff's "reversion...to his underlying permanent Associate Staff Analyst title" as the result of a "holistic assessment of employees' duties and functions ... conducted by multiple DOF offices" which similarly resulted to the reassignment of many other employees (*Defs memo* pp 4-5).

Plaintiff made numerous complaints to Kloss about perceived unequal treatment, including uninvestigated instances of harassment of Plaintiff by white subordinates (*Pl Opp* ¶ 6, citing *Complaint* ¶¶ 84-91; *Pl EBT* 135). After Plaintiff hired an attorney in approximately early 2012, DOF's EEO office began to investigate (*Pl Opp* ¶ 6; *NYSCEF 79*). Plaintiff alleges that, among other things, after he made complaints, Kloss "berate[d]" Plaintiff in the presence of another non-EEO employee and interfered in the EEO allegation (*Pl Opp* ¶ 7). According to a January 11, 2012 memorandum prepared by Kloss "to document recent developments involving [Plaintiff]," this conversation was the result of Plaintiff learning about the EEO investigation and beginning to conduct his own investigation, which Kloss warned him against (*NYSCEF 63*).

Plaintiff asserts that he was "set up to fail" (*Pl Opp* ¶ 13). For example, Plaintiff asserts that, unlike white supervisors, Plaintiff was not provided with a "Task and Standard," and thus could not be evaluated at his 2011 evaluation (*Pl Opp* ¶¶ 13-14, citing *Pl EBT* 138-39, *Kloss EBT* 98-99). Despite this, Plaintiff prepared a "Challenges and Achievements" memorandum and sent it to Kloss on December 11, 2011, but never heard back from Kloss (*NYSCEF 81*).

When Kloss, according to the January 11, 2012 memorandum, emailed staff to inform them that she could not act on rumors and anonymous letters, numerous individuals came forward to complain about Plaintiff's management, including that the "Chinese members of [Plaintiff's] team were given much less work" (*id.*). The memorandum also purports to document

an incident in which Plaintiff called Kloss to inform her that a direct report told Plaintiff that his conversations with staff had been recorded; according to the memo, about a month later, the individual confessed that she had concocted the records "to scare [Plaintiff], who had been constantly asking [the employee] questions" (*id.*). Plaintiff highlights this particular incident as an example of why the other allegations against him cannot be trusted.

Shortly before Plaintiff's transfer and pay cut, on March 12, 2012, Kloss, in a memorandum, detailed what Defendants characterize as "severe supervisory shortcomings and unacceptable hostility" (*Defs memo* pp 6-7, citing *NYSCEF 63*). The memorandum alleged, for example, unnecessary and ineffectual meetings, micromanagement, a lack of "full understanding of accounting concepts and principles," poor decision-making, and poor staff morale (*id.*). The memorandum concluded that Plaintiff "should be transferred to another division of Finance and he should not have any management responsibilities" (*id.*). On March 16, 2012, Plaintiff was transferred from Treasury to the Land Records Unit and "reassigned to your underlying civil service [position] of Associate Staff Analyst," which paid less (*NYSCEF 56*).

On March 28, 2012, Annie M. Long, a DOF Office of Equal Opportunity (EEO) Officer, issued a "Final Recommendation," also signed by Defendant/DOF Commissioner Frankel (*NYSCEF 60*). According to the EEO Recommendation, and as the City highlights in its moving papers (p 5, *et seq.*), Plaintiff had 8 anonymous complaints made against him for violations of the City's EEO policy on national origin, race, disability, and hostile work environment (*id.* ¶ I; *NYSCEF 61*). The EEO Recommendation, based on 17 interviews, including Kloss and Plaintiff, was unable to substantiate any of the allegations and, based on a pending reorganization and Plaintiff's already-effectuated demotion, did not recommend any further action (*NYSCEF 60* ¶ V). In sum and substance, the Recommendation found that Plaintiff was "equally stern and nasty at any given time to all his employees," and "appears to be a yeller and screamer. However, he made no discriminatory/derogatory comments while yelling and screaming at employees, and he yells and screams at employees of various protected categories" (*id.* at pp 7-8).

Plaintiff alleges that, throughout his employment, he suffered numerous examples of racial animus, including correction of his pronunciation, insults regarding his use of English including pretending not to understand Plaintiff's speech, and "routinely" asking him to repeat himself (*Pl Opp* ¶¶ 17-19; *Pl EBT* 94-95, 117-121, 126-33). Plaintiff also alleges that Gerwin and Kloss insulted his contribution to the holiday potluck (ginger chicken) when they learned it was his, previously said "you're Chinese you bring those dumpling things," insulted the use of a holiday card with Chinese lettering/figures (*Pl Opp* ¶ 18, citing *Pl EBT* 126-130).

DISCUSSION

Summary judgment is a "drastic remedy" and will only be granted in the absence of any material issues of fact (*id.*). To prevail on a motion for summary judgment, the movant must make a *prima facie* showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The movant's initial burden is a heavy one; on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party

(*Jacobsen*, 22 NY3d at 833). If the moving party fails to make its *prima facie* showing, the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

In support of their motion, Defendants argue: (1) that Frankel should be dismissed for lack of personal involvement; (2) that Plaintiff fails to state a prima facie cause of action for discrimination or retaliation under the NYSHRL or NYCHRL; and (3) that Defendants have articulated legitimate, non-discriminatory reasons for their actions that cannot be shown to be pretextual. In opposition, Plaintiff argues that he has established a triable issue of fact as to his NYCHRL and NYSHRL claims for hostile work environment, retaliation, and discrimination.

I. Frankel

The NYSHRL and NYCHRL "provide for individual liability for persons who 'aid, abet, incite, compel, or coerce the doing of any of the acts forbidden [thereunder], or attempt to do so'" (*Hagan v City of NY*, 39 F Supp 3d 481, 514 [SDNY 2014], citing N.Y. Exec. L. § 296[6]; N.Y.C. Admin. Code § 8-107[6]). "This provision reaches conduct by a supervisor or a co-worker who actually participates in the conduct giving rise to a discrimination claim" (*Hagan*, 39 F Supp 3d at 514). Defendants have satisfied their burden by arguing that Plaintiff cannot hold former DOF Commissioner David Frankel individually liable absent allegations that Frankel actually participated in the alleged conduct, allegations which are not substantively present in the Amended Complaint, or otherwise supported by the record. Plaintiff's opposition is limited to a brief mention of Frankel "sign[ing] off" on Kloss's "bogus reasons to transfer and demote" Plaintiff, which is insufficient to satisfy Plaintiff's burden (*Pl Opp* ¶ 26).[2] Accordingly, this branch of Defendants' motion is granted, and the Complaint is dismissed as against Frankel.

II. Discrimination and retaliation under the NYSHRL and NYCHRL

Courts analyze both NYSHRL and NYCHRL discrimination claims under the *McDonnell Douglas* burden shifting framework (*Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 112 [1st Dept 2012]). Under the *McDonnell Douglas* framework as applied in New York, a plaintiff alleging employment discrimination has the initial burden under either the NYCHRL and NYSHRL to establish a prima facie case of discrimination by demonstrating: (1) membership in a protected class; (2) qualification to hold a position; (3) termination or other adverse action; and (4) that the adverse action occurred under circumstances giving rise to an inference of discrimination (*id.* at 113). Only the third and fourth elements are at issue here.

"The burden then shifts to the employer to rebut the presumption of discrimination by clearly setting forth, through the introduction of admissible evidence, legitimate, independent, and nondiscriminatory reasons to support its employment decision" (*id.* at 113-14). "In order to nevertheless succeed..., the plaintiff must prove that the legitimate reasons proffered by the

[2] Plaintiff also conceded this point at argument.

defendant were merely a pretext for discrimination by demonstrating both that the stated reasons were false and that discrimination was the real reason. ... [t]he burden of persuasion of the ultimate issue of discrimination always remains with the plaintiff" (*id.* at 114).

Though the NYCHRL was previously analyzed identically to its federal and state counterparts, the New York City Council amended the NYCHRL by passing the Local Civil Rights Restoration Act of 2005 (N.Y.C. Local L. No. 85 ["Restoration Act"]). The City Council expressed that the NYCHRL had been "construed too narrowly" and therefore "underscore[d] that the provisions of New York City's Human Rights Law are to be construed independently from similar or identical provisions of New York state or federal statutes (*Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F3d 102, 109 [2d Cir 2013], citing Restoration Act § 1). Thus, the Restoration Act mandated that "interpretations of state and federal civil rights statutes can serve only as a floor below which the City's Human Rights law cannot fall," and required that that NYCHRL "be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed" (*Mihalik,* 715 F3d at 109, quoting Restoration Act §§ 1, 7). Thus, even if the challenged conduct is not actionable under federal and state law, courts must consider separately whether it is actionable under the broader NYCHRL standards (*Mihalik,* 715 F3d at 109).

A. Adverse employment action

Defendants first argue that the majority of the employment grievances alleged by Plaintiff are not actionable. A materially adverse change "must be more disruptive than a mere inconvenience or an alteration of job responsibilities," and "might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation" (*Messinger v Girl Scouts of U.S.A.*, 16 AD3d 314, 314-315 [1st Dept 2005]). NYCHRL claims need not demonstrate a materially adverse action; "instead, a plaintiff need only demonstrate differential treatment that is more than trivial, insubstantial, or petty" (*Cunningham v NY Jr. Tennis League, Inc.*, 2020 US Dist LEXIS 33235, at *8 [SDNY Feb. 26, 2020, No. 18-CV-1743 (JMF)]). As Defendants themselves recognize, however, under any standard, Plaintiff's "...annual salary decrease of approximately $7,000 accompanied [by] Plaintiff's March 2012 reassignment from the Treasury Department to Land Records based upon the corresponding reversion from his provisional Administrative Staff Analyst title to his underlying permanent Associate Staff Analyst title ... is sufficiently adverse under the SHRL and CHRL" (*Defs Memo* 12; *cf Messinger*, 16 AD3d at 314-15 [holding that an alteration of job responsibilities with no change in title, pay, work space, or hours is not generally considered materially adverse]). Accordingly, Defendants have failed to meet their burden of demonstrating the lack of a materially adverse employment action or, under the NYCHRL, treatment that is "more than trivial, insubstantial, or petty." Even if Defendants had satisfied this burden, Plaintiff has demonstrated an issue of fact as to the severity of certain actions: for example, at least one unfounded EEO violation and a transfer (*Pl Opp* ¶ 32).

B. Discrimination

Defendants next argue that Plaintiff has not shown an inference of discrimination, *i.e.* that the alleged adverse actions were motivated, at least in part, by his race, national origin, gender or age. "To establish a prima facie case of racial discrimination, a plaintiff has the initial burden of proving by a preponderance of the evidence a prima facie case of discrimination" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 323-324 [2004]). "Employers are unlikely to leave a 'smoking gun' admitting a discriminatory motive, [a]nd such evidence is not required to make a prima facie case of discrimination" (*Tolbert v Smith*, 790 F3d 427, 438 [2d Cir 2015]). "Statements showing an employer's racial bias...are sufficient to support a prima facie case of discrimination" (*id.* [holding that two statements about "black food" made prior to a decision to deny tenure were sufficient to establish prima facie claim of discrimination and deny summary judgment to defendant]).

Here, Plaintiff testified that no derogatory comments were made about his age or gender (*Pl EBT* 131-32). At argument, counsel was unable to conclusively identify any instances of discrimination based on those protected characteristics. Accordingly, any claims related to those characteristics are dismissed.

However, Plaintiff has alleged derogatory references to Chinese cuisine, and mockery of his use of English, which is sufficient to state a claim for discrimination (*Tolbert*, 790 F3d at 438; *Altman v NY City Dept. of Educ.*, 2007 US Dist LEXIS 32320, at *14 [SDNY May 1, 2007, No. 06 CV 6319 [HB] ["national origin discrimination includes 'the denial of employment opportunity because... an individual has the... linguistic characteristics of a national origin group."]). To the extent that Defendants argue, in reply, that any allegedly discriminatory comments were made by employees uninvolved in decisions regarding Plaintiff's employment, this argument is unavailing for two reasons: first, Defendants focus on comments relating to Chinese cuisine, characterizing them as relatively benign, but do not discuss other allegations—for example, Plaintiff's allegations that colleagues pretended not to understand Plaintiff's English.

Additionally, to the extent that colleagues made unsubstantiated EEO complaints, including at least once by an individual who later recanted, and that those complaints admittedly played at least some role in Plaintiff's reassignment, there remains an issue of fact which cannot be resolved on a motion for summary judgment. To the extent that Defendants also argue in reply that employees sharing Plaintiff's protected characteristics were treated favorably, that is not conclusive evidence that *Plaintiff* was not the victim of discrimination on the basis of protected characteristics.

C. Hostile work environment

To establish a hostile work environment claim, a plaintiff must show: (1) that the harassment was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, and (2) that a specific basis exists for imputing the objectionable conduct to the employer (*Alfano v. Costello*, 294 F3d 365, 373 [2d

Cir 2002]). "Whether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances" (*Schwapp v Town of Avon*, 118 F3d 106, 110 [2d Cir 1997]).

"For racist comments, slurs, and jokes to constitute a hostile work environment, there must be more than a few isolated incidents of racial enmity, meaning that instead of sporadic racial slurs, there must be a steady barrage of opprobrious racial comments" (*id.*). A combination of "seemingly minor incidents" may "form the basis of a constitutional retaliation claim once they reach a critical mass" (*Deters v Lafuente*, 368 F3d 185, 189 [2d Cir 2004]; *see Magilton v Tocco*, 379 F Supp 2d 495, 507-508 [SDNY 2005] [permitting a hostile work environment claim to go to a jury where plaintiff alleged verbal abuse and threats, false allegations and accusations of "being a troublemaker," having complaints ignored, denial of a transfer, and being required to put in for leave when others were not]).

Here, as discussed in detail above, Plaintiff has alleged more than Defendants' benign characterization of a few remarks about Chinese food which, viewed together and in context, could be found by a jury to constitute a hostile work environment. Accordingly, the branch of Defendants' motion seeking to dismiss the hostile work environment claims is denied.

D. Retaliation

To establish a retaliation claim, a plaintiff must demonstrate (1) participation in a protected activity; (2) the employer's awareness of the protected activity; (3) an adverse employment action; and (4) a causal connection between the protected activity and the adverse employment action (*Valentin v Fox Bus. Network*, 2016 NY Slip Op 30372[U], *7-8 [Sup Ct, NY County 2016, Engoron, J.]). "If plaintiff satisfies this burden, defendant must set forth a legitimate, non-retaliatory reason for the adverse employment action. If defendant does so, plaintiff can prevail only if he can show that defendant's explanation is merely a pretext for retaliation" (*id.*, citing *Williams v New York City Hous. Auth.*, 61 AD3d 62, 70-71 [1st Dept 2009]).

One way that retaliation can be inferred is temporal proximity between a protected action and an adverse consequence (*Harrington v City of NY*, 157 AD3d 582, 586 [1st Dept 2018] ["While temporal proximity between a protected activity and an adverse employment action may, under some circumstances, be sufficient in itself to permit the inference of a causal connection necessary for a retaliation claim, the fact that actions are not temporally proximate is not necessarily fatal to a retaliation claim."]). Though there is no defined, bright-line period of time constituting temporal proximity, a period of several months is generally sufficient (*Petyan v New York City Law Dept.*, 2015 US Dist LEXIS 53380, *41, 2015 WL 1855961, *14 [four months sufficient temporal proximity between protected activity of filing EEOC complaint and the unsatisfactory performance evaluation to raise an inference of retaliation, but 10 month interval was too attenuated]).

Here, as Plaintiff highlighted at oral argument, the Complaint alleges that Plaintiff was reassigned and demoted on March 16, 2012, about two weeks before the EEO Recommendation criticizing his performance, for his January 2012 EEO complaint. This is, at minimum, enough to

infer a potential connection between Plaintiff's protected conduct and retaliation against him. Defendants' rebuttals merely underscore that issues of fact remain.

III. Legitimate, non-pretextual reasons for adverse employment action

Finally, Defendants argue that even if the Court finds in Plaintiff's favor on all other factors, that the Court can nevertheless find, as a matter of law, that Defendants had legitimate, non-pretextual reasons for reassigning Plaintiff. Defendants highlight "severe and pervasive complaints of supervisory hostility, conduct unbecoming a supervisor, and gross mismanagement, all of which have been corroborated by many of Plaintiff's former subordinates, demonstrated to Defendant Kloss and others that Plaintiff was causing irreparable harm to the cohesiveness of the Treasury Department and his unit in particular" (*Defs Reply* p 16).

"The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff" (*Reeves v Sanderson Plumbing Prods.*, 530 US 133, 143 [2000]). "[I]n attempting to satisfy this burden, the plaintiff -- once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision -- must be afforded the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination" (*id.*). That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination by showing that the employer's proffered explanation is unworthy of credence" (*id.*) "An employer's reason for termination cannot be proven to be a pretext for discrimination unless it is shown to be false *and* that discrimination was the real reason" (*Quaratino v Tiffany & Co.*, 71 F.3d 58, 64 [2d Cir 1995]).

Though, as discussed above, the burden has not shifted to Plaintiff, the Court notes that, in addition to the analysis above, there are other factors which could suggest to a jury that actions taken by Defendants were pretextual. Plaintiff testified, and Defendants have not refuted, that Plaintiff received positive evaluations from a previous supervisor (before Kloss), and after his reassignment.[3] During that time period, every complaint cited by Defendants against Plaintiff came from a relatively brief window of time from late 2011 to his demotion. This is, in addition to the factors discussed above, sufficient to demonstrate that issues of fact remain for the jury.

CONCLUSION/ORDER

For the reasons above, it is

ORDERED that Defendants' motion for summary judgment is **GRANTED IN PART** solely to the extent that all claims on the basis of age and gender, and all claims against David Frankel, are severed and dismissed; and it is further

ORDERED that Frankel shall be removed from the caption; and it is further

[3] At argument, Defendants' counsel would not concede that other evaluations were positive, but did concede that they were not negative.

ORDERED that Plaintiff shall, within 30 days, e-file and serve a copy of this order with notice of entry upon all parties.

This constitutes the decision and order of the Court.

12/15/2020
New York, NY

DAKOTA D. RAMSEUR, 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