SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **IAS MOTION 38EFM**

Justice

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DR. GERALD FINKEL, as Chairman of the Joint Board of the Electrical Industry,

Plaintiff,

- v -

M.A. ANGELIADES, INC., and FEDERAL INSURANCE COMPANY,

Defendants.

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INDEX NO. 650028/2013

MOTION DATE 02/18/2020

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 007): 141, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192,

were read on this motion in limine/dismiss IN LIMINE TO PRECLUDE/DISMISS.

Upon the foregoing documents, and after oral argument, the motion by defendant M.A. Angeliades, Inc. ("MAA"), *in limine*, to preclude certain evidence at trial, and for related relief; and to dismiss the complaint on the ground of release in bankruptcy, is decided in accordance with the following decision.

PROCEDURAL POSTURE

By decision and order filed June 17, 2019 (NYSCEF Doc. No. 141) (the "Summary Judgment Decision"), the Hon. Carol R. Edmead, J.S.C., denied the parties' opposing motions for summary judgment (motion seq. nos. 005 and 006), finding a "multitude of questions of law and fact" making "summary judgment for either party to be an improper remedy" (Summary Judgment Decision at 7). Familiarity with the Summary Judgment Decision, setting forth certain facts and findings, is presumed.

Subsequent to the Summary Judgment Decision, pre-trial conferences in this trial-ready case were held before the undersigned at which MAA presented argument in support of a motion *in limine* (motion seq. no. 007) seeking the following relief: (a) precluding plaintiff from introducing at trial payroll records of non-party Coastal Electric Construction Corp. ("Coastal"); (b) precluding plaintiff from asserting at trial what MAA casts as "an inconsistent position as that asserted by plaintiff in a bankruptcy proceeding" involving Coastal as a Chapter 11 Debtor-In-Possession (*In re Coastal Electric Construction Corp.*, Case No. 8-11-75299-reg [EDNY]); and (c) sanctions for alleged spoliation of evidence by plaintiff. The motion is opposed by plaintiff.

While not strictly a part of MAA's motion *in limine*, MAA's counsel, during the pre-trial conferences, expressed his opinion that certain language found in the Bankruptcy Court's "Order Confirming Debtor's Third Amended Liquidating Chapter 11 Plan" in Coastal's bankruptcy case (the "Bankruptcy Plan Confirmation Order") (NYSCEF Doc. No. 184) mandates a total dismissal of this action, which the Summary Judgment Decision characterizes as "an action concerning a guarantor's failure to pay on a guaranty" (Summary Judgment Decision at 1). The guarantor that is intended by that characterization is MAA, which guarantied Coastal's obligations to plaintiff (*see*, Summary Judgment Decision at 2). The specific language referenced by MAA's counsel from the Bankruptcy Plan Confirmation Order is found at paragraph 6 thereof, titled "Confirmation Injunction," as follows:

> . . . all persons and entities who have held, hold or may hold . . . Claims against the Debtor are enjoined from taking any of the following actions against or affecting (i) the Debtor or Assets of the Debtor, (ii) DeMatteis, (iii) Skanska, ***(iv) Angeliades [i.e., MAA],*** (v) Hunter Roberts, (vi) Arch, and (vii) Capital One with respect to such Claims . . . .

(NYSCEF Doc. No. 184 ¶ 6 [emphasis added].) As indicated in the Bankruptcy Case Certification of Ballots (NYSCEF Doc. No. 189 at 2), plaintiff (i.e., the Joint Industry Board of

the Electrical Industry [the "Joint Board"]) was, in fact, a creditor who stated a claim in the sum of $902,426.66 against Coastal.[1] Therefore, MAA's counsel reasons that the Confirmation Injunction quoted above enjoins plaintiff from suing Coastal *and* the several entities listed therein, which includes "Angeliades," i.e., MAA. This is the basis of MAA's counsel's application to dismiss this action, proffered to the court during a pre-trial conference convened, primarily, to discuss stipulated facts, anticipated documentary and testimonial evidence, and MAA's motion *in limine*. MAA's counsel informed the court at pre-trial conference that his argument based on the Bankruptcy Court's Confirmation Injunction was never raised during the summary judgment motion practice before Justice Edmead; being raised for the very first time before the undersigned at pre-trial conference. Plaintiff opposes the motion to dismiss.

After a recitation of the factual background, the court will turn its immediate attention to the motion to dismiss predicated on the Bankruptcy Court Confirmation Injunction.

FACTS AND FINDINGS FROM THE SUMMARY JUDGMENT DECISION

As recited in the Summary Judgment Decision:

> This dispute stems from an agreement to pay union benefits and contributions to workers on a construction project. MAA was the general contractor on the construction of Public School 338 in the Bronx ("PS 338"). Coastal Electric Construction Corp. ("Coastal") was the electrical subcontractor on the project. Under the terms of a collective bargaining agreement, Coastal was obligated to make contributions on behalf of its employees to the Joint Board, a union-employer organization that administers benefits to its members. At one point during the project, Coastal stopped paying its required contributions and its employees walked off the job site. To ensure a return of the workers, MAA provided a written guaranty to the Joint Board that it would pay "all benefits/contributions due or may become due" for work performed by Coastal's employees on the project. The guaranty was memorialized by letter to the Joint Board's Associate Counsel on May 12, 2010. To ascertain what money was owed for benefits in connection with work on PS 338, MAA asked that it receive "timely accounts of amounts due to the board." Following the guaranty, Coastal's employees resumed work and finished the project.

[1] The exact sum sued for in this action (*see*, Complaint [NYSCEF Doc. No. 2]).

> On November 9, 2010, the Joint Board submitted a statement of account to MAA consisting of a spreadsheet that detailed Coastal's calculation of amounts owed to the Joint Board. MAA argues this spreadsheet was devoid of backup details to substantiate the claims for benefits owed, and also included payment owed on a non-related construction project. As a result, MAA did not make any payments to Coastal aside from an initial $200,000 payment. On July 26, 2011, Coastal filed for bankruptcy. The Joint Board then commenced this action against MAA and moved for summary judgment on its claim for payment of the guaranty. The Joint Board contends that Coastal's certified payroll reports show that it is owed $909,957.26, which accounts for the initial payment made by MAA. . . . In reply, MAA opposes the motion and has cross-moved for summary judgment in its favor, seeking dismissal of the Complaint. MAA argues that as the Joint Board did not provide a detailed statement of account, it did not comply with the conditional terms of the guaranty, and the guaranty is thus no longer binding on MAA.

(Summary Judgment Decision at 1-3 [record citations omitted].)

The Summary Judgment Decision goes on to find "that while the Joint Board has established the existence of the underlying debt, and MAA's failure to perform, summary judgment for the Joint Board is inappropriate as there are material questions of fact regarding whether the Joint Board complied with the condition of the guaranty" (Summary Judgment Decision at 4). Justice Edmead framed the issue for trial as whether plaintiff's statement of account (NYSCEF Doc. No. 95) "is an accurate accounting of the benefits owed to Coastal's workers for their work on the PS 338 project" (Summary Judgment Decision at 6). As her Honor continued, "MAA contends that the accounting pooled money that the Joint Board received from Coastal for amounts owed for benefits across other projects and did not individually account for the funds owed for the PS 338 project. . . . The Joint Board disputes this contention, arguing that it had no duty to segregate payments, and that nothing in the record suggests the Joint Board was even informed which project payments were related to when it received said payments from Coastal" (Summary Judgment Decision at 6-7 [record citations omitted]).

The Summary Judgment Decision concludes as follows: "While the Joint Board has demonstrated the existence of the guaranty and the underlying debt, there is grave uncertainty

regarding the exact amount owed, considering the outstanding questions of how much has already been covered by MAA's payments to Coastal, and whether the payroll certifications, assuming they are valid and admissible,[2] specifically cover work on the PS 338 project. The Joint Board's damages thus cannot be reasonably ascertained." (Summary Judgment Decision at 7.) That said, the Summary Judgment Decision left open the possibility, for trial, of the Joint Board being somehow capable of having its "losses . . . reasonably adjudged" (*id.*, at 8).

It is with that procedural and factual backdrop that this court, as the trial court, must now proceed to determine the pre-trial matters raised by counsel for MAA in advance of any trial in this action. Indeed, said counsel has even asked for outright dismissal, predicated on the Bankruptcy Court's Confirmation Injunction, which this court will take up first in its legal discussion directly below.

DISCUSSION

MAA's Motion to Dismiss, Predicated on the Bankruptcy Court's Confirmation Injunction

It is fundamental that a debtor's discharge in bankruptcy does not work a discharge or release of the obligations of the debtor's guarantors (*e.g., Union Trust Co. v Willsea*, 275 NY 164 [1937]; *Taubes v Stuart*, 181 AD2d 669 [2d Dept 1992]). MAA's counsel acknowledges that general precept (*see*, NYSCEF Doc. No. 188), but argues that in this particular instance, the Bankruptcy Plan Confirmation Order did go ahead and release MAA from its guaranty obligations, citing the court to the following language found at the beginning of paragraph 6 of that order (the Confirmation Injunction):

> . . . all persons and entities who have held, hold or may hold . . . Claims against the Debtor are enjoined from taking any of the following actions against or affecting (i) the Debtor or Assets of the Debtor, (ii) DeMatteis, (iii) Skanska, ***(iv) Angeliades [i.e., MAA],*** (v) Hunter Roberts, (vi) Arch, and (vii) Capital One with respect to such Claims . . . .

[2] The admissibility of Coastal's certified payroll reports is a subject of MAA's motion *in limine*, seeking to preclude.

(NYSCEF Doc. No. 184 ¶ 6.) However, in MAA's zeal to proffer this position, it has overlooked the clauses that immediately follow the above-quoted opening language of that paragraph. That paragraph enjoins parties with "Administrative Claims or Claims against or Interests in the Debtor," i.e., parties with claims against *Coastal*, from bringing one of five specific types of actions, enumerated in subparagraphs (a) through (e) of that paragraph, against certain parties, including MAA, "with respect to such Claims" (*id.*). That particular clause ("with respect to such Claims") limits the scope of that entire paragraph in the sense that the injunction against suit is limited to actions "with respect to" claims against *Coastal*, defined in subparagraphs (a) through (e) as:

- "any suit, action, arbitration, or other proceeding of any kind *against the Debtor* or *the assets of the Debtor*;"
- "recovering . . . any judgment, award, decree, or order *against the Debtor* or *the assets of the Debtor*;"
- "perfecting or otherwise enforcing . . . any encumbrance of any kind *against the Debtor*, [or] *the assets of the Debtor* . . .;"
- "Asserting any setoff . . . *against the Debtor, the assets of the Debtor*;" and
- "Proceeding in any manner . . . that does not conform to or comply with the provisions of the Plan."

The instant lawsuit against MAA does not fall into any of those categories because its guaranty of Coastal's obligations to the Joint Board is not conditioned on any non-performance by Coastal; it is not contingent on any default by Coastal or any discharge of Coastal's own obligation, whether through bankruptcy or otherwise. It is an independent obligation undertaken by MAA with no conditions tied to Coastal's performance, as plainly demonstrated by the broad language of MAA's guaranty which is devoid of any such conditions (*see*, NYSCEF Doc. No. 161).

Carefully read, MAA's guaranty does not condition its obligation on defaults by Coastal in meeting its obligation to the Joint Board. Rather, the guaranty clearly undertakes "to

guarantee all benefits/contributions due or may become due to the Board, and wages to the workers in connection with Coastal's work at the PS338Bx project" (*id.*). The guaranty continues by identifying MAA's motivation for undertaking this unconditional guaranty: "as an inducement for the immediate return of Coastal's entire electrical workforce at the subject project site" (*id.*).

> Indeed, MAA wrote to the Joint Board shortly after undertaking the guaranty:
>
> [O]nce you had the opportunity to calculate the entire amount owed by Coastal, in connection with the PS338Bx project, I committed to forwarding the balance of the funds to the JIB ["Joint Industry Board"] within seven days of your notification. In return for this agreement, I understand that you will be instructing all of the electrical workers to return to the PS338Bx project by tomorrow morning.

(NYSCEF Doc. No. 165.) That is an unconditional commitment insofar as Coastal's performance is concerned. Naturally, MAA's reasonable request for a calculation of amounts due is simply its way of gauging the quantum of its independent obligation to the Joint Board. Coastal's non-payment is not a "condition" of MAA's performance under its guaranty; it is the "measure" of its performance.

Justice Edmead's discussion about the guaranty being conditional (*see*, NYSCEF Doc. No. 141 at 4-5) relates only to a condition requiring the Joint Board to furnish MAA "timely accounts of the amounts due to the board" (NYSCEF Doc. No. 161). In other words, the quantum of MAA's independent guaranty to pay is calculable as sums "due or may become due to the Board" (NYSCEF Doc. No. 161).

Another indication that MAA's guaranty, benefitting the Joint Board, stands independent of Coastal's performance is from a careful reading of the Bankruptcy Plan itself (NYSCEF Doc. No. 190), which, under the category of "Class 4" claims, specifically references "the Angeliades Settlement Agreement" with Coastal (*id.*, at 11). The Joint Board is not a party to that agreement

(*see*, NYSCEF Doc. No. 191). Thus, nothing in that agreement, or in the Bankruptcy Plan which references it, operates as any sort of release of guaranty as between MAA and the Joint Board.[3]

MAA's attempt to persuade the court otherwise includes an observation that paragraph 7 of the Bankruptcy Plan Confirmation Order identifies Kevin McKosky (the principal of Coastal) as a party against whom creditors would be free to sue (*see*, NYSCEF Doc. No. 184 ¶ 7). In order for this court to accept that deduction as definite proof that MAA is *exempt* from suit, this court would have to pretend that the specifically inserted "Debtor" language in subparagraphs (a) through (e) of paragraph 6 does not exist. The only way to insure that all clauses of the Bankruptcy Plan Confirmation Order are given effect, this court is compelled to view that deduction as inconclusive in the face of the express "Debtor" language of subparagraphs 6 (a) through (e), as well as the qualifier "with respect to such Clams" in the opening of that paragraph, referring specifically to "Claims against . . . the Debtor," as pointed out hereinabove. In other words, the Confirmation Injunction applies to any action assertable against MAA and the other entities identified in paragraph 6 whose obligations might be *conditioned* on non-performance of an obligation on Coastal's part. Hence the language in the preamble of the Confirmation Injunction, reasonably read as enjoining certain actions "against . . . the Debtor or Assets of the Debtor" "or affecting . . . Angeliades . . . with respect to "such Claims," i.e., "Claims against . . . the Debtor" (NYSCEF Doc. No. 184 ¶ 6). Those certain enjoined actions are enumerated in the subparagraphs which immediately follow that preamble, and all of them are limited to actions taken directly against "the Debtor" or the Debtor's assets. Thus, an action

[3] Plaintiff understandably raises the inescapable fact that MAA, during the course of litigation that has lasted seven years now, and which endured the crucible of comprehensive summary judgment motion practice leading to the Summary Judgment Decision, has never once, until the eve of trial, raised the possibility that the Confirmation Injunction warrants dismissal of this action, even though MAA's counsel in this action was also MAA's bankruptcy counsel (*see*, NYSCEF Doc. No. 191 at 6). One is left to reasonably surmise that MAA's counsel himself was never quite confident in the merit of this argument, which is revealed to be without merit in the within textual discussion.

such as the one at bar, involving claims asserted directly against MAA as an unconditional guarantor is not included in the Confirmation Injunction.

In other words, the Confirmation Injunction does not release MAA from the claims asserted by the Joint Board against it in this lawsuit. Reading the opening paragraph of the Confirmation Injunction (NYSCF Doc. No. 184 ¶ 6) in tandem with its six subparagraphs, the injunction against taking action against MAA, or effecting MAA, is limited to circumstances where such action or effect are caused by any legal process asserted directly against Coastal (*see, id.*, subparagraphs [a] through [e], referring exclusively to "the Debtor").

Accordingly, MAA's last-minute attempt to secure a dismissal of this seven-year-old action, on the eve of trial, based on its bankruptcy-related dismissal argument never raised during comprehensive summary judgment motion practice, is denied for the reasons set forth above.

MAA's Motion in Limine

MOTION TO PRECLUDE COASTAL'S PAYROLL REPORTS:

Plaintiff anticipates moving into evidence Coastal's payroll reports submitted by Coastal to the New York City School Construction Authority ("NYCSCA") (NYSCEF Doc. No. 155). To give this context, the court refers to Labor Law § 220, which provides that:

> The contractor and every sub-contractor shall keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each worker, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided.

(Labor Law § 3-a [a] [iii].) Such records are submitted to NYCSCA pursuant to that section of the Labor Law. Plaintiff desires to have Coastal's submitted payroll reports admitted into evidence at trial as a means of proving its calculation of sums due the Joint Board in connection with Coastal employees' work on the school project. The Coastal payroll reports were actually

subpoenaed by MAA directly from NYCSCA during the course of this litigation, and then produced by MAA to plaintiff. Plaintiff's prayer in this lawsuit for $900,000 plus in benefit payments derives from those reports. However, despite MAA's procurement of those reports from NYCSCA, and despite its production of same to plaintiff, MAA now argues that they should be precluded from evidence at trial as inadmissible hearsay. MAA argues that the public records exception to the hearsay rule (*see*, CPLR 4518, 4540) cannot apply here because Coastal's records submitted to NYCSCA were not made by an officer of that public agency (*see also*, Richardson on Evidence § 8-1101). They were made by Coastal.

MAA also asserts that the records were not certified by Coastal, as required by the Labor Law.

MAA's hearsay argument misses the point. In its communication to plaintiff shortly after undertaking the guaranty, MAA expressly wrote the Joint Board:

> I am instructing Coastal to forward copies of all certified payroll reports to your office immediately, for their work on this project, so that you may perform the requisite calculations/audits relative to the benefit contributions.

(NYSCEF Doc. No. 165.) Thus, by MAA's own design, the payroll records which it now purports to preclude at trial were to be the precise markers of what it undertook to pay the Joint Board. The question is not one of hearsay, i.e., truth of the matter asserted; but rather, what MAA undertook, of its own accord, to rely on in ascertaining the measure of its obligation to the Joint Board. In other words, MAA's accession to relying upon Coastal's payroll records defines for the trier of fact what its state of mind was when it undertook to guaranty Coastal's obligations to the Joint Board. Such evidence of state of mind is not hearsay (*e.g.*, *Bergstein v Board of Educ.*, 34 NY2d 318 [1974]; *Doreen J. v Thomas John F.*, 101 AD2d 862 [2d Dept 1984]; Richardson, Evidence [Prince] 10th ed. §§ 203, 205).

The only qualification this court would recognize with regard to the foregoing is that MAA limited its reliance to *certified* payroll records. It was entitled to do so in defining the contours of its guaranty. It only guarantied Coastal's obligations to the Joint Board to the extent those obligations could be proven by the Joint Board through reference to *certified* payroll records. Indeed, as noted above, such is the measure of proof required under the Labor Law itself in requiring certification of payroll records submitted by contractors on public works to NYCSCA.[4]

In sum, the court denies defendant's motion *in limine* to preclude the subject payroll records insofar as they bear certification, and grants the motion insofar as such records lack certification.

MOTION *IN LIMINE* BASED ON ARTICLE 3-A OF THE LIEN LAW:

While cast as a motion *in limine*, MAA actually argues for dismissal based on its citation to Lien Law article 3-A. The gist of its argument is neatly distilled at page 9 of its memorandum in support of its motion (NYSCEF Doc. No. 157) as follows:

> Because N.Y. Lien Law Article 3-A trust fund beneficiaries have priority over Coastal and Plaintiff, until all of trust fund beneficiaries have been satisfied, neither Coastal nor Plaintiff had any interest in any of the monies from the PS 338 Project for any purpose other than the payment of Coastal's alleged deficiencies in benefits for the PS 338 Project.
>
> In other words, by pooling all of the alleged debts of Coastal together, plaintiff cannot reasonably ascertain its alleged damages, as it cannot reasonably demonstrate that the approximately $2.3 Million Dollars plaintiff admits it received for arrears from Coastal was not comprised of the Lien Law trust funds rom MAA that must be applied towards the PS 338 Project and that there remains amounts due and owing Plaintiff from Coastal on the PS 338 Project.

[4] There seems to be a discrepancy among the parties as to whether the subject payroll records, sought for admission by plaintiff, were, in fact, certified (*compare* NYSCEF Doc. No. 158 [Plaintiff's Combined Pre-Trial Brief and Opposition to Defendant's *In Limine* Motion] at 7 ["Coastal's Certified Payroll Records are Admissible"] *with* NYSCEF Doc. No. 157 [Defendant's Mem. in Support of Motion In Limine] at 2 ["The records here do not contain such a certification"]).

(NYSCEF Doc. No. 157 at 9 [citation omitted].)

However, this, too, was brought before Justice Edmead during the summary judgment motion practice. In the Summary Judgment Decision, her Honor expressly took note of this position, reciting that:

> MAA argues that the Joint Board therefore cannot ascertain its damages, as some of the funds that the Joint Board received indirectly from MAA should be credited against whatever benefit payments are outstanding under the guaranty. In reply, the Joint Board argues that it is not subject to the Lien Law trust fund laws as it is not a contractor or subcontractor, ***and disputes that it allocated any money to other projects***.

(NYSCEF Doc. No. 141 at 7 [emphasis added].) The Summary Judgment Decision has already spoken on this matter when it concludes that:

> While the Joint Board has demonstrated the existence of the guaranty and the underlying debt, there is grave uncertainty regarding the exact amount owed, considering the outstanding questions of how much has already been covered by MAA's payments to Coastal, and whether the payroll certifications, assuming they are valid and admissible, specifically cover work on the PS 338 project. ***The Joint Board's damages thus cannot be reasonably ascertained.***

(*Id.* [emphasis added].) That said, her Honor closed the Summary Judgment Decision by allowing for the possibility that "the Joint Board's proper losses can presumably still be reasonably adjudged" (*id.*, at 8).

This trial court is bound by that law of the case; to wit, that the point raised by MAA concerning Lien Law status attaching to the *res* of this lawsuit is applicable, giving rise to "grave uncertainty regarding the exact amount owed"; but that plaintiff should not be definitely presumed to be entirely without capability to ultimately demonstrate the quantum of its damages. Indeed, as highlighted above, plaintiff, in any event, "disputes that it allocated any money to other projects." The Summary Judgment Decision has afforded plaintiff the opportunity to try to prove that at trial.

In view of the foregoing procedural posture, the motion is denied insofar as it seeks outright pre-trial dismissal, on the possibility that plaintiff can demonstrate its damages in this case at trial, as the Summary Judgment Decision has allowed.

MOTION TO PRECLUDE BASED ON ALLEGED SPOLIATION OF EVIDENCE:

MAA has accused plaintiff of failing to preserve weekly payroll data that it received from Coastal. Plaintiff firmly denies this accusation (*see*, NYSCEF Doc. No. 158 at 13). Distinct of that denial, plaintiff maintains that the subject data cannot possibly be of use in this case because it does "not provide a record of the amount owed on the PS 338 project, and thus could not have been the basis to calculate how much Coastal owed on the PS 338 project" (*id.*). MAA's reference to the Joint Board's declaration in the Coastal Bankruptcy case about weekly payroll reports submitted by Coastal to the Joint Board (*see*, NYSCEF Doc. No. 157 at 11) does not contradict plaintiff's point about the less-than critical nature of those particular reports insofar as they do not segregate out other Coastal projects from the PS 338 project. In the end, it will be plaintiff's burden to prove the precise matter of its alleged damages that flow directly and exclusively from the PS 338 project, which Justice Edmead has already characterized as a "grave uncertainty."

THE MOTION *IN LIMINE* DIRECTED AT LETTERS RELIED ON BY PLAINTIFF:

This prong of the motion does not describe or identify what is intended by "letters to and from Coastal which are not business records and are inadmissible hearsay" (NYSCEF Doc. No. 157 at 4). The motion is denied subject to MAA's right to interpose objections at trial.

Accordingly, it is

ORDERED that defendant's motion to dismiss based on the Bankruptcy Court's Order in *In re Coastal Electric Construction Corp.* (Case No. 11-75299 [REG] [Bankr. EDNY]), dated June 17, 2013, is denied; and it is further

ORDERED that defendant's motion *in limine* to preclude payroll reports of Coastal Electric Construction Corp. is denied to the extent such reports are certified, and granted to the extent such reports are uncertified; and it is further

ORDERED that defendant's motion to dismiss on the assertion that plaintiff cannot prove its alleged damages is denied; and it is further

ORDERED that defendant's motion to preclude on the assertion of spoliation of evidence is denied; and it is further

ORDERED that defendant's motion to preclude certain unspecified letters which plaintiff is anticipated to rely upon at trial is denied, subject to defendant's right to interpose objections at trial; and it is further

ORDERED that a final pre-trial conference will occur via remote conferencing to be arranged by the court, for January 5, 2021, at 11:00 a.m.

This will constitute the decision and order of the court.

ENTER:

12/18/2020
DATE

LOUIS L. NOCK, J.S.C.

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

650028/2013 FINKEL, GERALD vs. M.A. ANGELIADES, INC.
Motion No. 007