

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN BRANSTEN

PART

IAS MOTION 3

Justice

-----X

MARK STEYN, MARK STEYN ENTERPRISES (US), INC., OAK
HILL MEDIA, INC.

Plaintiff,

- V -

CRTV, LLC,

Defendant.

INDEX NO.

650887/2018

MOTION DATE

N/A

MOTION SEQ. NO.

006

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 144, 145, 146, 147, 148, 149, 164, 165, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for


MISCELLANEOUS

Upon the foregoing documents, it is

ORDERD the Respondent's Motion for a Counter Judgment is DENIED and the
Petitioner's Cross Motion for a Judgement is GRANTED pursuant to the September 13, 2018
record and transcript at Tr. 5:6 – 6:22 (Dolores Hilliard, OCR).

9/ 28 /2018

DATE


EILEEN BRANSTEN, J.S.C.

CHECK ONE:

☒

CASE DISPOSED

☐

NON-FINAL DISPOSITION

☐

GRANTED

☒

DENIED

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

NYSCEF DOC. NO. 191

RECEIVED NYSCEF: 10/01/2018

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: CIVIL TERM: PART - 3
4 -----X
5 MARK STEYN, MARK STEYN ENTERPRISES (US), INC.,
6 And OAK HILL MEDIA, INC.,

Petitioners

INDEX NUMBER:
650887/2018

-against-

CRTV, LLC,

Respondents

60 Centre Street
New York, New York 10007
September 13, 2018

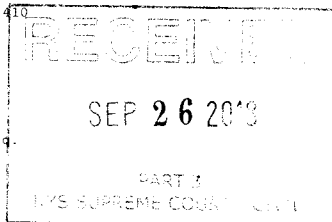
BEFORE:

HONORABLE: Eileen Bransten, JSC

APPEARANCES:

Fishkin Lucks, LLP
Attorneys for Petitioners
One Riverfront Plaza, Suite 410
Newark, New Jersey 07102
By: Erin C. O'Leary, Esq.

Browne George Ross, LLP
Attorneys for Respondent
5 Penn Plaza, 24th Floor
New York, New York 10001
By: Jeffrey A. Mitchell, Esq.
Judith R. Cohen, Esq.



Deiores Hilliard
Official Court Reporter

dh

1 Proceedings

2 Mr. Steyn and MSE would host, and CRTV would fund and
3 produce a television program to be distributed by CRTV,
4 otherwise known as (the "Show"). Petition at paragraph 11.

5 As part of the same transaction embodied in the
6 Steyn Agreement, CRTV and Oak Hill Media entered into a
7 letter agreement, dated May 9, 2016. And that is called
8 (the "Oak Hill Agreement"), pursuant to which Oak Hill would
9 provide ancillary services related to the Show. And again
10 that is the petition at paragraph 15.

11 On February 8, 2017, CRTV mailed to Mr. Steyn, MSE,
12 and Oak Hill which was purported to be a "Notice of
13 Termination" of the Steyn Agreement. The Petition at
14 paragraph 17.

15 On February 20, 2017, CRTV initiated the Demand for
16 Arbitration to the American Arbitration Association, which
17 was later amended on March 14, 2017.

18 As amended, the Demand for Arbitration alleged
19 claims against Mr. Steyn and MSE for breach of the Steyn
20 Agreement, civil theft and conversion, and trespass to
21 chattels. Petition at paragraph 18.

22 Mr. Steyn and MSE answered the Demand on March 22,
23 2017, and raised counterclaims for breach of the Steyn
24 Agreement and fraud. Petition at paragraph 19.

25 In addition, Oak Hill asserted a claim for breach
26 of the Oak Hill Agreement.

dh

1 Proceedings

2 COURT CLERK: Index Number 650887/2018.

3 In the matter of M A R K S T E Y N, et al
4 versus C R T V, L L C.

5 THE COURT: For Mark Steyn, Mark Steyn Enterprises
6 US, Incorporated and Oak Hill Media, Incorporated, with the
7 Fishkin Lucks, LLP I have Erin O'Leary. How are you?

8 MS. O'LEARY: Good. How are you, your Honor.

9 THE COURT: For CRTV, LLC. I have from the Browne
10 George Ross, LLP firm I have Ms. Cohen. How are you?

11 MS. COHEN: Good morning, your Honor.

12 THE COURT: And Jeffrey Mitchell. How are you?

13 MR. MITCHELL: Good morning, your Honor.

14 THE COURT: This is Motion Sequence Number 6. And
15 it is a motion for Leave to File Counter Judgment. And I'm
16 ready to give you my decision on this. I don't need
17 argument. So, please be seated. And I think that we can do
18 it.

19 Background. Petitioners Mark Steyn, Mark Steyn
20 Enterprises (US), Incorporated otherwise known as ("MSE"),
21 and Oak Hill Media, Incorporated otherwise known as ("Oak
22 Hill") brings this petition to confirm an arbitration award,
23 dated February 21st, 2018, otherwise known as (the "Award").

24 On May 9, 2016, Mark Steyn, MSE and Respondent
25 CRTV, LLC otherwise known as ("CRTV") entered into a Binding
26 Term Sheet which is called ("the Steyn Agreement") whereby

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1 Proceedings

2 The arbitration hearing was conducted on, from
3 October 16th through October 26, 2017 in Williston, Vermont.

4 On February 21st, 2018, the Arbitrator, the
5 Honorable Elaine Gordon (retired), rejected each of CRTV's
6 claims and entered the Award in the total amount of
7 \$3,797,427.98 in favor of Mr. Steyn, MSE, and Oak Hill.
8 Petition at paragraph 36.

9 First, the Arbitrator found that CRTV breached the
10 Steyn Agreement awarding Mr. Steyn and MSE \$1,800,000 in
11 damages, plus interest. And that is the same citation,
12 Petition at paragraph 32.

13 Second, the Arbitrator awarded Oak Hill \$908,124
14 for un-reimbursed expenses and amounts due under the Oak
15 Hill Agreement, plus interest. Again, the Petition at
16 paragraph 33.

17 Finally, the Arbitrator awarded Mr. Steyn, MSE and
18 Oak Hill the attorneys' fees and costs.

19 On July 20, 2018, this court confirmed the
20 following aspects of the award.

21 Awarding Mr. Steyn and MSE \$1,800,000 in damages,
22 plus interest against the CRTV.

23 Awarding Oak Hill Media \$908,124 for unreimbursed
24 expenses and amounts due and owing under the Oak Hill
25 agreement, plus interest.

26 Awarding Mark Steyn and MSE \$76,574.98 in

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NYSCEF DOC. NO. 191

5

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1 Proceedings

2 administrative expenses.

3 And modified the award to Steyn, MSE and Oak Hill
4 by removing the grant for attorneys' fees in the amount of
5 1,012,720.

6 Motion Sequence Number 6, which is the Motion for a
7 Proposed Counter Judgment.

8 The parties were directed to settle a judgment.

9 The Petitioner submitted a proposed judgment and
10 the Respondent submitted a proposed counter judgment by
11 bringing this instant action.

12 At issue is the Respondent's request to dismiss
13 certain claims against non-party Cary Katz during the
14 arbitration proceeding.

15 It should be noted that the parties have submitted
16 their pre-hearing arbitration papers on the issue.

17 It is well settled that judicial review of
18 arbitration awards is extremely limited, and an arbitrator's
19 award will be upheld and when there is even a barely
20 colorable justification for the result, regardless of the
21 errors of law or fact. And I cite to Wein & Malkin, LLP
22 versus Helmsley-Spear, Incorporated, 6 N.Y.3d 471 at pages
23 479-480, a 2006 case.

24 Accordingly, the court may only disturb an
25 arbitrator's award when it is against strong public policy,
26 is irrational, or clearly exceeds the specific and

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1 Proceedings

2 MR. MITCHELL: Yes.

3 THE COURT: And you have checked the numbers;
4 right?

5 MR. MITCHELL: Yes.

6 THE COURT: The numbers are exactly what was
7 awarded; am I correct?

8 MR. MITCHELL: Yes, your Honor.

9 THE COURT: So, today's date is the 13th of
10 September. And here's my name and my signature. And this
11 is what we are going to up-load. But, this is what will be
12 entered as a judgment, okay.

13 So, that constitutes the decision and order of the
14 Court.

15 Now, you're going to have to, I'm going to wait on
16 the judgment and wait on the minutes of my decision. Then,
17 I will give you the gray sheet. Then, we will do the order.
18 Okay. All right. So, as soon as you can get the minutes
19 the better it will be.

20 MS. O'LEARY: Yes, your Honor. Thank you.

21 MR. MITCHELL: Your Honor, may I ask a question
22 just so I understand?

23 THE COURT: Yes.

24 MR. MITCHELL: The confirmation -- This is simply
25 for future reference because, obviously, there may be things
26 that come up in the future that we need to deal with.

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1 Proceedings

2 enumerated limitation on the arbitrator's powers. That
3 cites McIver-Morgan versus Dal Piaz, 108 A.D.3d 47 at page
4 51, (1st Department 2013), Affirmed 22 N.Y.3d 1104 (2014).

5 By adding the additional request for dismissal of
6 claims made against Carl Katz, who was not even a party to
7 this action, the Respondent is effectively asking the court
8 to reinterpret the decision of the arbitrator.

9 The Court has already confirmed the arbitration
10 award made by the Honorable Elaine Gordon and will not
11 reconsider her decision.

12 To the extent that the Respondent seeks a further
13 modification in the award by dismissing the claims against
14 Carl Katz, that question is answered in the negative.

15 Conclusion, the motion is DENIED.

16 Cross-Motion to Enter Judgment. The Petitioner
17 moves to have its proposed judgment entered by the court.

18 The proposed judgment very clearly sets down only
19 the amounts confirmed by this court in motion sequence
20 number 4.

21 Therefore, the Cross-Motion for a proposed judgment
22 is hereby GRANTED.

23 And I have behind here a proposed judgment, which I
24 have read and I checked the numbers. And I'm sure that
25 everybody else has read it; right? You have read the
26 proposed judgment?

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6

1 Proceedings

2 Is the Court's decision that the decretal
3 paragraphs of the award say what they say and the Court was
4 confirming that part of the award?

5 Because, obviously, there are things that are in
6 the final award and statements concerning evidence and
7 things like that.

8 THE COURT: Let me tell you what usually happens.

9 Usually, you don't come in with an order to show
10 cause of that commission to put in a counterclaim. That's
11 not what happened.

12 What happens is that the order, the judgment, okay,
13 is made. And it says that noticing it to be adopted on such
14 and such a date. And the CPLR tells us how long it has to
15 wait. All right.

16 Now, during that period the other side can put in a
17 counter judgment. All right. And it was the counter
18 judgment that the Court then considers. And it goes back to
19 the arbitrator's award. And the arbitrator's award is what
20 is -- The motion sequence number 4 where I confirmed the
21 arbitration award.

22 Remember, I didn't confirm the attorneys' fees.

23 Never did I do the attorneys' fees, because that was
24 requesting a million and something plus. I did not confirm
25 that. But, everything else was confirmed.

26 MS. COHEN: Your Honor, with respect to the

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NYSCEF DOC. NO. 191

9

RECEIVED NYSCEF: 10/01/2018

1 Proceedings

2 procedure regarding the judgment we had actually sent your
3 Honor a letter asking that the Court direct that the
4 judgment be settled by a notice of settlement. And before
5 our Honor had an a chance to respond Petitioner submitted,
6 just submitted judgment, no notice of settlement.

7 We were concerned, because we didn't have the
8 opportunity to be heard. That is why we brought on the
9 order to show cause.

10 THE COURT: I did say settle the order, which is
11 notice of settlement.

12 MS. O'LEARY: May I be heard, your Honor?

13 THE COURT: Yes.

14 MS. O'LEARY: At the first hearing back in April on
15 the petition to confirm, your Honor directed that the
16 Petitioner submit a proposed judgment. That to my
17 understanding was not effected by the subsequent order in
18 June and it has not been my understanding. And it doesn't
19 sound like it has been the Defendant's understanding that it
20 was actually directed to be settled. So, nothing was
21 obligated.

22 Petitioner submitted a notice to settle the
23 judgment. The Petitioners were directed by the prevailing
24 party to submit a proposed judgment. And that is what we
25 did.

26 THE COURT: Let me tell you this, it doesn't really
dh

1 Proceedings

2 THE COURT: Yes. I don't see anything in here that
3 is anything different.

4 MR. MITCHELL: No, no. See, the issue is, your
5 Honor, our concern is the two parts. On page 14 of the
6 final award where the arbitrator found --

7 THE COURT: Look, that should have been arguments
8 made when I confirmed the award. Arguments, I don't know if
9 you made them or didn't, but I made a decision that I'm
10 confirming the award.

11 MR. MITCHELL: Right. We agreed, we moved to
12 confirm that part of the award, as well. In our motion we
13 cross-moved to confirm it. So, in our motion on the award
14 we cross-moved to confirm that portion of the award. So,
15 when the Court -- That is why the purpose of getting the
16 counter judgment when the Court confirms the arbitration
17 award it was also granting our cross-motion to confirm the
18 portion of the award --

19 THE COURT: Not necessarily. I confirmed their
20 motion. I didn't confirm the counter judgment. I did not
21 do that.

22 MR. MITCHELL: No, I'm not talking about the
23 judgment. Put the judgment aside. I understand the
24 judgment awards them money.

25 THE COURT: Yes.

26 MR. MITCHELL: And the --
dh

1 Proceedings

10

2 matter. Because, the bottom line, once that proposed
3 judgment, two, signing it. And any time, I mean, instead of
4 making a motion by order to show cause for permission to put
5 in something it should just be done. That's what the CPLR
6 says to do.

7 MR. MITCHELL: I'm not arguing with your Honor. I
8 just want to understand your Honor's decision.

9 I would at least like to understand the import.
10 Because, for later just for res judicata purposes this may
11 be important to understand.

12 So, with respect to the award, the final award of
13 the arbitrator is confirmed by the Court's decision without
14 the award of attorneys' fees, that's the Court's decision.
15 The final award being the entire document. The judgment
16 itself it's effecting the decretal paragraphs in the award.

17 THE COURT: I asked you, specifically, the decretal
18 paragraphs in the award are reflected in this proposed
19 judgment; am I correct?

20 MR. MITCHELL: Yes, that's correct.

21 New York law applies to certain-- So, to the extent
22 the final award contains other findings or things like that,
23 the award is confirmed in its entirety without the attorneys
24 fees. So that to the extent we have argument that derives
25 from the language of the final award, that award is
26 confirmed; correct? That's the Court's decision?

dh

1 Proceedings

12

2 THE COURT: Actually, the arbitration awarded them
3 money. They came to confirm it and I confirmed the
4 arbitration award. And the judgment now is being settled.

5 MR. MITCHELL: And the entirety, my simple
6 clarification, the entirety of the arbitration award has
7 been confirmed. But, not the attorneys fees award, without
8 the attorneys fees award.

9 THE COURT: I think I made that as clear as
10 possible. All right.

11 MR. MITCHELL: Thank you, your Honor.

12 THE COURT: I mean, I did it once when I confirmed
13 the award. All right. I did it again when I was reading
14 the decision today denying this ridiculous, if I say so,
15 order to show cause I don't think was necessary or proper.

16 MR. MITCHELL: I understand.

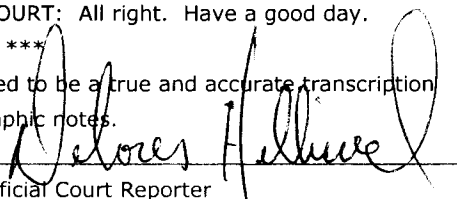
17 THE COURT: Anyway, I denied it. And now, I will
18 sign on the date that I put out the denial of this motion,
19 all right, Motion Sequence Number 6.

20 The minutes that I'll be getting, which you will be
21 ordering them, and I'll then sign the proposed judgment. It
22 won't be proposed it will be the judgment. Okay.

23 MR. MITCHELL: I understand. I understand, your
24 Honor.

25 I just wanted to understand the award is confirmed
26 except for the attorneys fees. That is all.

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1 Proceedings
2 THE COURT: You know, you should have been here
3 before. I mean, I did that exactly. Didn't I do that
4 before? Exactly.
5 MR. MITCHELL: Thank you, your Honor.
6 THE COURT: You know, you're trying to relitigate
7 something that has passed, gone, finished.
8 MR. MITCHELL: With all due respect, I'm not trying
9 to relitigate. I'm trying to obtain what the order says.
10 I'm not relitigating.
11 THE COURT: You should have gotten the minutes from
12 the last one and you would have seen. Okay.
13 So, this is it. Please, order the minutes so that
14 I can get going on this.
15 MS. O'LEARY: Yes, your Honor. Thank you.
16 MR. MITCHELL: Thank you, your Honor.
17 THE COURT: All right. Have a good day.
18 ***
19 Certified to be a true and accurate transcription
20 of said stenographic notes.
21 
22 Official Court Reporter
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\$1,012,720 [1] - 5:5
\$1,800,000 [2] - 4:10, 4:21
\$3,797,427.98 [1] - 4:7
\$76,574.98 [1] - 4:26
\$908,124 [2] - 4:13, 4:23

0

07102 [1] - 1:17

1

10001 [1] - 1:20
10007 [1] - 1:10
108 [1] - 6:3
11 [1] - 3:4
1104 [1] - 6:4
13 [1] - 1:11
13th [1] - 7:9
14 [2] - 3:17, 11:5
15 [1] - 3:10
16th [1] - 4:3
17 [1] - 3:14
18 [1] - 3:21
19 [1] - 3:24
1st [1] - 6:4

2

20 [2] - 3:15, 4:19
2006 [1] - 5:23
2013 [1] - 6:4
2014 [1] - 6:4
2016 [2] - 2:24, 3:7
2017 [5] - 3:11, 3:15, 3:17, 3:23, 4:3
2018 [4] - 1:11, 2:23, 4:4, 4:19
21st [2] - 2:23, 4:4
22 [2] - 3:22, 6:4
24th [1] - 1:19
26 [1] - 4:3

3

3 [1] - 1:2
32 [1] - 4:12
33 [1] - 4:16
36 [1] - 4:8

4

4 [2] - 6:20, 8:20
410 [1] - 1:16
47 [1] - 6:3
471 [1] - 5:22
479-480 [1] - 5:23

5

5 [1] - 1:19
51 [1] - 6:4

6

6 [4] - 2:14, 5:6, 5:22, 12:19
60 [1] - 1:10
650887/2018 [2] - 1:6, 2:2

8

8 [1] - 3:11

9

9 [2] - 2:24, 3:7

A

A.D.3d [1] - 6:3
accordingly [1] - 5:24
accurate [1] - 13:19
action [2] - 5:11, 6:7
adding [1] - 6:5
addition [1] - 3:25
additional [1] - 6:5
administrative [1] - 5:2
adopted [1] - 8:13
Affirmed [1] - 6:4
agreed [1] - 11:11
Agreement [9] - 2:26, 3:6, 3:8, 3:13, 3:20, 3:24, 3:26, 4:10, 4:15
agreement [2] - 3:7, 4:25
al [1] - 2:3
alleged [1] - 3:18
amended [2] - 3:17, 3:18
American [1] - 3:16
amount [2] - 4:6, 5:4
amounts [3] - 4:14,

4:24, 6:19

ancillary [1] - 3:9
answered [2] - 3:22, 6:14
anyway [1] - 12:17
APPEARANCES [1] - 1:14
applies [1] - 10:21
April [1] - 9:14
arbitration [11] - 2:22, 4:2, 5:14, 5:16, 5:18, 6:9, 8:21, 11:16, 12:2, 12:4, 12:6
Arbitration [3] - 3:16, 3:18
arbitrator [3] - 6:8, 10:13, 11:6
Arbitrator [4] - 4:4, 4:9, 4:13, 4:17
arbitrator's [5] - 5:18, 5:25, 6:2, 8:19
arguing [1] - 10:7
argument [2] - 2:17, 10:24
arguments [2] - 11:7, 11:8
aside [1] - 11:23
aspects [1] - 4:20
asserted [1] - 3:25
Association [1] - 3:16
attorneys [4] - 10:23, 12:7, 12:8, 12:26
Attorneys [2] - 1:16, 1:19
attorneys' [5] - 4:18, 5:4, 8:22, 8:23, 10:14
award [37] - 2:22, 4:20, 5:3, 5:19, 5:25, 6:10, 6:13, 8:3, 8:4, 8:6, 8:19, 8:21, 10:12, 10:14, 10:15, 10:16, 10:18, 10:22, 10:23, 10:25, 11:6, 11:8, 11:10, 11:12, 11:13, 11:14, 11:17, 11:18, 12:4, 12:6, 12:7, 12:8, 12:13, 12:25
Award [1] - 4:6
Award" [1] - 2:23
awarded [4] - 4:13, 4:17, 7:7, 12:2
awarding [4] - 4:10, 4:21, 4:23, 4:26
awards [2] - 5:18, 11:24

B

background [1] - 2:19
barely [1] - 5:19
BEFORE [1] - 1:12
behind [1] - 6:23
better [1] - 7:19
Binding [1] - 2:25
bottom [1] - 10:2
Bransten [1] - 1:12
breach [3] - 3:19, 3:23, 3:25
breached [1] - 4:9
bringing [1] - 5:11
brings [1] - 2:22
brought [1] - 9:8
Browne [2] - 1:18, 2:9

C

Carl [2] - 6:6, 6:14
Cary [1] - 5:13
case [1] - 5:23
Centre [1] - 1:10
certain [2] - 5:13, 10:21
Certified [1] - 13:19
chance [1] - 9:5
chattels [1] - 3:21
checked [2] - 6:24, 7:3
citation [1] - 4:11
cite [1] - 5:21
cites [1] - 6:3
CIVIL [1] - 1:2
civil [1] - 3:20
claim [1] - 3:25
claims [5] - 3:19, 4:6, 5:13, 6:6, 6:13
clarification [1] - 12:6
clear [1] - 12:9
clearly [2] - 5:26, 6:18
CLERK [1] - 2:2
Cohen [2] - 1:21, 2:10
COHEN [2] - 2:11, 8:26
colorable [1] - 5:20
commission [1] - 8:10
concern [1] - 11:5
concerned [1] - 9:7
concerning [1] - 8:6
conclusion [1] - 6:15
conducted [1] - 4:2
confirm [10] - 2:22, 8:22, 8:24, 9:15, 11:12, 11:13, 11:14, 11:17, 11:20, 12:3
confirmation [1] - 7:24

confirmed [14] - 4:19, 6:9, 6:19, 8:20, 8:25, 10:13, 10:23, 10:26, 11:8, 11:19, 12:3, 12:7, 12:12, 12:25
confirming [2] - 8:4, 11:10
confirms [1] - 11:16
considers [1] - 8:18
constitutes [1] - 7:13
contains [1] - 10:22
conversion [1] - 3:20
correct [4] - 7:7, 10:19, 10:20, 10:26
costs [1] - 4:18
Counter [2] - 2:15, 5:7
counter [5] - 5:10, 8:17, 11:16, 11:20
counterclaim [1] - 8:10
counterclaims [1] - 3:23

COUNTY [1] - 1:2
Court [9] - 1:25, 6:9, 7:14, 8:3, 8:18, 9:3, 11:15, 11:16, 13:22
COURT [27] - 1:2, 2:2, 2:5, 2:9, 2:12, 2:14, 7:3, 7:6, 7:9, 7:23, 8:8, 9:10, 9:13, 9:26, 10:17, 11:2, 11:7, 11:19, 11:25, 12:2, 12:9, 12:12, 12:17, 13:2, 13:6, 13:11, 13:17
court [5] - 4:19, 5:24, 6:7, 6:17, 6:19
Court's [4] - 8:2, 10:13, 10:14, 10:26
CPLR [2] - 8:14, 10:5
cross [3] - 11:13, 11:14, 11:17
Cross [2] - 6:16, 6:21
cross-motion [1] - 11:17
Cross-Motion [2] - 6:16, 6:21
cross-moved [2] - 11:13, 11:14
CRTV [11] - 1:7, 2:9, 2:25, 3:2, 3:3, 3:6, 3:11, 3:15, 4:9, 4:22
CRTV's [1] - 4:5

D

Dal [1] - 6:3
damages [2] - 4:11, 4:21

date [3] - 7:9, 8:14, 12:18
 dated [2] - 2:23, 3:7
 deal [1] - 7:26
 decision [12] - 2:16, 6:8, 6:11, 7:13, 7:16, 8:2, 10:8, 10:13, 10:14, 10:26, 11:9, 12:14
 decretal [3] - 8:2, 10:16, 10:17
 Defendant's [1] - 9:19
 Delores [1] - 1:24
 Demand [3] - 3:15, 3:18, 3:22
 denial [1] - 12:18
 DENIED [1] - 6:15
 denied [1] - 12:17
 denying [1] - 12:14
 Department [1] - 6:4
 derives [1] - 10:24
 different [1] - 11:3
 direct [1] - 9:3
 directed [4] - 5:8, 9:15, 9:20, 9:23
 dismiss [1] - 5:12
 dismissal [1] - 6:5
 dismissing [1] - 6:13
 distributed [1] - 3:3
 disturb [1] - 5:24
 document [1] - 10:15
 done [1] - 10:5
 down [1] - 6:18
 due [3] - 4:14, 4:24, 13:8
 during [2] - 5:13, 8:16

E

effected [1] - 9:17
 effecting [1] - 10:16
 effectively [1] - 6:7
 Eileen [1] - 1:12
 Elaine [2] - 4:5, 6:10
 embodied [1] - 3:5
 Enter [1] - 6:16
 entered [5] - 2:25, 3:6, 4:6, 6:17, 7:12
 ENTERPRISES [1] - 1:3
 Enterprises [2] - 2:5, 2:20
 entire [1] - 10:15
 entirety [3] - 10:23, 12:5, 12:6
 enumerated [1] - 6:2
 Erin [2] - 1:17, 2:7
 errors [1] - 5:21
 Esq [3] - 1:17, 1:20,

1:21
 et [1] - 2:3
 evidence [1] - 8:6
 exactly [3] - 7:6, 13:3, 13:4
 exceeds [1] - 5:26
 except [1] - 12:26
 expenses [3] - 4:14, 4:24, 5:2
 extent [3] - 6:12, 10:21, 10:24
 extremely [1] - 5:18

F

fact [1] - 5:21
 favor [1] - 4:7
 February [4] - 2:23, 3:11, 3:15, 4:4
 fees [9] - 4:18, 5:4, 8:22, 8:23, 10:14, 10:24, 12:7, 12:8, 12:26
 File [1] - 2:15
 final [6] - 8:6, 10:12, 10:15, 10:22, 10:25, 11:6
 finally [1] - 4:17
 findings [1] - 10:22
 finished [1] - 13:7
 firm [1] - 2:10
 first [2] - 4:9, 9:14
 Fishkin [2] - 1:15, 2:7
 Floor [1] - 1:19
 following [1] - 4:20
 fraud [1] - 3:24
 fund [1] - 3:2
 future [2] - 7:25, 7:26

G

George [2] - 1:18, 2:10
 Gordon [2] - 4:5, 6:10
 grant [1] - 5:4
 GRANTED [1] - 6:22
 granting [1] - 11:17
 gray [1] - 7:17

H

heard [2] - 9:8, 9:12
 hearing [3] - 4:2, 5:16, 9:14
 Helmsley [1] - 5:22
 Helmsley-Spear [1] - 5:22
 hereby [1] - 6:22

HILL [1] - 1:4
 Hill [16] - 2:6, 2:21, 2:22, 3:6, 3:8, 3:12, 3:25, 3:26, 4:7, 4:13, 4:15, 4:18, 4:23, 4:24, 5:3
 Hilliard [1] - 1:24
 Honor [18] - 2:8, 2:11, 2:13, 7:8, 7:20, 7:21, 8:26, 9:3, 9:5, 9:12, 9:15, 10:7, 11:5, 12:11, 12:24, 13:5, 13:15, 13:16
 Honor's [1] - 10:8
 Honorable [2] - 4:5, 6:10
 HONORABLE [1] - 1:12
 host [1] - 3:2

I

import [1] - 10:9
 important [1] - 10:11
 INC [2] - 1:3, 1:4
 Incorporated [5] - 2:6, 2:20, 2:21, 5:22
 INDEX [1] - 1:5
 Index [1] - 2:2
 initiated [1] - 3:15
 instant [1] - 5:11
 instead [1] - 10:3
 interest [4] - 4:11, 4:15, 4:22, 4:25
 irrational [1] - 5:26
 issue [3] - 5:12, 5:16, 11:4
 itself [1] - 10:16

J

Jeffrey [2] - 1:20, 2:12
 Jersey [1] - 1:17
 JSC [1] - 1:12
 judgment [30] - 5:8, 5:9, 5:10, 6:17, 6:18, 6:21, 6:23, 6:26, 7:12, 7:16, 8:12, 8:17, 8:18, 9:2, 9:4, 9:6, 9:16, 9:23, 9:24, 10:3, 10:15, 10:19, 11:16, 11:20, 11:23, 11:24, 12:4, 12:21, 12:22
 Judgment [3] - 2:15, 5:7, 6:16
 judicata [1] - 10:10
 judicial [1] - 5:17

Judith [1] - 1:21
 July [1] - 4:19
 June [1] - 9:18
 justification [1] - 5:20

K

Katz [3] - 5:13, 6:6, 6:14
 known [5] - 2:20, 2:21, 2:23, 2:25, 3:4

L

language [1] - 10:25
 last [1] - 13:12
 law [2] - 5:21, 10:21
 least [1] - 10:9
 Leave [1] - 2:15
 letter [2] - 3:7, 9:3
 limitation [1] - 6:2
 limited [1] - 5:18
 line [1] - 10:2
 LLC [3] - 1:7, 2:9, 2:25
 LLP [5] - 1:15, 1:18, 2:7, 2:10, 5:21
 load [1] - 7:11
 look [1] - 11:7
 Lucks [2] - 1:15, 2:7

M

mailed [1] - 3:11
 Malkin [1] - 5:21
 March [2] - 3:17, 3:22
 Mark [6] - 2:5, 2:19, 2:24, 4:26
 MARK [2] - 1:3
 matter [2] - 2:3, 10:2
 McIver [1] - 6:3
 McIver-Morgan [1] - 6:3
 mean [3] - 10:3, 12:12, 13:3
 Media [4] - 2:6, 2:21, 3:6, 4:23
 MEDIA [1] - 1:4
 million [1] - 8:24
 minutes [5] - 7:16, 7:18, 12:20, 13:11, 13:13
 Mitchell [2] - 1:20, 2:12
 MITCHELL [19] - 2:13, 7:2, 7:5, 7:8, 7:21, 7:24, 10:7, 10:20, 11:4, 11:11, 11:22, 11:26, 12:5, 12:11,

12:16, 12:23, 13:5, 13:8, 13:16
 modification [1] - 6:13
 modified [1] - 5:3
 money [2] - 11:24, 12:3
 Morgan [1] - 6:3
 morning [2] - 2:11, 2:13
 Motion [5] - 2:14, 5:6, 6:16, 6:21, 12:19
 motion [11] - 2:15, 5:6, 6:15, 6:19, 8:20, 10:4, 11:12, 11:13, 11:17, 11:20, 12:18
 moved [3] - 11:11, 11:13, 11:14
 moves [1] - 6:17
 MR [19] - 2:13, 7:2, 7:5, 7:8, 7:21, 7:24, 10:7, 10:20, 11:4, 11:11, 11:22, 11:26, 12:5, 12:11, 12:16, 12:23, 13:5, 13:8, 13:16
 MS [7] - 2:8, 2:11, 7:20, 8:26, 9:12, 9:14, 13:15
 MSE [12] - 2:20, 2:24, 3:2, 3:11, 3:19, 3:22, 4:7, 4:10, 4:17, 4:21, 4:26, 5:3

N

N.Y.3d [2] - 5:22, 6:4
 name [1] - 7:10
 necessarily [1] - 11:19
 necessary [1] - 12:15
 need [2] - 2:16, 7:26
 negative [1] - 6:14
 never [1] - 8:23
 NEW [2] - 1:2, 1:2
 New [6] - 1:10, 1:17, 1:20, 10:21
 Newark [1] - 1:17
 non [1] - 5:13
 non-party [1] - 5:13
 noted [1] - 5:15
 notes [1] - 13:20
 nothing [1] - 9:20
 Notice [1] - 3:12
 notice [4] - 9:4, 9:6, 9:11, 9:22
 noticing [1] - 8:13
 Number [4] - 2:2, 2:14, 5:6, 12:19
 number [2] - 6:20,

8:20
NUMBER [1] - 1:5
numbers [3] - 6:24, 7:3, 7:6

O

O'LEARY [5] - 2:8, 7:20, 9:12, 9:14, 13:15
O'Leary [2] - 1:17, 2:7
Oak [16] - 2:6, 2:21, 3:6, 3:8, 3:12, 3:25, 3:26, 4:7, 4:13, 4:14, 4:18, 4:23, 4:24, 5:3
OAK [1] - 1:4
obligated [1] - 9:21
obtain [1] - 13:9
obviously [2] - 7:25, 8:5
October [2] - 4:3
OF [3] - 1:2, 1:2
Official [2] - 1:25, 13:22
once [2] - 10:2, 12:12
one [1] - 13:12
One [1] - 1:16
opportunity [1] - 9:8
order [11] - 7:13, 7:17, 8:9, 8:12, 9:9, 9:10, 9:17, 10:4, 12:15, 13:9, 13:13
ordering [1] - 12:21
otherwise [5] - 2:20, 2:21, 2:23, 2:25, 3:4
owing [1] - 4:24

P

page [2] - 6:3, 11:5
pages [1] - 5:22
papers [1] - 5:16
paragraph [8] - 3:4, 3:10, 3:14, 3:21, 3:24, 4:8, 4:12, 4:16
paragraphs [3] - 8:3, 10:16, 10:18
part [3] - 3:5, 8:4, 11:12
PART [1] - 1:2
parties [2] - 5:8, 5:15
parts [1] - 11:5
party [3] - 5:13, 6:6, 9:24
passed [1] - 13:7
Penn [1] - 1:19
period [1] - 8:16
permission [1] - 10:4

petition [6] - 2:22, 3:4, 3:10, 3:24, 4:8, 9:15
Petition [4] - 3:13, 3:21, 4:12, 4:15
Petitioner [4] - 5:9, 6:16, 9:5, 9:16
petitioner [1] - 9:22
Petitioners [3] - 1:5, 1:16, 9:23
petitioners [1] - 2:19
Piaz [1] - 6:3
Plaza [2] - 1:16, 1:19
plus [5] - 4:11, 4:15, 4:22, 4:25, 8:24
policy [1] - 5:25
portion [2] - 11:14, 11:18
possible [1] - 12:10
powers [1] - 6:2
pre [1] - 5:16
pre-hearing [1] - 5:16
prevailing [1] - 9:23
procedure [1] - 9:2
proceeding [1] - 5:14
produce [1] - 3:3
program [1] - 3:3
proper [1] - 12:15
Proposed [1] - 5:7
proposed [13] - 5:9, 5:10, 6:17, 6:18, 6:21, 6:23, 6:26, 9:16, 9:24, 10:2, 10:18, 12:21, 12:22
provide [1] - 3:9
public [1] - 5:25
purported [1] - 3:12
purpose [1] - 11:15
purposes [1] - 10:10
pursuant [1] - 3:8
put [5] - 8:10, 8:16, 10:4, 11:23, 12:18

R

raised [1] - 3:23
read [3] - 6:24, 6:25
reading [1] - 12:13
ready [1] - 2:16
really [1] - 9:26
reconsider [1] - 6:11
reference [1] - 7:25
reflected [1] - 10:18
regarding [1] - 9:2
regardless [1] - 5:20
reimbursed [1] - 4:14
reinterpret [1] - 6:8
rejected [1] - 4:5
related [1] - 3:9
relitigate [2] - 13:6,

13:9
relitigating [1] - 13:10
remember [1] - 8:22
removing [1] - 5:4
Reporter [2] - 1:25, 13:22
request [2] - 5:12, 6:5
requesting [1] - 8:24
res [1] - 10:10
respect [3] - 8:26, 10:12, 13:8
respond [1] - 9:5
Respondent [5] - 1:19, 2:24, 5:10, 6:7, 6:12
Respondent's [1] - 5:12
Respondents [1] - 1:9
result [1] - 5:20
retired [1] - 4:5
review [1] - 5:17
ridiculous [1] - 12:14
Riverfront [1] - 1:16
Ross [2] - 1:18, 2:10

S

seated [1] - 2:17
second [1] - 4:13
see [2] - 11:2, 11:4
seeks [1] - 6:12
sent [1] - 9:2
September [2] - 1:11, 7:10
sequence [2] - 6:19, 8:20
Sequence [3] - 2:14, 5:6, 12:19
services [1] - 3:9
sets [1] - 6:18
settle [3] - 5:8, 9:10, 9:22
settled [4] - 5:17, 9:4, 9:20, 12:4
settlement [3] - 9:4, 9:6, 9:11
sheet [1] - 7:17
Sheet [1] - 2:26
show [4] - 8:9, 9:9, 10:4, 12:15
Show [1] - 3:9
Show") [1] - 3:4
side [1] - 8:16
sign [2] - 12:18, 12:21
signature [1] - 7:10
signing [1] - 10:3
simple [1] - 12:5
simply [1] - 7:24
soon [1] - 7:18

sound [1] - 9:19
Spear [1] - 5:22
specific [1] - 5:26
specifically [1] - 10:17
STATE [1] - 1:2
statements [1] - 8:6
stenographic [1] - 13:20
Steyn [21] - 2:5, 2:19, 2:24, 2:26, 3:2, 3:6, 3:11, 3:13, 3:19, 3:22, 3:23, 4:7, 4:10, 4:17, 4:21, 4:26, 5:3
STEYN [2] - 1:3
Street [1] - 1:10
strong [1] - 5:25
submit [2] - 9:16, 9:24
submitted [6] - 5:9, 5:10, 5:15, 9:5, 9:6, 9:22
subsequent [1] - 9:17
Suite [1] - 1:16
SUPREME [1] - 1:2

T

television [1] - 3:3
TERM [1] - 1:2
Term [1] - 2:26
Termination [1] - 3:13
THE [26] - 1:2, 2:5, 2:9, 2:12, 2:14, 7:3, 7:6, 7:9, 7:23, 8:8, 9:10, 9:13, 9:26, 10:17, 11:2, 11:7, 11:19, 11:25, 12:2, 12:9, 12:12, 12:17, 13:2, 13:6, 13:11, 13:17
theft [1] - 3:20
therefore [1] - 6:21
today [1] - 12:14
today's [1] - 7:9
total [1] - 4:6
transaction [1] - 3:5
transcription [1] - 13:19
trespass [1] - 3:20
true [1] - 13:19
trying [3] - 13:6, 13:8, 13:9
two [2] - 10:3, 11:5

U

un-reimbursed [1] - 4:14
under [2] - 4:14, 4:24

unreimbursed [1] - 4:23
up [2] - 7:11, 7:26
up-load [1] - 7:11
upheld [1] - 5:19
US [3] - 1:3, 2:6, 2:20

V

Vermont [1] - 4:3
versus [3] - 2:4, 5:22, 6:3

W

wait [3] - 7:15, 7:16, 8:15
Wein [1] - 5:21
whereby [1] - 2:26
Williston [1] - 4:3

Y

YORK [2] - 1:2, 1:2
York [5] - 1:10, 1:20, 10:21