Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS** IAS PART 4
Justice

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LOUIS BELL,

Plaintiff(s)

-against-

STAN DEUTSCH, ASSOCIATES, INC., LMM SALES CORP., LINEAR LIGHTING CORPORATION, LINEAR LIGHTING SALES & MARKETING CO., CONTEMPORARY CEILINGS, INC., CONTINENTAL LIGHTING SYSTEMS, INC., and STANLEY DEUTSCH, LAWRENCE DEUTSCH, MELISSA DEUTSCH-STEIN and MICHAEL DEUTSCH, personally and as Officers and Directors of STAN DEUTSCH ASSOCIATES INC., LMM SALES CORP., LINEAR LIGHTING CORPORATION, LINEAR LIGHTING SALES & MARKETING CO., CONTEMPORARY CEILINGS, INC. and CONTINENTAL LIGHTING SYSTEMS, INC.,

Defendant(s)

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Index Number 705565 2013

Motion Dates: August 16, 2016
August 23, 2016

Motion Cal. No.: 11, 18, 17

Motion Seq. Nos. 9, 11, 12

The following papers numbered 1 to 28 read on these separate motions by defendants pursuant to CPLR 3212 for summary judgment dismissing all causes of action predicated upon plaintiff's claim of ownership in Stan Deutsch Associates, Inc. and LMM Sales Corp., or, in the event that the Court determines plaintiff's claim of ownership in Stan Deutsch Associates, Inc. and LMM Sales Corp. is not susceptible to summary determination, to sever the issue of plaintiff's claim of ownership for an expedited hearing or trial, and to order preference therefor; by defendants pursuant to CPLR §2221 (c) for leave to renew their Motion to Amend the Counterclaims in light of new facts regarding defendants' proposed

counterclaim for plaintiff's breach of the duty of loyalty, which were neither offered in connection with defendants' prior Motion to Amend, nor available to defendants at the time they made such motion; and motion by plaintiff for leave to re-file the Motion to Strike defendants' Note of Issue and to deem it made as of the date of service of that prior motion, and on this cross motion by plaintiff pursuant to CPLR §§3212 and 2215, for summary judgment in his favor on the issue of plaintiff's ownership in defendants Stan Deutsch Associates, Inc. and LMM Sales Corp.

	Papers Numbered
Notices of Motion - Affidavits - Exhibits	1-13
Notice of Cross Motion - Affidavits - Exhibits	14-16
Answering Affidavits - Exhibits	17-22
Reply Affidavits	23-28

Upon the foregoing papers it is ordered that the motions and cross motion are consolidated and determined as follows:

This action was commenced by plaintiff Louis Bell, a former 40-year employee of defendant Stan Deutsch Associates, Inc. (SDA), who claims to be a shareholder in defendant SDA and its affiliate, defendant LMM Sales Corp. (LMM), pursuant to the terms of a written agreement (the 1978 Agreement) entered into by plaintiff and defendant Stanley Deutsch on September 6, 1978. Plaintiff contends that the 1978 Agreement entitles him to 10% ownership interests in defendants SDA and LMM, on whose behalf defendant Stanley Deutsch also entered the 1978 Agreement. Plaintiff further claims to own 10% interests in other companies affiliated with defendants SDA and LMM, namely, defendants Linear Lighting Corporation, Linear Lighting Sales & Marketing Co., Contemporary Ceilings, Inc. and Continental Lighting Systems, Inc., based on a provision in the 1978 Agreement which provides that: "It is agreed between the parties that in the event STAN DEUTSCH ASSOCIATES, INC. and/or LMM SALES CORP. should cease doing business or should open up a new enterprise as a factory representative or distributor for any manufacturer in the lighting fixture business, that BELL shall become the owner and/or partner of that business to the extent of 10% interest."

The parties' submissions include, among other things, the 1978 Agreement, the parties' examination before trial testimonies and their affidavits and the affidavit of Ted Lukralle, Sr., who was plaintiff's fellow employee and a 19% shareholder in defendants SDA and LMM at the time of the 1978 Agreement.

In his affidavit plaintiff avers:

"On or about September 6, 1978, after I had worked at Stan Deutsch Associates, Inc. ("SDA") since 1973 as a salesperson, Stanley Deutsch and I signed an agreement whereby Stanley agreed to sell me 10 of his ownership shares in SDA and 10 of his ownership shares of LMM Sales Corp. ("LMM") for a price of $23,600. Mr. Deutsch did not express any objection to me making payments that did not strictly adhere to the payment schedule terms set forth in Paragraph 2 of the 1978 Agreement. I personally handed Mr. Deutsch cash for each installment payment that I made and each time, Mr. Deutsch handed me back a signed receipt documenting the payment. Each receipt made reference to my "stock interest" in SDA and LMM or to my "shares" in SDA and LMM. I was never told by anyone . . . nor ever led to believe that anyone besides Stanley Deutsch needed to consent in order for him to sell me some of his shares of SDA and LMM. I was never told by anyone . . . nor ever led to believe that the 1978 Agreement needed the signature of Ted Lukralle, Sr., or anyone else besides Stanley Deutsch to make it effective, binding, enforceable, valid or complete.

Stanley Deutsch told me shortly after he and I both signed the 1978 Agreement that he would not issue or give me any actual paper stock certificates or shares of SDA and LMM as a favor, so that I could avoid the burden of having to report my interests on tax filings. I enjoyed the benefits of being a 10% shareholder in SDA and LMM in the form of profit distributions commensurate to that percentage (or at least what I was told were distributions commensurate to that percentage), despite never being issued actual paper stock certificates, or ever reporting that I was a shareholder on tax filings. I continued to be treated like a shareholder until my constructive termination in 2013.[1] I was never told by Stanley Deutsch nor anyone else that I would receive back only the amount that I paid or $1,000 per share if I wanted to sell my shares, or left SDA, except if I died as per the1978 Agreement. My understanding was always that, consistent with the written terms of Paragraphs 4 and 5 of the 1978 Agreement, if I wanted to sell my shares back, a price for the shares would be mutually agreed upon by myself and representatives or officers of SDA and LMM, and that the companies, followed by Stanley

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Plaintiff separately commenced an action against defendants SDA, LMM and Melissa Deutsch, under Index Number 12022/13, for age and disability discrimination, which action has been joined with the instant action for purposes of joint trial by Order of this Court, dated January 8, 2015.

Deutsch, would have the right of first refusal before I could offer them to anyone else. However, prior to commencement of this suit, SDA, LMM and the Deutsch family refused to cooperate with me after I requested information that was necessary to determine a fair value for my shares, which prevented me from being able to make a bona fide offer to sell back my shares."

Annexed to plaintiff's cross-moving papers are receipts for plaintiff's payments for the shares, including a final receipt, dated May 25, 1984, and signed by defendant Stanley Deutsch, in which it states the following: "I have received from you this date a cash payment of $3,522.60 which represents final payment of the balance due for 10% stock interest in Stan Deutsch Assoc. and L.M.M. Sales Corp. You have completed payment in full accordance of all terms and conditions required of you by our Agreement of September 6, 1978."

In his affidavit, shareholder, Ted Lukralle, Sr., avers:

"I was never told by anyone, including Stanley Deutsch, nor did I ever believe that my consent was needed in order to make Lou Bell a shareholder in SDA and LMM. I never believed that defendant Stanley Deutsch could not sell or transfer any portion of his ownership interest in SDA or LMM to anyone else without my consent. I never withheld my signature or refused to sign, or was even asked to sign, any document or agreement regarding Lou Bell's ownership interest in SDA or LMM. I never saw nor was presented with any document or agreement that concerned Lou Bell's ownership interest in SDA or LMM. If I had been asked to consent to making Lou Bell an owner of SDA and LMM, or to sign a document concerning his ownership interest in SDA or LMM, I would have agreed. I was never asked to approve the amount that Mr. Bell was paying to acquire his ownership interest in SDA and LMM. While Stanley Deutsch and I agreed that I would become a 25% shareholder of SDA And LMM, I believe that I was issued only 19 shares in those companies because he wanted to retain majority control over the companies after deciding to make Lou Bell, Emilio "Russ" Russo and Al Falussy, Sr., each 10% shareholders.

I do not recall any formal SDA or LMM shareholder meetings taking place during my time at SDA. I do not recall attending or being invited to any formal SDA or LMM shareholder meetings. I do recall having meetings with Stanley Deutsch, Lou Bell, Russ Russo and Al Falussy, Sr., which were referred to as "Partner Meetings," in which the state of business of SDA and LMM was discussed. I understood "partners" to mean the same thing as

"owners" and "shareholders." I understood that Stanley Deutsch was majority owner of SDA and LMM and that he exerted ultimate control over those companies. I do not recall ever being involved in personnel decisions. I do not recall ever being involved in any major business decisions involving SDA or LMM. I was never given a copy of any by-laws that may have been applicable to SDA or LMM. I do not recall there ever being a vote of shareholders of SDA or LMM taking place. I do not recall ever being asked to vote or voting as a shareholder of SDA or LMM for any reason in any context."

In his affidavit, defendant Stanley Deutsch avers:

"I served as President and Chief Executive Officer of Stan Deutsch Associates, Inc. ("SDA") from 1962 to 2001; and have served as President and Chief Executive Officer of LMM sales Corp. ("LMM") from 1973 to the present time. In 1962, I founded SDA. In 1967, I incorporated SDA in the State of New York. SDA is a sales agency for, and representative of manufacturers of specification-grade lighting products. It works with 'specifiers' (such as architects, electrical engineers, lighting designers, and others) to educate, layout, and assist them to select or "specify" for purchase the products of the manufacturers that SDA represents. In 1973, I founded LMM and incorporated it in the State of New York. LMM serves primarily as a distributor for SDA and places orders on its behalf. LMM typically does not operate at a profit, and commissions generated on orders it places are typically paid to SDA. When SDA sand LMM were established, both corporations were authorized to issue up to 200 shares of capital stock. We only ever issued 100 shares total for each company. As for SDA, the first 100 shares were issued to me by stock certificate dated January 7, 1967. On or about January 1, 1969, I arranged for 40 of my initial 100 shares to be transferred to my sons, Larry Deutsch and Michael Deutsch. I transferred 20 of my shares to each of them. SDA issued stock certificates to each of them for 20 shares, and I was issued a replacement stock certificate reflecting that my holdings had been reduced to 60 shares.

In January 1975, I entered into an agreement with Ted Lukralle, Sr., one of our earliest salespeople, to make him another owner of SDA, an owner of LMM and the Vice-President of both companies. I asked SDA's attorney at that time, Morris Siegal -- whom I understand to be deceased – to prepare Mr. Lukralle's agreement. That agreement, dated January 3, 1975, authorized Mr. Lukralle to purchase 25 shares of stock in SDA and LMM for $50,000. The

agreement also stated that, as shareholders of SDA and LMM, Mr. Lukralle and I would be required to consent to any further shares of stock being issued by SDA or LMM. Mr. Lukralle's status as a shareholder of the companies was formally approved during a special meeting of LMM's Board of Directors on or about January 3, 1975. Mr. Lukralle never ended up paying for the full 25 shares, but he did pay enough to buy 19 shares of stock in each company. SDA issued him a replacement stock certificate for 19 shares of stock and issued me a replacement stock certificate for 41 shares of stock; both were dated September 6, 1978. LMM issued to Mr. Lukralle a replacement stock certificate for 19 shares of stock, and issued me a replacement stock certificate for 81 shares of stock. Both of those were dated September 6, 1978, as well. From 1978 until 2000, the shareholders of SDA were myself, Larry Deutsch, Michael Deutsch, and Ted Lukralle. Over that same period of time the shareholders of LMM were myself and Ted Lukralle.

In 2000, Mr. Lukralle sold his 19 shares of stock in each of SDA and LMM back to the companies. SDA re-issued the 19 shares of SDA stock to my daughter Melissa Stein. I transferred one of my 41 shares of SDA stock to Melissa to bring her stockholdings up to an even 20 shares. SDA issued me a replacement stock certificate for 40 shares of stock. Those certificates are dated March 23, 2000. Since 2000, the only shareholders of SDA have been myself, Larry Deutsch, Michael Deutsch, and Melissa Stein. LMM has retained the 19 shares of stock that Mr. Lukralle sold back. Since 2000, I have been the sole shareholder of LMM. Shortly after Melissa was issued SDA stock in 2000, she assumed the title of CEO of SDA, in 2001. I have remained actively involved in business and sales strategy at SDA, but Melissa has assumed primary responsibility for day-to-day operations and oversight.

I hired Louis Bell in the early 1970's as an outside salesperson for SDA. Soon after I offered him an enhanced and more lucrative compensation package, and to become a Partner of SDA, which Mr. Bell accepted. The compensation package included a better commission rate relative to what non-Partners collected . . . an expense account, a company car, a company credit card, and 10% of any profit distributions to Partners when SDA in its discretion made distributions. As part of that deal, Mr. Bell would pay $23,600 . . . with the understanding that he would have money returned to him when he left SDA. I never offered Mr. Bell to become a shareholder of SDA or LMM. I understand and am informed that Mr. Bell is now claiming that he is a shareholder of SDA and LMM pursuant to a document from September 1978 that he has produced during discovery in this lawsuit. I have been shown a

copy of that document. On its face the document is invalid. As noted above, both Mr. Lukralle and I, as shareholders of SDA and LMM, were required to consent to any new shares of stock in SDA and LMM being issued. But Mr. Lukralle never wanted Mr. Bell to be part of SDA and LMM and never signed the document that Mr. Bell has come forth with. The two of them despised one another. Not only did Mr. Lukralle never sign the document, but it also has no Effective Date, likely because Mr. Lukralle never reviewed and approved it. All that document did was confirm the profit participation aspect of Mr. Bell's compensation package that I offered to him. When preparing that document I cut and pasted from Mr. Lukralle's contract.

At no point in time did SDA or LMM issue stock certificates to Mr. Bell. Mr. Bell never received any Schedule K-1s to report shareholder interest in SDA or LMM. All I ever offered to Mr. Bell was an elevated compensation package as a Partner of SDA. The company has honored that deal for decades.

While I have a general recollection of Mr. Bell making payments to me after September of 1978, I do not recall specifically when those payments were made. I understand and am informed that Mr. Bell has produced in this litigation certain documents that he claims are "memos" reflecting payments that he made to me in the late 1970s and early 1980s. I do not recall signing any of those documents."

In the complaint, plaintiff asserts causes of action for Breach of Fiduciary Duty, Breach of Contract, Fraud, Unjust Enrichment and Common Law Dissolution against defendants SDA, LMM, Stanley Deutsch, and his children, Lawrence Deutsch, Melissa Deutsch-Stein and Michael Deutsch, personally and as Officers and Directors of the defendant corporations. Plaintiff's other causes of action were dismissed in an Order of this Court, dated December 7, 2015. In their answer to the complaint, defendants assert various affirmative defenses and a counterclaim that plaintiff Misappropriated the Corporate Defendants' Confidential Information and Other Property for His Gain Without Regard to the Corporate Defendants' Rights and Without Compensation, Permission, or License. In an Order dated June 30, 2015, this Court granted defendants leave to amend their answer to assert an additional counterclaim for Breach of Fiduciary Duty, but not a Breach of Duty of Loyalty and Good Faith.

In a So-Ordered Stipulation of the parties dated April 19, 2016, the parties agreed to bifurcate discovery such that they will first proceed on the issue of plaintiff's alleged ownership of stock in SDA and LMM under the Agreement of September 6, 1978. The parties further agreed to file motions for summary judgment on this issue of ownership in SDA and LMM by May 24, 2016. Thereafter, the parties agreed to extend that deadline for

summary judgment motions on that ownership issue to June 13, 2016, in a Stipulation, dated June 1, 2016, and so-ordered on June 9, 2016.

Defendants now move and plaintiff cross-moves for summary judgment on the issue of ownership in SDA and LMM. In a separate motion, defendants seek leave to renew that branch of their prior motion to amend their answer to assert a counterclaim for Breach of Duty of Loyalty and Good Faith, which was denied in this Court's earlier Order, dated June 30, 2015. Plaintiff separately moves for leave to re-file his Motion to Strike defendants' Note of Issue and to deem it made as of the date of service of his prior motion for that same relief, which had been marked off the Central Motion Part (CMP) calendar for a failure to appear.

Defendants timely filed their instant motion for summary judgment. At that same time, defendants also filed a Note of Issue. However, inasmuch as defendants indicate in their papers that they filed the Note of Issue only with respect to the issue of whether plaintiff is a shareholder of defendants SDA and LMM, and it is clear from the parties' submissions that all discovery is not yet complete in this action, plaintiff's motion, in effect, seeking to vacate the note of issue and to strike this case from the trial calendar is granted.

As for defendants' motion seeking leave to renew, such a motion "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and . . . shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR §2221 [e] [2], [3]; *see Coll v Padilla*, 5 AD3d 716 [2004]; *Rizzotto v Allstate Ins. Co.*, 300 AD2d 562 [2002]). "A motion for leave to renew is addressed to the sound discretion of the Court" (*Matheus v Weiss*, 20 AD3d 454, 454-455 [2005]). In addition, "[t]he requirement that a motion for leave to renew be based upon newly-discovered facts is a flexible one and a court, in its discretion, may grant renewal upon facts known to the moving party at the time of the original motion" (*Lawman v The Gap, Inc.*, 38 AD3d 852, 853 [2007], quoting *Gadson v New York City Hous. Auth.*, 263 AD2d 464 [1999]), provided that "the movant offers a reasonable justification for the failure to submit the additional facts on the original motion" (*Matter of Progressive Northeastern Ins. Co. v Frenkel*, 8 AD3d 390, 391 [2004]; *see Gomez v Needham Capital Group, Inc.*, 7 AD3d 568 [2004]; *Hasmath v Cameb*, 5 AD3d 438 [2004]).

Defendants, here, present new evidence, that is, plaintiff's testimony from his examinations before trial held after defendants' prior motion to amend was fully submitted, which would change the Court's prior determination. (*Cf. Vazquez v JRG Realty Corp.*, 81 AD3d 555 [2011] [motion to renew denied where expert affidavit proffered on renewal was available to plaintiffs prior to the summary judgment motion being fully submitted].)

Accordingly, defendants' motion seeking leave to renew is granted, and upon renewal, that branch of defendants' prior motion to amend their answer to assert an additional counterclaim for Breach of Duty of Loyalty and Good Faith is granted since that counterclaim is neither palpably insufficient nor totally devoid of merit given plaintiff's testimony that he and his wife started a company called The Lamp Source in the late Seventies, early Eighties while he was an employee of SDA, which company also was in the Lighting Industry. In all other respects, the Court adheres to its original decision which granted defendants leave to amend their answer to assert a counterclaim for Breach of Fiduciary Duty.

As noted, defendants' motion for summary judgment on the issue of ownership in SDA and LMM was timely made. Plaintiff's cross motion for summary judgment, although untimely, concerns the same issue of ownership, and as such, there is good cause for permitting the late cross-motion (*see Ellman v Village of Rhinebeck*, 41 AD3d 635 [2007]).

It is well settled that a proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact *(see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; see *also Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion regardless of the sufficiency of the opposing papers *(see Winegrad v New York Univ. Med. Ctr., supra*). Furthermore, the court's function on a motion for summary judgment is issue finding, not issue determination (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]), or credibility assessment (*see Ferrante v American Lung Association*, 90 NY2d 623 [1997]). Once this showing has been made, however, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a triable issue of fact (*see Alvarez v Prospect Hosp., supra*).

Plaintiff, here, has met his initial burden on his cross-motion for summary judgment. Plaintiff has presented competent evidence, including the subject Agreement of September 6, 1978, and proof of payment, establishing that plaintiff is the owner of 10 shares of stock in defendant SDA and 10 shares of stock in defendant LMM, having purchased same from defendant Stanley Deutsch, for $23,600, pursuant to the terms of the 1978 Agreement executed by plaintiff and defendant Stanley Deutsch, on his own behalf and on behalf of defendants SDA and LMM. Thus, the burden shifts to defendants to present competent evidence raising a triable issue of fact (*see Alvarez v Prospect Hosp., supra*).

Defendants, in opposition, failed to meet this burden. Defendants failed to submit any evidence in the By-Laws to support their assertion that defendant Stanley Deutsch needed

Board Approval to sell his shares in defendants SDA and LMM, and in any event, defendant Stanley Deutsch, signed the 1978 Agreement on behalf of defendants SDA and LMM as President thereof, and thus, had the authority to bind those corporations. Defendants also contend that the 1978 Agreement is invalid because the signature line for "Theodore Lukralle - Vice President" was left blank. Contrary to defendants' contention, neither Lukralle's consent, nor his signature on the 1978 Agreement were required for defendant Stanley Deutsch to sell his own shares in defendants SDA and LMM. The clause in the Agreement with Lukralle, dated January 3, 1975, upon which defendants mistakenly rely, only requires Lukralle's consent for the issuance of any further capital stock by defendants SDA and LMM. It also was not necessary for Lukralle to sign the 1978 Agreement in his capacity as Vice President of defendants SDA and LMM. Rather, as noted, defendant Stanley Deutsch had the authority, as President, to execute the 1978 Agreement on behalf of defendants SDA and LMM, and did so exercise that authority.

While defendants assert that the 1978 Agreement is not a valid contract because the "effective date" also was left blank, this assertion is without merit. "A blank space in a written contract does not, as a matter of law, render the contract an incomplete or insufficient memorandum of the parties' whole agreement" (*Federal Deposit Ins. Corp. v Herald Square Fabrics Corp.*, 81 AD2d 168,181 [1981]). Where a blank space in a contract has not been filled in, the contract provision may be rendered inoperative and rejected as surplusage if the parties so intended (*Id*) Thus, while the subject 1978 Agreement does not contain an effective date, the presumption is that the agreement, which was made and subscribed by the parties on September 8, 1968, became effective either upon signing or plaintiff's payment to defendant Stanley Deutsch for the shares of stock in defendants SDA and LMM. Moreover, to the extent defendants argue that plaintiff did not timely make payments in accordance with the terms of the 1978 Agreement, such argument fails to raise a triable issue of fact. Any provision of a contract is subject to waiver, particularly a provision requiring timely payment (*See Mader v Mader*, 101 AD2d 881 [1984]; *see also Snide v Larrow*, 93 AD2d 959 [1983]). Defendant Stanley Deutsch's acceptance of each of plaintiff's late payments constitutes a waiver by defendant Stanley Deutsch.

Defendants further assert that plaintiff is not an owner of defendants SDA and LMM because he does not have any stock certificates. While a stock certificate is evidence of shareholder status, it is not necessary to its creation (*see United States Radiator Corp. v State of New York*, 208 NY 144 [1913]). The mere fact that the plaintiff does not physically possess stock certificates does not preclude a finding that plaintiff has the rights of a shareholder. (*See United States Radiator Corp. v State of New York, supra*; *see also Kun v Fulop*, 71 AD3d 832 [2010]; *French v French*, 288 AD2d 256 [2001]). Thus, where, as in this case, consideration for the shares has been paid in full, plaintiff is considered a holder

of the shares and is entitled to all rights and privileges thereof (*see* Business Corporation Law § 504 [i]).

Accordingly, it is

ORDERED and ADJUDGED that plaintiff's cross-motion for summary judgment in his favor on the issue of plaintiff's ownership interest in defendants SDA and LMM is granted; and it is further

ORDERED, and ADJUDGED that plaintiff is a 10% shareholder in defendant SDA; and it is further

ORDERED and ADJUDGED that plaintiff is a 10% shareholder in defendant LMM; and it is further

ORDERED and ADJUDGED that defendants' motion for summary judgment is denied; and it is further

ORDERED and ADJUDGED that plaintiff's motion, in effect, seeking to vacate the note of issue and to strike this case from the trial calendar is granted; and it is further

ORDERED and ADJUDGED that defendants' motion seeking leave to renew is granted, and upon renewal, that branch of defendants' prior motion to amend their answer to assert an additional counterclaim for Breach of Duty of Loyalty and Good Faith is granted; and it is further

ORDERED and ADJUDGED that defendants' First Amended Answer & Counterclaims, in the form annexed to the original and instant motion papers, shall be served and filed by defendants along with a copy of this Decision and Judgment and the Order of June 30, 2015, with Notice of Entry, within twenty (20) days of entry of this Decision and Judgment.

This constitutes the Decision and Judgment of the Court.

Dated: DEC 15 2016

J.S.C.

FILED
JAN 18 2017
COUNTY CLERK
QUEENS COUNTY