



Andrea K. Bailey, Acting County Clerk
Livingston County Government Center
6 Court Street, Room 201
Geneseo, New York 14454
(585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:

BRIAN LAUDADIO
350 LINDEN OAKS THIRD FLOOR
ROCHESTER, NY 14625

Return To:

BRIAN LAUDADIO
350 LINDEN OAKS THIRD FLOOR
ROCHESTER, NY 14625

Document Type: **CIVIL ACTION - MISC**

Document Desc: **NOTICE OF ENTRY**

Plaintiff

BRADY BRANDON M

Defendant

BRADY MYRON O
BRADY MYRON C
Levine Bernard D
Receiver

Recorded Information:

Index #: 000216-2019

State of New York
County of Livingston

Efiling through NYSCEF

Handwritten signature of Andrea K. Bailey in cursive.

Acting Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

In the matter of the Application of
BRANDON M. BRADY,

Petitioner,

NOTICE OF ENTRY

For the Judicial Dissolution of
BRADY FARMS, INC.,

Index No. 000216-2019

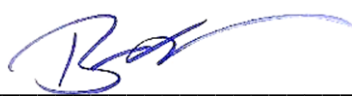
MYRON O. BRADY and MYRON C. BRADY,

Respondents.

PLEASE TAKE NOTICE that on September 2, 2021 an Order signed by the Hon. J. Scott Odorisi and dated September 2, 2021, a copy of which is annexed hereto, was entered with the Livingston County Clerk for the State of New York.

DATED: September 8, 2021.

BOND, SCHOENECK & KING, PLLC

By: 

Brian Laudadio, Esq.
Joseph S. Nacca, Esq.
Attorneys for Petitioner Brandon M. Brady
350 Linden Oaks, Third Floor
Rochester, NY 14625
Telephone: (585) 362-4700

TO: DIBBLE & MILLER P.C.
John M. Regan, Jr., Esq.
*Attorneys for Respondents Myron O. Brady
and Myron C. Brady*
55 Canterbury Road
Rochester, NY 14607-3436

Bernard D. Levine, Esq., Receiver
70 Linden Oaks Office Park, Suite 300
Rochester, New York 14625



Andrea K. Bailey, Acting County Clerk
Livingston County Government Center
6 Court Street, Room 201
Geneseo, New York 14454
(585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:

MAUREEN P. WARE
99 EXCHANGE BLVD
ROCHESTER, NY 14614

Return To:

MAUREEN P. WARE
99 EXCHANGE BLVD
ROCHESTER, NY 14614

Document Type: **CIVIL ACTION - MISC**

Document Desc: **ORDER - OTHER**

Plaintiff

BRADY BRANDON M

Defendant

BRADY MYRON O
BRADY MYRON C
Levine Bernard D
Receiver

Recorded Information:

Index #: 000216-2019

State of New York
County of Livingston

Efiling through NYSCEF

A handwritten signature in cursive script that reads "Andrea K. Bailey".

Acting Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

At a Special Term of the Supreme Court held
in and for the County of Livingston, State of
New York on June 8, 2021

PRESENT: HON. J. SCOTT ODORISI
Justice Presiding

STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

In the Matter of the Application of
BRANDON M. BRADY,

ORDER

Petitioner,

Index No. 000216-2019

v.

For the Judicial Dissolution of
BRADY FARMS, INC.

MYRON O. BRADY AND MYRON C. BRADY,


Respondents.

Receiver, Bernard D. Levine, Esq., having moved by Order to Show Cause for an Order approving and directing the Private Sale of Brady Farms, Inc.'s Real Property to Petitioner, Brandon M. Brady;

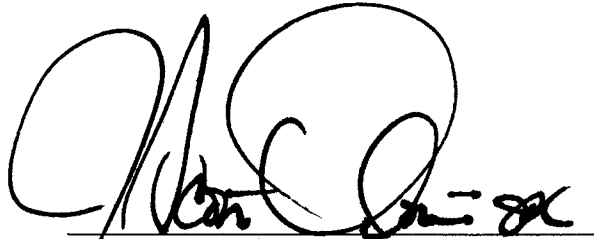
NOW, upon reading the Receiver's Order to Show Cause, dated February 14, 2020 (Dkt. 89), that Affirmation of Bernard D. Levine, Esq., dated February 12, 2020 (Dkt. 87, the Affidavit of Brandon M. Brady, sworn to on February 5, 2020 with exhibits A – C (Dkt. 90), and the Receiver's Memorandum of Law, dated February 12, 2020 (Dkt. 92), all submitted in support of the Receiver's Order to Show Cause; and the Affirmation of Craig D. Chartier, Esq., dated February 28, 2020 (Dkt. 95) with exhibits (Dkt nos. 96-107), the Affidavit of Myron O. Brady,

sworn to February 26, 2020 (Dkt. 108), with exhibits (Dkt nos. 109-111), the Affidavit of Myron C. Brady, sworn to February 26, 2020 (Dkt. 112), with exhibits A-D (Dkt nos. 113-116), and Respondents' Memorandum of Law, all submitted in opposition to the Receiver's Order to Show Cause; it is hereby;

ORDERED that the Receiver's Order to Show Cause is **GRANTED** as per the Court's Decision, dated August 10, 2021, a copy of which is attached hereto as Exhibit "A."

September
Dated: ~~August~~ 2, 2021 

ENTER:



Hon. J. Scott Odorisi, J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

In the Matter of the Application of
BRANDON M. BRADY,

Petitioner,

Index #: 000216-2019

-vs-

For the Judicial Dissolution of
BRADY FARMS, INC.,

MYRON O. BRADY and MYRON C. BRADY,

Respondents.

Special Term
June 8, 2021

APPEARANCES ON SUBMISSION

Brian Laudadio, Esq.
BOND SCHOENECK & KING, PLLC
Attorneys for Petitioner

Craig D. Chartier, Esq.
DIBBLE & MILLER, P.C.
Attorneys for Respondents

Bernard D. Levine, Esq.
Receiver

-2-

DECISION

Odorisi, J.

Petitioner, Brandon M. Brady, moves by Order to Show Cause for an order: (1) vacating and/or deeming unenforceable those certain lease documents dated January 26, 2018, February 26, 2018, and February 28, 2018, all of which were executed by Respondent, Myron O. Brady, purportedly on behalf of Brady Farms, Inc., for the benefit of Respondent Myron C. Brady and Scott Brady, respectively; and (2) vacating and/or deeming unenforceable that certain license agreement dated February 28, 2018, executed by Myron O. Brady, purportedly on behalf of Brady Farms, Inc., for the benefit of Respondent Myron C. Brady.

Also pending before the Court is the Receiver's Order to Show Cause for an order approving and directing the private sale of Brady Farms, Inc.'s real property to Petitioner.

After consideration of the parties' submissions and arguments, this Court hereby **GRANTS in part and DENIES in part** the relief sought in Petitioner's Order to Show Cause, **GRANTS** the relief sought in the Receiver's Order to Show Cause as set forth herein.

FACTS

Myron O. Brady ("Myron O.") is Brandon M. Brady's ("Brandon") and Myron C. Brady's ("Myron C.") father. Scott Brady ("Scott"), who is not a party to this litigation, is also Myron O.'s son. Myron C. and Scott are Myron O.'s sons from a previous marriage.

-3-

Brandon is Myron O.'s only child with Brandon's mother, Linda Bradley. Myron O. initiated a divorce proceeding against Linda Bradley on May 7, 2018.

Brady Farms, Inc. ("Brady Farms," "the Company" or "BFI") was formed by Myron O. in 1984. Bylaws were adopted on February 23, 1984, stating that "the business of the corporation shall be managed by its board of directors." The Company owns approximately 400 acres of tillable lands, 200 of which are farmed by the Company and the other 200 of which have allegedly been leased to Myron C. Scott resigned as a director in December 1995, and each of the initial shareholders transferred their respective shares back to the Company; the Company then issued 100 shares to Myron O. and 100 shares to Myron C.

In the mid-1990s, Brandon began assisting the Company with farming operations. Brandon claims that he assumed sole responsibility for farming the approximately 200 acres of tillable, unleased property owned by the Company. Myron O. had exclusive responsibility for collecting sales, rent or mortgage proceeds for the Company (and for distributing or otherwise managing those proceeds). Myron O. also was responsible for keeping and maintaining the books and records. Myron O. gifted Brandon more than \$8,500,000 worth of real property, as Myron O. sought to ensure that the land remained in the family after his death. Brandon claims that he had assumed sole responsibility for farming much of the Company property by 1998.

Brandon and the Myrons also farm property known as "Shaker Farm" that was leased from the Shaker Farm Corporation. The Shaker Farm is immediately contiguous to the property owned by Brady Farms. The Company pays \$250 per acre, with the landlord retaining the rights to annually raise the rent.

-4-

Myron C. resigned as an officer and director in April 2003; he transferred all of his stock to Myron O. Brandon alleges that at this juncture Myron O. began transferring shares to Brandon, with the understanding that Brandon would eventually obtain 100% ownership interest in the Company. Multiple transfers were made to Brandon beginning in 2006, resulting in Brandon allegedly acquiring a 48% interest in the Company (96 shares) as of December 31, 2017.¹ The 2017 tax return of the Company reflects Brandon's 48% interest. Likewise, loan documents prepared for the Company, signed by Myron O., and submitted to Five Star Bank list Brandon's 48% interest.

As of early 2018, Brandon was also a director of Brady Farms. On October 27, 2010, the shareholders, directors and officers met and elected Brandon as Vice President, Secretary and Director.

In early 2018, a dispute arose between Brandon and Myron O. relative to a proposed renewal of the Company's lease with Myron C.² Because Myron O. had not disclosed the proceeds related to rent received from Myron C., had not provided Brandon with distributions arising out of Myron C's payments, and had allegedly not been collecting rent from Myron C., Brandon believed the Company should allow Myron C.'s lease to expire and those 200 acres should be farmed for the Company's benefit going forward.

Brandon alleges that Myron O. and Myron C. thereafter schemed to strip him of his rights as a shareholder and owner of the Company. On May 23, 2018, although Myron O. and Brandon were the only shareholders, Myron O. and Myron C. acted by their own

¹ Brandon received 6 shares on January 2, 2006, and he received 14 shares on January 18, 2007, December 31, 2008, November 23, 2009 and December 31, 2010.

² That 2018 Lease is, in part, the subject of Petitioner's pending application.

unanimous consent to remove a provision in the Company's Certificate of Incorporation that restricted the alienation of shares by requiring a shareholder to first offer those shares for sale to other stockholders. Myron O. then also called a shareholders meeting to amend the Certificate of Incorporation to remove the alienation restriction. At that meeting, Myron O. took the position that Brandon owned only 62 shares, or 31% of the Company's stock. Over Brandon's objection, Myron O. voted in favor of removing the restriction on alienation from the Certificate of Incorporation and voted to elect himself and Myron C. as directors of the Company, while Brandon was removed. On May 25, 2018, Myron O. and Myron C. filed an amendment to the Company's Certificate of Incorporation purporting to remove the restriction on alienation.

On June 12, 2018, Myron O. and Myron C. entered into a "Share Purchase Agreement," pursuant to which Myron O. agreed to sell to Myron C. 138 shares (69%) of the Company stock. Brandon was not given the option to purchase those shares first, and the transfer allegedly violated a Court Order in Myron O.'s divorce proceeding precluding Myron O. from, among other things, disposing of his stock in the Company without further order of the Court (Piampiano, J.) or on consent. Myron O. and Myron C. also allegedly refused to provide Brandon with access to books and records other than the "Corporate Kit." Myron O. claims that Brandon had access to the books and records because they were kept in his home where Brandon also lived.

Brandon alleges that Myron O. and/or Myron C. have removed funds from the Company's bank accounts and closed the accounts. Brandon also alleges that the Myrons have purchased fuel for personal use on the Company card and have refused to personally pay those bills, and that Myron O. has caused the Company to guaranty his personal loans

-6-

on which he then defaulted. The Myrons also allegedly did not pay property taxes on Company property.

Furthermore, it is alleged that the Myrons stopped allowing Brandon access to landlocked property he owns, as Brandon has to cross Company property to reach his land.

Myron O. claims that no distributions were made to any shareholders. According to Myron O., the problems between the parties arose when Myron O. commenced an action to set aside the Brady Trust in 2018. When he created the trust, Myron O. states that he did not realize that he did not retain a life estate, which would permit him to continue farming until his death.³ He had intended to reserve his rights until his death and believed his children all understood that, including Brandon. However, conflict arose when Myron O.'s right to use the land expired and Brandon began to restrict that use.

PROCEDURAL HISTORY

This proceeding was commenced in March 2019 pursuant to BCL §1104-a, seeking to dissolve the Company due to the alleged oppressive and wasteful conduct of Myron O. and Myron C. Petitioner brought an Order to Show Cause upon commencement, seeking dissolution, discovery pursuant to CPLR 408, the appointment of a temporary receiver, and an order enjoining Respondents from: (1) using corporate funds to pay counsel fees in this action or the related plenary action, (2) transferring any monies received by the Company to people outside the ordinary course of business, and (3) otherwise engaging in conduct

³ Myron O. is 89 years old and wants to farm for the remainder of his life.

-7-

outside the ordinary course of business. On September 9, 2019, the Court (Rosenbaum, J.) issued a decision granting the appointment of a temporary receiver (Bernard Levine, Esq.), granting the application for dissolution, allowing discovery pursuant to CPLR 408, and enjoining Respondents from: transferring monies received by the Company except in the ordinary course of business, otherwise engaging in conduct outside the ordinary course of business, and using corporate funds to pay counsel fees in this dissolution proceeding and in the plenary action. Respondents appealed that Decision. By Decision dated April 18, 2020, the Court granted Respondent's motion for a stay pending the resolution of an appeal. On April 30, 2021, the Fourth Department entered two decisions affirming in their entirety the October 3, 2019 and October 4, 2019 Orders that were the subject of the appeal upon which Respondent premised the application for a stay.

The Fourth Department also consolidated this dissolution action with the companion plenary action. That consolidation was not opposed by Brandon.

Myron O. was deposed on January 21 and 22, 2020 in connection with the plenary action and the dissolution proceeding.

LEGAL ANALYSIS

Receiver's Order to Show Cause

BCL §1206(b)(2) provides that a permanent receiver has the power to: "sell at public or private sale the property vested in him in such manner and on such terms and conditions as the court shall direct, and to make necessary transfers and conveyances thereof."

Here, the Receiver seeks leave to sell the Company's real property via a private sale

-8-

to Brandon. Thus far in the Receiver's appointment, only Brandon has indicated any interest in purchasing the Company's real property through a private sale. Respondents have not similarly expressed any such interest,⁴ but as the Receiver notes in his submission to the Court, they are of course welcome to do so.

The Receiver's motion is **GRANTED** as follows: Each party will choose an appraiser. Those appraisers will choose an independent third appraiser to appraise the real property at issue. Each party will have an opportunity to make an offer for purchase after the appraisal has been completed. The Receiver will accept the offer that yields the greatest return for the Company.

Petitioner's Order to Show Cause

Brandon's application seeks to vacate and/or deem unenforceable certain documents dated January 26, 2018, February 26, 2018, and February 28, 2018, all of which were executed by Myron O. Four documents are at issue.

January 26, 2018 Lease

The first document is handwritten by Myron O., dated January 26, 2018 and provides:

I, Myron O. Brady, do lease to my son Myron C. Brady 50% of Brady Farms, Inc. land for twenty years at \$150.00 per acre, 165 acres.

Affirmation of Brian Laudadio, Esq., Ex. 11 (Doc. #78). The document is signed by Myron O.

This document does not constitute a valid lease for several reasons.

⁴ Rather, it is alleged that Respondents' have expressed a desire for the real property to be listed and sold.

-9-

New York's GOL §5-703(2) provides:

A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing.

The January 26, 2018 Lease is not signed by the party to be charged with rental payments, Myron C.

Additionally, this purported lease lacks essential terms and is ambiguous. "If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract." Cobble Hill Nursing Home, Inc. v Henry & Warren Corp., 74 NY2d 475, 482 (1989), *rearg. den.* 75 NY2d 863 (1990), *cert. den.* 298 US 816 (1990). "In order for an agreement. . . to be enforceable as a lease, all the essential terms must be agreed upon[,]. . . includ[ing] the area to be leased, the duration of the lease, and the price to be paid." Calkins Corporate Park, LLC v Eye Physicians & Surgeons of W.N.Y. PLLC, 56 AD3d 1122, 1123 (4th Dept 2008) (citation omitted). "[I]f 'any of these essential terms are missing and are not otherwise discernable by objective means, a lease has not been created.'" Reis v J.B. Kaufman Realty Co., LLC, 181 AD3d 740, 741 (2nd Dept 2020) (citation omitted).

The January 26, 2018 handwritten lease lacks the acres to be leased and a definite price term. Indeed, the document does not even overtly signify an intent for Brady Farms to be a party to the lease or bound thereby, as the document provides that Myron O. is the party leasing real property. Moreover, the document is silent as to the acres subject to the lease, and the price term is ambiguous. It is unclear whether the rent to be paid is \$150.00

-10-

per acre for twenty years means a yearly obligation of \$150.00 per acre or a one-time payment for the entire twenty year period.

The handwritten January 26, 2018 lease is not enforceable and is void *ab initio*.

February 26, 2018 Lease

The second purported lease is dated February 26, 2018 and is memorialized on a pre-printed form signed by both parties to the lease. This lease defines the "Leased Premises" as "the below described Farm property, including all its natural and man-made structure and live-stock located at: Bush Farm, Mt. Morris." Affirmation of Brian Laudadio, Esq., Ex. 11 at Ex. 12 (Doc. #79). The lease further provides:

Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for 20 year(s) lease term beginning 2018 and ending on 2038, end of year. 165 areas as historically recorded at F.S.A. . .

Rent. Tenant shall pay to Landlord a monthly or yearly rent during the lease term in the amount of \$150.00/acre. Yearly payments shall be fixed for the entire lease term. Each yearly payment shall be due March 30 day of each calendar year during the lease term to landlord at Business Address.

Id.

While the February 26, 2018 lease properly identifies Brady Farms as the landlord, includes a signature from Myron C., and clarifies that the rental obligation is yearly, this lease nevertheless cannot be enforced due to a failure to set forth essential terms, as discussed *supra*. A handwritten insert on the February 26, 2018 lease describes the "Leased Premises" as "Bush Farm, Mt. Morris," as apparently the entire Brady Farms property was once the Bush Farm. Another handwritten note in this documents indicates the premises consists of "165 acres historically recorded at F.S.A.," a reference to the

-11-

Farm Service Agency. Brandon indicates he is unaware of any such document recorded at FSA specifying the areas that are the subject of the lease, and Respondents have not proffered any such document in opposition. Respondents do not present any objective means to determine the acreage at issue. The publicly available records attached to respondents' opposition papers likewise do not identify which of the Company's 400+ acres of tillable land were subject to the lease.

Additionally, a corporate president derives his authority to enter into contracts with respect to corporate assets from two sources: the by-laws and past practice. See Hellman v Hellman, 60 AD3d 1468, 1469 (4th Dept 2009). Here, records presented to the Court demonstrate that significant transactions outside the ordinary course of business were historically authorized only upon the vote and approval of the Company's Board of Directors. See Affidavit of Brandon Brady, Exs. 3-7 (Docs. #58-62). Myron O. in his deposition also testified that this lease would have been something that required a meeting of the Board to approve it. See Affirmation of Brian Laudadio, Exhibit 10 at 91-92 (Doc. #77). As former shareholders and directors, Myron C and Scott were aware of the actions needed to approve such leases that purported to lease a majority of the Company's acres for many years. Given the posture with which Myron C. and Scott came to their purported leases, they could not reasonably rely on any indication from Myron O. that Board approval would not have been necessary. See Jesmer v Retail Magic, Inc., 55 AD3d 171, 182 (2nd Dept 2008) (citation omitted). Indeed, the previous lease to Myron C. in 2003- which Respondents now contend was the lease to be merely renewed in the February 26, 2018

-12-

lease⁵ - was accomplished by obtaining approval of the Board. The Court further notes that Myron O. testified at his deposition that the purpose of the February 26, 2018 lease was "to give my son, Myron, more farmland." Affirmation of Brian Laudadio, Exhibit 10 at 83:11- 84:5 (Doc. #77)

The February 26, 2018 Lease is not enforceable and is void *ab initio*.

February 28, 2018 Lease

Myron O. executed a lease to Scott A. Brady on February 28, 2018:

Brady Farms Inc. agrees to rent to Scott A. Brady approximately 165 acres at a price of 100 dollars/acre. Land is to be the same property that Myron O. Brady has been farming as recorded at the Farm Service Agency in Geneseo and owned by the corporation. Term is an annual price. Renewable annually by both parties. Not to be in effect as long as Myron O. Brady wishes to continue farming or is alive. Price can be adjusted if financial cause can be shown by Brady Farms Inc., such as increase in taxes.

Affirmation of Brian Laudadio, Esq., Ex. 11 (Doc. #80). This document is signed only by Myron O. Scott Brady's name on his signature line is crossed out and handwritten next to the cross out is: "signature not needed for agreement." Id.

This lease is not enforceable for several reasons. The February 28, 2018 lease to Scott is not signed by the party to be charged with rental payments, Scott. Myron O. testified at his deposition that Scott apparently had not agreed to this lease because he never signed it. Affirmation of Brian Laudadio, Exhibit 10 at 95-96 (Doc. #77)

This lease also fails to state a lease term or a commencement or end date,

⁵ The Court further notes that Respondents' contention that the February 26, 2018 lease was a mere renewal of the 2003 lease also fails. The 2003 Lease included a different number of acres, a description of the property subject thereto, a provision for rent escalations, default and remedies, and insurance provisions.

-13-

providing instead that it would "Not to be in effect as long as Myron O. Brady wishes to continue farming or is alive." Moreover, and to highlight the lack of detail given in the description of the acres to be leased in the purported leases, the land description in Scott's lease is nearly identical to that set forth in Myron C.'s February 26, 2018 lease. There is no stated duration to the lease, which in combination with the lack of start date to the lease, merely adds to the lack of definiteness and ambiguities.

The February 28, 2018 lease is not enforceable and is void *ab initio*.

February 28, 2018 License

Finally, on February 28, 2018, Myron O. signed a document which provides:

Brady Farms Inc. agrees to allow Myron C. Brady to alter, widen, deepen, or put culverts in any water way that is draining water or has drained water from lands owned by Myron C. Brady. Also, the corporation agrees to have Myron C. Brady use an attorney and surveyor to formalize this in a form of a permanent right-of-way that the corporation agrees to have filed at the county courthouse. These waterways will not be less than a 100 feet of right-of-way along all qualifying waterways. These right-of are to include drainage from BuckRun, Allens Creek, along railroad tracks, and any other waterways that drain Myron C. Brady's property. Myron C. Brady shall not be responsible for any cleanup, restoration or soil removal. He shall have access at all times and not be responsible for any damages due to any work done.

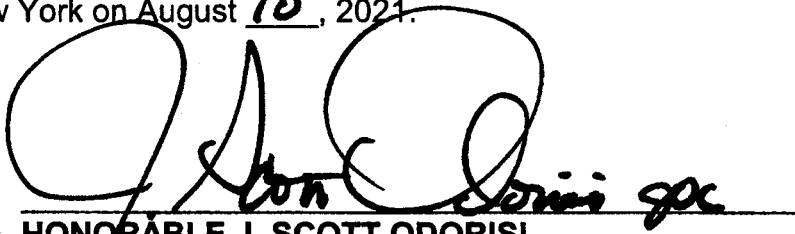
Affirmation of Brian Laudadio, Esq., Ex. 14 (Doc. #81). This document is signed by Myron O. and Myron C.

The license is sufficiently particular and contains the essential terms. It is also signed as required by the Statute of Frauds. On the record before the Court there is insufficient grounds to deem this document unenforceable.

-14-

Petitioner is directed to submit a Proposed Order within thirty days.

Signed at Rochester, New York on August 10, 2021.



HONORABLE J. SCOTT ODORISI
Supreme Court Justice