To commence the statutory time period for appeals as of right (CPLR §5513 [a]), you are advised to serve a copy of this Order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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BLEEMA ADLER,

Plaintiff,

-against-

MENDEL POLLAK and ZIPORA POLLAK,

Defendants.

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HON. DAVID FRIED, A.J.S.C.

DECISION & ORDER ON ATTORNEY FEES, COSTS AND EXPENSES

Index No. 035769/2025
Motion Sequence No. 1

The papers filed electronically via NYSCEF numbered 42 ("Underlying Order"), 48 – 61, and 63 ("Inquest Transcript") were read and considered herein. Upon such reading and consideration, and upon all prior papers and proceedings heretofore had herein, the Court determines the issues of attorney fees, costs, and expenses as follows:

BACKGROUND

This case arose out of a residential contract of sale of property that was entered into between the Plaintiff Bleema Adler ("Plaintiff") and Defendants Mendel Pollak and Zipora Pollak ("Defendants") on November 5, 2024. Thereafter, the parties signed an Amendment to Contract which changed the closing date from January 31, 2025 to June 2, 2025, with time being of the essence with respect to said date, and stated that the contract of sale shall be terminated automatically without any further notice or action required of either party and, thereafter, neither party shall have any further claim against the other. Additionally, the Amendment to Contract directed the escrow agent to release Plaintiff's down payment of $150,000 to Defendants on January 31, 2025. The parties agreed that said down payment shall not be refundable to buyer except in the event of sellers' default.

Defendants, by way of Motion Sequence No. 1, sought an Order: (1) dismissing Plaintiff's Complaint [i] pursuant to CPLR 3211(a)(1) based on documentary evidence and [ii] CPLR 3211(a)(7) for failure to state a claim; (2) vacating, canceling and/or discharging Plaintiff's Notice of Pendency [i] pursuant to CPLR 6514(b) and (c), 22 NYCRR 130-1.1 (a) and (c), and the Court's inherent power and authority,

because Plaintiff has not commenced or prosecuted this action in good faith, and awarding Defendants reasonable attorneys' fees and costs on this Motion, and [ii] pursuant to CPLR 6515, if denied, requiring Plaintiff to post a substantial undertaking. Plaintiff partially opposed Motion Sequence No. 1. The Court issued a Decision & Order on December 22, 2025 (NYSCEF Doc. No. 42) – the "Underlying Order" – *inter alia*, addressing Defendants' various applications and scheduling an inquest.

THE UNDERLYING ORDER

Plaintiff alleged in the Complaint that Defendants failed to send a termination notice and failed to return Plaintiff's down payment, and that Defendants' failure to return the down payment constituted a breach of contract (NYSCEF Doc. No. 1 ¶¶ 5 &6). However, in support of their Motion to Dismiss, Defendants submitted the contract and the written amendments thereto (NYSCEF Doc. No. 10), which conclusively established a defense to the asserted claims as a matter of law. Notably in Motion Sequence No. 1, Plaintiff did not contest the existence of said amendments, or the language set forth therein.

The amendment to contract changed the closing date from January 31, 2025 to June 2, 2025, with time being of the essence with respect to said date, and stated that the contract of sale shall be terminated automatically without any further notice or action required of either party and, thereafter, neither party shall have any further claim against the other (NYSCEF Doc. No. 10, p. 9 ¶ 3). Additionally, the amendment directed the escrow agent to release Plaintiff's down payment of $150,000 to Defendants on January 31, 2025 (NYSCEF Doc. No. 10, p. 9 ¶ 2). The parties agreed that said down payment shall not be refundable to buyer except in the event of sellers' default (NYSCEF Doc. No. 10, p. 9 ¶ 2). Hence, the allegations in the Complaint fail to identify the provisions of the contract that were purportedly breached. In contrast, Plaintiff alleged that Defendants failed to send a termination notice, while the terms of the amendment specifically state the opposite.

To the extent that Plaintiff sought to rely upon a purported oral waiver of written terms of the contract and or amendments thereto, the Contract upon which Plaintiff claims was breached, specifically states that "[n]either th[e] contract nor any provision thereof may be waived, changed or canceled except in writing" (NYSCEF Doc. No. 10, p. 5 ¶ 28[b]). Moreover, there has been no evidence before this Court that the purported discussion of waiver actually took place between Plaintiff (or counsel) and Defendants (or their counsel). Plaintiff asserted that the conversation Plaintiff had related to the waiver was between himself and a broker (NYSCEF Doc. No. 24 ¶ 6). Non-party Yizchok Shteierman asserted that the conversation he had, related to the waiver, was between himself and Plaintiff (NYSCEF Doc. No. 25 ¶ 6). Notwithstanding, there were no alleged facts in the Complaint related to a purported oral waiver of the written terms of the amendment to the contract. Furthermore, the Complaint made no mention of the amendment.

Accordingly, this Court granted Defendants' Motion to Dismiss the Complaint by way of the

Underlying Order (NYSCEF Doc. No. 42) and flowing therefrom, cancelled the Notice of Pendency See, CPLR §6514; *Castaldo v 1848 Realty, Inc.*, 241 A.D.3d 1256, 241 N.Y.S.3d 414 (2nd Dept. 2025); *Special Corp. v. 3RF, LLC*, 230 A.D.3d 527, 530, 217 N.Y.S.3d 581(2nd Dept. 2024); and *Chic Realty 712, LLC v. GSA Holding Corp.*, 220 A.D.3d 914, 917, 198 N.Y.S.3d 730 (2nd Dept. 2023).

In the Underlying Order, the Court thereafter addressed the portion of Defendants' Motion which sought costs and expenses pursuant to CPLR §6514(c) and on the grounds that the Notice of Pendency was filed in the absence of good faith. The Court noted that while the Complaint lacked, *inter alia*, a factual basis, it could not be affirmatively said at the time of the issuance of the Underlying Order, that Plaintiff or Plaintiff's counsel engaged in frivolous conduct related to the filing of the Complaint. Nonetheless, given Plaintiff's counsel's failure to explain to the Court the merits of the Notice of Pendency during the October 17, 2025 appearance in connection with Defendants' Motion and in any subsequent submission, the Court found that the Notice of Pendency was filed in the absence of good faith, and, in its discretion, granted the branch of Defendants' Motion for an award of costs and expenses, if any, occasioned by said filing and cancellation, including reasonable attorney's fees.

Of particular importance with regard to such holding, the Court noted that Plaintiff's Complaint asserted only a claim for money – not a right, title, or interest in the property. As such, Plaintiff forfeited use of the Notice of Pendency when asserting only a monetary claim (*Khanal v. Sheldon*, 55 AD3d 684 [2d Dept 2008]; *Long Island City Savings and Loan Association v. Gottlieb*, 90 AD2d 766 [2d Dept 1982]). In other words, a Notice of Pendency should not have been filed herein. Plaintiffs' Notice of Pendency related to the real property at issue, was improper, and was thus cancelled. As such, following notice and a full and fair opportunity to be heard, Defendants were awarded costs and expenses, if any, occasioned by said filing and cancellation, including reasonable attorney's fees. See, CPLR §6514(a) and (c); and *Saul v. Vidokl*, 151 A.D.3d 780, 56 N.Y.S.3d 230 (2nd Dept. 2017). In order to determine the quantity of such costs, expenses, and reasonable attorneys' fees, if any, and to resolve any disputed contentions in connection with such computations, an inquest was scheduled to be conducted before this Court, in-person, on January 28, 2026 at 9:15AM.

In addition, the Underlying Order specifically also placed the parties on notice that the scope of the January 28, 2026 inquest would not only encompass the quantity of costs, expenses, and reasonable attorney's fees to be awarded, if any, pursuant to CPLR §6514(c), but also provided counsel with the opportunity to be heard on the alleged misrepresentation made by Plaintiff's counsel in her Memorandum of Law.

In Plaintiff's Memorandum of Law in opposition to the Motion to Dismiss, Plaintiff's counsel represented to the Court that Plaintiff circulated a stipulation to Defendants' counsel to the effect of canceling the Notice of Pendency. In Defendants' reply on Motion Sequence No. 1, Defendants contended that Plaintiff's counsel omitted from her Memorandum of Law that within less than one hour of extending the offer to dismiss the Notice of Pendency and prior to any response thereto, Plaintiff withdrew the offer to stipulate without explanation and before Defendants' counsel could

view, let alone respond to, the stipulation (NYSCEF Doc. Nos. 30 & 31). In its Underlying Order, the Court thus stated that, "as Defendants have alleged that Plaintiff's counsel failed to tell the Court that within one hour of making the offer to dismiss the Notice of Pendency and prior to any response thereto, Plaintiff withdrew the offer to stipulate without explanation, while concurrently asserting said purported offer to stipulate in her opposition to the Motion, Defendant is granted leave to address said allegation in connection with the hearing to determine costs, expenses, and reasonable attorney's fees, if any, as related to costs of the within motion practice, if at all." (NYSCEF Doc. No. 42).

THE INQUEST

The inquest was conducted on January 28, 2026 (see, Inquest Transcript at NYSCEF Doc. No. 63). Attorney Donald J. Feerick and his client, Defendant Zipora Pollak, appeared in person as required. Attorney Farva Jafri appeared virtually via Microsoft Teams on behalf of her client, the Plaintiff.

At the inquest, Defendants' counsel indicated that Defendants sought two forms of recovery in connection with a prospective award of costs, expenses, and attorney fees: (a) positive expenses including damages in the form of costs, expenses, and attorney fees resulting from the cancellation of the Notice of Pendency; and (b) reasonable attorney fees resulting from defending against the frivolous filing of a Notice of Pendency which was devoid of any merit and baseless litigation.

Regarding the positive expense category of damages, Defendants' counsel contended as follows: that if Defendant still owned the property when the meritless Notice of Pendency was actively filed – which is not the case here – positive expenses would include costs such as mortgage, insurance, and maintenance charges; that at bar, the issue of the meritless Notice of Pendency arose when a title company did a continuation search in proximity to a closing being scheduled as to the replacement buyer's transaction; that the title company reported that there was a Notice of Pendency asserted against the property; that when the title company became aware of the Notice of Pendency and took notice of the amount in controversy relevant to same, the title company required $200,000 to be paid until the final disposition of the within litigation; that the Defendants thus paid the $200,000 as required by the title company; that as a result of the foregoing, Joda Abstract held Defendants' $200,000 until shortly after the Court determined Defendant's Motion to Dismiss which ultimately extinguished Plaintiff's claims against Defendants; that Defendants' $200,000 was returned to Defendants on December 26, 2025; that as a result of the foregoing, Defendants lost the value of their money and the access thereto for a period of 96 days; that same constitutes a positive expense as to which Defendants are entitled to recover from Plaintiff; and, that such positive expense should be calculated as follows: $200,000 x 0.09 as and for interest = $18,000 / 365 days resulting in a per diem rate of $49.32 x 96 days = $4,734.72 in damages as to which recovery is sought.

In connection with the second category of recovery sought by Defendants– reasonable attorney's fees – it has been represented to the Court that Defendants' attorney's fees amount to a total of $15,503.69 as of the date of the inquest. Said total sum was supported by Defendants' counsel's statements on the

record as an officer of the Court, accompanied by billing statements. Defendants' counsel advised the Court that said total sum also includes two disbursements, to wit a motion filing fee and a transcript production fee. In support of this branch of relief, Defendants' counsel notes that he attempted to mitigate litigation costs by contacting Plaintiff's counsel regarding Defendants' position that the action should be discontinued, to which Plaintiff's counsel refused.

In connection with the accusation asserted in his reply as to Plaintiff's counsel's offer to cancel the Notice of Pendency but which was withdrawn, Defendants' counsel contends as follows: that he would have agreed to the proposed stipulation to withdraw the Notice of Pendency; that before he had any opportunity to do so, Plaintiff's counsel withdrew the stipulation that she proposed; that approximately less than one hour lapsed between the time Plaintiff's counsel proposed the stipulation and the time she withdrew the stipulation, and without any reasonable opportunity for Defendants' counsel to respond; that the withdrawal of the stipulation by Plaintiff's counsel occurred on October 31, 2025; that as a result of the withdrawn proposed stipulation, Defendants were required to incur the costs of preparing and filing a reply in connection with Motion Sequence No. 1; that Defendants' counsel felt it was necessary to advise the Court of the foregoing in his reply because the opposition papers of Plaintiff's counsel invoked reliance upon said withdrawn stipulation without ever mentioning to the Court that she had actually withdrawn the stipulation; and that as a result of the foregoing, Plaintiff should compensate Defendants for their reasonable attorney fees.

Mr. Feerick further stated to the Court as follows:

> "But that -- that exchange, or the falsity of that exchange, required my client to then put in a reply. And -- and when we put in the reply, your Honor, we put in a reply with bewilder, but it required an action because we had to tell you what had transpired, and we did, which I submit to you means our entire bill through today should be chargeable to the defense.
>
> But the bewilderment was, it made no sense. Who would do what transpired? Make an offer, withdraw it, and then tell the Court that [s]he made the offer without talking about the withdrawal. Well, the only one who would do it is someone who isn't managing their NYSCEF filings.
>
> In this case, the Notice of Pendency was filed apparently without plaintiff's counsel's permission or consent by her staff and filed in a window of time when -- when multiple efforts were made to correct it. And those records are also before you, your Honor, in the reply papers. And you'll see on at least three separate occasions, plaintiff's counsel's staff attempted to correct the Notice of Pendency. The very Notice of Pendency that you'll see was the subject of an exchange asking to just drop it, not move forward with it, and they continued to prosecute it, to attempt to fix it and then to file it on September 26th.

It had first been filed on August 18th and then it was subsequently corrected and filed in a corrected form on September 26th. That shows a persistency, your Honor, to do that which plaintiff's counsel said she had no role in it. It's insane.

When we pointed out in our reply papers we're bewildered, we were trying to understand what was going on, and we suggested to your Honor that it seemed like someone was using a NYSCEF password of an attorney without the proper supervision and control of the attorney. What I just heard today, this morning, was that the exchanges yesterday were of such a nature that plaintiff's counsel spoke to her staff for filing what was filed yesterday and, so to speak, chastised them.

Your Honor, I can't explain what's happening in front of you. I have no reason to explain it. I represent a party who had a transaction, attempted to be scuttled by a frivolous filing, by a wrongful filing, by a bad faith filing, and we had to go through all effort rather than just negotiation with opposing counsel to drop it. We had to go through court time, court effort, your attention was drawn to this matter, your involvement in a hearing, your involvement in reply papers and your ruling and your time in making a written finding that brings us here today. All of this is completely needless and it doesn't explain who filed the Notice of Pendency. You never heard it. You never heard it when it was first brought up. You never heard it in any subsequent conversation, and you still haven't heard it today. Who filed the Notice of Pendency? And if no one knows, my recommendation, your Honor, and the request of my client, is for an award, all damages associated with this event should be charged to both plaintiff, and I hate to say an appeal to counsel, but counsel hasn't explained who did this. And if it wasn't her and someone did it inappropriately under her watch, I want to know who it was and how it occurred and what, if any, corrective action occurred. Because if it's continuing and we're dealing with it again, because my client is now here and she need not be here if we were going to do this virtually, we've been inconvenienced and you've been inconvenienced and we're here for a sanctions inquest, which is extraordinary in itself.

But with all of that said, your Honor, and being as succinct as possible, my client wants $4,734.25 for the loss, time, use of the positive expense of her payment into escrow of $200,000, plus all of her legal fees associated in defending this matter on the merits due to the bad faith filing involved of $15,503.69 for a total of $20,237.94. We want it from plaintiff and/or counsel if an explanation is inadequately supplied." (Inquest Transcript, pgs. 13 – 16).

In response to the aforesaid, Plaintiff's Counsel, on behalf of Plaintiff, averred as follows: that she "doesn't see any sort of case law supporting [Defendants' counsel's] position [regarding the contended

positive expenses], which [she has] never seen at inquest before regarding escrowing and expenses associated with the escrowing" (Inquest Transcript, pg. 16 ln 24 – pg. 17 ln 2); that the funds held by the title company accrued no interest; that Defendants' counsel assumes a 9% interest rate; that she understands the Defendants' "frustration…that they could not access the funds and, of course, it was an inconvenience, I'm not going to argue that it was not …it's a totally bald assertion [ ]" (Inquest Transcript, pg. 17 lns. 14 – 17); that as to the request for attorney fees, that Defendants' counsel "put in his affirmation some cases that he doesn't expound upon" (Inquest Transcript, pg. 17 lns. 24 – 25); that "it is hard for [her] to just respond to that and to understand the reasonableness of attorney's fees…There's no case law to support that the Appellate Division has given this position that a bad faith filing of a *lis pendens* is going to lead to reimbursement of attorney's fees" (Inquest Transcript, pg. 18 lns. 5 – 13); that she, "[doesn't] disagree that there is going to be an exchange of funds here that plaintiff is going to have to pay some of these costs" but that as to "the entirety of the legal expenses, it's difficult to know what is reasonable, and there's absolutely no precedence, at least none cited, that I can reply to regarding the expenses related to the escrowing of funds" (Inquest Transcript, pg. 18 lns. 15 – 22).

Remarkably, Plaintiff's counsel remained wholly silent in the first instance regarding Defendants' counsel's accusation against her that she invoked a proposed stipulation in her opposition to Motion Sequence No. 1, but which was withdrawn by her, and nonetheless remained at all relevant times the basis of an argument supporting her opposition before this Court. Accordingly, the Court inquired of Plaintiff's counsel regarding same (Inquest Transcript, pg. 18 ln 25; pg. 19 lns. 1 – 11). The Court read the relevant portion of Plaintiff's counsel's opposition into the record (Inquest Transcript, pg. 19 lns. 3 – 11).

In response thereto, Plaintiff's counsel contended as follows: that "obviously if it's coming with [her] signature block on it, [she doesn't] deny that [she] bear[s] responsibility for it. [ ] It was [her] staff. Ultimately, it falls on [Plaintiff's counsel]" (Inquest Transcript, pg. 19 lns 12 – 16); that "what [Defendants' counsel] was getting at before is that there is an individual who is making -- sort of having these conversations from [her] email and sending stipulations from [her] email, and [she has] since corrected that issue [ ]. So it was withdrawn, but, unfortunately, it -- it was without [her] authorization and that individual has just been removed from [her] staff since the incident occurred [ ]" (Inquest Transcript, pg. 20 lns. 3 – 10); and, that she never corrected for the Court the statement in her opposition, "[b]ut, of course, if the Court had wanted any information [she] would have supplied it" (Inquest Transcript, pg. 20 lns. 16 – 18).

Notwithstanding that Plaintiff's counsel admits that the stipulation was withdrawn and that such withdrawal was not brought to the Court's attention, yet maintained for months in her Memorandum of Law to this Court that she circulated a stipulation to withdraw the Notice of Pendency – which was a major focus of Motion Sequence No. 1 and the October 17, 2025 conference on the record before the undersigned – when asked by the Court, "at what point did [she] think that it would be appropriate to let the Court know that there was a material false statement in [her submission]," (Inquest Transcript,

pg. 21 lns. 4 – 6), Plaintiff's counsel responded, "Well, what was the material false statement [ ]?" (Inquest Transcript, pg. 21 lns. 7-8). Counsel then responded, "it was *circulated* [ ]" (emphasis added) so as to suggest, at the very least, that silence as to the subsequent withdrawal was either not germane or could simply not be mentioned (Inquest Transcript, pg. 21 lns. 12 – 25). Thereafter, under an advisory of possible sanctions,[1] Plaintiff's counsel finally took responsibility for same and apologized (Inquest Transcript, pg. 22 lns. 1 – 9) for which the Court noted its appreciation (Inquest Transcript, pg. 22 ln. 10). The Court noted that the statement in counsel's submission, which was later rendered false by omission of the withdrawal of the stipulation within less than one hour of proposing same, remained before the Court uncorrected for two months and was the subject of several hours of work performed, by the Court and its personnel in rendering a determination on Motion Sequence No. 1 – not to mention the costly legal services provided by Defendants' counsel to his clients in drafting and filing a reply and preparing for and arguing at an inquest.

In further support of his contention that an award of positive expenses is appropriate here, Defendants' Counsel noted as follows:

> "[T]he Appellate Division does speak to positive expenses, and I would represent, your Honor, my clients are out of pocket. We gave a check and it went into Joda Abstract and sat there for 96 days.
>
> But there is a unique distinction between first-party claims and third-party claims when you deal with escrow accounts. If you and I were in a transaction buying and selling and we had a written contract that had an escrow agreement, and inside that contract the escrow agreement said let's put it, part of the escrow, in an IOLA account that bears no interest, neither you, nor I, have any claim to protest that the window of time that it took for the release of that money deposited in escrow spanned months, if not years, while litigation took place. And if you look at the case law, you'll find that that's, in fact, true. That's not this case. We have a third-party claim.
>
> What happened here was that we had an unrelated transaction with a replacement buyer; that we had went out of pocket for positive expense. And we're not asking for the full positive expense because we got it back. We're only asking for the loss value of that money

[1] The Underlying Order provided express notice to all counsel that the relevant issue would be addressed at the inquest so as to enable a meaningful opportunity for all parties to be prepared and heard related thereto. For clarity, no sanction nor award of cost was imposed at the inquest, so that the Court could thoroughly hear the parties' respective positions, reflect upon the record, and ultimately determine the issue by written Order. 22 NYCRR 130-1.1(d) authorizes a Court to impose sanctions ***and or*** awards of costs upon motion or upon the Court's own initiative, after a reasonable opportunity to be heard. The opportunity to be heard "shall depend upon the nature of the conduct and the circumstances of the case" (22 NYCRR 130-1.1[d]). Here, the Court provided advance notice of the relevant issues to the attention of Plaintiff's counsel at the October 17, 2025 conference *before* the filing of Plaintiff's counsel's opposition papers on October 31, 2025 (NYSCEF Doc. No. 26) as well as in the Underlying Order on December 23, 2025 *before* the January 28, 2026 inquest. Each party was provided a meaningful opportunity to be heard on the record prior to the issuance of the within Decision & Order.

> during the window of time that plaintiff triggered its removal from my client's possession, that's it. That's why I point to the positive expense law. That's why I tell you it's different than first-party claims between a buyer and seller. We're not a buyer and seller in this instance. We had a transaction with a third party, the replacement buyer, that they impeded by basically doing what they did." (Inquest Transcript, pgs. 22 – 24).

In further support of his contention that an award of reasonable attorney fees is appropriate here, Defendants' counsel noted as follows:

> "[I]t sounds to me like a classic, classic situation where you have a misrepresentation of fact. What is misrepresentation of fact? What does it mean? How does it occur? Well, in the sensibility of this particular case, in the design and the purpose and the intent of the plaintiff in this case, a misrepresentation of fact is a true, but inaccurate statement. They gave you truth entirely inaccurately. When they delivered their memo of law, it wasn't true anymore. It had been a truth when it was delivered; one hour later it was no longer true; two hours after that they filed their memo of law that restated a true but inaccurate fact because they never told you it had been withdrawn. That, your Honor, I believe to be a misrepresentation of fact. It is a bad faith misrepresentation, which was your question. Is this a bad faith misrepresentation? I think based on what you've heard here, the answer is absolutely yes. And again, because it's yes, and because we have all this extra work that was entirely needless, my client should not be out of pocket a penny." (Inquest Transcript, pg. 24 lns. 6 – 25).

DISCUSSION

As noted in the Underlying Order regarding Motion Sequence No. 1, Defendants conclusively established a defense to Plaintiff's claims as a matter of law, *inter alia*, by submitting the contract between the parties and the written amendment thereto. Plaintiff did not contest the existence of said amendments to the contract nor the language set forth therein, sustaining the legitimacy and merit of Defendant's position. The allegations in the now-dismissed Complaint failed to identify the provisions of the contract that were purportedly breached. Plaintiff alleged that Defendants failed to send a termination notice, while the terms of the amendment – which Plaintiff never placed before this Court – specifically states the opposite. In fact, a basic reading of the Complaint does not indicate that the contract upon which Plaintiff premises this entire action, was amended. In other words, this entire case was haphazardly presented upon an incomplete set of allegations. Still, and even though the litigation pertains to an unsubstantiated claim for money – not title or other property right – a Notice of Pendency was filed and maintained for months without any basis in fact nor law to have been so filed. By virtue of the foregoing, Plaintiff filed a Notice of Pendency in the absence of good faith, exerted service to bring the Defendants – who incurred the time, cost, and anxieties of litigation –

before this Court, and, among other things, caused wholly unnecessary motion practice which required two lengthy court conferences and a commitment of judicial resources and personnel at the expense of the public.

Plaintiff's Notice of Pendency was completely devoid of merit in that same had no relevance to the possession, use or enjoyment of real property. Making matters worse, when Defendants' counsel raised the issue of the Notice of Pendency at the October 17, 2025 court conference, and upon the Court's inquiry regarding same, Plaintiff's counsel first stated to the Court that she did not file a Notice of Pendency, and then claimed that her client filed the Notice of Pendency. When the Court examined the NYSCEF docket in open court and noted that the Notice of Pendency contained Plaintiff's counsel's signature block, Plaintiff's counsel pivoted to claim that she had no recollection of the Notice of Pendency and that her staff must have filed it, even after the Court noted that said Notice of Pendency contained Plaintiff's counsel's signature block and was uploaded to NYSCEF by her personal filing account. Next, counsel took the position that the Notice of Pendency did not bear her signature. Despite being invited by the Court to explain the basis in law for filing a Notice of Pendency in an action wherein only purported monetary damages were sought, counsel could not, or at the very least did not, provide any explanation. As such, this Court strongly encouraged Plaintiff's counsel to address same in her opposition to Motion Sequence No. 1 (*see*, NYSCEF Doc. Nos. 2 & 39) to ensure a full and fair opportunity to be heard notwithstanding the representations counsel made to the Court during the conference as aforesaid.

Nonetheless, she did not do so, and instead affirmed that, "Plaintiff has reviewed the matter, however, and realized *his* error. Accordingly, Plaintiff has agreed to dismiss the Notice of Pendency and will not address the Defendants' arguments herein. Plaintiff has also *circulated a Stipulation to Counsel for the Defendants to that effect.*" (NYSCEF Doc. No. 26, pg. 1) (emphasis added). Notably, by this statement counsel represents to this Court that the error was made by *Plaintiff* – not an error of Plaintiff's counsel, which the Court finds disingenuous considering that same was electronically filed to NYSCEF bearing Plaintiff's counsel's signature block, and filed using her own NYSCEF filing account (see, NYSCEF Doc. No. 2).

Of particularly serious concern, the inquest record establishes to the Court's satisfaction that at the time that Plaintiff's counsel filed her opposition containing an affirmative statement that Plaintiff "circulated a Stipulation to Counsel for the Defendant to [dismiss the Notice of Pendency]" said stipulation had already been withdrawn for roughly three hours. It has not gone unnoticed by this Court that: [a] the communication proposing the stipulation was emailed by or on behalf of Plaintiff's counsel[2] to Defendants' counsel on October 31, 2025 at 9:50AM (NYSCEF Doc. No. 30); [b] the very same stipulation was withdrawn by email sent by or on behalf of Plaintiff's counsel to Defendants' counsel at 10:37AM on October 31, 2025 (NYSCEF Doc. No. 31); and [c] Plaintiff's counsel submitted

[2] The email address which extended the offer to cancel the Notice of Pendency to Defendants' counsel (NYSCEF Doc. Nos. 30 & 31) is also one of three email addresses for Plaintiff's counsel listed on her NYSCEF Attorney Information page.

to this Court in writing, roughly three hours after withdrawal, on October 31, 2025 at 1:46PM, that she/her client agreed to dismiss the Notice of Pendency and circulated a stipulation to effectuate same – never mentioning any indication that said stipulation had already been withdrawn earlier that same day and was, thus, a nullity.

The statement made to this Court by Plaintiff's counsel was false. Making matters much worse, the false statement was not corrected despite notice to her by her adversary, a written decision that referenced the issue, and the scheduling of an inquest that, *inter alia*, would address the allegation of the false statement. Further, after Defendants' counsel raised the issue during the inquest and she was provided an opportunity to be heard, Plaintiff's counsel addressed a myriad of issues with no mention whatsoever of the false statement until specific and direct inquiry of the Court. Compellingly, the response of "Well, what was the material false statement [ ]?" (Inquest Transcript, pg 21 lns 7-8), shines a spotlight on the unacceptable nature of what has transpired here.

Such statement was false, considering that it is undisputed on this record that Plaintiff's counsel and or her staff withdrew that very same stipulation within less than one hour of proposing same to Defendants' counsel. Even assuming, *arguendo*, that such false statement was made in error or as a result of law office failure (which can happen, does happen, and as to which courts should be forgiving to the extent reasonable and proper) counsel was at the very least first on notice of said "inaccuracy" as early as the filing by Defendants' counsel of his reply papers on November 4, 2025. Plaintiff's counsel allowed such false statement to remain of record, in her submission, until the January 28, 2026 inquest, at which point she remained silent about it requiring direct inquiry by the Court, and then once asked pointedly, the initial response failed to show any recognition of the troubling nature of maintaining a false statement in filed papers ("Well, what was the material false statement [ ]?" [Inquest Transcript, pg. 21 lns. 7-8]). At no time in the span of over two months did she make <u>*any*</u> effort whatsoever to correct and or at least address the falsity of her representation to this Court. A simple timely acknowledgement of the issue with prompt corrective action would likely have avoided the entirety of at least this portion of the ordeal. This Court is always mindful that mistakes can be made and routinely aspires to provide reasonable opportunities for corrective action so long as doing so is non-prejudicial and otherwise proper. However, a laissez faire approach to one's mistakes – particularly where, as here, the error was brought to the attention of the mistaken party – and or a strategy of denial and distance, is not acceptable as under such conditions the error can metamorphosize to ratified falsehood and misrepresentation.

Defendants' Application for Costs and Expenses under CPLR §6514(c)

Prior to the inquest, Defendants filed proof of the costs, expenses, and reasonable attorney fees purportedly incurred as a result of the improperly filed notice of pendency. As for Defendants' claim for so-called "positive expenses," that is statutory interest on $200,000 deposited by Defendants in escrow for a period of 96 days, Defendants submit a title bill indicating an escrow deposit of $200,000 by the seller, an email from Joda Abstract LLC indicating that it agreed to hold $200,000 in escrow

pending the resolution of the matter, a check paid to the order of Joda Abstract LLC in the amount of $200,000, and a wire transfer statement evidencing the return of the $200,000 to Defendants. As for Defendants' claim for attorney's fees incurred from the filing and cancellation of the improperly filed Notice of Pendency, Defendants submit three invoices for legal services from September 4, 2025 to January 27, 2026 billed to Defendants for a total sum of $15,503.69. Plaintiff's sole opposition to Defendants' request for so-called "positive expenses" and attorney's fees is that there is no case law from the appellate division to support the recovery of same under CPLR §6514(c).

Although there is a dearth of case law to support Defendants' position for the recovery of interest resulting from an improperly filed notice of pendency, it is not without support. Firstly, the plain language of CPLR §6514(c) provides that "*any costs and expenses* occasioned by the wrongful filing and cancellation of a notice of pendency under CPLR §6514(a) or (b), in addition to *any costs* of the action" may be recovered (emphasis added). The escrowing of money as a security for an improperly filed notice of pendency may not constitute a direct cost to Defendants, but it represents a real cost insofar as they were deprived of the immediate use of their money, for which they would ordinarily be compensated through interest payments. Secondly, support for awarding lost interest to a defendant aggrieved by a Notice of Pendency filed in bad faith is found in case law issued by the Appellate Division, Third Department and at least one U.S. District Court (*see Tucker*, 199 AD2d at 958 [holding that the premium that vendors incurred from the sale of real property following cancellation of the notice of pendency could not be used to offset their damages sought under CPLR §6514(c), including lost interest]; *In re Sun Property Consultants, Inc.*, 2021 WL 3574026, *4 – *5 [E.D.N.Y. August 12, 2021 Case No. 8-16-72267]). Thirdly, CPLR §6515, as an alternative to CPLR §6514, allows for an aggrieved party to move to cancel a Notice of Pendency provided that such a party first post an undertaking in an amount fixed by the Court. When calculating the amount of the undertaking, Courts have factored "the economic losses and expenses incur[red] as a result of the de facto inability to sell the property while the notice of pendency remains in place, [including] loss of interest on the sales proceeds from a delayed or cancelled contract to sell the property to a third person" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, 2014 Electronic Update, CPLR §6514; *see also*, *Andesco, Inc. v. Page*, 137 AD2d 349, 358 [1st Dept 1988]; *Esposito v. Federal Deposit Ins. Corp.*, 644 F Supp 276, 277 [E.D.N.Y. 1986]).

On the other hand, contrary to the contentions of Plaintiff's counsel at the inquest, there is ample case law to support Defendants' claim for attorney's fees incurred as a result of the filing and cancelation of an improperly filed Notice of Pendency, some of which was supplied by Defendants' counsel in his memorandum of law (*see e.g.*, *Lake Valhala*, 194 AD3d at 805 [holding that the Supreme Court providently exercised its discretion to award costs and expenses under CPLR §6514(c), including an award of reasonable attorney's fees]; *41st Road Properties, LLC v. Wang Real Property, LLC*, 232 AD3d 828, 830 [2d Dept 2024]; *No. 1 Funding Center, Inc.* 48 AD3d at 911; *Josefsson*, 141 AD2d at 701]).

Accordingly, it falls within the purview of this Court pursuant to CPLR §6514(c) to award Defendants interest for having to deposit $200,000 into escrow as a result of Plaintiff's bad faith filing of the Notice

of Pendency as well as attorney's fees resulting from the filing and cancelation. Without any further opposition to Defendants' application, the Court, in its discretion, awards Defendants $4,734.25 in statutory interest for having to deposit and keep $200,000 in escrow for a period of 96 days while the Notice of Pendency remained active, and $12,594.19 (30.3 chargeable hours x $400.00 per hour [$12,120.00] plus motion and RJI filing fees [$144.19] and transcript production fee [$330.00]) of the $15,503.69 sought as and for reasonable attorney's fees in connection with the filing and cancelation of the Notice of Pendency. In making such an award for attorney's fees, the Court has reviewed the invoices submitted by Defendants' counsel taking into consideration the difficulty of the issues involved and the skill and effectiveness of Defendants' counsel (*see SO/Bluestar LLC v. Canarsie Hotel Corp.*, 33 AD3d 986 [2d Dept 2006]). Except as otherwise specifically noted here, the Court finds the applicable services listed in the invoices to be properly charged to Defendants and recoverable from Plaintiff under CPLR §6514(c). However, in the undersigned's discretion, the Court believes that same are more appropriately awarded at a rate of $400/hour rather than the $495/hour and $425/hour rates reflected in said invoices. Further, the Court has not included the October 30th charges in the amount of $148.50 in that it is unclear to the Court how same pertains to the instant matter. Finally, the Court excludes the November 6th charge in the amount of $148.50 in that same is identified as being "non-related."

Defendants' Application for An Award of Costs and Imposition of Sanctions

22 NYCRR 130-1.1(d) authorizes a Court to impose sanctions and or awards of costs against any party or attorney for frivolous conduct upon motion or upon the Court's own initiative, after a reasonable opportunity to be heard. The opportunity to be heard "shall depend upon the nature of the conduct and the circumstances of the case" (22 NYCRR §130-1.1[d]). Conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false (22 NYCRR §130-1.1[c]). The award of costs or imposition of sanctions must be issued via a written decision which sets forth the conduct upon which the award or imposition is based, the reasons why the Court found the conduct to be frivolous, and the reasons why the Court found the amount awarded or imposed to be appropriate (22 NYCRR §130-1.2).

A finding that a Notice of Pendency was filed without good faith under CPLR §6514(b) also forms the basis for a finding of frivolous conduct under 22 NYCRR §130-1.1 (*see Matter of South Beach Area-State 2*, 236 AD3d 800, 801 [2d Dept 2025] [upholding lower Court's decision to award attorney's fees and disbursements under 22 NYCRR §130-1.1 based on the improper filing of a Notice of Pendency]; *Wilmington Savings Fund Society, FSB v. Kelly*, 229 AD3d 660, 662 [2d Dept 2024] [holding similar]; *Whelan v. Busiello*, 219 AD3d 778, 780 – 781 [2d Dept 2023] [holding similar]).

In the underlying Order, the Court determined that the Notice of Pendency was filed in the absence of good faith. At no time during the October 17, 2025 appearance on the Motion to Dismiss, or in the

Memorandum of Law in opposition thereto, did Plaintiff explain the merits of the Notice of Pendency. Instead, Plaintiff's counsel attempted to sidestep the issue by arguing that the Notice of Pendency was a misfiling that was not approved by her, as it did not contain her signature. However, as the Court noted on the October 17, 2025 conference record and in the underlying Order, the absence of Plaintiff's counsel's signature on an e-filed document does not absolve her from responsibility for filing same where the document contains her signature block and was filed with her NYSCEF account. In fact, by registering on NYSCEF, Plaintiff's counsel, as with all NYSCEF users, agreed to the Terms of Use, which include in relevant part an understanding that "each use of [her] password for filing documents with NYSCEF constitutes [her] signature on the document being submitted of the purpose of meeting the requirements of Part 130 of the Rules of the Chief Administrator and all rules governing NYSCEF" (*Website Terms of Use*, https://iappscontent.courts.state.ny.us/NYSCEF/live/termsOfUse.htm [New York State Courts Electronic Filing, accessed Mar. 18, 2026]). To the extent that Plaintiff's counsel seeks to evade or diminish her responsibility for the filing of the Notice of Pendency by attributing same to one of her staff members, she is advised to heed Part 202 of the Uniform Rules for New York State Trial Courts, which Plaintiff's counsel agreed to adhere to by registering an account on NYSCEF. Subdivision (4) of Section 202.5-c permits NYSCEF users to authorize others to make filings with their account on their behalf but notes that responsibility for such filings remains with the NYSCEF user.

Notwithstanding the discussion on the record with Plaintiff's counsel on October 17, 2025, Plaintiff's counsel subsequently stated in her Memorandum of Law in opposition to the Motion to Dismiss that *Plaintiff* had realized *Plaintiff's error* – not counsel's own error as the filer of the Notice of Pendency, which underscores a continued refusal on the part of Plaintiff's counsel to take responsibility for the filing.

In addition, the Court inspected the electronic docket and discovered that Plaintiff's counsel originally filed a Notice of Pendency contemporaneously with the Summons & Complaint on August 18, 2025, which was in fact signed by her. Said Notice of Pendency was returned for correction by the Rockland County Clerk's Office on August 18, 2025 for failing to include a Schedule A and Defendants' names. On August 29, 2025, a Notice of Pendency bearing the signature of Plaintiff's counsel was once again filed and subsequently returned on the same date for failing to include a Schedule A and an instrument number. It was not until approximately one month later on September 26, 2025 that a corrected Notice of Pendency was filed without the signature of Plaintiff's counsel. This revelation of two defective Notices of Pendency *actually and affirmatively signed by Plaintiff's counsel* flies in the face of her statement on the record of the October 17, 2025 conference that she does not recall filing a Notice of Pendency herein and that same must have been a misfiling not authorized by her.

Separate and apart from the Notice of Pendency issue, the Underlying Order also placed the parties on notice that one subject of the inquest would be the then-alleged materially false statement contained within Plaintiff's Memorandum of Law in Opposition to Motion Sequence No. 1 (NYSCEF Doc. No. 26) — that statement being that Plaintiff's counsel circulated a stipulation to cancel the Notice of Pendency to Defendants' counsel without any mention that the offer was withdrawn less than one hour

after it was extended, leaving no time for Defendants' counsel to view let alone respond to the offer. The Underlying Order further specified that the subject would be heard in connection with the determination of costs, expenses, and reasonable attorney's fees. Thus, Plaintiff's counsel was put on ample advanced notice of the potential for an award of costs and or an imposition of sanctions resulting from the alleged misrepresentation/omission contained within her Memorandum of Law. At the inquest, both Plaintiff and Defendants were provided with a meaningful opportunity to be heard on the record regarding the assertion of Plaintiff's counsel's misrepresentation prior to the issuance of the within Decision & Order.

It is alarming that a member of the bar would not only place a disingenuous statement before the Court but in addition fail to correct the statement for months after opposing counsel pointed out the inaccuracy of the statement. Plaintiff's counsel's choice to allow a materially false statement to remain unaddressed for months demonstrates either complacency or procrastination but certainly delayed action and noncompliance with professional expectations. The Court believes that such behavior, along with Plaintiff's counsel's frivolous Notice of Pendency, her refusal to take responsibility for same until all other options extinguished, and her lack of candor with the Court, must be discouraged, as same unnecessarily prolonged this litigation, caused Defendants to incur unnecessary legal fees, and wasted judicial resources at the public's expense. Had Plaintiff's counsel taken due care in assessing the merits of the Notice of Pendency, same would not have been filed, and Defendants would not have been required to post a $200,000 undertaking and lost the immediate use and enjoyment of same. Had Plaintiff's Counsel been more candid about her filing of the improper Notice of Pendency and the alleged circulation of the stipulation at issue, judicial and party resources would have been saved, and Defendants would have incurred fewer legal fees, as neither a reply to Plaintiff's opposition nor, possibly, an in-person inquest would have been necessitated.

As such, the Court in its discretion under 22 NYCRR §130-1.1, chooses to hold Plaintiff's counsel and her law office liable, in part, for the costs and expenses awarded to Defendants under CPLR §6514(c). The Court believes that such an award of costs is sufficient to discourage Plaintiff's counsel, as well as others, from engaging in such behavior in the future before a Court of this state. On this record, an award of costs requiring that the Plaintiff pay the entirety of the stated costs, without contribution from Plaintiff's counsel, would be offensive to justice. Accordingly, of the total judgment granted herein in favor of Defendants, Plaintiff's counsel and or her law office, jointly and severally, shall remit the total sum of $3,500 as an award of costs thus reducing the out-of-pocket impact upon her client, the Plaintiff. In determining the reasonableness of such amount, the Court reviewed and considered the legal fees incurred by Defendants as of the initial dispatch of the purported stipulation to vacate the Notice of Pendency, and the ensuing work performed by Defendant's counsel, thereafter, as a result thereof. In light of the directive requiring Plaintiff's counsel and or her law office to contribute the total sum of $3,500 toward the judgment, *infra*, the Court, in its discretion, declines to impose a formal Part 130 sanction upon said attorney – although it cannot be overstated that the conduct here would most certainly warrant same.

[SIGNATURE PAGE FOLLOWS]

In light of the foregoing, it is hereby

ORDERED, that Defendants are AWARDED the total sum of $4,734.75 as and for an award of damages resulting from the improper filing of the Notice of Pendency pursuant to CPLR §6514(c), and more specifically in connection with the Defendants' loss of access, use, and enjoyment of $200,000 for a period of 96 days as described herein, *supra*; and it is further

ORDERED, that Defendants are AWARDED reasonable attorney's fees, inclusive of disbursements, pursuant to CPLR §6514(c), in the total sum of $12,594.19; and it is further

OREDRED AND ADJUDGED, that Defendants are GRANTED, as against Plaintiff, judgment in the total amount of $17,328.94 ($4,734.75 [award of damages, *supra*] plus $12,594.19 [reasonable attorney's fees inclusive of disbursements, *supra*]) of which, as an award of costs pursuant to 22 NYCRR 130-1.1(b), Farva Jafri, Esq. and or The Law Office of Farva Jafri shall be jointly and severally liable in the amount of $3,500.00. The aforesaid is expressly an award of costs and is not a sanction upon said counsel; and it is further

ORDERED, that Defendants are granted leave to enter Judgment consistent with the relief granted herein.

The foregoing constitutes the Decision & Order of this Court.

Dated: New City, New York
March 30, 2026

ENTER:

HON. DAVID FRIED, A.J.S.C.
STATE OF NEW YORK
COUNTY OF ROCKLAND