

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. ANIL C. SINGH
PRESENT: SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 151021/2012
BOWEN, BARBARA
vs.
CITY UNIVERSITY OF NEW YORK
SEQUENCE NUMBER : 001
OTHER RELIEFS

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to 3, were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion.

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: Feb 21, 14

[Signature] J.S.C.

HON. ANIL C. SINGH

- 1. CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----x
PROFESSIONAL STAFF CONGRESS/CUNY,
LOCAL 2334, AFT, AFL-CIO, BARBARA
BOWEN as President of the
Professional Staff Congress/CUNY,
SANDI E. COOPER as Chair of the
University Faculty Senate, and
TERRENCE MARTELL as Vice-Chair of
the University Faculty Senate and
Chair of the Baruch College
Faculty Senate,

Index No. 151021/2012

Plaintiffs,

-against-

CITY UNIVERSITY OF NEW YORK, and
the BOARD OF TRUSTEES of the City
University of New York,

Defendants.
-----x

Hon. Anil C. Singh:

Defendants, the City University of New York (CUNY) and the
Board of Trustees of the City University of New York (Board),
move for an order either converting this action to an Article 78
proceeding or dismissing it, pursuant to CPLR 3211 (a) (1), (5),
and (7), CPLR 7803, and CPLR 7804 (f).

Background

This is a breach of contract action commenced by plaintiffs,
the Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO
(PSC), the bargaining unit representative for CUNY's faculty and
professional staff at over 20 campuses; Barbara Bowen, PSC's
president; Sandi E. Cooper (Cooper), the chair of CUNY's Faculty

Senate (Faculty Senate), the faculty governance body in academic matters concerning the entire university system; and Terrence Martell, the Faculty Senate's vice-chair and the chair of Baruch College's own faculty senate, against CUNY and its Board. CUNY is a public university comprising eleven senior and six junior colleges and several graduate schools, and serving more than 240,000 students.

Pursuant to the legislature's intent, CUNY is required to "remain responsive to the needs of its urban setting and maintain its close articulation between senior and community college units." Education Law § 6201 (2). In light of the proximity of the various CUNY entities, each year a large number of its students transfers between those entities. Because each CUNY institution had reserved the right to create its own general education and major requirements, and to evaluate whether courses taken at other CUNY institutions were deemed equivalent, transfer students were often denied credit for courses and had to take additional classes. This situation was further complicated by the fact that the colleges had varying requirements as to the number of necessary general education credits. All this led to increased costs to students, longer times to obtain degrees and enter the workforce, and to students leaving CUNY without obtaining their degrees.

According to CUNY websites, to which defendants' memorandum of law (at n 4, 5) directed this court, these problems were

longstanding, and although recognized for many years, remained unresolved. See Board's minutes of June 27, 2011 meeting contained on CUNY's website. In an effort to remedy the situation, the Board proposed a transfer structure, the Pathways to Degree Completion Initiative (Pathways Initiative), which involved the creation of a set number of general education credits which would be required of all CUNY undergraduate colleges and which would be transferable among those entities. While it is not exactly clear when this initiative was commenced, it apparently began at least by October 2010, when meetings, ultimately numbering about 70, were held between CUNY's central administration and the campus community, including the Faculty Senate. *Id.* CUNY created a public Pathways Initiative website and kept the university community updated and informed through it, newsletter articles, and a webinar open to all. *Id.* Also, there were numerous consultations and discussions with members of the CUNY community. *Id.* The foregoing resulted in some modifications of the initial proposal and the drafting of a proposed resolution, which was discussed at a public hearing on June 20, 2011. See also Defendants Memorandum of Law, n 3 (which provides the website where the Board's bylaws were set forth) and Board bylaw § 1.9 (b) (which indicates that, at a public hearing held before the Board's regular meeting, persons could speak and submit written statements, summaries of which would be provided

to the Board before its regular meeting).

The Board then held its regular meeting with respect to the proposed resolution on June 27, 2011. Public notice of that meeting and its agenda were required to be given in advance, including to the colleges, any educational organization which requested notice, and to any collective negotiation representative. *Id.*, Bylaw § 1.1 (c). CUNY's website contains a June 8, 2011 notice of that board meeting, which notice attached a copy of the agenda, and indicated that the meeting would be telecast live on-line, on cable television, and on the CUNY channel. The Board passed the resolution at its meeting, after Cooper presented the Faculty Senate's opposition to it. See Minutes of June 27, 2011 meeting on CUNY's website. The resolution was characterized by CUNY's Executive Vice Chancellor and Provost, Alexandra Logue (Logue), as "historic" and by the Board's Chairman, Benno Schmidt, as a "momentous resolution," which would create "a coherent unified University in which students c[ould] navigate across campuses." Minutes of June 27, 2011 Meeting. Under the Board's bylaws (§ 1.1 [d]), a summary of any resolution and the board's action at a regular meeting had to be posted on CUNY's website within seven days of the meeting and remain there for at least 10 years.

The resolution's preamble affirmed CUNY's commitment to academic excellence and indicated that the faculty's

responsibility for curriculum and courses was integral to the resolution. The resolution set forth the timeline and means for creating an efficient transfer system, which was to be operational in the Fall 2013. That resolution provided for a general education framework, which included the set number of core general education credits common to all CUNY colleges and of college option general education credits specific to the baccalaureate colleges, which credits would be required of all CUNY students and which would be transferable among the CUNY undergraduate campuses. It was further resolved that CUNY's chancellor, in consultation with various groups, including the Faculty Senate, would create a task force, predominantly of faculty, to recommend, by December 1, 2011, a structure for the common core. The task force was to develop the areas making up the common core as defined by learning outcomes. The task force was also to indicate how many of the set number of credits would be allocated to each area. Additionally, the task force could make more specific recommendations as to technical degree programs, such as in science and math. After the task force made its recommendations, and the chancellor approved the common core's structure, each college was to specify the courses for that core which would meet the specified learning outcomes. Then a CUNY-wide committee, appointed by the chancellor, would review the courses proposed and, if appropriate, approve them. Each college was, by April 1, 2012, to provide the chancellor with its

plan for the general education framework. It was also resolved that, after implementation, all of the policies and processes would be evaluated, at first yearly, starting in 2013, so as to make any needed modifications.

Following the 2011 resolution's passage, the chancellor created the task force, seeking nominations from the Faculty Senate, among others. See Pathways Initiative website, August 25, 2011 "Dear Colleagues" letter from Logue. By letter dated September 6, 2011 to the CUNY Faculty, the task force's chair, Michelle Anderson (Anderson), updated the faculty on the progress of the Pathways Initiative and advised that the task force was working to complete, by November 1, 2011, its draft of its recommendations and that, on that date, the draft would be posted on the Pathways Initiative website to get feedback from any individual or group, so that the task force could make any needed revisions in time to submit the report to the chancellor by the December 1, 2011 deadline. *Id.*, Anderson letter of September 6, 2011. The task force, on November 1, 2011, issued common core guidelines and sought comments from the CUNY college presidents by November 15, 2011. After receiving those comments, the task force, on about December 1, 2011, issued a final set of common core guidelines, which were adopted by the chancellor on December 12, 2011.

On March 20, 2012, the plaintiffs commenced this action,

which alleges two breach of contract causes of action, which seek, as the sole relief, an order vacating the 2011 resolution and permanently enjoining CUNY from implementing it. In essence, the complaint alleges that, in 1997, the defendants, in an unrelated Article 78 proceeding, *Matter of Polishook v City Univ. of New York* (234 AD2d 165 [1st Dept, 1996]), signed a settlement agreement and a resolution. In the 1997 resolution the Board, among other things,

"in the exercise of its authority to govern and administer the University pursuant to N.Y. Education Law § 6204[1], in connection with the Board's making educational policy, recogniz[ed] and reaffirm[ed] that the faculty, in accordance with CUNY bylaw § 8.6, shall be responsible, subject to guidelines, if any, as established by the board, for the formulation of policy relating to the admission and retention of students including health and scholarship standards therefor, student attendance including leaves of absence, curriculum, awarding of college credit, [and] granting of degrees; that this responsibility is to be exercised through the college faculty senates pursuant to Board Bylaws or college governance plans approved by the Board, or the University Faculty Senate in accordance with CUNY Bylaws §8.13, which states: 'There shall be a university faculty senate, responsible subject to the board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, university level educational and instructional matters, and research and scholarly activities of university-wide import. . . . and that such policies will then be considered by the board or its appropriate committees in making policy decisions relating to educational matters.'"

According to the complaint, this resolution and bylaw §§ 8.6 and 8.13¹ did not permit the Board to formulate its own policy

¹ These bylaw sections have subsequently been renumbered as 8.5 and 8.10, but, in this action, the parties are using, for

on educational issues, but, instead, required that educational policies be formulated, in the first instance, by the college and faculty senates for consideration by the Board. Complaint, ¶ 34. The complaint further alleges that the passage of the 2011 resolution constituted a breach of the 1997 settlement agreement and resolution, and was a violation of bylaws §§ 8.6 and 8.13, because the 2011 resolution was not based on policy formulated by the faculty; changed, without properly including the faculty in the process, the course and credit degree requirements and the requirements for transferring credits among CUNY colleges; established a task force to perform the Faculty Senate's duties; gave that task force the faculty's duties; and failed to properly include the faculty in the implementation of the 2011 resolution. Complaint, ¶¶ 45-51. The first cause of action alleges that the Board's passage, approval, and implementation of the 2011 resolution and its approval and implementation of the task force's proposal constituted breaches of the settlement agreement. The second cause of action alleges that, because the settlement agreement amounted to a contractual commitment to comply with bylaw §§ 8.6 and 8.13, and because the 2011 resolution was inconsistent with those bylaw provisions, the "passage" of the 2011 resolution constituted a breach of contract. *Id.*, ¶¶ 59, 63.

The Instant Motion

these two bylaws, the numbers set forth in the 1997 resolution.

Defendants move for an order dismissing the action for failure to state a cause of action, based on the documentary evidence, and because the action is time-barred, or, alternatively, converting this action to an Article 78 proceeding. They urge that the settlement agreement and 1997 resolution contain no contractual provision requiring them to comply with bylaw §§ 8.6 and 8.13, that the Board simply reaffirmed those bylaws, and that neither of those bylaws, nor the 1997 resolution, requires academic policy to originate with the faculty or Faculty Senate.

Since there was no such contractual provision, defendants urge that the action must be dismissed, and that, because plaintiffs were alleging bylaw violations and a challenge to a university's internal decision, plaintiffs' claims should have been brought as an Article 78 proceeding against the Board, as a state body. Defendants further contend that, because the Board had the authority to independently formulate policy regarding CUNY's governance and establish the Pathways Initiative, plaintiffs' claims fail as a matter of law. Defendants also maintain that, because CUNY's senior colleges are state entities, and the state has, as is applicable here, only waived its sovereign immunity for breach of contract actions principally seeking monetary damages, which actions must be pursued in the Court of Claims, the instant action cannot be maintained as such against CUNY.

Moreover, since the resolution establishing the Pathways Initiative was passed in June 2011, and this action was commenced on March 20, 2012, defendants assert that this action is barred by the four-month statute of limitations applicable to Article 78 proceedings, because plaintiffs, who are alleging that the passage of the 2011 resolution was inconsistent with the bylaws, were aggrieved when that resolution was passed. According to the defendants, that the 2011 resolution required additional steps to implement the Pathways Initiative, did not toll the statute of limitations, since the resolution provided for a definite plan of action.

In response, the plaintiffs, who "do not ask this court to pass on the wisdom of the Pathways [Initiative]" (Plaintiffs' Memorandum of Law, 7), contend that the 1997 settlement agreement and resolution's provision relating to bylaw §§ 8.6 and 8.13, extracted a contractual obligation from the Board that the Faculty Senate would, in the first instance, be responsible "for the formulation of policy relating to curriculum, the awarding of college credit, the granting of degrees, academic status, and university level educational and instructional matters." Plaintiffs Memorandum of Law, 5, 38. Only after the Faculty Senate has formulated any such policy, can the Board consider it in making their own policy decisions. *Id.* While plaintiffs concede that the 2011 resolution gave faculty members a role in developing and implementing the Pathways Initiative, they assert

that the initiative violated the settlement agreement because the Pathways Initiative was not based on policy formulated by the Faculty Senate. *Id.* at 12. Thus, this action's "nub" is whether the settlement agreement permitted the Board, in formulating academic policy, to ignore the Faculty Senate. *Id.* Plaintiffs contend that, because the 1997 settlement agreement and resolution extracted from the Board a contractual promise which it breached, plaintiffs are entitled to maintain this matter in the form of an action rather than through an Article 78 proceeding. Further, plaintiffs assert that the settlement agreement and 1997 resolution would be rendered meaningless unless their interpretation governs. Additionally, plaintiffs apparently take the position that, irrespective of the 1997 settlement agreement and resolution, in adopting bylaw §§ 8.6 and 8.13, the Board ceded its power to initiate academic policy to the Faculty Senate. *Id.*, 37.

Plaintiffs also claim that, were this matter to be converted to an Article 78 proceeding, it would be timely. In this regard, they observe that the first cause of action contains an allegation that the defendants' approval of the task force's guidelines violated the settlement agreement, and assert that, since the chancellor approved that proposal on December 12, 2011, fewer than four months before this action was commenced, all of plaintiffs' claims are timely, because before then, all that the

2011 resolution proposed were goals, rather than a final determination. Therefore, plaintiffs urge that any potential injury to plaintiffs may have been ameliorated before the chancellor approved the task force's proposal. Finally, plaintiffs contend that CUNY has no sovereign immunity because the Court of Claims lacks jurisdiction for cases where monetary damages are not being sought, and because CUNY waived any immunity by entering into the settlement agreement and agreeing that only the Faculty Senate was responsible, in the first instance, for formulating academic policy.

Discussion

On a motion to dismiss a complaint for failure to state a cause of action, "facts pleaded in the complaint must be taken as true and are accorded every favorable inference.... However, allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration...." *Maas v Cornell Univ.*, 94 NY2d 87, 91 (1999) (internal quotation marks and citation omitted); *Gertler v Goodgold*, 107 AD2d 481, 485 (1st Dept 1985), *affd* 66 NY2d 946 (1985). "A motion to dismiss based on documentary evidence pursuant to CPLR 3211(a)(1) may be appropriately granted 'only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law' (*Goshen v. Mutual Life*

Ins. Co. of N.Y., 98 NY2d 314, 326; see *Norment v. Interfaith Ctr. of N.Y.*, 98 AD3d 955, 955-956).” *North Shore Towers Apts. Inc. v Three Towers Assoc.*, _ AD3d _, 2013 NY Slip Op 01812, *2 (2d Dept 2013).

Plaintiffs’ position, that bylaw §§ 8.6 and 8.13 and the 1997 settlement agreement and resolution constituted a contractual commitment that only the faculty and the Faculty Senate could initiate academic policy, is devoid of merit. Bylaw §§ 8.6 and 8.13 do not provide that the faculty and Faculty Senate have the exclusive right to formulate academic policy. They simply, respectively, permit faculty to formulate certain academic policy, subject to board guidelines, and the Faculty Senate, subject to the Board, to formulate policy on certain academic matters of university-wide import. That only the faculty, through the Faculty Senate, could have initiated the academic policy at issue here is undercut by Board bylaw § 11.2 which pertains to the chancellor’s role. In this regard the chancellor is appointed by, and reports to, the Board and is CUNY’s chief executive, and educational and administrative officer as well as the chief educational and administrative officer of the senior and junior colleges. Board bylaw § 11.2. He or she is charged with implementing the board’s policies, and with initiating, planning, developing and “implement[ing] institutional strategy and policy on all educational and

administrative issues affecting the university, including to prepare a comprehensive overall academic plan for the university, subject to the board's approval, and to supervise a staff to conduct research, coordinate data, and make analyses and reports on a university-wide basis." *Id.* The chancellor also presents the Board with any of his or her recommendations on important plans, reports, or recommendations submitted by faculty, a college president, or any governance body. *Id.* Thus, while the chancellor can recommend to the Board any important policy formulated by the faculty or the Faculty Senate, the chancellor can also initiate academic policy.

Further, that the Board is permitted to initiate academic policy is evident from Education Law § 6204 (1), which provides that the Board "shall govern and administer the city university. The control of the educational work of the city university shall rest solely in the board of trustees which shall govern and administer all educational units of the city university." See also Education Law § 6206 (7) (Board required to "establish and conduct courses and curricula; prescribe conditions of student admission, attendance and discharge"). The Board's power to initiate academic policy is supported by this judicial department's case law. Specifically, in *Matter of Polishook v City Univ. of N.Y.* (1996 WL 34478650 [Sup Ct, NY County 1996]; *mod* 234 AD2d at 167) the petitioners, including the PSC president

and Cooper, urged before the lower court, among other things, that, since three of the Board's long-range resolutions concerning academic matters did not relate to financial exigency, the Board, in adopting those resolutions, could not ignore its own rules and bylaws, which allegedly dictated that such matters first be addressed by the college senates and governance councils. The Board asserted that it acted lawfully in passing the resolutions. The lower court held, among other things, that the board's adoption of these three resolutions was arbitrary and capricious because the respondents were silent as to the connection of these matters to financial considerations and why there was a need to circumvent ordinary governance plans involving this type of decision. The Appellate Division, First Department in *Polishook* (234 AD2d at 167), overturned the lower court's determinations, except as to one of the three long-range resolutions, because the First Department could not perceive the rational basis for Long Term Initiative 27, which reduced the number of credits required for a degree. Significantly, in modifying the lower court's determination and upholding the propriety of the Board's passage of the other two long-range resolutions, the First Department, citing Education Law § 6204 (1), held that the bylaws "d[id] not require the Board ... to consult with the senior college faculties prior to implementing" those resolutions. *Id.* at 166-167.

In light of the foregoing, it is evident that bylaw §§ 8.6 and 8.13 do not limit the initiation of academic policy to the faculty and the Faculty Senate, and that the Board has the power to initiate academic policy. Therefore, by merely recognizing and/or reaffirming bylaw § 8.6, the 1997 resolution did not create a contractual right in that bylaw section nor did it in any way amend that section, or bylaw § 8.13, to limit the Board's power to initiate academic policy. Since the *Polishook* petitioners urged in the lower court that, under the bylaws, only it could initiate such matters, a claim, which was firmly rejected by the First Department, if what those petitioners truly desired was a resolution limiting the Board's powers, the parties, if they were amenable, could easily and clearly have so provided in the 1997 resolution. Petitioners' claim that, without such an interpretation, the resolution would be meaningless, is unavailing, because the only issue remaining on CUNY's appeal was the First Department's finding of a lack of a rational basis for Long Term Initiative 27, and the petitioners, stipulated that there was a rational basis for that determination, in exchange for the Board's resolution to clarify and set forth the circumstances under which CUNY would grant waivers from the requirements of that initiative. See 1997 Resolution, 3-4. Because the 1997 resolution created no contractual obligation with respect to the bylaws, and neither

that resolution, nor bylaw §§ 8.6 and 8.13, limited the formulation of academic policy to the faculty through the Faculty Senate, plaintiffs' breach of contract claims and action must be, and hereby are, dismissed. Because plaintiffs have no valid breach of contract claims, it is immaterial whether sovereign immunity bars such claims against defendant CUNY.

Further, in view of the absence of any valid breach of contract claim, the complaint effectively urges nothing more than alleged bylaw violations, and, accordingly, this matter should have been brought, if at all, as an Article 78 proceeding. See *Maas v Cornell Univ.*, 94 NY2d at 93-95; *Wander v St. John's Univ.*, 99 AD3d 891, 893 (2d Dept 2012); *Gertler v Goodgold*, 107 AD2d at 487. However, conversion is inappropriate here because, aside from the fact that respondents did not violate bylaw §§ 8.6 and 8.13, any such Article 78 proceeding would be time-barred (see CPLR 217 [1]) ("proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding"). *Gertler v Goodgold*, 107 AD2d at 487; *Silverman v New York Univ. School of Law*, 193 AD2d 411 (1st Dept 1993) (conversion of action to Article 78 proceeding not warranted when matter barred by four-month statute of limitations). An administrative determination is final and binding when it is complete and administrative remedies have been exhausted. *Walton v New York State Dept. of Correctional Servs.*,

8 NY3d 186, 194 (2007). "First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be ... significantly ameliorated by further administrative action or by steps available to the complaining party." *Id.* at 194 (internal quotation marks and citations omitted).

In the instant case, the four-month statute of limitations began to run, not when the chancellor adopted the task force's guidelines, but, rather, when the Board adopted the 2011 resolution. *Matter of Gach v City of Long Beach*, 218 AD2d 801 (2d Dept 1995); *Matter of Douglaston & Little Neck Coalition v Sexton*, 145 AD2d 480, 480-481 (2d Dept 1988) (statute of limitations runs from the adoption of resolution). This is so because, the complaint alleges that only the faculty and Faculty Senate could formulate policy, and that the plaintiffs were aggrieved when the Board, without the proper input from the faculty and Faculty Senate, formulated policy by crafting and creating the Pathways Initiative, via the 2011 resolution. As for the complaint's allegation that plaintiffs were further aggrieved because the 2011 resolution violated the bylaws by establishing a task force to perform the Faculty Senate's duties, plaintiffs were well aware when the Pathways Initiative was passed that the Board had provided for the establishment of a task force which would also formulate policy. The Pathways

Initiative was not merely an abstract, nonconclusive proposal (see generally *Matter of Edmead v McGuire*, 67 NY2d 714, [1986]) or a proposal for a course of action on a trial basis (*Matter of Seniors for Safety v New York City Dept. of Transp.*, 101 AD3d 1029, [2d Dept 2012]), but was instead one integrated plan which embodied a firm commitment to create, within a precise time frame, an efficient transfer system. It was the sine qua non of all that followed. That some details were left to be resolved is inconsequential, since they would not have affected the Pathways Initiative's alleged infirmity - namely, that, upon the passage of the Pathways Initiative, policy was formulated and firmly set to be formulated by those other than the faculty and the Faculty Senate. In any event, I also note that, evidently after nominations were sought from the Faculty Senate, the task force was established more than four months before this action was commenced. Plaintiffs' amelioration claim, that the task force may have recommended that the development of a student transfer structure be submitted to the Faculty Senate, is without merit, since that was not within the scope of the task force's assigned duties. Similarly, plaintiffs' assertion that the chancellor could have declined to have adopted the task force's recommendations as to the broad disciplinary and interdisciplinary areas comprising the common core, would not have alleviated the problem of someone other than the Faculty

Senate having been charged with initiating academic policy, since presumably, the chancellor could either have made his own decision or directed matters back to the task force for additional input from it. Further, that would not have alleviated the alleged problem of the Board having, in the first place, formulated the Pathways Initiative without properly including the faculty and Faculty Senate in the process. Also, tellingly, the complaint seeks an order vacating the 2011 resolution.

In conclusion, it is

ORDERED that defendants City University of New York and the Board of Trustees of the City University of New York's motion to dismiss the complaint herein is granted, and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated Feb 21, 14

ENTER:

ACC2

J.S.C.

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**