**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

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| TEXAS 1845, LLC, | TRIAL/IAS PART 31<br>NASSAU COUNTY |
| Plaintiff, | Index No.: 8397/12<br>Motion Seq. Nos.: 02, 03, 04<br>05 |
| - against - | Motion Dates: 11/13/12<br>12/04/12<br>12/04/12<br>01/17/13 |
| MYINT J. KYAW,<br>Defendant. | **XXX** |

**The following papers have been read on these motions:**

| | Papers Numbered |
|---|---|
| Order to Show Cause (Seq. No. 02), Affirmation and Exhibits | 1 |
| Order to Show Cause (Seq. No. 03), Affirmation, Affidavit and Exhibits | 2 |
| Affirmation in Opposition to Seq. No. 03 and Exhibits and Affidavit | 3 |
| Reply Affirmation to Seq. No . 03 and Exhibits | 4 |
| Supplemental Reply Affirmation to Seq. No . 03 | 5 |
| Affirmation in Further Opposition to Seq. No. 03 and Exhibits and Memorandum of Law | 6 |
| Notice of Cross-Motion (Seq. No. 04), Affirmation and Exhibit and Affidavit and Exhibits | 7 |
| Affirmation in Opposition to Seq. No. 04 and Exhibits, Affidavit and Exhibits and Affidavit and Exhibit | 8 |
| Reply Affirmation to Seq. No. 04 | 9 |
| Order to Show Cause (Seq. No. 05), Affirmation and Exhibits | 10 |
| Affirmation in Opposition to Seq. No. 05 and Exhibits | 11 |
| Reply Affirmation to Seq. No. 05 and Exhibit | 12 |

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Plaintiff moves (Seq. No. 02), pursuant to CPLR § 2308(b), for an order directing the

defendant judgment debtor to comply with a stated information subpoena dated July, 3, 2012. Defendant opposes the motion

Defendant moves (Seq. No. 03), pursuant to CPLR § 2221(d), for an order (1) granting re-argument and/or renewal of his prior motion, which motion was denied by Order of this Court dated September 12, 2012, and (2) upon re-argument or renewal, vacating that Order and granting defendant's prior motion, by (i) setting aside a prior Judgment of Confession dated July 3, 2012; and (ii) directing restitution from the plaintiff with respect to sums generated upon the plaintiff's prior sale of certain collateral belonging to the defendant; or alternatively, if the motion to vacate is denied, (2) staying, limiting and/or modifying any and all enforcement proceedings so as to reflect a stated, reduced amount owed under the above-referenced Judgment of Confession and/or alternatively, regulating plaintiff's right to enforce judgment as against the defendant's assets to a judicially created and referee-supervised stream of stated payments. Plaintiff opposes the motion.

Defendant cross-moves (Seq. No. 04), pursuant to Article 50 of the CPLR, for an order modifying and reducing the foregoing judgment obtained by plaintiff against him and cross-moves, pursuant to CPLR § 5222, for an order vacating and/or amending plaintiff's restraining notices and a July 3, 2012 information subpoena. Plaintiff opposes the cross-motion.

Defendant moves (Seq. No. 05) for an order: (1) permitting him to submit an affirmation as a supplement to his underlying motion for, *inter alia*, re-argument and renewal; and (2) staying the issuance of this Court's decision with respect to defendant's motion for re-argument and renewal pending review of the above-referenced affirmation. Plaintiff opposes the motion.

Between 2006 and 2008, defendant, Myint J. Kyaw a/k/a Jeffrey Wu, personally guaranteed some $20 million in "aircraft" loans made to Wu Aviation and Wu Air Corp – entities in which defendant was a principal. At some point in 2010, the Wu borrowers defaulted

on the loans, which were collateralized by perfected security interests in two aircraft; namely, a "Bombadier model CL-600-2B19 (the "CRJ") and a 1992 "British Aerospace" model BAE 125-1000A, also known as "the Hawker."

Thereafter, plaintiff – as assignee of the original lender – commenced litigation in this Court (and others), to recover the then outstanding sum of over $20 million on defendant's personal guarantees. That litigation ultimately culminated in the parties' execution of a Settlement Agreement in March of 2012. Insofar as relevant, the March 1, 2012 settlement required the Wu entities and defendant to: (1) pay plaintiff the sum of $13 million between April 1 and June 1, 2012 (Settlement ¶ 3(a)-(c) at 3); and (2) execute a written "Confession of Judgment" in the sum of $24,744,833.56 – which judgment could then be "immediately file[d]" by plaintiff in the event that defendant failed to comply with "any term" of the settlement (Settlement ¶¶ 3, 10 at 7).

Significantly, and as part of the settlement, defendant also agreed to deliver the "Hawker" aircraft – then located in Maine – to plaintiff in an FAA-certified, "airworthy" condition on or before March 28, 2012 (Settlement ¶ 4(b) at 4). The operative contract language in this respect provided that, "[n]o later that March 28, 2012, the Wu defendants shall prepare and execute all necessary documents to transfer title to the Hawker Collateral to Texas 1845, and shall transfer transport, or otherwise deliver the Hawker Collateral to Texas 1854". There is no material dispute that both parties construed the pre-amendment phrase, "March 28, 2012" as applicable to, and modifying both, the "document transfer" and the following "aircraft delivery" clauses of the foregoing provision (*e.g.*, July 18, 2012 Colloquy, 42 - 43; Plaintiff's July 17, 2012 Sur Reply Affirmation Exhibit 1).

Defendant, however, admittedly defaulted on his obligation to deliver the "Hawker" prior to the March 28, 2012 deadline and requested additional time to produce the aircraft. As a

consequence, the parties entered into further negotiations, which ultimately produced a "second" written amendment to the original settlement, dated April 11, 2012. To the extent relevant, the newly amended April 11, 2012 settlement increased the sum payable to plaintiff from $13 to $14 million (which sum was later paid by defendant) and altered the "aircraft" and "title document" delivery provisions. It did so by, in essence, substituting the term "immediately" for the phrase, "March 28, 2012."

Accordingly, pursuant to the newly governing sentence, defendant agreed that he would "*immediately* prepare and execute all necessary documents to transfer title to the Hawker...to Texas... [and] shall transfer, transport or otherwise deliver the Hawker Collateral" thereto (2nd Amendment ¶ 2) (emphasis added). Notably, by e-mail dated April 10, 2012 – one day prior to the execution of the second amendment – plaintiff's counsel wrote to defendant's counsel advising that, "[t]he latest version [of the settlement] requires... [defendant] to *immediately* execute all documents necessary to transfer title of the Hawker collateral to Texas 1845 and immediately transfer possession of the Hawker Collateral." (emphasis added). *See* Defendant's Affirmation in Support of Seq. No. 03 Exhibit A at 10; Defendant's Appendix to Seq. No. 03 Exhibit 4 Stagg Sur Reply Affirmation ¶¶ 18-19, Exhibit 6. According to plaintiff, no responsive e-mail was ever received from defendant's counsel objecting to plaintiff's use of the term "immediately" in characterizing the nature of defendant's newly amended aircraft delivery obligation. *See* Defendant's Appendix to Seq. No. 03 Exhibit 2 Stagg Affirmation in Opposition ¶¶ 37-42. Significantly, a so-called "red-lined" version of the proposed amendment, which was transmitted by plaintiff's counsel to defendant's counsel the day prior to the execution of the second amendment, further illuminates the grammatical and/or structural nature of the proposed alteration. The "red-lined" version reads as follows (here, the prior deleted phrasing is underlined; newly proposed terms italicized):

"No later than March 28, 2012, the *The* Wu defendants shall *immediately* prepare and execute all necessary documents to transfer title to the Hawker Collateral to Texas 1845, and

shall transfer transport, or otherwise deliver the Hawker Collateral" to plaintiff. *See* Defendant's Appendix to Seq. No. 03 Exhibit 2 Stagg Affirmation in Opposition ¶¶ 41-42.

By mid-June of 2012, however, defendant had yet to deliver the aircraft – in response to which plaintiff issued a June 22, 2012 default letter. That letter – which followed certain prior e-mails from plaintiff demanding "immediate" delivery of the plane – advised that if defendant did not cure his delivery default by July 2, 2012, plaintiff would then proceed with all remedies available to it under the agreement, including the filing of the defendant's $24 million "Confession of Judgment."

The Hawker, however, was not delivered by the stated July 2, 2012 deadline and plaintiff then filed defendant's "Judgment of Confession" (with certain reductions) in the sum of $12,323,530.82 the next day - July 3, 2012. At approximately the same time, plaintiff sold the "Hawker" for $2.3 million and the "CJR" aircraft for $7 million. *See* Defendant's Affirmation in Support of Seq. No. 03 Exhibit A at 4-5; Plaintiff's Starling Nov. 30, 2012 Affidavit in Opposition ¶ 4. According to plaintiff's most recent assertions, it recovered, all told, the sum of $10,917,951.69, from both sales – leaving an alleged, outstanding deficiency in connection with the judgment of $1,408,579.13. *See* Plaintiff's Meyer Dec. 17, 2012 Affidavit in Opposition ¶¶ 7-10. A partial satisfaction of judgment, dated December 17, 2012, has since been filed in the sum of $10,917,951.69. *See* Plaintiff's Stagg Dec. 17, 2012 Affidavit in Opposition Exhibit A.

Shortly thereafter, in mid-July of 2012, defendant moved to vacate the judgment filed by plaintiff. By Order dated September 12, 2012, this Court denied defendant's vacatur motion – in respect to which defendant has filed a Notice of Appeal. In sum, this Court held that, pursuant to the parties' April 11, 2012 settlement agreement, as amended, plaintiff was entitled to demand "immediate" delivery of the Hawker. Since, however, defendant did not deliver the plane "immediately" – and had not delivered it yet by early July – he breached the agreement, thereby entitling plaintiff to file the Confession of Judgment. *See* Defendant's Affirmation in Support of Seq. No. 03 Exhibit A at 9-11.

Notably, after filing the foregoing judgment, plaintiff served restraining notices upon certain financial institutions listing an outstanding judgment amount of $12,323,530.82. At the same time, it also served a July 3, 2012 information subpoena on defendant. *See* CPLR § 5224(3). Plaintiff claims that, although defendant's prior counsel accepted service of, *inter alia*, the subpoena (and other materials on behalf of defendant), and promised – without objecting to service – responses to the subpoena in certain colloquy before this Court, those responses have yet to be produced. *See* Plaintiff's Stagg Oct. 19, 2012 Affirmation in Support ¶¶ 22-23, Exhibits B and C; Plaintiff's Lacoff Affirmation in Further Support ¶¶ 11-15, 17, 19, Exhibit D at 9.

The parties now move and cross-move for various species of relief. Specifically, plaintiff has moved for an order compelling defendant to respond to its July 3, 2012 information subpoena. *See* Plaintiff's Stagg Oct. 19, 2012 Affirmation in Support Exhibit A. Defendant opposes plaintiff's application and moves for, *inter alia*, reargument and/or renewal of his prior motion to vacate the subject judgment. *See* CPLR § 2221(d) and (e). In support of his vacatur application, defendant argues, among other things, that: (1) this Court misconstrued the meaning of the governing contract language and (2) that plaintiff misled the Court by misrepresenting critical facts on the prior motion relating to the alleged delivery default (*e.g.*, Defendant's Capetola Nov. 23, 2012 Affirmation in Support ¶¶ 3-4, 10, 12-13; 19-23; 27-29).

Those branches of defendant's motion (Seq. No. 03), which are for re-argument and/or renewal with respect to vacatur of the July 3, 2012 judgment should be **DENIED**.

Preliminarily, the Court notes that defendant's re-argument motion – which was made only after plaintiff first moved with respect to its information subpoena – was originally noticed in late November of 2012, well after the elapse of the thirty-day period prescribed by CPLR § 2221(d)(3). Nevertheless, the Court possesses discretion to consider an ostensibly belated motion for reargument (*Profita v. Diaz*, 100 A.D.3d 481, 954 N.Y.S.2d 40 (1st Dept. 2012); *HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718; 950 N.Y.S.2d 172 (2d Dept. 2012); *Terio v. Spodek,* 63 A.D.3d 719, 880 N.Y.S.2d 679 (2d Dept. 2009); *Itzkowitz v. King Kullen Grocery*

*Co., Inc.*, 22 A.D.3d 636, 804 N.Y.S.2d 350 (2d Dept. 2005); *Leist v. Goldstein*, 305 A.D.2d 468, 760 N.Y.S.2d 191 (2d Dept. 2003) although it is not necessarily required to do so. *See Matter of Ida Q.*, 11 A.D.3d 785, 783 N.Y.S.2d 680 (3d Dept. 2004); *Matter of Pearson v. Goord*, 290 A.D.2d 910, 763 N.Y.S.2d 636 (3d Dept. 2002); *New Century Mortg. Corp. v. Kogan*, 38 Misc.3d.1211(A), 2013 WL 173269 (Supreme Court, Kings County 2013); *Orr v. Yun*, ___Misc.3d___, 2011 WL 9689168 (Supreme Court, New York County 2011). Under the circumstances, however, the Court will exercise its discretion and entertain the motion and will also consider the supplemental materials submitted in connection with defendant's January 2, 2013 Order to Show Cause (Seq. No. 05), thereby **GRANTING** defendant's motion (Seq. No. 05). The motion to vacate, however, should be **DENIED**.

It is settled that motions for re-argument are granted in the Court's discretion only upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision. *See Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 916 N.Y.S.2d 821 (2d Dept. 2011); *McDonald v. Stroh*, 44 A.D.3d 720, 842 N.Y.S.2d 727 (2d Dept. 2007); *New York Cent. Mut. Ins. Co. v. Davalos*, 39 A.D.3d 654, 835 N.Y.S.2d 247 (2d Dept. 2007); *Marini v. Lombardo*, 17 A.D.3d 545, 793 N.Y.S.2d 460 (2d Dept. 2005); CPLR § 2221(d)(2). A motion for re-argument "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *McGill v. Goldman*, 261 A.D.2d 593, 691 N.Y.S.2d 75 (2d Dept. 1999). *See also Haque v. Daddazio*, 84 A.D.3d 940, 922 N.Y.S.2d 548 (2d Dept. 2011); *Anthony J. Carter, DDS, P.C. v. Carter*, *supra* at 821; *Woody's Lumber Co., Inc. v. Jayram Realty Corp.*, 30 A.D.3d 590, 817 N.Y.S.2d 391 (2d Dept. 2006); *Gellert & Rodner v. Gem Community Mgt.*, 20 A.D.3d 388, 797 N.Y.S.2d 316 (2d Dept. 2005); *Simon v. Mehryari*, 16 A.D.3d 664, 792 N.Y.S.2d 543 (2d Dept. 2005).

Here, however, the Court discerns no misapprehension of the law or fact in that interpretive construction of the key contract language and its underlying conclusion that there

was no injustice flowing from enforcement of the stipulation's terms. As the Court suggested in its prior order, "[a] stipulation of settlement is a contract, enforceable according to its terms." *Alshawhati v. Zandani*, 82 A.D.3d 805, 918 N.Y.S.2d 173 (2d Dept. 2011). *See also Long Island Junior Soccer League v. Back of Net, Ltd.*, 85 A.D.3d 737, 925 N.Y.S.2d 555 (2d Dept. 2011); *Vermont Teddy Bear Co. v. 538 Madison Realty Co.,* 1 N.Y.3d 470, 775 N.Y.S.2d 765 (2004). Stipulations, which are judicially favored and not be set aside lightly, "are to be enforced with rigor and without a searching examination into their substance" as long as they are "clear, final and the product of mutual accord." *Bonnette v. Long Is. Coll. Hosp.*, 3 N.Y.3d 281, 785 N.Y.S.2d 738 (2004); *Hallock v. State of New York*, 64 N.Y.2d 224, 485 N.Y.S.2d 510 (1984); *Peralta v. All Weather Tire Sales & Serv., Inc.*, 58 A.D.3d 822, 873 N.Y.S.2d 111 (2d Dept. 2009). *See also Matter of Monaco v. Armer*, 93 A.D.3d 1089, 941 N.Y.S.2d 316 (3d Dept. 2012); *Alshawhati v. Zandani*, 82 A.D.3d 805, 918 N.Y.S.2d 173 (2d Dept. 2011). Of course, sophisticated parties are free to make their contracts, and, even where the results are economically harsh, Courts will not, through "judicial interpretation" or "sympathy," relieve a party "of what it may now regard as a burdensome bargain" (*Backer Mgmt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 413 N.Y.S.2d 135 (1978); *Emigrant Mtge. Co., Inc. v. Fisher*, 90 A.D.3d 823, 935 N.Y.S.2d 313 (2d Dept. 2011); *CBS Inc. v. P.A. Bldg. Co.*, 200 A.D.2d 527, 606 N.Y.S.2d 674 (1st Dept. 1994)), *i.e.*, here, and in light of defendant's prior defaults – "the contracted-for consequence of his... noncompliance with the stipulation." *Chelsea 19 Assoc. v. James*, 67 A.D.3d 601, 889 N.Y.S.2d 564 (1st Dept. 2009); *Hotel Cameron, Inc. v. Purcell*, 35 A.D.3d 153, 827 N.Y.S.2d 13 (1st Dept. 2006). *See also Cadlerock Joint Venture, L.P. v. Rubenstein*, 26 A.D.3d 219, 812 N.Y.S.2d 469 (1st Dept. 2006). Indeed, "[a]dherence to these principles is particularly appropriate in a case like this involving interpretation of documents drafted by sophisticated, counseled parties and involving the loan of substantial sums of money." *NML Capital v. Republic of Argentina*, 17 N.Y.3d 250, 928 N.Y.S.2d 666 (2011).

While defendant obviously disagrees with the Court's interpretive analysis and

construction of the governing contract language, he has not established that the Court "misapprehended" the facts or the law in reaching its conclusion. *See Frenchman v. Lynch*, 97 A.D.3d 632, 948 N.Y.S.2d 396 (2d Dept. 2012); *Nicolia v. Nicolia*, 84 A.D.3d 1327, 924 N.Y.S.2d 509 (2d Dept. 2011); *Mazinov v. Rella*, 79 A.D.3d 979, 912 N.Y.S.2d 896 (2d Dept. 2010). Moreover, the claims currently advanced by defendant are, in sum, essentially the same core theories and assertions (albeit embellished and amplified), which he presented on the prior motion, *i.e.*, that, *inter alia*: (1) the contract term "immediately" is inapplicable to the plane delivery portion of the second amendment; (2) that plaintiff itself was responsible for, and/or deliberately contributed to, the post-amendment repair delays which triggered the default; (3) that plaintiff acted in bad faith by misleading the Court and by manufacturing a technical default to secure an unwarranted windfall; and (4) that the planes were not sold in a commercially reasonable fashion or for a reasonable price. *Cf. Woody's Lumber Co., Inc. v. Jayram Realty Corp., supra*; *Weitz v. Murphy*, 241 A.D.2d 547. 661 N.Y.S.2d 646 (2d Dept. 1997).

Contrary to defendant's contentions, the Court did not place determinative reliance upon, or misapprehend the import of plaintiff's claim that defendant was allegedly dilatory in commencing repairs on the Hawker. Rather, the Court principally mentioned this claim so as to highlight the parties' respective and opposing arguments on the prior motion. *See* Defendant's Affirmation in Support of Seq. No. 03 Exhibit A at 3, 7-8. The analytical and/or decisional portion of the Court's order (*see* Defendant's Affirmation in Support of Seq. No. 03 Exhibit A at 8-12), relies primarily upon the Court's interpretation of the contract language utilized by the parties as further buttressed by the relevant, surrounding circumstances. *Cf. Coliseum Towers Associates v. County of Nassau*, 2 A.D.3d 562, 769 N.Y.S.2d 293 (2d Dept. 2003).

Similarly, the Court discerns no error in its holding which, in effect, rejected defendant's theory that the equities and/or plaintiff's pre-default conduct, otherwise entitles him – a sophisticated, counseled business person – to vacatur of the disputed judgment. *See generally Bynum v. Scheiner,* 33 A.D.3d 832, 823 N.Y.S.2d 484 (2d Dept. 2006); *Cadlerock Joint Venture,*

*L.P. v. Rubenstein, supra* at 220; *McKenzie v. Vintage Hallmark*, 302 A.D.2d 503, 755 N.Y.S.2d 288 (2d Dept. 2003). *Cf. Weitz v. Murphy, supra*; *Bank of N.Y. v. Forlini*, 220 A.D.2d 377, 631 N.Y.S.2d 440 (2d Dept. 1995).

Lastly, defendant has not established his entitlement to an order granting renewal of his prior vacatur motion, inasmuch as the "new" evidence submitted does not alter the analysis applicable to the original motion and would not have changed the Court's prior determination. *See* CPLR § 2221(e)(3). *See generally Fales v. Fales,* 102 A.D.3d 734, 957 N.Y.S.2d 867 (2d Dept. 2013); *Kaya v. B & G Holding Co., LLC*, 101 A.D.3d 685, 955 N.Y.S.2d 614 (2d Dept. 2012); *Matter of Willnus,* 101 A.D.3d 1036, 957 N.Y.S.2d 229 (2d Dept. 2012); *Hughes v. Welsbach Elec. Co.*, 101 A.D.3d 684, 954 N.Y.S.2d 501 (2d Dept. 2012).

However, those branches of defendant's various motions (Seq. Nos. 03 and 04) which are to modify and/or vacate the previously served restraining notices should be **GRANTED to the extent indicated below**.

While "CPLR 5223 compels disclosure of 'all matter relevant to the satisfaction of the judgment'" (*Technology Multi Sources, S.A. v. Stack Global Holdings, Inc.*, 44 A.D.3d 931, 845 N.Y.S.2d 357 (2d Dept. 2007)), "CPLR 5240 empowers the court to exercise broad powers over the use of enforcement procedures" so as to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." *Paz v. Long Is. R.R.*, 241 A.D.2d 486, 661 N.Y.S.2d 20 (2d Dept. 1997); *Matter of Sanders v. Manufacturers Hanover Trust Co.*, 229 A.D.2d 544, 644 N.Y.S.2d 1017 (2d Dept. 1996). *See generally Matter of Stern v. Hirsch,* 79 A.D.3d 1046, 915 N.Y.S.2d 275 (2d Dept. 2010); *Gryphon Dom. VI, LLC v. APP Intl. Fin. Co.*, 58 A.D.3d 498, 871 N.Y.S.2d 115 (1st Dept. 2009); *Costello v. Casale*, 39 A.D.3d 797, 835 N.Y.S.2d 354 (2d Dept. 2007).

At bar, the restraining notices served by plaintiff immediately after the judgment was filed reflect the unadjusted sum of $12,326530.82, although at this juncture, plaintiff has conceded that the alleged deficiency is allegedly some $1,408,579.13. *See* Plaintiff's Meyer

December 17, 2012 Affidavit in Opposition ¶¶ 7-10. With these principles in mind, and upon the exercise of its broad discretion, the Court agrees that the previously served restraining notices should be vacated with leave to re-serve notices which accurately reflect the judgment deficiency currently alleged to be due and owing. *Cf. Costello v. Casale*, *supra*.

However, that branch of plaintiff's motion (Seq. No. 02) which is to compel defendant to supply responses to the July 3, 2012 information subpoena should be **GRANTED**. The defendant shall serve responses to the subpoena within twenty (20) days of the date of this Order.

The Court has considered the parties' remaining contentions and concludes that they do not support an award of relief in excess of that granted above.

In summation, plaintiff's motion (Seq. No. 02), pursuant to CPLR § 2308(b), for an order directing the defendant judgment debtor to comply with a stated information subpoena dated July, 3, 2012 is hereby **GRANTED.**

Those branches of defendant's motion (Seq. No. 03), pursuant to CPLR § 2221(d), for an order (1) granting re-argument and/or renewal of his prior motion, which motion was denied by Order of this Court dated September 12, 2012, and (2) upon re-argument or renewal, vacating that Order and granting defendant's prior motion, by (i) setting aside a prior judgment of confession dated July 3, 2012; and (ii) directing restitution from the plaintiff with respect to sums generated upon the plaintiff's prior sale of certain collateral belonging to the defendant are hereby **DENIED**.

Those branches of defendant's motion (Seq. No. 03) for an order staying, limiting and/or modifying any and all enforcement proceedings so as to reflect a stated, reduced amount owed under the above-referenced Judgment of Confession and/or alternatively, regulating plaintiff's right to enforce judgment as against the defendant's assets to a judicially created and referee-supervised stream of stated payments are hereby **GRANTED to the extent that** the previously served restraining notices should be vacated with leave to re-serve notices which accurately reflect the judgment deficiency currently alleged to be due and owing.

Defendant's cross-motion (Seq. No. 04), pursuant to Article 50 of the CPLR, for an order modifying and reducing the foregoing judgment obtained by plaintiff against him and, pursuant to CPLR § 5222, for an order vacating and/or amending plaintiff's restraining notices and a July 3, 2012 information subpoena is hereby **GRANTED to the extent that** the previously served restraining notices should be vacated with leave to re-serve notices which accurately reflect the judgment deficiency currently alleged to be due and owing.

Defendant's motion (Seq. No. 05) for an order permitting him to submit an affirmation as a supplement to his underlying motion for, *inter alia*, re-argument and renewal and staying the issuance of this Court's decision with respect to defendant's motion for re-argument and renewal pending review of the above-referenced affirmation was **GRANTED** and said documents were considered in the rendering of this Decision and Order.

This constitutes the Decision and Order of this Court.

ENTER:

**DENISE L. SHER, A.J.S.C.**
**XXX**

Dated: Mineola, New York
February 20, 2013