

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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NATIONAL RIFLE ASSOCIATION OF AMERICA

Plaintiff,

- v -

OLIVER NORTH,

Defendant.

-----X

INDEX NO. 653577/2019

MOTION DATE 10/10/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to DISMISS

Upon the foregoing documents, it is

ORDERED that Plaintiff's Motion to Dismiss is granted in part and denied in part for the reasons set forth on the record following oral argument on October 10, 2019 and in accordance with the attached Final Judgment; it is further

ORDERED that Plaintiffs are directed to upload a copy of the October 10, 2019 transcript to NYSCEF upon receipt.

This constitutes the decision and order of the Court.

10/22/19 DATE

Signature of Joel M. Cohen, J.S.C.

Form with checkboxes for CASE DISPOSED, GRANTED, DENIED, NON-FINAL DISPOSITION, GRANTED IN PART, OTHER, SETTLE ORDER, SUBMIT ORDER, INCLUDES TRANSFER/REASSIGN, FIDUCIARY APPOINTMENT, REFERENCE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

.....X
NATIONAL RIFLE ASSOCIATION OF AMERICA,

Plaintiff,

-against-

OLIVER NORTH,

Defendant.
.....X

Index # 653577/2019

FINAL JUDGMENT

WHEREAS, on June 19, 2019, Plaintiff the National Rifle Association of America (the “NRA”) filed this action seeking a judgment declaring that Lt. Col. Oliver North (“Defendant”) has no right to advancement or indemnification of legal fees or expenses that he may incur in complying with (i) two subpoenas from the NRA in *NRA v. Ackerman McQueen, Inc. and Mercury Group, Inc.*, Case No. CL19002067 (the “Ackerman Litigation”), or (ii) a request for information from the United States Senate Finance Committee dated May 3, 2019. (Dkt No. 2.) In the Complaint, the NRA also sought an order granting the NRA any and all relief that the Court deems just and proper. (Dkt No. 2.)

WHEREAS, Defendant filed a Corrected Answer and Counterclaim (Dkt No. 27) that asserted a number of affirmative defenses and asserted a counterclaim seeking a judgment declaring that he was entitled to (i) indemnification for the reasonable legal fees and costs incurred in connection with defending himself in this lawsuit, (ii) reasonable legal fees and costs incurred in connection with having to enforce his alleged indemnification rights under the

NRA's Bylaws, including through the Corrected Counterclaim, (iii) indemnification requested in letters dated May 6, June 6, and July 1, 2019, which included requests for (a) indemnification and advancement of legal fees and expenses that he incurs in connection with responding to the Senate Finance Committee's request and any other inquiries that he may receive from May 6, 2019 forward from law enforcement or investigative bodies regarding the NRA; (b) indemnification regarding two subpoenas from the NRA in connection with the Ackerman Litigation; and (c) indemnification for this lawsuit. In support of the relief he sought, North alleged that he has the right to indemnification in these matters under Article IV Section 4 of the NRA's Bylaws. North did not assert any claims for indemnification under New York law, any agreement, the NRA's Certificate of Incorporation, or under common law.

On August 21, 2019, the NRA filed a motion for a judgment dismissing North's counterclaim and affirmative defenses and declaring that North has no right to indemnification for any of the matters for which he seeks it (the "Motion"). (Dkt No. 30.) Specifically, the NRA sought that the Court (i) pursuant to CPLR 3211(a)(7) enter a judgment dismissing the Corrected Counterclaim in its entirety with prejudice because it fails to state a cause of action; (ii) pursuant to CPLR 3211(b) enter a judgment dismissing North's Affirmative Defenses; (iii) pursuant to CPLR 3001 issue a declaration that North is not entitled to indemnification for any of the matters listed in his Corrected Counterclaim; and (iv) award any other relief that the Court deems just and proper. (Dkt No. 30.)

Having considered the pleadings, the parties' submissions in connection with the Motion (including Dkt Nos. 30-49), and the arguments presented at the October 10, 2019 hearing in this action, for the reasons set forth in the Court's Opinion read into the record at the October 10,

2019 hearing, pursuant to CPLR 3001 and 5011, the Court hereby enters a **FINAL JUDGMENT IN THE NRA'S FAVOR** and **ORDERS AND DECLARES THAT:**

1. Pursuant to CPLR 3001 and 3211(a)(7), North's request for a declaration that the NRA Bylaws grant him a right to indemnification for legal fees or costs in connection to (i) litigating this case, (ii) responding to subpoenas in the Ackerman Litigation, or (iii) responding to the request for information from the Senate Finance Committee are **DISMISSED ON THE MERITS AND WITH PREJUDICE**;

2. Pursuant to CPLR 3001, the NRA's requests for declaration that North has no right to advancement or indemnification in the same three matters is **GRANTED**;

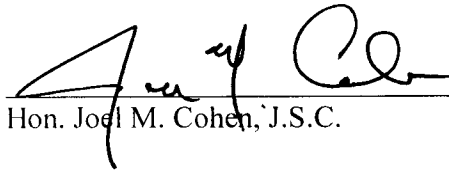
3. Pursuant to CPLR 3211(a)(7), North's request for declaratory relief with respect to indemnification for unidentified future matters is **DISMISSED WITHOUT PREJUDICE AS NOT RIPE** because the rights and obligations of the parties with respect to any future action or proceeding will turn on the facts and circumstances on any such future action or proceeding;

4. The NRA's request to dismiss North's Affirmative Defenses pursuant to Rule 3211(b) is **DENIED AS MOOT**;

5. The clerk is hereby directed pursuant to CPLR 5016 to enter this final judgment upon this decision of the Court by filing it after signing it.

IT IS SO ORDERED.

DATED: October 22, 2019



Hon. Joel M. Cohen, J.S.C.