

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

MUFUG UNION BANK, N.A. (F/K/A UNION BANK, N.A.), Plaintiff, - v - AXOS BANK (F/K/A BANK OF INTERNET USA), AXOS FIDUCIARY SERVICES, AXOS NEVADA, LLC, EPIQ SYSTEMS, INC., and SELLER SUB, LLC, Defendants. INDEX NO. 652474/2019 MOTION DATE MOTION SEQ. NO. 005 DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

In accordance with the decision on the record on June 4, 2020 following extensive oral argument by counsel for all parties, the motion by plaintiff MUFUG Union Bank, N.A., for partial summary judgment with respect to the First, Third and Sixth Causes of Action is granted in part and denied in part as follows. The motion is granted in connection with the First Cause of Action only for breach of contract against defendant Epiq Systems, Inc. to the extent of finding that Epiq's transfer and assignment of its chapter 7 bankruptcy trustee software business to its wholly-owned subsidiary, Seller Sub, and Epiq's subsequent sale of Seller Sub to Axos Nevada, both are breaches of the Joint Services Agreement between Union Bank and Epiq, effective as of October 1, 2012, as amended, and the motion is otherwise denied.

Dated: June 4, 2020

Handwritten signature of Barry R. Ostrager, J.S.C.

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER APPLICATION: SETTLE ORDER SUBMIT ORDER CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE