

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

**PRESENT: DEBRA A. JAMES**

**PART 59**

STEVEN R. LEVENTHAL as representative of a class consisting of himself and other similarly situated,  
 Plaintiff,

Index No.: 100530/2011

**STATUS CONFERENCE ORDER**

- v -

BAYSIDE CEMETERY, CONGREGATION SHAARE ZEDEK and COMMUNITY ASSOCIATION FOR JEWISH AT RISK CEMETERIES,  
 Defendants.

Upon a status conference at which counsel for all parties in the above-entitled action appeared before this court on August 12, 2016, and this court having (i) reviewed the subpoena duces tecum served on Ethan Klingsberg, Esq., of Cleary, Gottlieb, Steen & Hamilton LLP, attorneys for defendant Congregation Shaare Zedek, which seeks the production of 503 documents to which defendants assert an attorney-client privilege, and considered and dismissed plaintiff's argument that the communications between defendant Congregation Shaare Zedek and its counsel are subject to the crime fraud exception, upon the reasoning that plaintiff's evidence does not establish probable cause to believe that (1) a crime or fraud has been committed, and (2) that the specific attorney-client communications at issue were in furtherance of such crime or fraud (Nowlin v People, 1 AD3d 172, 173 [1<sup>st</sup> Dept 2003]), such evidence being comprised of (a) the same allegations of fraud made by plaintiff that were previously dismissed by order dated January 9, 2012 of this court, which order was affirmed in Lucker v Bayside Cemetery, 114 AD3d 162 (1<sup>st</sup> Dept 2013) and (b) the

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

Check One:       FINAL DISPOSITION       NON-FINAL DISPOSITION  
 Check if appropriate:       DO NOT POST       REFERENCE

omission of any explanation as to how such communications made decades after the alleged fraud were in furtherance thereof, and (ii) reviewed the plaintiff's second document request dated February 3, 2016 that seeks documents pertaining to any proposed sale of the real estate owned by defendant Congregation Shaare Zedek, and determined that such documents are immaterial to the only remaining claim in this case, i.e., breach of contract, in particular the claim of plaintiff that defendants failed to abide by the terms of the charitable trust established by plaintiff in 1985 for the perpetual care of three graves at Bayside Cemetery, it is hereby

ORDERED that the documents, as attorney-client communications, enumerated in the privilege log dated April 9, 2015, are not subject to production; and it is further

ORDERED that the objection of defendants to the production of documents demanded in plaintiff's second request for documents served on February 3, 2016 is upheld; and it is further

ORDERED that the parties shall confer and reschedule the examinations before trial upon completion of the remaining discovery and inspection; and it is further

ORDERED that the parties are directed to appear in IAS Part 59, 60 Centre Street, Room 331, for a status conference on November 1, 2016, 11 AM.

This is the order of the court.

**Dated:** August 19, 2016

**ENTER:**

Debra A. James  
J.S.C.  
**DEBRA A. JAMES**