

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN R. LUCKER, ELIZABETH A. :
LUCKER, NANCY L. ROUSSEAU, :
Individually and On Behalf of All Others :
Similarly Situated, :

Plaintiffs, :

-against- :

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :

Defendants. :

No. 07 Civ. 3823 (RJD) (JMA)

-----X
LYNN COHEN Individually and On :
Behalf of All Others Similarly Situated, :

Plaintiff, :

-against- :

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :

Defendants. :

No. 08 Civ. 3555 (RJD) (JMA)

-----X
FRAN GOLDSTEIN, Individually and On :
Behalf of All Others Similarly Situated, :

Plaintiff, :

-against- :

BAYSIDE CEMETERY and :
CONGREGATION SHAARE ZEDEK, :

Defendants. :
-----X

No. 08 Civ. 3923 (RJD) (JMA)

DECLARATION OF JOHN R. LUCKER

I, John R. Lucker, hereby declare as follows:

1. I am a named Plaintiff in this action and respectfully submit this Declaration in further support of the Plaintiffs' Motion For Class Certification Pursuant to Rule 23 Of the Federal Rules OF Civil Procedure.

2. Prior to commencing this lawsuit, I attended a meeting on February 28, 2007 at the New York State Attorney General's Office concerning Bayside Cemetery. Attendees of the meeting included: (i) Robert Piggott who I understood was Bureau Chief of the Charities Bureau of the New York State Attorney General's Office; (ii) Ethan Klingsberg of Cleary Gottlieb Stein & Hamilton LLP who I understood was a member of Defendant Congregation Shaare Zedek and the head of the Bayside Cemetery Committee; (iii) my attorney, Michael M. Buchman; and (iv) a gentleman who was an Assistant Attorney General in the Charities Bureau whose name I believe was Robert Molic.

3. Shortly before the meeting commenced, Mr. Piggott gave Mr. Buchman and I access to a manila folder which contained documents concerning Congregation Shaare Zedek and Bayside Cemetery. Although we were told by Messrs. Piggott and Klingsberg that we would not be allowed to copy any documents, we were allowed to take notes of our document review. Attached as Exhibit A hereto is a copy of my handwritten notes.

4. One of the documents we reviewed was highly relevant and became a focal point for discussion during the meeting. Based upon my notes and recollection, the document was a letter dated January 29, 2004 submitted on behalf of Congregation Shaare Zedek wherein it represented to the New York State Attorney General's Office in relevant part as follows: "[I]n general, there seems to have been a general comingling of assets between the synagogue and the cemetery before 1999." Later in the document it also stated "From 1985 through 1999, there was

approx[imately] \$570,000 of invest[ment] income of which approx[imately] \$351,000 was allocated to the cemetery and \$219,000 was allocated to the synagogue.”

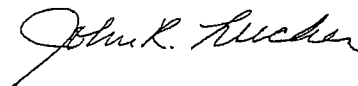
5. Even to a lay person like me, this admission unequivocally establishes liability *per se* as to Plaintiffs’ breach of contract, breach of fiduciary duty, consumer fraud, conversion and unjust enrichment claims.

6. A consistent statement by opposing counsel to the *Daily News* also bespeaks liability *per se*. See Exhibit B.

7. Should the Court have any doubts about Defendant Congregation Shaare Zedek’s admission contained in the document identified in ¶ 4 herein, I respectfully suggest that the Court urge James Rogers, Esq., of the New York State Attorney General’s Office, who has appeared in this matter, to produce this document *in camera* for the Court’s review in connection with this motion. Otherwise, I respectfully request that the Court draw all reasonable merits inferences on this motion in Plaintiffs’ favor since they have not been afforded full discovery in this litigation.

8. I am currently on vacation and will file the contents herein in the form of an Affidavit upon my return.

This Declaration has been executed this 24th day of July, 2009 under penalties of perjury pursuant to the laws of the United States.



John R. Lucker

Exhibit A

2/28/07

From 1985-1999 - cash + investments held by
the Synagogue + the cemetery ~~report~~
were held in MULTIPLE acct + in MULT.
INVESTMENTS

Re - Jan 29 2004 letter - Exhibit C

"In General, there seems to have been
a general comingling of assets between
the Synagogue + the cemetery before
1999"

"From 1985 through 1999, there was approx.
\$570,000 of invest income of which approx.
\$351,000 was allocated to the cemetery +
\$219,000 was allocated to the Synagogue"

↳ So 61.2% of \$ → Cemetery

WOL Fenster Lot #8

United Burial Society - Bernard Bernstein

718-507-1524

Chechanover Joel Fried 516-796-1809

Howard Free 212-529-7782

- Validity of ownership in China
- Allocation of \$ seems to indicate a disproportionate share to Cemetery
- no indication of reputation of names
- Klumpke has ties to you
- Studies at cemetery indicate far more than then records show.

BOB LOMBARDI - can I borrow BT's?

\$400K of cemetery \$ (+) \$20K of diesel loads.

Piggott would entertain an analysis of how much \$ to cleanup & to maintain forever.

Can we create an analysis of how much PC \$ has would have been collected.

Send letter for SZ not to remove PC + SA stocks - what does SA mean?

Sand letter regarding being at Alps

Q

Clay, Gottlieb, Steven Hamilton

Letter 1/29/04 to Marlene Turner - AG's
from Ehren Kresky ^{of NY}

- regarding GERALD HASS (Pres of Jewish
Cemetery Owners Assoc)

& repr of the UJA - NY Federation

Jewish Comm. Relations Council
Clay Gottlieb and
SZ.

cc: Rabbi Mark Auckorn

Marcia Eisenberg Esq. Jewish Comm. Rel.
Council

Max Gitter, Clay Gott.

Charles Golderman - UJA - NY F.

Gerald Hass

Gary Katz - Delaware Trust Capital

Jacqueline Laurent, Clay G.

Michael Knepp MBIA Inc.

Michael Miller Jewish Comm. Relations

Robert Miller - Committee on

Rabbi Michael Palley - UJA NY Fed.

David Pollock - Jewish Comm. Rel. Council

JOEL SHALMAN - BLACK ROCK INC.

ELLIOT SPITZER

Daniel Weller - SZ President

David Yovan - Clay G.

RESNICK + NEUMAN LLP - CPA (1985-2002)

Exhibit B

Copyright 2007 Daily News, L.P.
DAILY NEWS
NEW YORK'S HOMETOWN NEWSPAPER
Daily News (New York)

October 4, 2007 Thursday
SPORTS FINAL EDITION

SECTION: SUBURBAN; Pg. 1

LENGTH: 359 words

HEADLINE: FINAL RESTING PLACE IS A DISGRACE, SUIT SAYS

BYLINE: BY JOHN MARZULLI DAILY NEWS STAFF WRITER

BODY:

JOHN LUCKER wept when he recently visited his grandparents' graves at Bayside Cemetery in Ozone Park, but the sadness and tears were provoked by the chest-high weeds obscuring the tombstone.

"It's like entering a forest," said Lucker, 46, of Connecticut. "The current condition of the Bayside Cemetery is a desecration of the memories and remains of the approximately 35,000 Jews buried there."

Lucker and his two sisters have filed a lawsuit in Brooklyn Federal Court accusing the cemetery operator - Congregation Shaare Zedek on Manhattan's upper West Side - of breach of contract for failing to maintain perpetual care of the plots. The suit seeks an accounting of cemetery finances and monetary damages.

But the 19-page complaint also contains serious allegations that Shaare Zedek "raided" accounts intended for the perpetual care of the cemetery to pay for repairs to the congregation's W. 93rd St. synagogue.

"It appears these monies were improperly taken . . . thereby using the money for the living and not the deceased as initially promised, represented and intended," the complaint alleges.

The cemetery land, on Pitkin Ave., was bought in 1842 by Shaare Zedek when the congregation was on the lower East Side. The congregation sold most of the plots to individuals and burial societies.

Rabbi Julia Andelman of Shaare Zedek acknowledges the cemetery conditions are "very distressing," adding that many of the burial societies have disappeared or stopped contributing to the upkeep of the grounds.

Andelman said Shaare Zedek has accepted its "communal responsibility" to maintain the plots of earlier generations - no current member of the congregation has a plot there - but cannot afford to go it alone. She said it is setting up a nonprofit group to raise funds for the cleanup and maintenance.

"It's extremely counterproductive, what he's doing," Andelman said of the suit.

As to the allegations about misappropriated funds, Shaare Zedek's attorney Steven Axinn said some cemetery funds were borrowed from a **nonrestricted account** to repair the synagogue roof, which is entirely proper and legal. The money was repaid, he said. jmarzulli@nydailynews.com

GRAPHIC: Plots inside Bayside Cemetery (entrance at r.) are overrun with weeds, and family with relatives buried there is suing the owners. Photos by Todd Waisel/Daily News

LOAD-DATE: October 4, 2007