

Michael M. Buchman


September 25, 2009

VIA ELECTRONIC FILING AND OVERNIGHT DELIVERY

The Honorable Raymond J. Dearie
United States District Court Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Luckers, Cohen and Goldstein. v. Bayside Cemetery and Congregation Shaare Zedek*, Civil Action Nos. 07 Civ. 3823, 08 Civ. 3555, 08 Civ. 3923(RJD)(JMA)

Dear Chief Judge Dearie:

I represent Plaintiffs in the above-referenced actions and respectfully submit this reply to Defendants' opposition to Plaintiffs' objection to Magistrate Judge Azrack's September 21, 2009 Minute Entry staying this case *sine die*.

At the June 29, 2009 motion to dismiss hearing, Your Honor clearly and unequivocally instructed the parties to proceed with class certification briefing if no decision was rendered on the motion to dismiss within three weeks.

It was quite clear from this directive that, after three weeks elapsed, the parties were to proceed with the assumption that the Court has jurisdiction over this matter and that all claims survived the motion to dismiss or would be addressed on a motion for class certification.

Indeed, Plaintiffs argued in the motion to dismiss opposition papers that Defendants' arguments were more appropriately made during the class certification phase. Defendants now concede this point by claiming that briefing these issues *again* is wasteful and duplicative. *See* Russell M. Steinthal Letter dated Sept. 24, 2009, p 2. Clearly, Defendants can effectively and efficiently incorporate by reference any prior arguments from the motion to dismiss briefing they wish to assert during the class certification phase without engaging in a waste of their purported resources. Their argument is nothing more than a thinly veiled attempt to impose more unwarranted delay in this matter.

In Plaintiffs' initial letter, we clearly and convincingly established that Magistrate Judge Azrack's decision was entirely inconsistent with Your Honor's instructions and commitment to Plaintiffs. She made absolutely no factual findings, provided virtually no reasoning for her decision and in approximately two minutes dispensed with the motion. Under these unique

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circumstances, a decision more clearly erroneous and entirely inconsistent with Your Honor's directive at the motion to dismiss hearing and commitment to Plaintiffs cannot be imagined.

Plaintiffs respectfully submit that they have, for over two years, attempted to resolve this dispute with Defendants to no avail. They have made recommendations to narrow the issues and streamline this litigation which Defendants have rejected in an effort to frustrate and impede progress. In light of the unlawful conduct alleged and admitted by Defendants in this case, Plaintiffs respectfully submit there is absolutely no justification for delay.

In closing, Defendants suggest Plaintiffs have not demonstrated any prejudice from a *third stay*. There is considerable prejudice each day Defendants are allowed to ignore their fiduciary duties to my clients, especially Plaintiff Lynn Cohen. Ms. Cohen, who is in her mid 70s, intends to be buried in a family perpetual care plot at Bayside Cemetery. Notably, she is precisely the type of Plaintiff who Defendants suggest possesses standing in this matter. It is Ms. Cohen's strongest desire to seek a successful resolution of this matter during her lifetime so that she may eternally rest in peace at Bayside Cemetery. Imposing further delay will increase the likelihood that she will not have her day in court nor see the day when this cemetery is restored and maintained in accordance with Defendants' perpetual care contractual obligations. This is something which weighs heavy on Ms. Cohen's mind as she almost recently lost her life in a car accident while in transit to the motion to dismiss hearing in this case. Her car was totaled and she is fortunate to be alive.

Accordingly, Ms. Cohen and the other Plaintiffs respectfully request that this Court reverse Magistrate Judge Azrack's September 21, 2009 Minute Entry and place this case on an expedited track so that the nine months lost during the voluntary administrative suspensions suggested by Your Honor can be timely restored.

Respectfully submitted,



Michael M. Buchman

c: Stephen M. Axinn (Counsel for Defendant Congregation Shaare Zedek)
Magistrate Judge Joan Azrack