

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
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)

AFFIDAVIT OF JOHN R. LUCKER

I, John R. Lucker, hereby state under oath as follows:

1. I am one of the named Plaintiffs in the above-referenced actions. In my complaint, I allege that “my grandparents purchased perpetual care from a Defendant through the Chebra Shebath Achim [Burial] Society.” Complaint ¶ 19.
2. Despite my repeated requests for Bayside Cemetery perpetual care records to substantiate this allegation, Defendant Congregation Shaare Zedek refused to produce such documents to me in violation of its fiduciary duty to me as the living, legal representative of my grandmother’s (Ruth Lucker) estate.
3. Lacking the requested documents and as part of my opposition to Defendant’s request for leave to file a motion to dismiss, in October of 2007 I provided opposing counsel and the Court with a copy of a January 4, 1973 letter from Nathan Lipton to my grandmother. In this letter, Mr. Lipton, on behalf of the Chebra Shebath Achim Burial Society, acknowledged that it purchased perpetual care for my family members’ plots at Bayside Cemetery by stating “[t]hat is why we purchased perpetual care of the cemetery.” See Exhibit A.
4. This document lays bare that perpetual care was purchased for my family members’ plots, including my grandmother Ruth Lucker. Defendant Congregation Shaare Zedek has consistently claimed otherwise. In its motion to dismiss, it sought dismissal under the Statute of Frauds on the ground no perpetual care contract governed the Lucker plots. Def. Mem. Of Law p., 12, n. 5.; Def. Mem. 17-18.

5. Defendant Congregation Shaare Zedek was recently ordered by Magistrate Judge Azrack to produce documents in this case. Defendant's document production consisted of less than 1000 pages.
6. I have reviewed the attached document which I understand was recently produced by Defendant Congregation Shaare Zedek as part of its production in this litigation. *See* Exhibit B.
7. Tellingly, Exhibit B is entitled Mausoleums, Plots and Graves Under Perpetual Care at Bayside Cemetery. The first reference at the top of the page on SZ-EDNY-000042 is to "Che[b]ra Shebath Ac[h]im [Burial] Society." The amount paid was \$3000.00.
8. The factual record in this case makes patently clear that Defendant Congregation Shaare Zedek and/or Bayside Cemetery are *contractually obligated* to provide my grandmother's plot, other relatives buried within this Society's cemetery area and others listed on this document with perpetual care services. *See* Affidavit of Lynn Cohen dated May 19, 2009.
9. Given the small size of Defendant's document production combined with Exhibit A which was produced by Plaintiff *a year before* Defendant filed its motion, Congregation Shaare Zedek knew quite well that the Chebra Shebath Achim Society purchased perpetual care and that Ruth Lucker was buried within this Burial Society's cemetery area. Defendant's refusal to turn over Exhibit B while arguing that dismissal was appropriate under the Statute of Frauds because there was *no* contract is *troubling*. This is especially true

when one considers Congregation Shaare Zedek owes a fiduciary duty to Plaintiffs and to the Class.

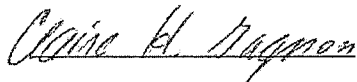
10. Thus, it appears that Defendants' deception, as alleged in the Complaint, is continuing in nature.

11. Accordingly, Defendant cannot properly contend that I lack standing to pursue this action on the ground there is *no* contract to provide perpetual care services for my grandmother's grave and the graves of other relatives, including my grandfather Harry Lucker who is buried next to my grandmother.

This Affidavit has been executed this 21st day of May, 2009 under penalties of perjury pursuant to the laws of the United States.


John R. Lucker

Sworn to before me this 21st day of May, 2009



Notary Public My Commission Expires 7/31/11

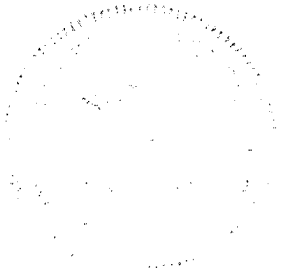


EXHIBIT A

January 4, 1973

Paradise Cemetery

Dear Mrs. Lucker:

Paradise Cemetery

This is in reply to your letter regarding the Chebra Shebath Achim.

Yes, you are still a member on the society, and you still have your grave reserved next to your husband. I hope it will be many years yet before you use it.

The reason for making the distribution was because if this was not done while the members are alive to share it the money would eventually go to the State.

The Chebra is still alive, and will continue so until the last member passes away. After that, who knows what will be. That is why we purchased perpetual care of the cemetery.



Let me wish you a very Happy and Healthy New Year to you and your family.

With best regards, I remain

Sincerely,

Nathan Lipton
NATHAN LIPTON
PARADISE CEMETERY
79th St. Manhattan

Nathan Lipton
467 Central Park West
New York, N. Y. 10025

Handwritten scribbles

EXHIBIT B

MAUSOLEUMS, PLOTS AND GRAVES UNDER PERPETUAL CARE

Aaron Plot # 18	\$ 750.00
(Aaron Plot # 36 and Mausoleum	
Aaron Plot # 51 and graves	2000.00
Abalov, graves Celia & David	1000.00
Abraham graves Amelia, Isaac & Julius	1000.00
Abrahams, A. B.	200.00
Abrahams, M	100.00
Abrahams, Yetta	500.00
Ackerman, Amelia	350.00
Adler, Isaac & Fannie	700.00
Alexander, Adolph	350.00
Alexander Plot	1000.00
Alter-Zion Plot	1500.00
Altus, Isidore & Sarah	700.00
Amber, Harold	400.00
Aron plot # 198	4500.00
Appleboom, Freida & George	1000.00
Ascher, Bertha, Louis, Samuel, Annie & Sidney	2500.00
Anshum Plot # 143	1500.00
Bach Plot # 25 Emanuel Bach grave	300.00
- Barned Plot # 18	1000.00
- Barnett, Sarah, Abraham, Leah & Hannah	2000.00
Baruth Plot	4000.00
Berman, Dora	400.00
Beinzeicht, Abraham, Hannah & Jacob	1050.00
Beutler Plot # 27	2000.00
Bialis, Eva	400.00
Bialis, Ida & Bialistosky Morris	700.00
Bienenfeld, Rosabelle	350.00
Bleicher, Gladys	250.00
- Block Plot and graves Louia, Marth a, & child Sarah	4000.00
Block, Millie, Jennie & Isaac	1050.00
Bloom, Max	500.00
Bloomberg Plot # 94	1500.00
Blum, Fannie & Res.	350.00
Blumenson, Fanny & Henry J	1000.00
Blumenthal Plot	200.00
Blumstein Plot & Mausoleum	5000.00
Boley & Jacobs Plot 159	300.00
Bornstein, Eva & William	1000.00
Boroschek Plot # 118	2000.00
Borowsy Plots	700.00
Erickman, Ida & Herman	350.00
Bromberger, Max	350.00
Est. Aaron J. rown	1500.00
Burmeste, Sam & Matilda	700.00
Butler, Charles	500.00
Bytler-Stitch Plots	700.00
- Captain Plot	1500.00
Caskel Plot	500.00
Casper-Arendt Plot # 13 and 8 graves	3000.00

\$ 63,200.00

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Chevra Shebath Acjim Society	\$ 3000.00
Chuck Plot # 64 graves Esther & Marcus Levy	500.00
Cinnamon, Yetta	350.00
Cla, an, Leoni	500.00
Cohn, Simon	350.00
Cohen, Abraham, Rachel & Jacob	1050.00
Cohen, Blanche, William & Cohen plot	900.00
Cohen, Charles & Annie	700.00
Cohen, Fanny * Isaac	700.00
Cohen, Max & Sarah	700.00
Cohen, Moe & Sol	700.00
Cohen Plot # 41 5 graves	2000.00
Cohen Plot # 43 7 graves	2500.00
Cohen-Coleman Plot and 8 graves	2000.00
Cohen- Jacob Plot #65 graves Leah & K ashill	500.00
Cohn, Harry & Anna	1000.00
Cohn Plot # 42	930.00
Cohen, Revecca & Isidore	700.00
Cohn Mausoleum	2500.00
Cohn, Morris	250.00
cöwen Plot	2000.00
Croner, Amelia & Abraham	700.00
Curzan Plo # 47 and grave Meyer Curzan	2500.00
- Davis, Bertha Moss, Abraham & Joseph	1000.00
Davis, Frances	350.00
Davis M Plot	500.00
Davis Plot & graves Sadie Davis & Vernard Marcuss	2500.00
Davis, Rebecca & Joseph	700.00
Davis - Jessie & Louis	700.00
Deutsch, Bernard	350.00
Doblin Plot # 30	2000.00
Dobrer, Jacob & Sophie	700.00
- Dryer Plot 7 graves	4200.00
Edelman, Lena X, Harry & Minnie, Joseph	1600.00
Elias, Jack	350.00
Engel Plot # 28	2500.00
Epstein Plot	2000.00
Fano, Guili G., & Hannah	1000.00
Feder Plot # 34	250.00
Feinberg, Minna & Maier	500.00
Fine, Barnett & Ethel	1000.00
Finkelstein, Bessie	350.00
Frank, David	350.00
Frankel Plot # 14	2000.00
Feinberg, Harris, Hannah, Tillie, Abraham & twin graves	2500.00
Fishkin, Ida, Solomon & Kate Cohen	1500.00
Freizer, Philip	
Grohman, Hyman & Hannah,	
Cohen, Jeanette & Harris Cohen	2000.00
French Society	2000.00
Friedlander Plot	1000.00
Freeman, Julia & Benjamin, xxxx	800.00
Freudenthat Plot # 157 & grave Max Freudenthat	7500.00

\$ 65,230.00

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Freund, Ira	\$ 350.00
Freund, Miriam	350.00
Fru-Nyberg Plot and Mausoleum	2000.00
Furth, Frances & Rebecca	700.00
Gallin, Louis	500.00
Gehr, Pauline	350.00
Geist Plot and Mausoleum & 4 graves	5000.00
Geozler Plot # 14	1000.00
Gellwrt Plot	1500.00
Gerard, Edward & Esther	1000.00
Gerschel Plot grave Berth a Gerschel	300.00
Gluck Plot # 46	2500.00
Gluck, Fannie & Elias	700.00
Goetz, Pearl	350.00
Goldberg, Harry M & Jessie J.	500.00
Goldberg, Israel, Bessie & Louis	1050.00
- Goldman, Minnie	600.00
Goldstein, Samuel	1000.00
Goldstein Plot # 82	1200.00 in bo
Goodman, Max	500.00
Graf, Yetta	350.00
Graw, HerMAN & Sophie	1000.00
Greenberg, athan	225.00
- Grohman, Ja ob & Mausice	1000.00
Gross Plot # 124	1750.00
Guggenheimer Plot and Mausoleum	3000.00
Harris, Samuel, Rose & Leo	900.00
Harris-Jalkut Plot	2000.00
- Harris, Jacob & Rebecca	1200.00
Harris, Leopold	350.00
Harris, Meyer, Mollie & Robert	700.00
Harris-Mosses Plot # 12	1500.00
Hartfield Plot and 5 graves	1000.00
Heilbrum Plot # 39	1250.00
	500.00
- Heller, Ephraim & Eva	1200.00
Henryson Plot	1000.00
Hertz, Herman N in Leow plot # 52	500000 - 500
Herzfeld Plot graves Gustave S. ertha & Louis	2500.00
Herzog, Plot	1322.50
Hessberg Plot	1500.00
Hessin, Aaron, Anna, Eleanor, Rebecca & Philip	1500.00
Heyman Plot 213	350.00
Hines, Daniel & Jennie	1000.00
Hirschfeld Plot	2500.00
Gross Plot 124 graves Isaac, Minnie & Isidore	700.00
- Est, Spphia Jacobs Plot 106	3118.72
Hacobs Plot Est. of M. Jacobs	2000.00
Jacobs Mausoleum # 107	3500.00
Jarrett, Lena & William	700.00
Joseph, Bertha, Simon, Harry & Rachel	1000.00
Josephson, Fay	350.00
Jacobson, Isidore & Deborah	1000.00
Kahn, Bertha & Leo	700.00
Kahn, Hanniietta & Newmanm	700.00
Kalkulator, Regina & Samuel	700.00
- Kamsler, Annie & Samuel	1000.00
Kanter, Solomon, Pasha Rachel	700.00

967,716.22

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Kantorowicz 3 graves	\$ 1000.00
Kaplan, Philip & Sarah	700.00
Katzky plot # 66	250.00
Kaufman, Samuel, Lewis, Blanche Augusta & Milton	1700.00
Kirschbrown, Isidore & Ida	700.00
Klein, Sussman, Lena & Yetta	1050.00
Klein Plot	1000.00
Kohn H rold Storsch	350.00
Kopelman, Essie	600.00
Korn Plot and graves William & Fannie Korn	4400.00
Korn Mausoleum # 180-186	4000.00
Korn-Sink Plot 67	1400.00
Koszyn, Louis	4000.00 400
Krakower, Arthur	250.00
Krause Plot 12 and vault	2500.00
Kramko plot	2000.00
Krontha, Emma & Charles	700.00
Krooks Plot # 239 Fannie Krooks grave	200.00
Ksulewitch Vault	4500.00
Kupfer, Pauline	500.00
Lasher, Beckie, Abraham	
Weinstein, Sarah & Herman	1700.00
Lasker, Samuel George	350.00
Leipziger Plot # 41 & 6 graves	1000.00
Lenchitsky, Millel & Pearl	900.00
Lesle Society	3000.00
Lesser, Lazarus	350.00
Leventhal, Ethel, Benjamin & Emma Stoloff	1200.00
Levine, Elaine	100.00
Levinson 3 grave Plot	1500.00
Levy, Nathan, & Bella	1000.00
Levy, Barnett	350.00
Levy, Jonas & Sarah, Ross & Louis	1250.00
Levy, Rosa	300.00
Leichtag, Bertha & Isaac	
Marks, Lillien & Louis	2000.00
Levy, Alice, Raphael & Jeanette	500.00
Levy Plot 13A	1200.00
Levy Mausoleum and graves Bella & Israel Levy	5000.00
Lewis Plot	1050.00
Lewkowitz 4 graves	1000.00
Levy, Abraham & Rosalie and Percy Dora	1800.00
Lichtenstein, Jermah, Delia	
Davis, Solomon, Lilly & Spph ie	1250.00
Lillenstein Plot	3200.00
Lippman, Hattie & David	500.00
Lipschitz, Betsy, Isaac	
Kornicker, Gerson & Jennie	1400.00
Lipschitz, Solomon	350.00
Lipsius, Samuel & Mae	700.00
Est. Jack Lipman	1000.00
Lipton, Nathan	500.00
Lisner, Arnold	150.00
Lithauer Plot # 151	
Graves Hannah Lithauer & Florentine Leipzig & Cedar	2000.00
Litthauer G. Plot and 3 graves	600.00
Loeb Plot 24	2500.00
Loeffler, Frances & Charles	700.00

\$ 68,600.00

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Lowenstein, Bernard & Fanny	\$ 500.00
Loewenstein, David & Gretchen	1000.00
Lowenstein Plot	2000.00
Marks, Joseph	350.00
Marks Mausoleum	5000.00
Marks Plot # 208 Manton Marks	2880.00
May Simon	300.00
Moritz Mayer Plot	1500.00
Mendelson-Pakulski Plot # 19	1000.00
Meyer, George II grave	700.00
Meyers Rose Plot # 158 and 6 graves	4000.00
Meyerson Plot and Mausoleum	5000.00
Michaelis Siegfried	350.00
Michaelis Plot and 6 graves	3000.00
Miller Abraham, Moses & Rose	700.00
Monash Plot # 116	1000.00
Morris, Sarah & Simon	1000.00
Morrison, Rubin & Pearl	1000.00
Morse, Herman & Fanny Elias	1500.00
(Est. Victoria Bitterman	
Graves Anna & David Moss in Moss plot 165	700.00
Munstick Plot	750.00
Murzin, Ray & Israel	700.00
Myres Sarah & Rudolph	506.25
Nelson Phillipine, & Dr. Siegfried Nelson	700.00
Newman Carrie	350.00
Est. Norman Herrmann	2000.00
Oppenheim, Rose	350.00
Ortlieb Emma & Levi	600.00
Pantiel Plot	1000.00
Paris, Julius & Rebecca	500.00
Pell Plot	1000.00
Pereira Abraham	350.00
(Adelaide & Bernard Peyser in Peyser plot 81	
Unger, 1 adult & 2 children graves	1150.00
Peyser, Nettie & Morris	700.00
Pincus Plot	2000.00
Pinfyvk 3 graves	1050.00
Post Edward & reserve	800.00
Price-Geiger Plot 245	1000.00
Rappoport, Boris & Eda	700.00
Ratkowsky, Libbie, Max & Alice	1050.00
Ratkowsky, May	350.00
Propp, Louis & Pansy	800.00
Ratkowsky May & Celia	700.00
Rosenberg Plot	2400.00
Rothman-Jones Plot	2000.00
Rothman Plot	950.00
Rosenberg, Celia	350.00
Rosenson Plot	2000.00
(Rosenzweig Gittel, Max FriedMAN	
Friedman, Rose & Wolf Rose Morris	1500.00
Roth, Leo Dr. & H. Roth	730.00
(Rubin Plot # 16	
David & Rhina Rubin.	4750.00
Rothman plot and graves	1500.00
Rudansky Betsy and Mendel	700.00
Rudansky, Sarah	350.00

6,816.25

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Robinson-Spiegel 2 graves	\$ 500.00
Rieben, Joshua & Toba	1000.00
Richman Plot 172	1991.33
Est. Estelle Richter, Isidore	500.00
Rodecker, Reuben	1560.00
Rosenberg, Jacob	350.00
Rosenberg, Mary	300.00
Rosenberg Plot # 59	1000.00
Rosenberg Plot # 60	1500.00
Schlesinger Plot # 166 and vault	300.00
Schwalbach, Louis & Sarah	300.00
Schless, Dora, Elazer & Charles	1200.00
Sachs, Gertrude & Henry	1000.00
Schhs Vault # 175	2500.00
Sachs Plot #215	1000.00
Sachs, Emil	400.00
Saffier, Na alie & Jessie	700.00
(Salberg, Esther & roochi & Al	
(Lobell, Charles & Essie	2000.00
Salinger, Hulda, Sigmund, Edgar, Gertrude, Salo	2100.00
Saltzman, Chana, Jacob & Abraham, Dora Glick	800.00
Samuels Muriel	350.00
Scheyer Plot	1000.00
Schlosberg, Louis & Jennie & Bertha Levy	900.00
Schnair, Jacob	250.00
Schnair, Lena	300.00
Sachs, Barnett	400.00
Schulang Plot	5000.00
Schulberg, Jacob	350.00
Schulberg, Mollie & Joseph	700.00
Schldenfrei, Henry & Hattie	600.00
Schwartz Plot 27	2000.00
(Schweitzer, David II grave	
(Brooks, Louis & Hannah	2000.00
Segal-Samuels Plot	1500.00
Sentlowitz, Max	500.00
Sherman, Lee	350.00
Sherwood, Harry	350.00
Silberstein Plot # 33	2000.00
Silver, Rose, Beckie & David	1050.00
- Silver, Abaraham	350.00
Silver, Morris & Sarah	700.00
Silverberg, Jennie & Charles	800.00
Silverberg Plot # 244 & Vault	1000.00
Silverstein, Isidore & Jennie	1000.00
Simon Plot 43 Westerly half	1850.00
Simon-Cooperman Plot	2500.00
Sink, Fanny, Charles, Phillip & Sarah	200.00
Slade, Abaraham	350.00
Sobel, Samuel, Sarah & Elias	1000.00
Sobel Frederick Plot # 207	2000.00
Solomon, Augusta, Abraham, Rchhel & Harris	1400.00
Solomon Plot # 52	981.00
Solomon Plot 229	1500.00

55,232.33

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Solomon Morris Plot	\$ 2500.00
Solomon H Plot and Vault	200.00
Sperber, Minnie & Esther	
Kaufman, Slawin	1050.00
Spivack, Harry & Ethel	700.00
Spivack, Joseph & Fannie	700.00
Stawiska Society	1000.00
Stebbins II Graves	700.00
Stein, Nathan, Glara & Isaac	1000.00
Steinman, Betsy & Phillip	400.00
Sternglanz, Elias & Cecelia	700.00
Stich Mausoleum	4500.00
Strauss, Gustave	350.00
Stream, Phyllis	1500.00
Stream Plot & Mervyn	1400.00
Stream Plot # 163A	6000.00
Stutz, Israel	500.00
Sundel, Rachel & Harris	600.00
Tableporter Plot	500.00
Taft-Farber Plot	1000.00
Tenzer, Sarah	400.00
Suchow II grave	1000.00
Traubner, Lawrence & Reserve	1000.00
Turkheim Haas Plot	2000.00
Tuttleman, Meyer & Pauline	700.00
Ullnick, Mary & Abraham	500.00
United Mutual Hand Society	1000.00
Vogel, Bernard & Reserve	700.00
Vogel, Rose & Ignatz	1000.00
Wallerstein, Max & Elizabeth	700.00
Washer Plot 17	2000.00
Wasser Plot 192	2000.00
Werner Plot	2000.00
Weigert Plot 231	2000.00
Weil Plot # 26	1500.00
Weinberg, David	2500.00
Werner Plot	350.00
Werner Mausoleum & Plot # 92	1000.00
Werner Plot # 100	3000.00
Willner, Mary	1500.00
Wolf Plot # 46	250.00
Wolf Plot 112-113	2500.00
Wolfe Plot 88	2000.00
Wolfenstein Mausoleum # 7	700.00
Wolfenstein Plot # 8	2500.00
Wolfenstein Plot 20	1000.00
Wolff, William, Jennie & Phobr	2000.00
Wolffe Plot	1050.00
Wolin, Philip & Beatrice Wolin	1150.00
Yalomstein, Solomon	700.00
Zabinski Plot	350.00
Zeitlin, Hyman	1200.00
Zimmerman, Charles	500.00
	500.00

66,550.00