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Bayside Cemetery Mess Lands In Federal Court

Class-action suit filed against Shaare Zedek alleges diversion of perpetual care funds.

Julie Wiener - Special To The Jewish Week

John Lucker, 46, fondly recalls visiting his late grandparents, Ruth and Harry Lucker, in the Midwood section of Brooklyn.

A year ago, shortly after his father passed away, Lucker — nostalgic about the Saturday nights he spent watching “I Love Lucy” with his grandparents — was inspired to pay another visit, this time to their final resting place.



What he found horrified him. Unlike the tidy two-family house of Lucker’s childhood memories, his grandparents’ current home at Bayside Cemetery in Ozone Park, Queens, was a mess, so overgrown with chest-high weeds and poison oak that he could barely see the headstones.

This in spite of the fact that the Luckers’ burial society, Chebra Shebeth Achim, had purchased a perpetual care contract from the cemetery.

Together with his two sisters, Lucker, an accountant who lives in Simsbury, Conn., has filed a class-action lawsuit against Bayside and Congregation Shaare Zedek, the 175-family Upper West Side synagogue that owns the long-neglected historic cemetery, where a number of Civil War veterans are buried.

Among the allegations of their complaint, filed on Sept. 12 in the U.S. District Court in Brooklyn, are:

- Breach of contract, for failing to maintain plots for which annual and perpetual care policies were sold.
- Deliberately destroying documents that identify perpetual care plots “in order to now contend that they cannot identify which plots are governed by perpetual care contracts.”
- Improperly diverting money from the cemetery perpetual care fund for use in the synagogue. “Defendants’ deliberate false statements and fraudulent conduct has resulted in the desecration of thousands of plots at the cemetery in violation of New York and Jewish law.”

The suit is being brought on behalf of all persons, or relatives of persons, who purchased a perpetual care or annual care contract from Bayside Cemetery and/or Shaare Zedek from 1970 to the present.

Shul Denies Wrongdoing

The synagogue’s attorney, Stephen Axinn, has not yet filed a response and has until Oct. 22 to do so. However, in a press release issued this week, the congregation called the lawsuit “frivolous” and said it “utterly denies any wrongdoing in connection with its stewardship of Bayside Cemetery.”

In an interview with The Jewish Week, Axinn denied that the 170-year-old synagogue, which has long claimed it lacks the resources to properly maintain Bayside, diverted money from the cemetery’s perpetual care fund. However, he said that in the 1960s and ’70s, when the congregation — like many other neighboring synagogues — fell on hard times, it did “borrow” money from the cemetery’s general operating accounts and subsequently repaid its debts. Such a practice, he said, is “not at all unusual for charitable corporations, including religious corporations.”

Shaare Zedek’s fortunes rebounded in the 1990s as the neighborhood gentrified. Most of its current members, many of whom are in their 20s and 30s, have joined in recent years.

Because Shaare Zedek is a religious entity, it is not under the jurisdiction of the New York State Division of Cemeteries, which has intervened on behalf of other neglected burial grounds.

Shaare Zedek officials say the timing of Lucker’s class-action suit is “ironic,” because they

— in partnership with the Jewish Community Relations Council of New York, UJA-Federation of New York and the Hebrew Free Burial Society and apparently in cooperation with the New York State Attorney General's Office — are in the final stages of creating and hiring an executive director for the Community Association for Jewish At-Risk Cemeteries, a nonprofit organization that will be responsible for funding and managing the cleanup and maintenance of Bayside. Once Bayside's future is secured, CAJAC will also be charged with helping other neglected Jewish cemeteries in the tri-state area.

According to Gary Katz, first vice president of the Hebrew Free Burial Society and a board member of CAJAC, UJA-Federation has pledged over \$200,000 in seed money for the project: \$125,000 for a onetime cleanup effort, to be commenced once CAJAC's formation is complete, along with a two-year grant of \$40,000 — to be matched with money from a Shaare Zedek account designated for the cemetery — to help pay the salary of CAJAC's executive director, whom the group expects to hire by the end of December.

Synagogue officials did not disclose how much additional money they plan to invest in the new group's formation, nor would they say how much the congregation currently spends — from the synagogue budget and from accounts designated for Bayside — on maintaining the cemetery. Calls to the Attorney General's Office — which has been reviewing Shaare Zedek's management of Bayside Cemetery for several years — were not returned by press time.

Both Katz and David Pollock, the associate executive director of the JCRC, expressed dismay about the class-action lawsuit.

"This suit is totally unproductive and indeed counterproductive to the efforts of those of us who have worked for years to create a coalition to solve this problem," Katz said.

Pollock, who is also on the nascent CAJAC's board, said, "the litigation will prove to be disruptive to a process that's moving constructively."

'Once You're Inside It's An Adventure'

The plight of Bayside Cemetery — where many tombstones have toppled over, a thick overgrowth of vegetation obscures most graves and where many mausoleums have been vandalized — was documented extensively in The Jewish Week a 2002 article called "The Cemetery Nobody Wants."

That article spurred Shane Wamsley, a Mormon activist from Salt Lake City, to mobilized hundreds of Mormon volunteers for a multi-day cleanup project in June 2003. Soon after, several area funeral directors — led by Leslie and Ralph Francisco, who own a funeral home in Ozone Park — volunteered to re-entomb remains in Bayside's many vandalized mausoleums. However, the Franciscos soon grew disenchanted with Shaare Zedek for its lack of cooperation, particularly its unwillingness to provide Dumpsters in a timely fashion.

Other volunteers, including members of the Chechonover burial society, have echoed the Franciscos' complaints that Shaare Zedek stymied their efforts to improve conditions at the cemetery.

While the 2003 cleanup brought some temporary improvements, conditions inside the cemetery are currently "worse than ever," said City Councilman Joseph Addabbo, who lives in and represents Ozone Park and has repeatedly complained about Shaare Zedek's failure to maintain Bayside Cemetery. While the perimeter and surrounding sidewalks of the cemetery are adequate, Addabbo said, "once you're inside, it's an adventure."

Lucker is not the first person to take legal action against Shaare Zedek and the approximately 35,000-plot Bayside, which has been neglected for decades. However, his is believed to be the first class-action suit and the broadest in scope.

The amount of damages sought is not specified in the complaint, and Lucker insists he is seeking no money for his personal gain. Instead, he says, he wants the defendants to "conduct independent, full and formal accounting and restore all monies that may have been improperly taken" as well as "pay monetary damages so the cemetery can be restored to a respectful condition and the contracts maintained in the future."

"In the end, I want the cemetery fixed up: renovated, restored and maintained so when you walk in what you see is a beautiful, ancient cemetery that's respectful and maintained in a matter any of us would be proud to see," he said.

Legal Strategy

In a possible indicator of Shaare Zedek's legal strategy, officials there are downplaying the synagogue's ties to the cemetery. The recent press release it issued contends that Bayside Cemetery is "actually a collection of many sub-cemeteries, representing approximately 85 organizations," referring to the burial societies that purchased sections of the cemetery for their members' use.

"In fact, Shaare Zedek is the only organization to spend any significant money on [Bayside Cemetery's] upkeep, despite the fact that the synagogue is struggling financially, has no current members who either own a plot at Bayside or have a relative buried at Bayside, and most importantly, has only a small section of the cemetery associated with members of Shaare Zedek from previous generations."

With many records from Bayside and Shaare Zedek's past missing, it is not entirely clear what the relationship between the congregation and the numerous burial societies was: whether the societies were to be partners who shared long-term responsibility for maintaining their sections, as some officials with Shaare Zedek have contended, or whether they were essentially consumers purchasing plots with the understanding that the synagogue would manage and maintain the cemetery in perpetuity. Only a handful of the burial societies with sections at the cemetery are still in existence; the others dissolved as their members died.

Axinn, the congregation's attorney, said the congregation has deeds showing that the burial societies had the "obligation to maintain their plots."

Rabbi Julia Andelman, who has been Shaare Zedek's spiritual leader since July 2006, said she finds the current situation of the cemetery "very distressing" and "not in keeping with the values we hold of honoring the dead."

That's why, she said, "we've been working as hard as humanly possible in partnership with very prominent organizations ... to make real progress toward an actual solution," she said.

"I can't describe how many hours and how many brains have gone into engineering what's going to be a real solution," she said. "To divert that into a lawsuit ... is a step in the wrong direction."

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