

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

JOHN R. LUCKER, ELIZABETH A. LUCKER, NANCY L. ROUSSEAU, LYNN COHEN and FRAN. GOLDSTEIN as representatives of a class consisting of themselves and all others similarly situated,

Index No.: 114818/09

Motion Date: 09/20/11

Motion Seq. No.: 02

Plaintiffs,

- v -

BAYSIDE CEMETERY, CONGREGATION SHAARE ZEDEK AND COMMUNITY ASSOCIATION FOR JEWISH AT-RISK CEMETERIES, INC.,

Defendants.

The following papers, numbered 1 to 3 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	No (s) .	1
Answering Affidavits - Exhibits	No (s) .	2
Replying Affidavits - Exhibits	No (s) .	3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is granted.

Defendant Community Association for Jewish At-Risk Cemeteries, Inc., (CAJAC) moves to dismiss the complaint pursuant to CPLR 3211.

The court shall grant the motion. The court summarized the background of this action in Motion Sequence No. 1 and will not repeat that recitation here.

Plaintiffs argue that CAJAC should be held liable upon the

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

1. CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER  DO NOT POST  REFERENCE

perpetual care contracts between plaintiffs' decedents and Congregation Shaare Zedek.

Plaintiffs point to the overlapping ties between CAJAC and the Congregation including a shared address and the fact that the President of CAJAC is a member of the Congregation. Plaintiffs assert in the complaint that these overlapping ties "suggest that CAJAC is an arm of Defendant Congregation Shaare Zedek which has been designed as a straw person upon which to unload all of Shaare Zedek's legal and other responsibility for Bayside Cemetery."

Plaintiffs allegations are not cognizable. Most importantly, there is no dispute that at the time plaintiffs contracted for perpetual care CAJAC did not exist having only been incorporated in 2006. Absent some assumption by CAJAC of the Congregation's obligations and liabilities through contract or purchase, there is no legal basis to hold it liable for a breach of agreement with plaintiff when the entity was not alleged to be a signatory to the agreement and did not even exist when it was consummated. The very allegations in plaintiffs' complaint are insufficient to assert the applicability of the doctrine of piercing the corporate veil because it is explicitly alleged that the CAJAC "is an arm of" Congregation which is exactly the opposite of what is needed to impose liability upon CAJAC. See Morris v New York State Dept. of Taxation and

Finance, 82 NY2d 135, 141 (1993) ("complete domination of the corporation is the key to piercing the corporate veil"). Thus to invoke the doctrine plaintiffs would have to have alleged that CAJAC dominated the Congregation, not vice versa as they have done.

Having failed to allege any privity or other direct basis for the imposition of liability against CAJAC nor that CAJAC dominated the Congregation, plaintiffs' claims against CAJAC are not cognizable and must be dismissed.

Accordingly, it is

ORDERED that the motion of Community Association for Jewish At-Risk Cemeteries, Inc. to dismiss the action against it pursuant to CPLR 3211 is GRANTED and the Clerk is directed to enter judgment DISMISSING the action.

This is the decision and order of the court.

**Dated:** September 15, 2011

ENTER:

/s/

J.S.C.