

Michael M. Buchman

December 16, 2008

VIA ECF

The Honorable Joan M. Azrack
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East – Room 1210S
Brooklyn, New York 11201

Re: *Lucker et al. v. Bayside Cemetery & Congregation Shaare Zedek*,
No. 07 Civ. 3823 (RJD) (JMA); *Cohen v. Bayside Cemetery & Congregation
Shaare Zedek*, No. 08 Civ. 3555 (RJD) (JMA); and *Goldstein v. Bayside
Cemetery & Congregation Shaare Zedek*, No. 08 Civ. 3923 (RJD) (JMA)

Dear Judge Azrack:

I represent Plaintiffs in the above-referenced actions. I have received Chief Judge Dearie's December 10, 2008 Order ("Order") raising jurisdictional issues under 28 U.S.C. § 1332 and Your Honor's Order adjourning the initial case management conference in the *Cohen* action.

The first-filed action was the *Lucker* matter. That action was filed approximately fifteen months ago. Prior and subsequent to the filing of the *Lucker* action, Defendants produced documents and/or data to the New York State Attorney General's Office ("NYAG") concerning the same issues in this case. Although Defendants owe these Plaintiff family members a fiduciary duty,¹ Defendants have repeatedly refused to turn over the documents/data produced to the NYAG and other documents on the ground that we are not entitled to them until the resolution of the motion to dismiss and the formal commencement of discovery. It is my understanding that this production consists of less than ten (10) banker's boxes.

Plaintiffs did not previously challenge this position and have patiently waited to request these documents at the appropriate time. Plaintiffs respectfully submit that time has now arrived in light of Chief Judge Dearie's recent Order. Plaintiffs raise this issue now since the documents produced to the NYAG may address or touch on the jurisdictional issues raised by the Court.

¹ Under New York law, a fiduciary relationship may exist where one party reposes confidence in another and reasonably relies on the others expertise or knowledge. *WIT Holding Corp., v. Klein*, 282 A.D.2d 527, 529, 724 N.Y.S.2d 66 (2nd Dep't 2001); see also *Yochim v. Mount Hope Cemetery Association*, 163 Misc. 2d 1054 (Cty. Ct. Yonk. 1994) (citing *DiMaio v. State of New York*, 135 Misc. 2d 1021, 1025 (N.Y.Ct. Cl. 1987)).

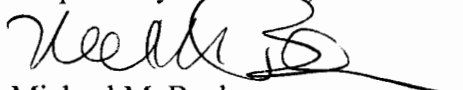
The Honorable Joan M. Azrack
United States Magistrate Judge
December 16, 2008
Page 2

Plaintiffs respectfully submit that these documents and/or data, which have already been gathered, bates stamped, produced and placed in storage, should be made available for immediate inspection and copying. There will be virtually no burden placed on Defendants in making this information available for inspection and copying since all that is required is simply retrieval of boxes from storage and copying.

I have conferred with opposing counsel concerning this issue and he has indicated that Defendants, at this time, do not intend to introduce these documents into evidence in connection with their jurisdictional filing next week. Yet that position is not comforting for two reasons. *First*, opposing counsel may change his mind at the last minute. *Second*, it is highly likely that these documents are the financial and business records of the cemetery and contain highly relevant information concerning the jurisdictional issues raised such as the aggregate amount in question and the residence of class members in this case. It would be inequitable to allow Defendants to keep these documents from the Court and Plaintiffs if they will be helpful in addressing the jurisdictional issue raised by Chief Judge Dearie.

In light of the foregoing, Plaintiffs respectfully request that Defendants be Ordered to immediately make the documents and/or data previously produced to the NYAG, whether voluntarily or by compulsion, available to Plaintiffs for inspection and copying this week.

Respectfully submitted,



Michael M. Buchman
Pro Bono Attorney for Plaintiffs

c: Stephen Axinn (counsel for Defendants)