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The Honorable Bernard J. Fried
Supreme Court of the State of New York, New York County
60 Centre St., Room 248 (Part 60)
New York, NY 10278

Re: Lucker et al. v. Bayside Cemetery et al., No. 114818/2009

Dear Judge Fried:

We represent Defendants Congregation Shaare Zedek (“Shaare Zedek”) and Bayside Cemetery (“Bayside”) in the above-referenced matter and write pursuant to Rule 24 of the Rules of the Commercial Division of the Supreme Court to request a pre-motion conference in contemplation of a motion pursuant to CPLR 3211 to dismiss the Complaint (a copy of which is attached) in its entirety.

Shaare Zedek has operated Bayside Cemetery since the mid-19th century. For years it permitted synagogues, burial societies, and other Jewish fraternal organizations to establish burial grounds for their members at Bayside, and ultimately over 100 organizations purchased burial areas amounting to approximately 95% of the total area at Bayside, each agreeing to maintain its own section. Unfortunately, all but a handful of those organizations dissolved or became defunct and conditions at Bayside began to deteriorate, with more and more of the cemetery no longer having an active “maintainer,” and Shaare Zedek lacking the resources to assume that role for the 95% of the cemetery for which it was not originally responsible.

Earlier this year, however, Shaare Zedek, with the assistance of Defendant Community Association for Jewish-At-Risk Cemeteries, Inc., a New York not-for-profit corporation (“CAJAC”), began a long-needed professional cleanup of the cemetery.

The Plaintiffs in this putative class action, meanwhile, are a group of individuals who are apparently dissatisfied with the way that Shaare Zedek has managed the cemetery. Although

their Complaint dwells at length on the overall physical condition of Bayside (without even acknowledging the recent cleanup), their legal claims are for false advertising, deceptive trade practices, breach of perpetual and annual care contracts, unjust enrichment, breach of fiduciary duty, aiding and abetting such breaches of fiduciary duty, and conversion, centering on funds Shaare Zedek holds in trust for the perpetual care of graves at Bayside. Notably, Plaintiffs concede that they never purchased any perpetual or annual care from, or had any relationship with, any Defendant. Rather, they purport to sue as “family members” or “near relatives” of individuals who allegedly did place money in trust for such perpetual care.

Given that background, Defendants Shaare Zedek and Bayside Cemetery intend to move the Court for dismissal of the action in its entirety on the following grounds:

First, that Plaintiffs cannot establish personal standing to bring these claims, given their concession that they have not suffered any injury-in-fact from the Defendants’ alleged actions.

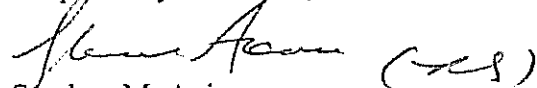
Second, that Plaintiffs cannot bring these suits in any representative capacity on behalf of their deceased relatives, since they are not duly-appointed personal representatives of their relatives’ estates and their claims are not, in any event, proper survival actions. Standing to enforce the charitable trusts at issue lies instead with the Attorney General, who has had the very claims alleged in this Complaint under investigation for at least two years. Mere dissatisfaction with his approach to the merits does not create standing for Plaintiffs.

Third, that those Plaintiffs who allege that a burial society purchased perpetual care on their relatives’ behalf cannot state a cause of action against the Defendants.

Finally, that the Statute of Limitations is an almost-complete bar to the claims at issue.

We stand ready to file the above-described motion shortly after the required pre-motion conference and believe that it should be possible to resolve it on a reasonably short briefing schedule, given that nearly identical issues were briefed, but not decided, in an earlier action in the Eastern District of New York prior to that court’s dismissal for lack of federal jurisdiction.

Respectfully submitted,



Stephen M. Axinn
*Attorney for Congregation Shaare Zedek
and Bayside Cemetery*

Attachment

cc: Michael M. Buchman, Attorney for Plaintiffs (by electronic mail)
George A. Zimmerman, Attorney for CAJAC (by electronic mail)