

At LAS Commercial Part I of the Supreme Court of the State of New York, County of Kings, at the Courthouse, 360 Adams Street, Brooklyn, New York, held on the 14th day of January, 2009.

PRESENT: Hon. C E DEMAREST, J.

~~WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES SPIELMAN and all others similarly situated,~~

INDEX NO.: 33481/08

Plaintiffs,

ORDER TO SHOW CAUSE

-against-

PFCE
CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC., CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and SHLOMO WERTZBERGER,

ASSIGNED TO:
HON. CAROLYN
E. DEMAREST

Defendants.

PLEASE TAKE NOTICE, THAT THE PURPOSE OF THIS HEARING IS TO PUNISH DEFENDANTS JOSEPH WEISS AND JOEL KAUFMAN FOR CONTEMPT OF COURT AND SUCH PUNISHMENT MAY CONSIST OF A FINE OR IMPRISONMENT OR BOTH ACCORDING TO LAW

WARNING

YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT

Upon the annexed Affirmations of David B. Hamm, Chaim

Jacobowitz and Samuel Kestenbaum, and Exhibits annexed thereto; upon the

KINGS COUNTY CLERK
FEE PD \$ 45.00
David B. Hamm

Order to Show Cause, containing a Temporary Restraining Order, issued by this Court on December 16, 2008, and upon all of the prior proceedings herein,

LET defendants Joseph Weiss and Joel Kaufman show cause before
(Rm 156)
the Commercial Part I of this Court, at the Courthouse, 360 Adams Street,

→ Brooklyn, NY, on January 30, 2009, at 9:30 in the forenoon. Or as soon thereafter as counsel can be heard, why they should not be held in and punished for contempt of Court, pursuant to Judiciary Law §§753 (a) (3) and 756, for their willful violation of this Court's Temporary Restraining Order.

Good cause appearing therefore, let personal service of this Order to

Show Cause and its supporting papers upon Joseph Weiss and Joel Kaufman

→ by January 16, 2009, and service of same by overnight mail upon all other defendants,

→ by January 16, 2009, be deemed good and sufficient service.

E N T E R:



J.S.C.

HON. CAROLYN DEMAREST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

INDEX NO.: 33481/08

Plaintiffs,

-against-

AFFIRMATION OF
EMERGENCY AND
IN SUPPORT OF
MOTION

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV
LEV D'SATMAR, INC., CONGREGATION YETEV
LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES
WITRIOL, NEW YORK STATE POLICE, DAVID
MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

Defendants.

-----X

DAVID B. HAMM, an attorney duly admitted to practice before the
Courts of the State of New York, affirms upon information and belief, the
source of which is the evidence heretofore and herewith submitted to the
Court, and under penalties of perjury, as follows.

1. I am a member of Herzfeld & Rubin, P.C., attorneys for
plaintiffs in this class action. I make this affirmation in support of plaintiffs'

motion, brought on by Order to Show Cause, to hold defendants Weiss and Kaufman in contempt of Court for violating this Court's Temporary Restraining Order. No prior request for this relief has been made.

2. This Motion is brought on by Order to Show Cause because it involves an emergent situation. As the Court will recall, this action seeks to protect, and prevent interference with, the contractual, statutory and By-Law-based rights to burial in the Kiryas Joel Cemetery ("the Cemetery") and attendant right to erect a headstone, evidenced by Certificates issued by Congregation Yetev Lev D'Satmar, Inc. ("the Congregation"), of which the representative and class plaintiffs are all members. On Sunday, January 11, 2009, defendants Weiss and Kaufman directly interfered with the burial of a Congregation member, holding a timely-issued Certificate, and extorted payment of \$9,000 from the family in order to permit internment. Furthermore, another member, likewise holding a timely-issued Certificate, is now hospitalized in critical condition. If we are to avoid another case of extortionate imposition upon the grieving family of the holder of a Certificate issued by the Congregation prior to April 1, 2006, the Court must act now.

3. As this Court is aware, this matter came before the Court on December 16, 2008, in connection with the request by the representative

plaintiffs for a Temporary Restraining Order. The evidence before the Court demonstrated inter alia that, despite decades of prior practice in which Certificates issued by the Congregation for burial of members in the Congregation's Cemetery had been honored by the Chevre Kadishe (Burial Society) and others involved in the internment process, defendants had recently threatened and had actually sought to actively interfere with the Congregation's ability to comply with its contractual duties - - evidenced by the Certificates and reflected in the By-Laws - - to provide for the burial of its members. Defendants, and particularly the CYL Cemetery Inc. and the Central Congregation Yetev Lev D'Satmar, Inc. ("Central Congregation"), had announced that Certificates issued by the Congregation would no longer be honored, and that members had until December 18, 2008 to obtain new certificates from the Central Congregation or risk loss of their burial rights. Other defendants, and particularly Messrs. Weiss and Kaufman, had threatened to prevent burials at the Cemetery notwithstanding duly issued Certificates, unless additional extortionate payments were made by the Certificate-holding members to them or to the Central Congregation, of which Kaufman is the Sexton and Weiss apparently an officer. They had also actually prevented the placement of headstones on graves of members, despite receipt by decedents' next of kin of permits issued by the

Congregation authorizing erection of the headstones, because additional sums had not been paid to them (and, apparently, because the headstone had been purchased from a stone maker other than defendant Weiss).

4. In the presentation of the Order to Show Cause before this Court on December 16, a copy of the transcript of which is annexed as Exhibit “1,” counsel appearing before the Court on behalf of defendants, including Central Congregation, Weiss and Kaufman, made clear and unequivocal representations that (a) the December 18 deadline that had been given “has been extended by ninety days so there is no emergency;” and (b) that counsel for plaintiffs “is absolutely correct that up until this lawsuit was started there was no dispute. Anybody who had a license that entitled them to burial rights had been buried in the cemetery. There is no dead body lying around waiting to be buried....” (Exhibit “1,” p. 18). This Court explicitly noted defense counsel’s representation that no one bearing a Certificate had been denied burial (Exhibit “1,” p. 35).

5. Following the hearing, this Court issued a Temporary Restraining Order (copy annexed as Exhibit “2”), prohibiting defendants from interfering, directly or indirectly, with burial rights of those holding Certificates issued by the Congregation bearing a date earlier than April 1, 2006, the approximate date of death of the late Grand Rabbi of Satmar,

Rabbi Moses Teitelbaum. Notably, although defendants argued for an earlier date (Exhibit “1,” p. 32), and the representative plaintiffs all had Certificates bearing earlier dates, this Court recognized that the Certificates appeared to create contractual rights (when read together with the By-Laws), and that Certificates issued during the lifetime and under the auspices of the late Grand Rabbi - - whose word was absolute with respect to membership (Exhibit “1,” pp. 29-30) - - were presumptively binding on the Congregation (see Matter of Cong. Yetev Lev D’Satmar, Inc. v. Kahana, 9 N.Y.3d 282, 288 [2007] [“A decision as to whether or not a member is in good standing is binding on the courts when examining the standards of membership requires intrusion into constitutionally protected ecclesiastical matters”]), and rights thereunder were entitled to protection.

6. The Order To Show Cause, Motion papers, memorandum of Law, Summons and Complaint were served on all defendants. Copies of affidavits of service are annexed as Exhibit “3.” In addition, it must be noted that, although Andrew Fisher, Esq., counsel for defendants, at the conclusion of the hearing before this Court, protested his supposed inability to accept service of those papers on behalf of his clients (Exhibit “1,” p.33), he had by then **already signed an unqualified receipt of the motion papers on behalf of most of the defendants, including specifically**

Central Congregation, Joseph Weiss and Joel Kaufman. A copy of that hand-written signed receipt is annexed as Exhibit “4.”¹ Notably, a copy of the Summons and of the Complaint were annexed to the motion papers. In addition, I affirm that I personally handed a copy of the Order to Show Cause, as signed by the Court, to Mr. Fisher in the Courthouse on December 16, 2008. Thus, no defendant should be heard to assert lack of knowledge of the Court’s Order.

7. Unfortunately, as related in the annexed Affirmations of Chaim Jacobowitz (Exhibit “5”) and Samuel Kestenbaum (Exhibit “6”), (a) the representations by Mr. Fisher concerning the 90-day extension and concerning people not being left unburied were, at the least, mistaken; and (b) this Court’s Order has not been adhered to and has not provided the critical protection necessary to avoid impending harm to other Certificate-bearing members of the class plaintiffs.

8. As those Affirmations indicate, Moses Kestenbaum, a member in good standing of the Congregation, to whom the Congregation had issued on June 22, 2004 a Certificate attesting to his membership and to his right of burial in the Cemetery, passed away on Sunday, January 11, 2009. In accordance with Jewish law, burial was required, if at all possible, that same

¹ As the Transcript reflects (Exhibit “1,” p. 33), I tried to bring that receipt to the attention of the Court, but was unfortunately interrupted.

day. Mr. Kestenbaum's grandson, Samuel Kestenbaum, contacted Chaim Jacobowitz, the Congregation's Secretary, to make necessary arrangements for the funeral. Mr. Jacobowitz, in turn, contacted Rabbi Gluck, head of the Burial Society, and the Yereim Funeral Chapel. However, at the funeral chapel, Samuel Kestenbaum was informed that he would have to speak to Joseph Weiss before the funeral.

9. Upon contacting Mr. Weiss, Samuel Kestenbaum was advised in no uncertain terms that his grandfather's Certificate, although issued in 2004, would not be honored and that he would have to contact Joel Kaufman to make arrangements for internment. Joel Kaufman, in turn, insisted that burial of Mr. Kestenbaum in the Cemetery would not be permitted, notwithstanding the Certificate issued by the Congregation, until \$9,000 was paid to Kaufman. Meanwhile, Mr. Jacobowitz contacted Weiss in an effort to reason with him, but was rebuffed.

10. In the end, in order to avoid the humiliation and shame of a disruption or delay in the funeral of his grandfather, Samuel Kestenbaum acceded to the extortionate demands of Weiss and Kaufman, and paid Kaufman \$9,000. Only then was the funeral permitted to proceed and Moses Kestenbaum buried in the Cemetery.

11. Among the lessons to be learned from this horrendous incident are (a) defense counsel's representations concerning defendants' extension of time and their supposed recognition that bodies cannot go unburied are, in the end, worthless; and (b) notwithstanding this Court's Temporary Restraining Order, defendants are ready and willing to continue their nefarious acts of extortion, unless this Court takes measures to stop them.

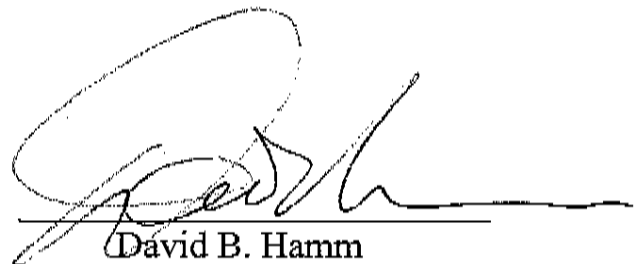
12. Beyond that, this incident teaches a very clear lesson with respect to this Court's understandable concern that it not become embroiled in ecclesiastical issues. What we see from this incident is that ecclesiastical issues are not at all involved in this case. No ecclesiastical concern, no theological disagreement, no required allegiance to one Satmar Rabbi rather than another, separated Moses Kestenbaum from burial in the Cemetery. What this case is all about - - what the delay in Mr. Kestenbaum's funeral was all about - - is and was MONEY - - certain defendants' insistence on extorting money from members of the Congregation. There is nothing ecclesiastical, indeed nothing religious, about that. There is nothing which should keep this Court from effecting a remedy to prevent such outrages in the future.

13. The cases are legion that a Court's Restraining Order must be obeyed, upon penalty of contempt (see, e.g., Orange County-Poughkeepsie

Limited Partnership v. Bonte, 37 A.D.3d 684 [2nd Dept. 2007]). Indeed, even where, in retrospect, the Court could be said to have been in error, a failure to abide by the Court's ruling could justify a finding of contempt (see Matter of Evans v. Board of Assessment Review of Town of Catskill, 284 A.D.2d 753, 756 [3rd Dept. 2001]). Certainly, where, as here, the Court's determination to prevent precisely the type of outrageous conduct which has now taken place was entirely just and appropriate, is contempt a proper remedy. We submit that the circumstances here warrant that result.

WHEREFORE, your affirmant respectfully requests that the motion be granted, and that defendants Weiss and Kaufman be held in contempt of Court.

Dated: New York, New York
January 14, 2009



David B. Hamm

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: PART 1

2 -----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH,
3 JOSE MASRI, ERVIN ROSNER, MORRIS FRIEDMAN, JOSEPH
EPSTEIN, HERMAN LANDAU, MOSES SPIELMAN and all
4 others similarly situated,

5

6 Plaintiffs,

7 - against -

8 CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR,
INC., CHEVRE KADISHE D'SATMAR, a division of CONGREGATION
9 YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL
10 GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK STATE
POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
11 KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and SHLOMO
WERTZBERGER,

12

13

Defendants,

14

-----X

15

December 16, 2008
360 Adams Street
Brooklyn, New York 11201

16

17

18 B E F O R E: THE HONORABLE CAROLYN DEMAREST,
Justice of the Supreme Court

19

20

A P P E A R A N C E S:

21

22

HERZFELD & RUBIN, P.C
Attorneys for the Plaintiffs
23 40 Wall Street
New York, New York 10005
24 By: DAVID HAMM
HERBERT RUBIN
25 CHARLES A. CRUM

23

24

25

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: PART 1

2 -----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH,
3 JOSE MASRI, ERVIN ROSNER, MORRIS FRIEDMAN, JOSEPH
EPSTEIN, HERMAN LANDAU, MOSES SPIELMAN and all
4 others similarly situated,

5

6 Plaintiffs,

7 - against -

8 CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR,
INC., CHEVRE KADISHE D'SATMAR, a division of CONGREGATION
9 YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL
10 GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK STATE
POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
11 KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and SHLOMO
WERTZBERGER,

12

13

Defendants,

14

-----X

15

December 16, 2008
360 Adams Street
Brooklyn, New York 11201

16

17

18 B E F O R E: THE HONORABLE CAROLYN DEMEREST,
Justice of the Supreme Court

19

20

A P P E A R A N C E S:

21

22

HERZFELD & RUBIN, P.C
Attorneys for the Plaintiffs
23 40 Wall Street
New York, New York 10005
24 By: DAVID HAMM
HERBERT RUBIN
25 CHARLES A. CRUM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EDWARD RUBIN
ISRAEL VIDER
Attorneys for Congregation Yetev Lev
Cherve Kadish, Rabbi Gluck
1507 Avenue M
Brooklyn, New York 11230

JOANNE SKOLNICK
Assistant Attorney General
120 Broadway
New York, New York 10271

FISHER & FISHER
Attorneys for CYL Cemetery,
Congregation Yetev Lev, Chevre Kadish,
Yetev Lev D'Satmar Of Kiryas Joel,
Joel Weiss, David Markowitz, Chaim Gross,
Joel Kaufman, David Ekstein, Elias Horowitz,
Shlomo Wertzberger,
One Whitehall Street
New York, New York 10004

BY: ANDREW S. FISHER

SMITH BUSS & JACOBS, LLP
500 Fifth Avenue
New York, New York 10110

BY: GERALD KAHN

ROBIN ASHBY, RPR
Senior Court Reporter

Proceedings

1 COURT CLERK: Number 1 on the motion
2 calendar, Index Number 33481 of 2008, Wilmos Friedman
3 versus CYL Cemetery.

4 THE COURT: Let us have your appearance,
5 please.

6 MR. HAMM: David Hamm. I am the attorney and
7 I am with Herzfeld & Rubin, and this is Herbert Rubin
8 and this is Charles Crum.

9 And you appear for?

10 MR. RUBIN: For the class plaintiffs.

11 MR. E. RUBIN: Edward Rubin, Your Honor,
12 appearing for three of the defendants, Congregation
13 Yetev Lev, Chevre Kadishe. These are the second and
14 third defendants in the caption. And Rabbi Ezriel
15 Gluck all together with my colleague Israel Vider.

16 I anticipate Your Honor that as the action
17 moves to my right Mr. Kahn is going to say that he
18 represents the two corporate defendants.

19 THE COURT: Counsel, don't anticipate. I
20 know already what this case is about.

21 Mr. Rubin, you mentioned another attorney.
22 Is that the gentlemen next to you?

23 MR. VIDER: Israel Vider. I'm co-counsel for
24 Yetev Lev, Chevre Kadishe and Rabbi Gluck.

25 THE COURT: Could you spell your last name?

Proceedings

1 MR. VIDER: V-i-d-e-r.

2 MS. SKOLNICK: Joanne Skolnick and I
3 represent the state police.

4 THE COURT: The police?

5 MS. SKOLNICK: They are named defendants.

6 MR. FISHER: Good morning, Your Honor.
7 Andrew Fisher from the firm of Fisher & Fisher.

8 I represent CYL Cemetery, Inc., Congregation
9 Yetev Lev, Chevre Kadishe, Yetev Lev D'Satmar of Kiryas
10 Joel, Central Congregation Yetev Lev D'Satmar. I also
11 represent the individual defendants Joseph Weiss, David
12 Markowitz, Chaime Gross, Joel Kaufman, David Ekstein,
13 Elias Horowitz and Shlomo Wertzberger.

14 THE COURT: All of whom are the purported
15 board, correct?

16 MR. FISHER: Yes.

17 MR. KAHN: Your Honor, my name is Gerald Kahn
18 from the firm of Smith Buss & Jacobs.

19 We represent all of the defendants except the
20 state police defendant. The defendant Moses Witriol
21 and defendant Gluck.

22 THE COURT: You represent everybody like
23 Mr. Fisher. Are you in collaboration with Mr. Fisher
24 or are you in competition with Mr. Fisher?

25 MR. FISHER: It's in collaboration, Your

Proceedings

1 Honor.

2 THE COURT: So you actually together
3 represent all the defendants except those who were
4 excluded and that is the same group?

5 MR. KAHN: Same group.

6 THE COURT: This is a petition brought by
7 Mr. Rubin, Mr. Hamm, and Mr. Crumm for plaintiffs.

8 Make your case gentlemen. I know what this
9 case is about.

10 MR. RUBIN: We are here solely for the stay
11 on the motion for preliminary injunction. Whatever
12 other issues might be sort to be interpreted I think
13 Your Honor you should try to just limit ourselves to
14 the question as to whether we have a right to a
15 preliminary injunction. We contend here that as a
16 matter of contract and as a matter of statute under the
17 Religious Corporations Law Section 8 that the class
18 plaintiffs here have a right to be buried in the
19 cemetery in which the first Grand Rabbi Joel Teitelbaum
20 and the second Grand Rabbi are buried as a matter of
21 great significance emotionally and spiritually and they
22 have contracted to be buried there.

23 We submit that the contract is evidenced by
24 the certificates which were issued by the Yetev Lev
25 Congregation, the authenticity which is not in

Proceedings

1 question.

2 We also submit that for decades, certainly
3 for the past 25 years the procedure which we seek now
4 to have maintained on the status quo basis pending a
5 decision on the motion be organized to continue and not
6 to be changed or interfered with. Whatever the
7 disputes have been between the two groups are members
8 of the Satmar group of Jewish appearance. There's been
9 no problem up to very, very recently with respect to
10 the burial rights of persons who are holders of
11 certificates from the Congregation of Yetev Lev. Nor
12 has there been any problem with respect to the burial
13 rights of persons who are members of the other
14 congregations. This ability to maintain the rights to
15 burial has been respected notwithstanding the very
16 tense and severe differences which have been expressed
17 between the two groups and which have taken the form of
18 litigation through this Court and through the Court of
19 Appeals. But in the decision by Justice Barasch his
20 ultimate decision was there should be a maintenance of
21 status quo. When the matter was argued in the Court of
22 Appeals, the Court of Appeals came to the same
23 conclusion that the status quo should be maintained.

24 THE COURT: What is this status quo?

25 MR. RUBIN: The status quo, Your Honor, has

Proceedings

1 been that a member of the Congregation Yetev Lev who
2 has contracted for burial rights in the cemetery and
3 the right to have a headstone placed at burial is
4 handled administratively through Chevre Kadishe Burial
5 Group. Burial procedure is very ritualistic and is
6 conducted through a particular committee. The
7 committee has very narrow authority. There are rituals
8 which are followed and no dispute as to what those
9 rituals are and so when a person dies his family or
10 representatives will present the certificate. The
11 burial then takes place. Whatever fees there might be
12 for grave digger or something of that nature, all of
13 that is handled routinely and the burial goes on in the
14 cemetery and then subsequently when the time comes to
15 place a stone art as marking the grave that is allowed
16 as well.

17 THE COURT: Mr. Rubin, do your clients adhere
18 to Rabbi Zelman or Rabbi Aaron?

19 MR. RUBIN: The members of the class we are
20 representing are members of the group that recognize
21 Rabbi Zelman.

22 THE COURT: In terms of the status quo that
23 you refer to the Court of Appeals declined to recognize
24 any successor and of course that's where we are here.
25 This is non-justiciable it sounded to me and I have

Proceedings

1 spent quite a bit of time reviewing these papers and
2 looking at the certificates and the bylaws and it does
3 seem to me this controversy is inextricably
4 intertwined. With this, I would say political for lack
5 of a better word, struggles between these two brothers
6 to control this.

7 MR. RUBIN: With all due respect I don't
8 think we have to get involved with the question as to
9 who is elected. That was the specific issue in the
10 Court of Appeals. It was a question of elections and
11 offices. We don't have that question here.

12 THE COURT: Well let me ask you this: Now we
13 have the certificates and we have the notice that seems
14 to suggest that they're reviewing the credentials of
15 the people who hold the certificates to be buried in
16 the cemetery.

17 Is that what they're doing?

18 MR. RUBIN: I'm sorry, Your Honor?

19 THE COURT: From reading the notice from
20 which you complain that apparently was sent out by the
21 competing board because Mr. Weiss is named as the
22 secretary they are purportedly reviewing in my
23 interpretation of the notice, they are reviewing these
24 certificates and considering the credentials of the
25 people who hold the certificates to actually be buried

Proceedings

1 in--

2 MR. RUBIN: The challenging certificates
3 which have been certificates in a form which has been
4 utilized and accepted and recognized for a period of
5 decades.

6 THE COURT: Sit down, Mr. Fisher. I'll hear
7 from you in a minute.

8 MR. RUBIN: In terms of status quo certainly
9 those certificates represent the status quo.

10 THE COURT: All right. You're saying you
11 want the contract enforced, that the certificates
12 evidence a contract and you want the contract enforced.

13 Is there anyone among the named plaintiffs
14 here who is an extremist who anticipates the immediate
15 need for a burial?

16 MR. RUBIN: Your Honor, I believe that is
17 recited among them and also is recited that they have
18 suffered the -- at least two of them have suffered
19 questions with respect to the erection of the stones.
20 First of all there was interference with questioning
21 about the right to burial but then subsequently the
22 erection of the stones was also a question. The whole
23 business about the stones is likely a status quo issue.

24 THE COURT: Mr. Rubin, what I'm trying to do
25 is limit this discussion because you are seeking a TRO

Proceedings

1 in the order to show cause. I have no written
2 responses. I see you have quite a number a people here
3 ready, willing and eager to speak but nonetheless this
4 will have to go to further litigation before there can
5 be a determination made as to your merits. The
6 question I'm raising here, is there any irreparable
7 injury that's going to result in the next week or two
8 or three?

9 MR. RUBIN: Very much so because the notice
10 which was sent out declared that anyone who did not
11 have the form of certificate which the defendants are
12 now announcing should be the new form of certificates
13 which they recognized. If those are not applied for
14 and issued by Thursday, December the 18th then no one
15 will be permitted -- those people will not be permitted
16 to have any of the burial rights.

17 THE COURT: So what do you want me to do is
18 restrain the defendants here from acting upon the
19 notice that they've given at least pending further
20 argument on the issue?

21 MR. RUBIN: Exactly, Your Honor.

22 THE COURT: You want to speak for all of the
23 defendants?

24 MR. FISHER: I want to speak to that issue
25 and speak with respect to the CYL Cemetery --

Proceedings

1 THE COURT: Are you having a problem?

2 MR. E. RUBIN: I am not anticipating the
3 duplicate of representation argument. I would like an
4 opportunity to address that.

5 THE COURT: You're first. Then go ahead,
6 Mr. Rubin.

7 MR. E RUBIN: I want to come back to the
8 issue of whoever represents Congregation Yetev Lev, its
9 burial society division.

10 THE COURT: Are you in competition with
11 Mr. Fisher?

12 MR. E RUBIN: Yes, I am. As the Court
13 correctly understands there are two competing
14 administrations based upon the two political facts and
15 those are adherence of Rabbi Zelman and Rabbi Aaron. I
16 don't suggest that can be resolved certainly within the
17 ambit of a TRO and not necessarily within the ambit of
18 this litigation, and I do appreciate the strength of
19 Mr. Rubin's earlier remarks insofar as this action
20 seeks to vindicate contract rights. That dispute is
21 not necessarily implicated. Many of the certificates
22 he's talked about were issues before this controversy
23 began.

24 THE COURT: The import of the notices --

25 MR. E. RUBIN: The narrow based

Proceedings

1 administration seeks to nullify all those who do not
2 sort of resubmit their forms or get new certificates
3 recognizing them as the administration of the
4 congregation and cemetery. That's really the import of
5 that notice. That notice says you may have got your
6 certificate twenty years ago, if you don't deal with us
7 now and recognize us as a legitimate administration we
8 are not going to deal with you.

9 THE COURT: Let me ask you this, Mr. Rubin:
10 You stated your appearance for the congregation and
11 Kadishe and Gluck, right?

12 MR. E. RUBIN: And Kadishe which is the
13 burial society of the individual congregation and Rabbi
14 Gluck.

15 THE COURT: And the cemetery.

16 MR. E. RUBIN: CYL Cemetery, Inc. is a
17 corporation. This cemetery was owned by Congregation
18 Yetev Lev. There was a transfer of fifty percent
19 interest back in '01 which was the subject of five
20 years of litigation which reversal was affirmed by the
21 Court of Appeals.

22 THE COURT: I read the decision this morning.

23 MR. E. RUBIN: Staying on the representation
24 issue when the appeal was filed on that particular case
25 the law firm of Smith Buss & Jacobs represented here

Proceedings

1 today by Mr. Kahn moved to dismiss the appeal on the
2 grounds that counsel for the appellant which was Eric
3 Feinstein did not have the authority (unintelligible)
4 that they are legitimate administration of the
5 congregation. That motion however was denied by the
6 appellate division, and throughout the course of the
7 appellate litigation both the appellate division of the
8 Court of Appeals didn't seem to have no problem
9 recognizing Harry Feinstein as counsel for the
10 congregation. They weren't necessarily deciding that
11 issue and they never did really decide it. As the
12 Court is aware they held they could not reach the
13 merits on justiciability grounds of the election
14 challenge that had been brought to the election of my
15 client by their client.

16 THE COURT: Okay, Mr. Rubin, when you take
17 this position you are speaking on behalf of the board
18 that supports Aaron?

19 MR. E. RUBIN: Zelman.

20 THE COURT: You're on the same side as
21 plaintiffs?

22 MR. E. RUBIN: We are certainly sympathetic
23 to plaintiff and believe that the cemetery should
24 recognize the certificates. That's absolutely correct.
25 I'm going to suggest again that probably representation

Proceedings

1 issue sort of can't be resolved and doesn't necessarily
2 have to be resolved by this court in this context and
3 perhaps the most useful way to look at it is just to
4 understand there are competing administrations, one
5 which we claim is legitimate. The other one which they
6 claim is legitimate. You can call them -- sometimes
7 they have been referred to as the Kahn administration
8 referring to my client, and the Friedman administration
9 referring to their client. That is a dual
10 representation situation as to those entities that I
11 think the Court can simply somehow live with for the
12 moment. A little bit backwards from a theoretical
13 point of view but if it's good enough for the Court of
14 Appeals it's kind of good enough for me too.

15 I think there's a second stage to the
16 analysis that the Court has put forward more than once
17 which is having said that the merits of the election
18 challenge brought by the Aaron Administration to the
19 Zelman Administration was non-justiciable. There's a
20 second stage question which I will suggest here and
21 elsewhere can be determined upon mutual principles of
22 law.

23 THE COURT: I.E., justice.

24 MR. E. RUBIN: I.E., what follows from the
25 inability of the Court to reach the merits of the

Proceedings

1 election challenge. That is something which having
2 said that the merits are non-justiciable the impression
3 has kind of been created by the community at large that
4 this vacuum that it's subject to--

5 THE COURT: There is a vacuum, isn't there,
6 counsel?

7 MR. E. RUBIN: I don't agree with that. I
8 think what remains is if a board is elected and
9 somebody brings an election challenge and that election
10 challenge is unsuccessful for any reason; timeliness,
11 justiciability, the merits, whatever, the results of
12 the failure of that challenge is that the encumbrance
13 remains in place.

14 THE COURT: This is a little bit far afield
15 of the immediate controversy which I suspect I might
16 have find it nonjusticiable but in any case this is not
17 a mechanism for all the members of this congregation
18 regardless of who they support to vote in some manner
19 and then determine who the board is.

20 MR. E. RUBIN: Regrettably no because that
21 would bring you back to the issue of membership
22 legitimacy and membership legitimacy is really probably
23 non-justiciable.

24 THE COURT: There must have been a body of
25 the congregation that existed before these two brothers

Proceedings

1 became adversaries.

2 MR. E. RUBIN: True, but you can't -- because
3 of the bylaws phrased the way they are the
4 determination of who is a member somehow ineluctably
5 leads to the Court reaching questions which it really
6 can't address because it's based upon who is religious
7 or observant or sufficiently something or the other
8 from the point of view of the current administration,
9 and where you have two administrations these questions
10 can't be resolved so it can't never be an agreement
11 between my client and the other administration who
12 would be entitled to participate, for example, in an
13 election.

14 THE COURT: Was the transfer of a part of
15 this cemetery plot an attempt to solve one of the
16 problems?

17 MR. E. RUBIN: It was an attempt to
18 circumvent the appellate division '06 decision. Nine
19 days after the appellate division decided that the
20 original '01 transfer should be reversed they formed a
21 new corporation improperly formed in seven or eight
22 different ways that I'll address at some future point
23 and perhaps at some future action and they purported to
24 transfer title to this newly formed corporation without
25 judicial approval though requiring judicial approval

Proceedings

1 without many other things.

2 THE COURT: I read that decision but it was
3 only half of the cemetery.

4 MR. E. RUBIN: After that half was put back
5 they went and formed a new corporation and acting
6 wearing their hat as the administration of the
7 congregation purported to transfer the entire cemetery
8 for no consideration to this newly formed corporation
9 and it is as the officers and trustees of this newly
10 formed corporation that they are exercising the
11 leverage that they now believe they have in this vacuum
12 that they perceived that have resulted from these
13 decisions on justiciability to enforce their view that
14 they are the legitimate administration and that if you
15 don't pay them you're not going to be buried there
16 regardless of how many years ago--

17 THE COURT: So it's going to come right back
18 to the issue that the Court of Appeals found to be
19 non-justiciable as to which board is the proper board.

20 MR. E. RUBIN: Not at all because a contract
21 is a contract and there is no question about the
22 authority of the board congregation to issue these
23 certificates for the most part at the time that they
24 were issued because many of them, perhaps most of them
25 and today the inception of the controversy and simply

Proceedings

1 because the board changes or doesn't change depending
2 upon your point of view that doesn't give the entity
3 the right to abrogate contract.

4 THE COURT: You're saying the corporate
5 entity is still bound?

6 MR. E. RUBIN: That's correct.

7 THE COURT: Alright, Mr. Fisher.

8 MR. FISHER: Let me take a couple of things
9 off the table. Let's not worry about this December
10 18th date because an announcement was made in the
11 synagogue this past weekend that the notice that was
12 sent out concerning the updating of membership lists
13 and the verification of the certificates has been
14 extended by ninety days so there is no emergency.
15 That's number one.

16 Number two, Mr. Rubin is absolutely correct
17 that up until this lawsuit was started there was no
18 dispute. Anybody who had a license that entitled them
19 to burial rights has been buried in the cemetery.
20 There is no dead body lying around anyplace waiting to
21 be buried or at least there was not up until the time
22 we entered this courtroom.

23 Thirdly, the only issue with respect to the
24 headstones was raised by the fact a group of
25 individuals attempted at a time when the cemetery was

Proceedings

1 closed using a street crane outside of the cemetery
2 ground to lift two headstones into the cemetery that
3 had not been approved as to contents, as to style, as
4 to anything else by the burial society as is required
5 by the burial society's rules. The burial society has
6 someone who oversees the cemetery. He was there. He
7 and others observed this unusual process of headstones
8 being lifted from the outside over the wall. The state
9 police were called. The state police intervened only
10 for the purpose of maintaining the public order.
11 Suggested that they remove the headstones which they
12 did. And there is no dispute. Every certificate,
13 every license that punitively entitles a person to be
14 interred in the cemetery has been honored to this date.
15 Not one person irrespective of whether they are
16 supporters of Rabbi Aaron or Rabbi Zelman has been
17 turned off. Not one. So Your Honor has put your
18 finger right on. There are a number of issues that you
19 will have to decide in connection with both of this
20 application and if you keep the case, the case
21 including whether or not the plaintiffs and their class
22 are congregants. I don't think this Court can decide
23 who's a member of the congregation or not.

24 THE COURT: That I think would be undoubtedly
25 unjudicial.

Proceedings

1 MR. FISHER: It would. You will have to
2 decide who's been authorized by the ecclesiastical
3 authorities to represent to ecclesiastical authorities.
4 I'm not sure that's a judiciable issue. And while Mr.
5 Rubin made a very eloquent argument that was okay with
6 the Appellate Division and the Court of Appeals.
7 Basically what the Appellate Division and the Court of
8 Appeals did on that issue was see no evil, hear no
9 evil, speak no evil, don't address it. Let's get to
10 the merits. The merits are nonjusticiable. And I'm
11 sick and tired of hearing counsel for some of the
12 parties coming before this Court to talk about the
13 magic status quo that Judge Barasch supposedly
14 established. Judge Barasch established one thing. The
15 issues were non-justiciable. That Rabbi Aaron is the
16 supreme rabbinical authority for all of Kiyras Joel. I
17 don't think that's a dispute. If that's true there's
18 no dispute to the authority of those people acting
19 under the auspices of Rabbi Aaron because he is without
20 doubt the rabbinical leader of KJ. He was appointed to
21 that by Grand Rabbi.

22 What I suggest to this Court is and I think
23 Your Honor's intention are dead on right, this is
24 another back door effort to come before this Court to
25 address the issues of the leadership of this divided

Proceedings

1 congregation. There is no need for a TRO. There's no
2 need for court intervention at this point. If they
3 want to maintain an action for breach of contract bring
4 it on and either it's a justiciable issue or it's not.
5 We can address that in papers. There's certainly no
6 need for a TRO. There's certainly no emergency.
7 There's certainly no irreparable harm, and there's
8 nothing for this Court to do except to leave this issue
9 with the ecclesiastical authority where it belongs.

10 THE COURT: Mr. Fisher, in a proposed order
11 to show cause the TRO that's been proffered here
12 provides as follows: Ordered that pending the hearing
13 of this motion defendants are restrained from
14 interfering directly or indirectly with plaintiffs
15 rights and those of all other similar situated
16 established by certificates issued by the Congregation
17 Yetev Lev at 150-152 Rodney Street in Brooklyn to
18 burial in the Kiyras Joel Cemetery and their rights
19 pursuant to permit issued by the Congregation for the
20 erection of headstones in the Kiyras Joel Cemetery and
21 from withholding services incidental and necessary to
22 the exercise of such right.

23 Based on your representation that there has
24 been an extension of the notice for another ninety days
25 and your representation that no one holding these

Proceedings

1 certificates has been denied burial and apparently it's
2 not the intention of your client to deny burial is
3 there a reason why that shouldn't be entered?

4 MR. FISHER: Yes, Your Honor.

5 THE COURT: Why?

6 MR. FISHER: Because you have to decide a
7 religious issue. You have to decide who the
8 congregation is because they have expressly limited
9 their request for a stay to authorize their version of
10 what the congregation is because that's not --

11 THE COURT: No, I disagree. It actually
12 provides it's the holders of certificates.

13 MR. FISHER: Issued by the congregation at
14 150-152. That's Rabbi Zelman and that's precisely,
15 Your Honor, the reason for the notice that was sent out
16 on behalf of the burial society to eliminate all
17 confusion as to who holds a legitimate certificate.

18 THE COURT: It's exactly the very issue that
19 has been ongoing through numerous cases and in fact I
20 have another case that have these people.

21 MR. FISHER: If you read their papers they
22 also raised all of these issues that Mr. Rubin raised,
23 the issue with respect to and Mr. Rubin and Mr. Rubin
24 raised the issue with respect to the conveyance that
25 took place. First of all the Court of Appeals said

Proceedings

1 that the first conveyance was gonza (ph) because they
2 did not comply with the law. They didn't set forth the
3 proper purposes.

4 THE COURT: Let's not get that far into this.
5 You don't have to go there.

6 MR. FISHER: The second transfer has never
7 been disputed. Never been disputed.

8 THE COURT: I don't have to get to that.

9 MR. FISHER: No, you don't.

10 THE COURT: You're talking about
11 certificates, honoring member certificates which I
12 haven't looked at everyone of them but most of them
13 appeared to have been issued prior to the death of the
14 prior--

15 MR. FISHER: Threshold question, Your Honor,
16 who's a member?

17 THE COURT: Whoever got the certificate at
18 that time.

19 MR. FISHER: They were a member then, they
20 are a member today. Do you want to get into looking at
21 this class one by one and making a decision as to
22 whether or not they meet all of the requirements of
23 continued membership today as to entitle --

24 THE COURT: Mr. Fisher, I don't want to make
25 that decision and I'm not so sure I should make that

Proceedings

1 decision, but at the time the certificate was issued to
2 certain named individuals there was a determination
3 that they were members of this congregation and that
4 becomes a contractual determination by the
5 congregation. What I'm suggesting to you is if this
6 TRO modifies to provide that the certificate was issued
7 by the congregation Yetev Lev Satmar prior to whatever
8 date it was that this conflict arose, I believe
9 sometime in 1996, that might cure the problem because
10 it would be only those people who hold the certificate.

11 MR. FISHER: No, Judge, it only opens the
12 door. It isn't simply a question of whether or not
13 they have a right to burial. It is a conditional right
14 and--

15 THE COURT: Where does it say that--

16 MR. FISHER: Certificate that's attached to
17 Exhibit A.

18 THE COURT: That's what I'm looking at.

19 MR. FISHER: This is the one that was issued
20 to Mr. Friedman and his spouse. So here it says the
21 holder of the certificate has been accepted as a member
22 in our association to be entitled to a burial plot for
23 himself after he passed away at the cemetery of our
24 holy community and Kiryas Joel. If you then go down a
25 few line there you will see that it is to be determined

Proceedings

1 by the committee of our holy community in accordance
2 with the holy regulations of the Holy Congregation
3 Yetev Lev.

4 THE COURT: And it got he has paid the sum in
5 full. That's contractual.

6 MR. FISHER: Right, he has a contractual
7 right to be buried provided he meets all of the other
8 terms and conditions.

9 THE COURT: I don't see the condition you
10 refer to counsel.

11 MR. FISHER: In accordance to the holy
12 regulation.

13 THE COURT: What are you saying?

14 MR. FISHER: I am saying--

15 THE COURT: It says according to the amount
16 determined by the committee of our holy community in
17 accordance with the holy regulations.

18 MR. FISHER: And in addition to that, Your
19 Honor, as is set forth in Mr. Rubin's papers there is a
20 burial society and the burial society has rules and so
21 when you read that together that there are rules and
22 that the authority here is in the congregation to make
23 the determination it is clear that you would have to
24 get into ecclesiastical decision making to--

25 THE COURT: That may be one of the issues I

Proceedings

1 have to decide but this is a TRO and you have made a
2 representation here that the terms that would be
3 contained within this TRO are not being violated in any
4 event and has no intention to do so and of course
5 people can die at any time for any reason and they
6 entered into this contract and in reliance on a
7 commitment by the congregation at that time to permit
8 the burial. And I'm familiar, very little, but to some
9 extent with the requirement that there be burial within
10 24 hours of death so we have to have some recognition.

11 MR. FISHER: Now let me take it to the next
12 level for Your Honor. Burial society has the best end.
13 All disputes with respect to burials at the cemetery
14 are supposed to be carried to the best end.

15 THE COURT: Is that written in the agreement?

16 MR. FISHER: I know it's in the certificate
17 but it's certainly in the Jewish law that relates to
18 Congregation Yetev Lev. It's certainly clear that the
19 burial society as Mr. Herbert Rubin said is in charge
20 of all the burials and all of the rituals so if one of
21 the burials requires you be a congregant in good
22 standing these people have come to a secular courtroom
23 without first exhausting their ecclesiastic remedies
24 and so that's another issue that Your Honor has to--

25 THE COURT: It's a matter of the controls of

Proceedings

1 the congregation and who are going to call the shots.
2 It's clear.

3 Now Mr. Rubin, do you accept the modification
4 of the TRO that I suggested that we put a date in here
5 that there be the limitation, that there be no
6 interference with rights established by certificates
7 issued prior to a certain date?

8 MR. RUBIN: No, Your Honor, please. The
9 Religious Corporation Law Section 8 gives the right to
10 the members and their families, their widows, and their
11 descendants so that it gives the right into the future
12 and therefore you cannot have any kind of limitation.

13 THE COURT: But your certificate provides the
14 name Mr. Zab Wolf (ph) Friedman and his spouse. That's
15 the name of the person identified as the holder of the
16 entitlement to be buried. Not his prodigy. Not
17 somebody three generations removed. Just this person
18 and his wife.

19 MR. RUBIN: And the right to erect the
20 monument subsequent to their death. All if that is
21 guaranteed--

22 THE COURT: The certificate does not say
23 anything about erection of monuments and that I
24 understand is contained in the bylaws and it has a lot
25 of other ramifications, but I believe that the bylaws

Proceedings

1 provide there's a year for the erection of the
2 monument. We are talking about a TRO here. We are
3 talking about something that's going to last for the
4 next month or so. In the event one of these people die
5 they have the right to be buried and that's all.

6 MR. RUBIN: They want to put monuments up.

7 THE COURT: Well, all right. Are the people
8 buried there?

9 (Whereupon, the parties were talking
10 simultaneously.)

11 THE COURT: This is going to end very quickly
12 because I'm not having four people on their feet
13 speaking at the same time. This doesn't happen in my
14 courtroom. You all know that.

15 MR. KAHN: I apologize.

16 MR. RUBIN: I certainly respect Your Honor.
17 As you well know I think it should be pointed out
18 though it is in our affidavit that the grave stones
19 have been provided by a grave stone manufacturer who
20 has made hundreds of these who should then use and
21 those are the ones which historically meet all of the
22 requirements. So any kind of attempt to create an
23 issue as to whether some kind of "curly cue" should or
24 should not be on a grave stone, if that's out to be
25 changed that's contrary--

Proceedings

1 THE COURT: That a very limited discussion.
2 We are talking about a TRO.

3 What is the date of the death of the prior
4 Grand Rabbi father of Aaron Zelman? What is his date
5 of death?

6 MR. E. RUBIN: April, 2006.

7 THE COURT: What day? None of these
8 certificates were issued after April 1st of 2000 -- no,
9 2006.

10 MR. KAHN: Your Honor, the controversy
11 started in 1996 according to the movant's affidavit.

12 MR. RUBIN: Your Honor, I don't know you
13 don't have to get involved in all of this but so much
14 has been said up to now I think is so contrary to fact
15 I don't think that the fact is that this controversy
16 arose from the fact that the father, the Grand Rabbi
17 indicated that Aaron at a certain had a certain
18 geographical area and that Zelman had another
19 geographical area and he continued to be Grand Rabbi.
20 While this situation continued each one was acting
21 within the geographical area to be allocated to him and
22 so he died in 2006 and what has continued since he died
23 is essentially unchanged.

24 THE COURT: I am aware of that; however, is
25 it not agreed up until the factions here up to the date

Proceedings

1 of his death he was the ultimate authority for the
2 entire --

3 MR. RUBIN: No question about that.

4 MR. FISHER: And it's also no question as
5 Herbert Rubin has just acknowledged that everything
6 geographically is under the ambit of Rabbi Aaron.

7 THE COURT: Counsel, I am not going to be
8 addressing any of those issues. We are going to pick a
9 on a date on this return for the order to show cause.
10 The only issue of course you have an absolute right to
11 go up to 45 Monroe Place and seek reversal of the TRO
12 but I am going to grant the temporary restraining order
13 as limited by the restrictions that the certificates
14 must have been issued prior to April 1, 2006. I
15 eliminated the street address which appears to be
16 critical in your dispute because I think there's an
17 implication there. And as far as the election of head
18 stones that that will be deleted pending further
19 hearing of the Court and --

20 MR. FISHER: Your Honor, if I may.

21 MS. SKOLNICK: I have not had a chance to
22 speak on behalf of the --

23 THE COURT: You may speak to the issue,
24 counsel, but this is very limited.

25 MR. FISHER: (Indiscernible.)

Proceedings

1 THE COURT: Please counsel, I think this lady
2 has a right to speak. She's a defendant.

3 What is your position?

4 MS. SKOLNICK: Our position we just learned
5 of our involvement in this case yesterday afternoon.
6 We believe that the leave that plaintiffs are seeking
7 has no likelihood of success on the success vis a vi
8 our client. The police has mentioned in one paragraph,
9 paragraph forty which simply says the police aided in
10 some way which we do not believe to be a basis for
11 injunctive relief against the police. We believe that
12 the plaintiffs are asking for a broad restraint against
13 the police.

14 THE COURT: Ms. Skolnick.

15 MS. SKOLNICK: Yes.

16 THE COURT: None of the relief that we are
17 dealing with right now will impact your position.

18 MS. SKOLNICK: Okay.

19 THE COURT: And I am not deciding anything.
20 This is interim relief. I'm issuing an order to show
21 cause. You will come back. You will brief it, you
22 will argue it, and in fact I realize in order to issue
23 a temporary restraining order there has to be some
24 colorable probability of success. In fact, I have no
25 idea whether it's going to be success here and I do wan

Proceedings

1 to did address with all of you a certain decision which
2 I rendered finding non-justiciable, a dispute of this
3 community and in the case of Swimmer (ph) against Welks
4 (ph) and the appellate division recently determined
5 that -- that's November 12, 2008 this is justiciable
6 which is one my concerns here. This community is tied
7 up in knots. This is being presented as a contract.
8 Evidence by the certificate I think that the bylaws
9 probably will be relevant to the interpretation. I am
10 not making a ruling. I think there's a very high
11 probability this is non-justiciable but pending further
12 litigation and argument I am going to restrain the
13 defendants from preventing the burial pursuant to the
14 certificates. Should there be a death between now and
15 the return date at least there would be some protection
16 for those people.

17 MR. FISHER: Your Honor, may I just say one
18 thing. If you look at the complaint paragraph 26 it
19 says alleges that in 1999 a bitter dispute arose. Now
20 you're using the death --

21 THE COURT: That's right.

22 MR. FISHER: I will submit to you Your Honor
23 that in 1999 that's the time and that's the point at
24 which --

25 THE COURT: I have made a decision. You take

Proceedings

1 your exception, take your appeal if you wish. The
2 question I have for you now are you accepting service,
3 do you have copies of the papers? Is everyone
4 accepting service on behalf of their respective client
5 or should I provide for service?

6 MR. E. RUBIN: Yes, Your Honor.

7 MR. FISHER: I was engaged for a limited
8 purpose. I cannot except--

9 MR. KAHN: Same with me.

10 THE COURT: We have to have a return date on
11 this matter and --

12 MS. SKOLNICK: The attorney general's office
13 cannot accept service.

14 THE COURT: Fine, you will be duly served.
15 We will put this on for --

16 MR. HAMM: I do have a signed statement--

17 THE COURT: I'm putting in the order. If you
18 have some other point to deal with you can deal with.

19 Is the 30th of January a good day for
20 everybody to appear?

21 MR. HAMM: If we can get service done.

22 THE COURT: I can't imagine why not.
23 January 14.

24 MR. FISHER: Will Your Honor entertain
25 application in the event that someone presents a

Proceedings

1 certificate of authenticity?

2 THE COURT: No. Go to the appellate division
3 if you have an issue.

4 MR. FISHER: Your Honor, on the bylaws and
5 rules of burial--

6 THE COURT: I am not making any further
7 rulings. This is it. They will serve you and when you
8 are served-

9 MR. FISHER: I am just trying to understand
10 what Your Honor is doing quite frankly. You're issuing
11 a restraining order. Does that mean that the rules of
12 the burial society are not to be enforced?

13 THE COURT: No, that doesn't mean anything.

14 MR. FISHER: Thank you.

15 MR. E. RUBIN: Your Honor, it doesn't mean to
16 the extent they are restrained from not honoring the
17 certificates period because I want to express my
18 condition.

19 THE COURT: The TRO speaks for itself. It
20 says only that they may not -- a restraint from
21 interfering directly or indirectly with plaintiffs
22 rights established by certificates to Kiryas Joel and
23 from holding to be the exercise of such rights. This
24 has been limited to the rights of burial at this
25 location. There is no other determination being made.

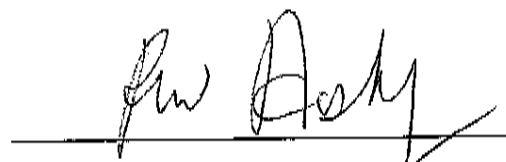
Proceedings

1 The certificate controls. The certificate on its face
2 says they have a right to burial.

3 If you have further issues I am not dealing
4 with them right now. You have made a representation
5 Mr. Fisher that no one has been denied such burial and
6 the determination according to the certificate was made
7 at the time the certificate was issued that the named
8 person was a member of the congregation. Anything
9 beyond that is speculative and I am not going to
10 address it. That's it.

11 * * *

12 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
13 ABOVEMENTIONED TRANSCRIPT.

A handwritten signature in dark ink, appearing to read 'Robin Ashby', is written over a horizontal line.

14
15 ROBIN ASHBY, RPR

16 OFFICIAL COURT REPORTER
17
18
19
20
21
22
23
24
25

At IAS Part Com I of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, 360 Adams Street, Brooklyn, New York, on the 16th day of December, 2008

P R E S E N T:

HON. HON. CAROLYN E. DEMAREST

Justice

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Index No. 33481/08

Plaintiffs,

ORDER TO SHOW CAUSE

-against-

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION
YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL, INC.,
CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK,
JOSEPH WEISS, MOSES WITRIOL, NEW YORK
STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN,
DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

Defendants.

KINGS COUNTY CLERK
FEE PD \$ 45 00
Law. Officer

Upon reading and filing plaintiffs' Verified Complaint, affirmed on December 15, 2008, the Affirmation of David B. Hamm, Esq., dated December 15, 2008, and the Affirmations, Affidavits and other Exhibits annexed thereto,

Let defendants show cause at IAS Part Com Fat Room 256, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 30 day of January, 2009, at 9:30 o'clock in the Forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein, pursuant to CPLR Article 63, granting a preliminary injunction barring defendants and each of them from interfering, directly or indirectly, with plaintiffs'

rights and those of all others similarly situated, established by Certificates issued by the Congregation Yetev Lev D'Satmar, Inc. at 150-152 Rodney Street in Brooklyn, to burial in the Kiryas Joel Cemetery, and their rights pursuant to permits issued by the said Congregation for the erection of headstones in the Kiryas Joel Cemetery, and from withholding services incidental and necessary to the exercise of such rights; ~~and~~

ORDERED, that pending the hearing of this motion, defendants are restrained from interfering, directly or indirectly, with plaintiffs' rights ~~and those of all others similarly situated,~~ ^{prior to April 1, 2006} established by Certificates issued by the Congregation Yetev Lev D'Satmar, Inc. ~~at 150-152 Rodney Street in Brooklyn, to burial in the Kiryas Joel Cemetery, and their rights pursuant to permits issued by the said Congregation for the erection of headstones in the Kiryas Joel Cemetery,~~ and from withholding services incidental and necessary to the exercise of such rights; ~~and it is further~~

^{LET PERSONAL}
~~ORDERED~~, that service of a copy of this Order to Show Cause and the papers upon which it is based, together with the Summons and Complaint herein, a) with respect to the individual defendants, ~~pursuant to CPLR 309(1), (2) or (3);~~ b) with respect to defendant corporations, ~~pursuant to CPLR 314 or Business Corporation Law section 305;~~ and c) with respect to defendant New York State Police, ~~pursuant to CPLR 309,~~ on or before January 14, 2009, shall be considered good and sufficient service.

ENTER:



J.S.C.

HON. CAROLYN E. DEMAREST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Plaintiffs,

INDEX NO.:
33481/08

-against-

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV
LEV D'SATMAR, INC., CONGREGATION YETEV
LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES
WITRIOL, NEW YORK STATE POLICE, DAVID
MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

Defendants.

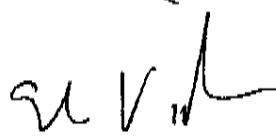
-----X

ACKNOWLEDGEMENT OF SERVICE

Israel Vider, Esq., having been duly authorized to do so by the
defendants hereinafter noted, hereby acknowledges receipt as an agent of
personal service of the Summons and Complaint, Order to Show Cause,
Motion Papers and Memorandum of Law in this matter on behalf of
defendants **CONGREGATION YETEV LEV D'SATMAR, INC. and**

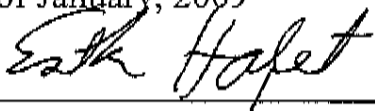
**CHEVRE KADISHE D'SATMAR, a division of CONGREGATION
YETEV LEV D'SATMAR, INC.**

Dated: January 5, 2009



Israel Vider

Affirmed before me this 5th
Day of January, 2009



Notary Public

ESTHER HALPERT
Notary Public State of New York
No. 01HA4648347
Qualified in Kings County
Commission Expires 10/31/2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Plaintiffs,

INDEX NO.:
33481/08

-against-

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV
LEV D'SATMAR, INC., CONGREGATION YETEV
LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES
WITRIOL, NEW YORK STATE POLICE, DAVID
MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

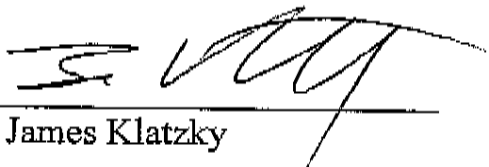
Defendants.

-----X

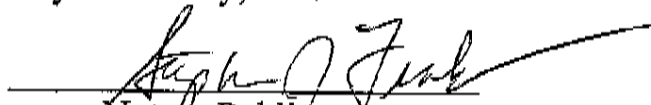
ACKNOWLEDGEMENT OF SERVICE

James Klatzky, Esq., having been duly authorized to do so by the
defendant hereinafter noted, hereby acknowledges receipt as an agent of
personal service of the Summons and Complaint, Order to Show Cause,
Motion Papers and Memorandum of Law in this matter on behalf of
defendant **RABBI EZRIEL GLUCK.**

Dated: January 6, 2009


James Klatzky

Affirmed before me this 6th
Day of January, 2009


Notary Public

STEPHEN J. FRAHER
Notary Public, State of New York
No. 02FR6102421
Qualified in New York County
Commission Expires ~~Dec 8, 2009~~

MARCH 27, 2012

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

, Defendants(s)

State of New York)
) ss.:
County of Kings)

AFFIDAVIT OF SERVICE

Joel Stern being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and
resides within the State of New York. That on December 30, 2008 at 8:40 PM at: 17 Hayes Court #201, Brooklyn,
New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon DAVID EKSTEIN

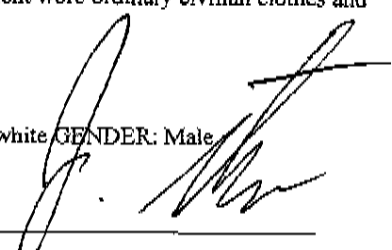
By personally delivering to and leaving with said individual, and that he knew the person so served and described as
recipient therein.

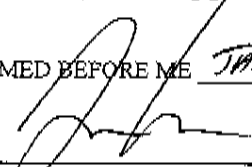
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged
in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and
not military uniform

Deponent describes the individual served as follows:

AGE: 50-55 HEIGHT: 5' 7" HAIR: Gray RACE: white GENDER: Male
OTHER: blue eyes, wearing glasses

AFFIRMED BEFORE ME Jan. 8. 2009


JOEL STERN


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joel Stern being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and resides within the State of New York. That on December 30, 2008 at 8:30 PM at: 3 Siget Court, #201, Monroe, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon ELIAS HOROWITZ

By personally delivering to and leaving with said individual, and that he knew the person so served and described as recipient therein.

To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and not military uniform.

Deponent describes the individual served as follows:

AGE: 55-60 HEIGHT: WEIGHT: 6' HAIR: red RACE: white GENDER: Male
OTHER: brown eyes

AFFIRMED BEFORE ME Jan. 9, 2009

JOEL STERN

Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA5091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joel Stern being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and
resides within the State of New York. That on December 30, 2008 at 8:35 PM at: 19 Satmar Drive, #202, Monroe,
New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon JOSEPH (JOSEF) WEISS

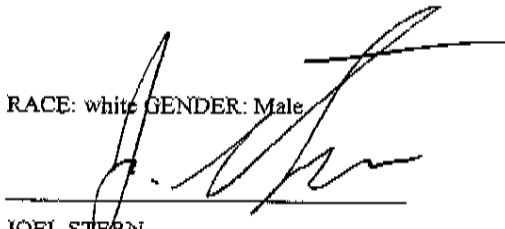
By personally delivering to and leaving with said individual, and that he knew the person so served and described as
recipient therein.

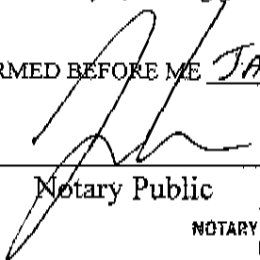
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged
in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and
not military uniform.

Deponent describes the individual served as follows:

AGE: 50-55 HEIGHT: WEIGHT: 5' 7" HAIR: gray RACE: white GENDER: Male
OTHER: blue eyes, wearing glasses

AFFIRMED BEFORE ME JAN. 8. 2009


JOEL STERN


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

, Defendants(s)

State of New York)
)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joel Stern being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and
resides within the State of New York. That on December 30, 2008 at 8:48 PM at 18 Quick way, #201, Monroe, New
York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon SHLOMO WERTZBERGER

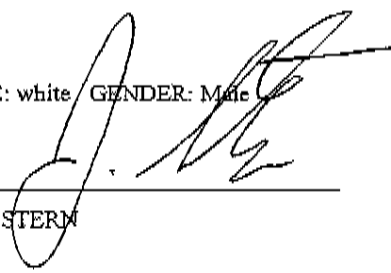
By personally delivering to and leaving with said individual, and that he knew the person so served and described as
recipient therein.

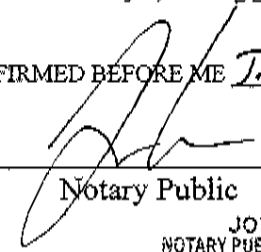
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged
in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and
not military uniform.

Deponent describes the individual served as follows:

AGE: 55-60 HEIGHT: 5'8" WEIGHT: 180 HAIR: gray RACE: white GENDER: Male
OTHER: black eyes, wearing glasses

AFFIRMED BEFORE ME JAN. 8. 2009


JOEL STERN


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

, Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joel Stern being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and
resides within the State of New York. That on December 31, 2008 at 8:30 PM at: 417 Schunnemunk Road, #201,
Monroe, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon MOSES WITRIOL

By personally delivering to and leaving with said individual, and that he knew the person so served and described as
recipient therein.

To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged
in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and
not military uniform.

Deponent describes the individual served as follows:

AGE: 40-45 HEIGHT: WEIGHT: 6' HAIR: BROWN RACE: white GENDER: Male
OTHER: blue eyes

AFFIRMED BEFORE ME JAN. 8. 2009

JOEL STERN

Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR, INC., CHEVRE
KADISHE D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH
WEISS, MOSES WITRIOL, NEW YORK STATE POLICE, DAVID MARKOWITZ,
CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ, and
SHLOMO WERTZBERGER,

Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joshua Schwartz being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action
and resides within the State of New York. That on January 5, 2009 at 7:30 /PM at: 65 Heyward Street, Brooklyn,
New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon S. DAVID MARKOWITZ

By personally delivering to and leaving with said individual, and that he knew the person so served and described as
recipient therein.

To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged
in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and
not military uniform.

Deponent describes the individual served as follows:

AGE: 55-60 HEIGHT: 5' 8" HAIR: Red RACE: white GENDER: Male
OTHER: blue eyes, wearing glasses

AFFIRMED BEFORE ME Jan. 8. 2009

Joshua Schwartz
JOSHUA SCHWARTZ

Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA8091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEVLEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK
STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID
EKSTEIN, ELIAS HOROWITZ, and SHLOMO WERTZBERGER,

, Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joshua Schwartz being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and resides within the State of New York. That on January 5, 2009 at 7:10 pm at: 74 Ross Street, #3-J, Brooklyn, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW.

Upon JOEL KAUFMAN

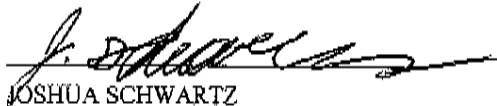
By delivering thereto a true copy of each to LEAH KAUFMAN, wife, a person of suitable age and discretion, at said premise. Said premises is recipient's usual place of abode within the state.

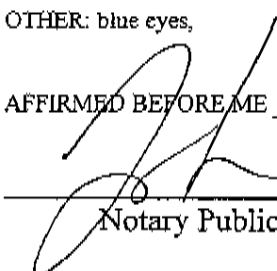
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged in the military service of the United States or of the State of New York.

Deponent describes the individual served as follows:

AGE: 30-35 HEIGHT:WEIGHT: 5' 2" HAIR: OTHER RACE: white GENDER: female
OTHER: blue eyes,

AFFIRMED BEFORE ME Jan. 8, 2009


JOSHUA SCHWARTZ


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Plaintiffs,

INDEX NO.: 33481/08

**AFFIDAVIT OF
SERVICE**

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR,
INC., CHEVRE KADISHE D'SATMAR, a division of
CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC.,
CENTRAL CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLÜCK, JOSEPH WEISS, MOSES WITRIOL, NEW
YORK STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER
GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT HOLMES, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides in Brooklyn,
New York, that on the 8th day of January 2009 deponent served a copy of the within:

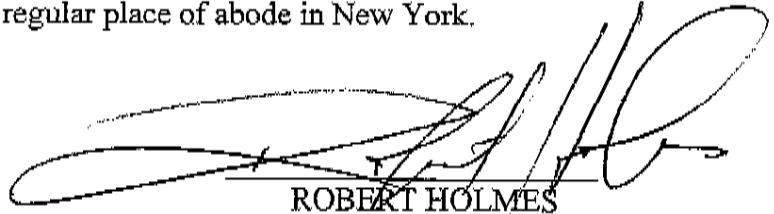
**ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND
MEMORANDUM OF LAW**

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under
the exclusive care and custody of the U.S. Postal Service within New York State addressed:

TO:

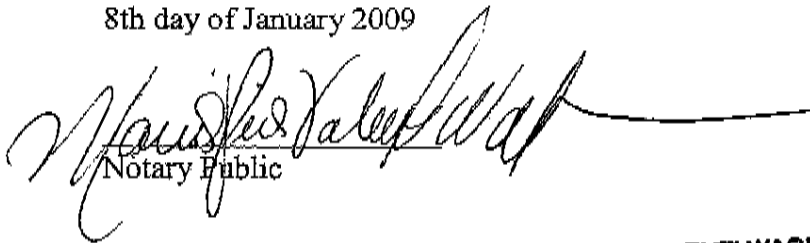
JOEL KAUFMAN
74 Ross Street, #3-J
Brooklyn, New York 11211

Said address being the addressee's regular place of abode in New York.



ROBERT HOLMES

Sworn to before me this
8th day of January 2009



Notary Public

MARIA PIA VALENTI-WAGNER
Notary Public, State of New York
No. 01VA5001832
Qualified in Richmond County
Commission Expires March 11, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEVLEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK
STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID
EKSTEIN, ELIAS HOROWITZ, and SHLOMO WERTZBERGER,

, Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joshua Schwartz being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and resides within the State of New York. That on January 5, 2009 at 7:21 pm at: 73 Division Avenue, Brooklyn, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon CHAIM ELIEZER GROSS

By delivering thereat a true copy of each to DEVORY GROSS, wife, a person of suitable age and discretion, at said address. Said premise is recipient's usual place of abode within the state.

To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged in the military service of the United States or of the State of New York.

Deponent describes the individual served as follows:

AGE: 55-60 HEIGHT: 5' 1" HAIR: other RACE: white GENDER: female
OTHER: brown eyes,

AFFIRMED BEFORE ME JAN. 8. 2009

J. Schwartz
JOSHUA SCHWARTZ

[Signature]
Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Plaintiffs,

INDEX NO.: 33481/08

**AFFIDAVIT OF
SERVICE**

-against-

CYL CEMETERY, INC., CONGREGATION YETEV LEV D'SATMAR,
INC., CHEVRE KADISHE D'SATMAR, a division of
CONGREGATION YETEV LEV D'SATMAR, INC.,
CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC.,
CENTRAL CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW
YORK STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER
GROSS, JOEL KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT HOLMES, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides in Brooklyn,
New York, that on the 8th day of January 2009 deponent served a copy of the within:

**ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND
MEMORANDUM OF LAW**

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under
the exclusive care and custody of the U.S. Postal Service within New York State addressed:

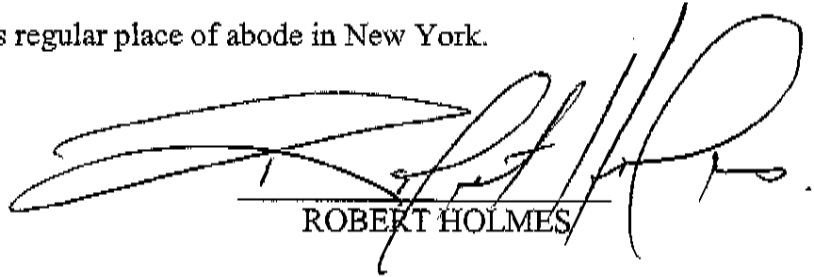
TO:

CHAIM ELIEZER GROSS

73 Division Avenue

Brooklyn, New York 11211

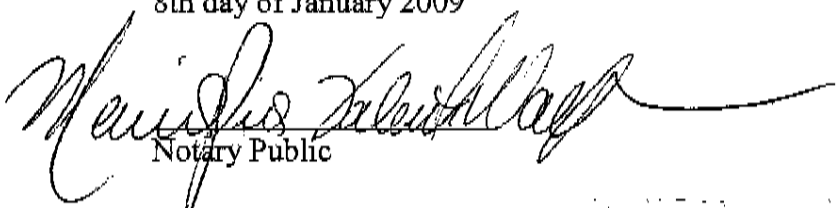
Said address being the addressee's regular place of abode in New York.



ROBERT HOLMES

Sworn to before me this

8th day of January 2009



Notary Public

MARIA PIA VALENTI-WAGNER
Notary Public, State of New York
No. 01VA5001332
Qualified in Richmond County
Commission Expires March 11, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEVLEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK
STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID
EKSTEIN, ELIAS HOROWITZ, and SHLOMO WERTZBERGER,

Defendants(s)

State of New York)
) ss.:
County of Kings)

AFFIDAVIT OF SERVICE

Joshua Schwartz being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and resides within the State of New York. That on January 2, 2009 at 1:05 pm at: 1322 45th Street, Brooklyn, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon CYL CEMETERY, INC.

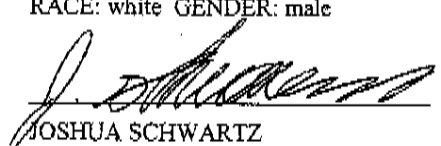
By delivering thereat a true copy of each to BERL FREIDMAN. Deponent knew said corporation so served to be the corporation described in same as said recipient, and that BERL FRIEDMAN is an Officer and Director of said corporation authorized to accept service thereof.

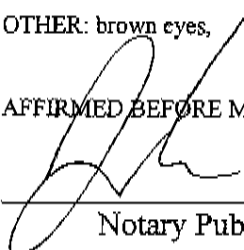
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and not military uniform.

Deponent describes the individual served as follows:

AGE: 60-65 HEIGHT: WEIGHT: 5' 6" HAIR: gray RACE: white GENDER: male
OTHER: brown eyes,

AFFIRMED BEFORE ME Jan. 8, 2009


JOSHUA SCHWARTZ


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 33481/08

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN and all others similarly situated,

Plaintiff(s)

-against-

CYL CEMETERY, INC., CONGREGATION YETEVLEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES WITRIOL, NEW YORK
STATE POLICE, DAVID MARKOWITZ, CHAIM ELIEZER GROSS, JOEL KAUFMAN, DAVID
EKSTEIN, ELIAS HOROWITZ, and SHLOMO WERTZBERGER,

Defendants(s)

State of New York)
County of Kings) ss.:

AFFIDAVIT OF SERVICE

Joshua Schwartz being duly sworn, deposes and says that he/she is over the age of 18 years; is not a party to this action and resides within the State of New York. That on January 2, 2009 at 1:05 pm at: 1322 45th Street, Brooklyn, New York

Deponent served the within:

ORDER TO SHOW CAUSE, MOTION PAPERS, SUMMONS AND COMPLAINT AND MEMORANDUM OF
LAW

Upon CENTRAL CONGREGATION YETEV LEV D'SATMAR, INC.

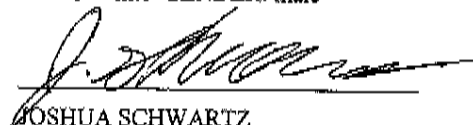
By delivering thereto a true copy of each to BERL FREIDMAN. Deponent knew said corporation so served to be the corporation described in same as said recipient, and that BERL FRIEDMAN is an officer and director of said corporation authorized to accept service thereof.

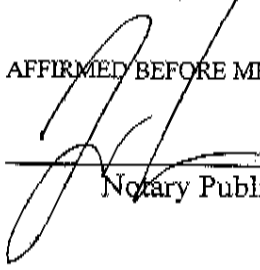
To the best of my knowledge, based on information and belief, the said recipient at the time of service was not engaged in the military service of the United States or of the State of New York. Recipient wore ordinary civilian clothes and not military uniform.

Deponent describes the individual served as follows:

AGE: 60-65 HEIGHT: WEIGHT: 5' 6" HAIR: gray RACE: white GENDER: male
OTHER: brown eyes,

AFFIRMED BEFORE ME JAN. 8. 2009


JOSHUA SCHWARTZ


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011

AFFIDAVIT OF SERVICE

SUPREME COURT

STATE OF NEW YORK

KINGS COUNTY

DOCUMENTS SERVED WITH INDEX # 33481/08 AND FILED ON DECEMBER 15, 2008

ATTORNEY(S): Herzfeld & Rubin P.C., Laura Luster

Plaintiff

Wilmos Friedman, et al
vs
CYL Cemetery, Inc., et al

Defendant

STATE OF NEW YORK: COUNTY OF ALBANY COUNTY, SS.:

James Perone, being duly sworn deposes and says deponent is not a party to this action, is over the age of eighteen years and resides in the State of New York. That on December 23, 2008 at 11:37am at 1220 Washington Avenue, Building 22, Albany, New York 12226 deponent served the within Summons, Verified Class Action Complaint, Memorandum of Law in Support of Motion For A Preliminary Injunction, and Order to Show Cause and Affirmation with Exhibits

on: New York State Police Department Defendant (herein called recipient) therein named.

INDIVIDUAL
A ☐ By personally delivering to and leaving with said _____ a true copy thereof, and that deponent knew the person so served to be the person mentioned and described in said Summons, Verified Class Action Complaint, Memorandum of Law in Support of Motion For A Preliminary Injunction, and Order to Show Cause and Affirmation with Exhibits

CORPORATION
B ☒ By delivering to and leaving with Jill Bertrand at 1220 Washington Ave, Bldg 22, Albany, NY and that deponent knew the person so served to be the _____ authorized clerk of the corporation. Service was made in the following manner after your deponent was unable, with due diligence, to serve the defendant in person:

SUITABLE
AGE PERSON
C ☐ By delivering a true copy thereof to and leaving with _____ a person of suitable age and discretion at _____ the said premises being the defendants/respondents [] dwelling place (usual place of abode) [] actual place of business within the State of New York.

AFFIXING
TO DOOR
D ☐ By affixing a true copy thereof to the door of said premises, the same being the defendant's [] dwelling house (usual place of abode) [] actual place of business within the State of New York.

MAILING TO
RESIDENCE
(use with C or D)
E1 ☐ Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's residence at _____ and deposited said envelope in an official depository under the exclusive care and custody of the United States Post Office within New York State on _____

MAILING TO
BUSINESS
(use with C or D)
E2 ☐ Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's actual place of business at _____ in an official depository under the exclusive care and custody of the United States Post Office within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant and mailed on _____

PREVIOUS
ATTEMPTS
(use with D)
F ☐ Deponent had previously attempted to serve the above named defendant/ respondent
Day _____ Date _____ Time _____
Day _____ Date _____ Time _____
Day _____ Date _____ Time _____
Deponent spoke with _____ who stated to deponent that the said defendant(s) lived at the aforementioned address, but did not know defendant's place of employment.

G ☒ DEPONENT STATES THAT THE INDEX # AND FILING DATE WERE CLEARLY VISIBLE ON THE SUMMONS.

VOID WITHOUT
DESCRIPTION
(use with A, B, C & D)
A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:
Approximate age 48 Approximate weight 130 Approximate height 130 Sex Female
Color of skin White Color of hair Brown Other _____

MILITARY
SERVICE
H ☐ Deponent asked the person spoken to whether the defendant/respondent was presently in the military service of the United States Government or on active duty in the military service in the State of New York and was informed he/she was not. Your deponent further says that deponent knew the person so served to be the person mentioned and described in said legal papers as defendant/respondent therein. Your deponent is over the age of 18 years and is not a party to this action.

NON-
SERVICE
H ☐ After due search, careful inquiry and diligent attempts, I have been unable to effect process upon the person/entity being served due to the following: [] Not known at address [] Address does not exist [] Evading [] Moved left no forwarding [] Other _____

WIT. FEES
I ☐ \$ the authorizing traveling expenses and one day's witness fee was paid (tendered) to the recipient.

Sworn to before me on this 23rd day of December, 2008

Donna M. Tidings
NOTARY PUBLIC, State of New York
No. 01T14898570, Qualified in Albany County
Commission Expires June 15, 2011

James Perone

Attny's File No. 23810.0005

Invoice/Work Order # SP0812701

SERVICO, INC. - PO BOX 871 - ALBANY, NEW YORK 12201 - PH 518-463-4179

SUPREME COURT
COUNTY OF KINGS

OF THE STATE OF NEW YORK

AFFIDAVIT OF SERVICE

WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND BRACH, JOSE MASRI, ERVIN
ROSNER, MORRIS FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU, MOSES
SPIELMAN AND ALL OTHERS SIMILARLY SITUATED

ATTORNEY: SERVICE
FF/INDEX #: 33481/08
DATE FILED: 12/15/08
DOCKET #:

- AGAINST -

Plaintiff(s)/Petitioner(s)

CYL CEMETERY, INC.

Defendant(s)/Respondent(s)

COURT D/T: 1/30/09 @ 9:30 A.M.
AMOUNT:

STATE OF NEW YORK COUNTY OF ORANGE ss:

THE UNDERSIGNED DEPONENT BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND IS OVER
THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK

That on 1/9/09 at 12:40 PM at 12 GARFIELD ROAD
MONROE, NY 10980

deponent served the within SUMMONS & VERIFIED CLASS ACTION COMPLAINT WITH INDEX # AND DATE OF FILING ENDORSED
THEREON, ORDER TO SHOW CAUSE & MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION

on CONGREGATION YETEV LEV D'SATMAR OF KIRYAS JOEL, INC.

therein named

CORPORATION



By delivering to and leaving with YIDA WEINSTOCK
so served to be the GENERAL AGENT

and that he knew the person
of the corporation, and authorized to accept service,



AND AT THE SAME TIME PAYING IN ADVANCE

THE AUTHORIZED FEE

DESCRIPTION

Deponent describes the individual served as follows:

MALE, WHITE SKIN, BLACK HAIR, 35-45 YRS., 6'-6"2", 190-200 LBS.

Other identifying features:

BEARD, MUSTACHE

Sworn to before me on: 1/13/09


MIKE RENNA

LINDA HOYS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ORANGE COUNTY
COMMISSION EXPIRES JANUARY 7, 20__
01000180138

JOHN COULD
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ORANGE COUNTY
COMMISSION EXPIRES JULY 15, 20__ If
01005013764

JO-ANN JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ORANGE COUNTY
COMMISSION EXPIRES AUGUST 15, 20__
01005031056

KATHLEEN COULD
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ORANGE COUNTY
COMMISSION EXPIRES NOVEMBER 15, 20__
01004882858

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

INDEX NO.:
33481/08

-against-

Defendants.

CHAIM JACOBOWITZ, a person of the Jewish religion,
observant of its prohibition on oath taking, under penalty of perjury affirms:

1. I am the Secretary of Congregation Yetev Lev D'Satmar Inc. (the "Congregation"). I make this affirmation in support of plaintiffs' motion to hold Joseph Weiss and Joel Kaufman in contempt of Court.

2. As this Court is aware, this matter came before the Court on December 16, 2008, in connection with the request by the representative plaintiffs for a Temporary Restraining Order. The moving papers, including my prior affirmation, set forth the history of the Congregation, and showed that, despite decades of prior practice in which Certificates issued by the Congregation for burial of members in the Congregation's Kiryas Joel Cemetery had been honored by the Chevre Kadishe (Burial Society) and others involved in the internment process, defendants had recently threatened and had actually sought to actively interfere with the Congregation's ability to comply with its contractual duties to its members - - evidenced by Certificates and reflected in the By-Laws - - to provide for the burial of its members. The Affirmation of David Hamm, Esq., submitted with this Affirmation, addresses the hearing before the Court, including the representations of defendants' counsel and the Temporary Restraining Order issued by this Court. I respectfully relate here my knowledge of the subsequent events requiring the institution of this application.

4. On Sunday, January 11, 2009, I was contacted by Samuel Kestenbaum concerning the death of his grandfather, Moses Kestenbaum, who had been a member in good standing of the Congregation. A Certificate had been issued to him on June 22, 2004, authorizing his burial in the

Congregation's Kiryas Joel Cemetery. A copy of same is annexed, with certified translation, as Exhibit "A." I contacted Rabbi Ezriel Gluck, the head of the Chevre Kadishe (Burial Society), and Yereim Funeral Chapel to arrange for the funeral.

5. Shortly thereafter, I was contacted again by Samuel Kestenbaum. He stated that he had been told by an employee of Yereim Funeral Chapel to contact Joseph Weiss, that he had done so, that Joseph Weiss told him that the decedent's Certificate would not be honored, and that he should contact Joel Kaufman to make further arrangements. Mr. Kestenbaum advised me that, upon calling Joel Kaufman, the latter confirmed that the decedent's certificate would not be honored, and that Moses Kestenbaum would not be buried in the Cemetery unless \$9,000 additional were paid to Joel Kaufman. Thus, notwithstanding counsel's assurances of a 90-day extension, and, more importantly, notwithstanding this Court's Temporary Restraining Order, defendants Weiss and Kaufman were attempting to interfere with contract rights of members bearing Certificates issued prior to April 1, 2006.

6. I thereupon faxed a letter along with Mr. Kestenbaum's Certificate to Mr. Weiss, and called him in an effort to resolve the difficulty. He refused. Despite my telefax to him of the Certificate, and his recognition

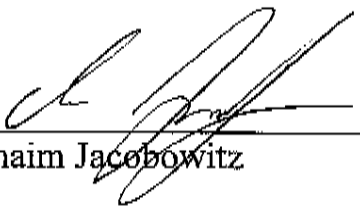
that it had indeed been issued in 2004, he insisted that because Mr. Kestenbaum's name did not appear in *his* books and records, in that no permit had been issued by Joel Kaufman (sexton of the Central Congregation Yetev Lev D'Satmar, Inc.), the Congregation's Certificate would not be honored and Mr. Kestenbaum would not be buried in the Cemetery. Indeed, he indicated that if the funeral did take place, and the body was brought to the Cemetery, the result would be infliction of shame and humiliation on the decedent "just like last time," apparently referring to the incident in which headstones brought to the Cemetery with a permit of the Congregation were forced to be removed by Weiss and others.

7. The annexed affirmation of Samuel Kestenbaum confirms that, in light of the extortionate threats by Weiss and Kaufman, Samuel Kestenbaum had hand-delivered to Joel Kaufman a check in the demanded sum of \$9,000, and only then was the funeral permitted to proceed. Clearly, notwithstanding counsel's erroneous representation to the court, and in sheer disregard of this Court's Temporary Restraining Order, Weiss and Kaufman have once again - - and this time successfully - - sought to extort money from Congregation members, by interfering with a member's contract rights, under a Certificate issued prior to April 1, 2006, to burial in the Cemetery.

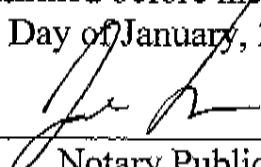
8. The need to hold these defendants in contempt so as to prevent

them from repeating this conduct is urgent. I am aware of at least one other member of the Congregation having a Certificate issued prior to April 1, 2006 who is hospitalized in critical condition. The potential for repetition of the abusive and extortionate behavior of Messrs. Weiss and Kaufman is very real. This Court should put a stop to such practices.

WHEREFORE, your affirmant respectfully requests that the motion to hold Weiss and Kaufman in contempt be granted.


Chaim Jacobowitz

Affirmed before me this
13 Day of January, 2009


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LAG091405
Qualified in Kings County
Commission Expires 04/28/2011

[Emblem]

Congregation Yetev Lev D'Satmar

Founded by the holy Grand Rebbe, of blessed memory - Under the leadership of the current Grand Rebbe
- Headed by the Head of the Rabbinical Court

Central Office: 150 Rodney Street • Mailing Address: P.O.B. 506 Brooklyn NY 11211 Tel. (718) 384-7449 Fax: (718) 384-7455

With the Help of G-d

Confirmation Certificate

May this serve as evidence for the honorable

Mr. Moshe Kestenbaum
190 Ross St.
Brooklyn NY 11211

for his purchase of a plot of land for himself and his spouse where they are to be buried in the cemetery of our holy Community, Congregation Yetev Lev D'Satmar, in Kiryas Joel, and that he paid the amount determined by the administration of our Community in accordance with the regulations of our holy Community.

On behalf of the congregation leadership, I confirm that he has taken possession of his plot effective immediately and until one hour prior to his death in accordance with a decision by the Burial Society at that time, until the arrival of the righteous Messiah, when all who have been buried will rise and sing.

May it be the will of the Almighty will that you merit to live a long life in good spirits and pleasantly into old age until we merit to hear the voice of him who brings good tidings upon the arrival of the son of David our Redeemer, speedily in our times, amen.

In witness whereof, on 3 Tamuz 5764 [22 June 2004]

On behalf of the Congregation Administration

Yida Eliezer Jacobowitz

Cong. Yetev Lev
D'Satmar



קהל יטב לב
ד'סאטמאר

נתייסדה ע"י רבינו הקדוש זצ"ל - בנשיאות רבינו הגה"ק שליט"א - בראשות הגה"צ אב"ד ור"ם שליט"א

Central Office: 150 Rodney Street • Mailing Address: P.O.B. 506 • Brooklyn, NY 11211 • Tel. (718) 384-7449 • Fax: (718) 384-74

ב"ד

תעודת אישור

וענתה השורה הזאת לעד ביד הרבני הנכבד בש"ת

אברהם לוי (אברהם לוי)

190 Ross St.

Brooklyn N.Y. 11211

שקנה אתוזה קרקע לו ולב"ב לאחר אריכות ימים ושנים, בבית העלמין דקחלתינו הק' "קהל יטב לב דסאטמאר" בקרית יואל יצ"ו, ושילם הסכום הנקבע ע"י הנחלת קחלתינו, ובהתאם להתקנות של קחלתינו הקדושה.

בשם הנחלת תקחלה חנני מאשר שחלקו קנוי לו מעבשיו ולשעה אחת קודם סוף מוע"ש, בהתאם להחלטת החברא קדישא בימים ההם, עד ביאת מלכא משיחא ויקיצו וירננו שוכני עפר.

ויה"ד שיזכה מע"כ להאריך ימיו ושנותיו בשוב ובנעימים עד זקנה ושיבת מובה, עדי נוכח לשמוע קול המבשר ברנה, בביאת בן דוד גואלינו במחרה בימינו אמן.

באעה"ח ביום 2 לחודש 5769 שנת 2008 לפ"ק

בשם הנחלת הקחלה

(Signature)

D+M Consulting LP
#128 1303-53rd Street
Brooklyn, NY 11219

CERTIFICATION OF TRANSLATOR COMPETENCE

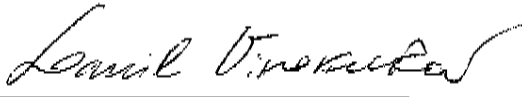
I, David Goldman, Translator, hereby state that I am familiar with both the English and Hebrew languages, that I have reviewed and edited the attached document(s) translated from the Hebrew language into the English language, and that the same are true and complete translation(s) to the best of my knowledge, ability, and belief.



David Goldman, Translator

Date 1/12/09

Affirmed and subscribed before me this 12 day of January 2009



Notary Public

DANIL I. VINOKUROV
NOTARY PUBLIC-STATE OF NEW YORK
No. 01VI6064200
Qualified in Kings County
My Commission Expires September 24, 2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER, MORRIS
FRIEDMAN, JOSEPH EPSTEIN, HERMAN LANDAU,
MOSES SPIELMAN and all others similarly situated,

Plaintiffs,

INDEX NO.:
33481/08

-against-

AFFIRMATION

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION YETEV
LEV D'SATMAR, INC., CONGREGATION YETEV
LEV D'SATMAR OF KIRYAS JOEL, INC., CENTRAL
CONGREGATION YETEV LEV D'SATMAR, INC.,
RABBI EZRIEL GLUCK, JOSEPH WEISS, MOSES
WITRIOL, NEW YORK STATE POLICE, DAVID
MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
KAUFMAN, DAVID EKSTEIN, ELIAS HOROWITZ,
and SHLOMO WERTZBERGER,

Defendants.

-----X
STATE OF NEW YORK)

ss.:

COUNTY OF KINGS)

SAMUEL KESTENBAUM, being duly affirmed, deposes and says:

1. As more fully set forth in the Affirmation of Chaim Jacobowitz,
my grandfather Moses Kestenbaum was a member in good standing of the
Congregation Yetev Lev D'Satmar, Inc. ("the Congregation"). A Certificate
had been issued to him in 2004, upon his payment of a special fee,

authorizing his burial in the Congregation's Kiryas Joel Cemetery ("the Cemetery"). My grandfather was thus in the same position as the representative plaintiffs in this action.

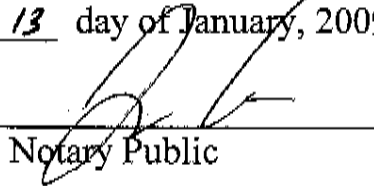
2. My grandfather, Moses Kestenbaum, passed away yesterday, Sunday, January 11, 2009. I contacted Chaim Jacobowitz, Secretary of the Congregation, who regularly handles arrangements on behalf of the Congregation for burial through the Chevre Kadishe (burial society). I was told at the Yereim Funeral Chapel, however, that I would have to contact Joseph Weiss before the funeral. I contacted Mr. Weiss, who advised me that the Certificate would not be honored, and that the family would have to make arrangements through Joel Kaufman, the sexton of the Central Congregation Yetev Lev D'Satmar, Inc., prior to the funeral. I so advised Mr. Jacobowitz.

3. I contacted Mr. Kaufman by telephone and informed him that my grandfather was the holder of a Certificate issued by the Congregation in 2004. Mr. Kaufman advised me that he would not honor the Certificate, and that the funeral could not go forward - - that my grandfather could not be buried in the Cemetery - - unless the family paid him \$9,000. I so advised Mr. Jacobowitz.

4. Because the Jewish Law requires burial as soon as possible, and certainly the same day, after consultation with other family members, and in order to avoid a disruption of my grandfather's funeral and burial, I agreed to and did, under duress, pay to Kaufman, by check, the amount of \$9,000, whereupon the funeral took place.


Samuel Kestenbaum

Affirmed before me this
13 day of January, 2009


Notary Public

JOEL LANDAU
NOTARY PUBLIC, State of New York
No. 01LA6091405
Qualified in Kings County
Commission Expires 04/28/2011