

FAX COVER SHEET

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FROM: ELLEN MULQUEEN, COURTROOM DEPUTY TO JUDGE DEARIE
EASTERN DISTRICT OF NEW YORK

DATE: SEPTEMBER 21, 2009

PHONE # (718) 613-2435

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RE : LUCKER -V- BAYSIDE CEMETERY CV 07-3823 (RJD)

YOU SHOULD RECEIVE 5 PAGES INCLUDING COVER SHEET.

RECEIVED IN CHAMBERS OF
U.S.D.J. DEARIE
ON: 9/16/09

Ira Leviton
164 West 79th Street
Apartment 4D
New York, N.Y., 10024

September 14th, 2009

Regarding: *Lucker vs. Bayside Cemetery and Congregation Shaare Zedek*, 07 Civ. 3823
Cohen vs. Bayside Cemetery and Congregation Shaare Zedek, ~~07 Civ. 3555~~ ⁰⁸ 3555
Goldstein vs. Bayside Cemetery and Congregation Shaare Zedek, ~~07 Civ. 3923~~ ⁰⁸

The Honorable Raymond J. Dearie
Chief United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y., 11201

9/21/09
Clerk to forward
copies to counsel.
[Signature]

Dear Chief Judge Dearie,

I am writing to you in regard to the cases referenced above. Although I am not sure if a letter like this becomes part of the court record, I hope that you spend the several minutes needed to read it, and promise that it will be worthwhile.

Before anything else, I want to make clear that although I live only several blocks from Congregation Shaare Zedek, I have never been a member of that synagogue, gone inside its building, known or spoken to any of its members, officers, clergy, or employees, or have been affiliated with it in any way, and that neither have I known or ever even spoken to John Lucker, any of the other plaintiffs, or any of the lawyers involved with the cases.

My connection to Bayside Cemetery and the court cases is that I am the President of the Dobrzyn-Rypin Benevolent Association, one of the organizations that with a plot of graves in Bayside Cemetery, and I am also Chairman of that organization's Cemetery Committee. Please don't be too impressed with my titles - my main qualification is that I'm several decades younger than most of our other members. (I'm one of the few children of members who also joined.) The Dobrzyn-Rypin Benevolent Association is the result of a merger in 1977 of two previous organizations with members who were originally from the adjacent Polish towns of Dobrzyn and Rypin. I am not sure if I can have any legal standing in the cases that you are hearing because I don't have direct ancestors buried in Bayside - our plot in Bayside Cemetery originally belonged to the Dobrzyn portion, but my lineage is from Rypin. However, due to my position, I have an interest in the circumstances at Bayside Cemetery, and also have an obligation to our members who have ancestors buried there. Some of the graves at Bayside that are supposed to be under perpetual care arrangements are in the Dobrzyn-Rypin Benevolent

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Association plot. If Bayside or Congregation Shaare Zedek has records, we are probably listed under the name Doresh Tov, or Doresh Tov Dobrzynski, the name of the Dobrzyn portion prior to the merger. (We are at gate number 65 in Bayside.)

The Dobrzyn-Rypin Benevolent Association has not arranged for a burial in our plot at Bayside since 1987. In that year, one of our elderly members was buried there to be next to a spouse who had died many years previously. This was the same circumstance as for all our burials at Bayside during the more than 10 years before that. Therefore, when I became president of the organization in 2003, I was not even aware that we had a plot in Bayside, and discovered so only after studying our old papers. After learning this, I visited and was horrified to see the deplorable conditions that have been already abundantly described in court filings, are not disputed, and for brevity I will not repeat. I also learned from our elderly members that unless a member had expressly wished to be buried next to a spouse who was already at Bayside, we had stopped burying our dead there because the poor conditions made the cemetery unfit to be a respectable burial ground, and we had room in our plots located in other cemeteries that are in much better condition.

One of those plots is in Acacia Cemetery, which happens to adjoin Bayside. Our plots at Bayside and Acacia are contiguous, with no physical separation of any kind. I was shocked to discover how much easier it was to enter our section in Bayside by walking through Acacia and entering and traversing our plot there, instead of simply entering the front gate of Bayside and walking its main path. I was also stunned to discover that as the small path through our plot in Acacia merges into the path in our plot in Bayside, the grounds abruptly change from well-tended to forest – in a matter of inches. There types of organizations that own plots in Bayside and Acacia are the same, the climate and weather for both cemeteries is obviously the same, and the native plants, trees, and other vegetation are the same. The only difference between the two cemeteries is their condition.

I have read through the court papers several times and have been even more astounded. Notwithstanding Congregation Shaare Zedek's ownership of Bayside Cemetery, the financial problems of the congregation due to a low membership or any other cause should have no effect on self-funding perpetual care in their cemetery. I am aware that one of the central issues, namely whether or not Congregation Shaare Zedek took monies that had been given under contract for perpetual care of graves in Bayside Cemetery and then used them for other purposes, has not yet been litigated. I also realize that I've already given away how I feel about the case, even though a trial has not yet started, so there's technically no evidence to decide anything yet.

However, it is extremely disturbing that Congregation Shaare Zedek is seeking to avoid caring for its cemetery, denying that the responsibility to do so is theirs, and even trying not to be answerable to the descendants of the deceased. Despite not being a lawyer, I suppose that arguing against certification of a class for a class action lawsuit, or saying that the statute of

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limitations has passed, are commonly used legal strategies. However, the legal arguments of Congregation Shaare Zedek, that the injuries and losses suffered by the deceased, which can only happen after death, cannot be litigated because they did not begin while the deceased were alive, and that even direct descendants do not have legal standing to seek justice on their behalf, is the most absurd part yet of everything that I have known about the entire situation concerning Bayside. If direct descendants cannot seek legal relief on behalf of their ancestors, then surely indirect descendants, or people with unknown relationships like me, or any random person, cannot do so. According to Congregation Shaare Zedek, even if a class is certified for the suit being sought by the plaintiffs, nobody could be in that class. Forgive me for what may seem like either lack of common sense or ignorance of the law, but it seems to me that it shouldn't be necessary for a person have a will, that their executor have it probated, and that it have had a clause directing the inheritance of the right to litigate poor upkeep of the decedent's grave, or the grave of their parent, for a case like this to proceed. Shaare Zedek seems to be asking for all these conditions to be fulfilled.

In the Jewish religion, there are many kinds of mitzvos, or commandments. The highest are those in which somebody helps another person with no expectation, or even hope, of getting paid back by the beneficiary. The only type of act for which this principle is always true, and in its purest sense, are deeds performed for the benefit of the dead, such as arranging for the proper funeral for a pauper, making a marker for the grave of a dead person who had no relatives, and cleaning up a cemetery. There is no restriction to the type of people who can fulfill these types of commandments; indeed, they are the obligation of all Jewish people.

Over the last several months, I have taken several figurative steps backwards, to put the situation in perspective and forget my initial horror of seeing Bayside Cemetery the first time. The conclusion that I have reached every time I have done this and thought about Bayside, is that if Congregation Shaare Zedek internalized the laws and moral obligations in the Jewish religion, which are presumably preached in its own synagogue, it either would never have allowed Bayside Cemetery to reach its current state, or when it became aware of the situation, would have considered it its obligation alone to promptly correct the conditions. Instead, every action that it has taken, over years, has been to either deny or to attempt to evade its responsibilities. The recently initiated cleanup at Bayside is occurring only because Shaare Zedek has been forced because of the threat that these court cases pose to it. Yet even that is not enough, because it has no plan for the upkeep that will be required afterward, which is part of every cemetery's basic maintenance. On the other hand, the plaintiffs are doing something that can never be paid back by those who would benefit, or by anybody else.

According to religious laws that Congregation Shaare Zedek should be following on its own, it should restore the cemetery to good condition and then maintain it, and not deny its responsibility to do so. Civil law certainly trumps religious law in any American courtroom, but I believe that the same basic principles of justice apply. Judging by its long record of neglect

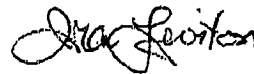
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and its more recent actions to avoid responsibility, I am fairly certain that Shaare Zedek will not do the right thing at Bayside Cemetery unless you compel it.

I realize that ultimately, your job is to decide cases after evidence has been presented. As part of that process, I strongly urge you to see the main evidence in this case for yourself, and see Bayside Cemetery in person. It will help you not only to issue decisions and judge the case if there is a trial, but also guide your pretrial decisions. And I predict that when you see it, you will also be amazed that a cemetery and the souls in it have been allowed to be degraded so badly, let alone by a synagogue, and I hope that you will find Shaare Zedek legally responsible and require it to correct the situation there.

Thank you for your time and attention in reading this letter.

Sincerely,



Ira Leviton

cc: Magistrate Judge Joan M. Azrack