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November 25, 2009

VIA NYSCEF, COURTESY COPY BY HAND

Hon. Bernard J. Fried
Supreme Court of the State of New York, New York County
60 Centre Street, Room 248 (Part 60)
New York, New York 10278

RE: *Lucker v. Bayside Cemetery*, Index No. 114818/09

Dear Justice Fried:

We write to request a pre-motion conference under Rule 24 of the Commercial Division of the Supreme Court in advance of our motion under CPLR 3211 to dismiss all of the claims in the above-referenced matter against our client, Defendant Community Association for Jewish At-Risk Cemeteries, Inc. ("CAJAC").

Plaintiffs purport to bring this class action on behalf of individuals who contracted with Defendant Congregation Shaare Zedek (the "Congregation") between 1970 and the present for the annual or perpetual care of their burial sites at Bayside Cemetery in Queens, New York. According to the complaint, the Congregation breached its contractual and fiduciary duties arising under these contracts by failing properly to maintain those sites.

CAJAC is not a party to any of the contracts at issue. Rather, it is a New York not-for-profit founded in 2006—long after most of these contracts were executed and the Congregation's alleged defalcations—for the 501(c)(3) tax-exempt purpose of raising funds to help restore and maintain New York's historic Jewish cemeteries, many of which have fallen into disrepair. To date, CAJAC has raised approximately \$150,000 to help restore Bayside Cemetery.

The complaint contains a single reference to CAJAC, which essentially alleges that CAJAC is an "alter ego" of the Congregation and thus somehow should be derivatively

liable for the Congregation's alleged misconduct. The entirety of that reference and therefore the sole basis for urging liability against CAJAC is as follows:

Community Association for Jewish At-Risk Cemeteries, Inc. ("CAJAC") previously called "Friends of Bayside Cemetery," is a New York not-for-profit corporation with its principal place of business at One Barker Avenue, Suite 260, White Plains, New York. CAJAC has entered into at least one recent contract concerning Bayside Cemetery and holds itself out as the steward of the cemetery. CAJAC was previously registered with the New York Secretary of State's Office with an address of 212 West 93rd Street, New York, NY – this is the same address for Defendant Congregation Shaare Zedek. The President of CAJAC, Gary Katz, is also a member of Congregation Shaare Zedek and a Board of Directors member of Hebrew Free Burial Society which provides references to CAJAC on their website, has been involved with CAJAC's activities at Bayside Cemetery and also served as a money conduit for CAJAC prior to CAJAC receiving its tax exempt status. There are additional overlapping ties between Congregation Shaare Zedek and CAJAC which suggest that CAJAC is an arm of Defendant Congregation Shaare Zedek which has been designed as a straw person upon which to unload all of Shaare Zedek's legal and other responsibility for Bayside Cemetery. (Complt. ¶ 16.)

These allegations fall woefully short of the particularized facts that are required to be pled under New York law for this Court to impose liability under an alter ego theory and/or to pierce the corporate veil. As this Court recently ruled in dismissing a complaint that contained far more specific facts than the conclusory assertions above, plaintiffs here must plead specific facts demonstrating that the Congregation controlled the day-to-day management of CAJAC, *e.g.*, interlocking directors or officers and the absence of arms-length dealings between the entities, and that the Congregation used that dominion to perpetrate a fraud or wrong upon plaintiffs. *See Capricorn Investors III, LP v. Coolbrands Int'l, Inc.*, No. 603795/06 (N.Y. Sup. Ct. June 13, 2008) (J. Fried) (a copy of the decision is attached hereto). Plaintiffs have failed to meet this heavy burden and, therefore, CAJAC intends to move this Court to dismiss all of the claims against it.

We stand ready to file our motion after the required pre-motion conference, in accordance with a briefing schedule to which all parties have agreed,¹ if resolution of the

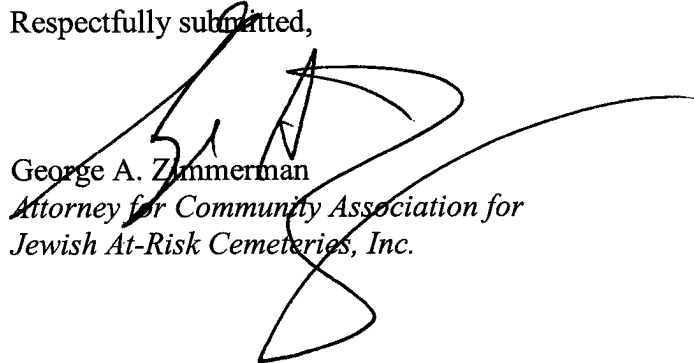
¹ Subject to this Court ordering otherwise, all parties have agreed that the time by which defendants shall answer or move to dismiss the complaint is as follows: (1) defendants shall serve their motions to dismiss on or before seven days after the Court authorizes the filing of a motion to dismiss; (2) plaintiffs shall file their opposition on or before 45 days after service of all defendants' motions to dismiss; (3) defendants shall serve

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issue proves impossible.

Respectfully submitted,



George A. Zimmerman
*Attorney for Community Association for
Jewish At-Risk Cemeteries, Inc.*

cc: Michael M. Buchman, Attorney for Plaintiffs (by electronic mail)
Stephen M. Axinn, Attorney for Defendants Congregation Shaare Zedek and
Bayside Cemetery (by electronic mail)

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or before seven days after the Court authorizes the filing of a motion to dismiss; (2) plaintiffs shall file their opposition on or before 45 days after service of all defendants' motions to dismiss; (3) defendants shall serve their replies on or before 14 days after all defendants receive service of plaintiffs' opposition; and (4) the return date for the motions in the submissions part shall be February 8, 2010.