

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
FOR DADE COUNTY, FLORIDA

JUDITH HERSKOWITZ, XXX HERSKOWITZ,  
XXXX HERSKOWITZ,

GENERAL JURISDICTION DIVISION

Plaintiffs,

vs.

SUSAN CHARNEY, and SUSAN CHARNEY  
(purportedly) on behalf of NORTH  
JERSEY TRADING CORPORATION,

CASE NO(s) 94- 472 CA (22)  
94-2887 CA (22)  
94-5714 CA (22)

Defendants.

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SUSAN CHARNEY,

Plaintiff,

vs.

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ  
XXXX HERSKOWITZ & XXX HERSKOWITZ

CASE NO(s) 93-22964 CA (22)  
94-669 CA (22)  
94-3614 CA (22)

Defendants.

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**VERIFIED MOTION FOR CONSTITUTIONALLY MANDATED INQUIRY  
INTO WHETHER THE JURISDICTIONAL ISSUES WERE FULLY AND  
FAIRLY LITIGATED AND FINALLY DECIDED BY THE NEW YORK COURT**

COMES NOW Judith Herskowitz and moves this Honorable Court pursuant to Florida Enforcement of Foreign Judgments Act §§ 55.501-55.509 and U.S.C. Constitutional Article 4 § 1 for a Constitutional Inquiry Into Whether the Jurisdictional Issues Were Fully and Fairly Litigated and Finally Decided by the New York Court on the New York judgments sought to be domesticated in this Court, by Susan Charney individually and Susan Charney (purportedly) on behalf of North

Jersey Trading Corporation (“Charney”) <sup>1</sup>

### **BACKGROUND INFORMATION**

1. On, on around December 20, 1988 Charney purported to serve Alex Fried and Judith Herskowitz and her two sons XXXX and XXX Herskowitz (“the Herskowitzes”) with a *Motion for a Temporary Restraining Order and Preliminary Injunction* issued *ex parte* in the form of an Order to Show Cause on December 13, 1988, in the Supreme Court of the State of New York, County of New York, Index No. 24517/88.

2. Various supporting papers were attached to the motion as “exhibits” including a *Verified Complaint* in which Charney individually sought judgment *personally* against Fried and the Herskowitzes, to be declared the owner of 40 shares of the 100 shares of the issued and outstanding stocks of North Jersey Trading Corporation (“North Jersey”)<sup>2</sup> through an alleged promise of a gift of stocks by Fried; a payout for those alleged shares; and three million dollars for alleged damages.

3. In attempts to gain *in personam* jurisdiction over Fried and the Herskowitzes, Charney falsely claimed in her *Verified Complaint* that they were citizens of New York, when in fact the Herskowitzes had been domiciled in and were permanent residents of the State of Florida since 1975 and Fried since 1986.

4. Each of the Herskowitzes and Fried filed Motions for Dismissal for lack of personal jurisdiction and contested Charney’s attempted service because: it was made only with a Motion for

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<sup>1</sup> The italicized references to records from the New York Court represent newly submitted matters of record not previously before this Court and not considered in this case.

<sup>2</sup> In 1958 Alex Fried and his wife Hedy Fried purchased a 54 unit rent controlled apartment building at 200 Riverside Drive New York City. The Frieds managed the building during their lifetime and it was their source of income. The property was under the business entity, North Jersey Trading Corporation a closed New Jersey corporation.

Preliminary Injunction and Temporary Restraining Order and not with the required summons; the attempted personal service and substituted service were deficient; and the Herskowitzes and Fried were not amenable to long arm jurisdiction of the New York court or to extra-territorial service of process because, they had not committed any act or engaged in any activity in New York and had no legal relations with Charney which could be construed as subjecting them to the jurisdiction of the New York courts, i.e. no minimum contacts.

5. In January 1989, Charney moved the court to allow her to serve an Amended Complaint which was basically the same as her initial complaint but instead of seeking damages individually she now claimed it derivatively on behalf of North Jersey. By *Order dated March 8, 1989* Justice Jacqueline Silbermann denied the Motion for Preliminary Injunction and Temporary Restraining Order; set down the Herskowitzes' and Fried's Motion to Dismiss on the service of the Order to Show Cause for an immediate trial pursuant to CPLR 3211(c) for March 21, 1989 and held in abeyance Charney's Amended Complaint, "subject to the disposition of the traverse hearing".

6. The Herskowitzes and Fried objected to the March 21, 1989 date of the hearing. Following that the hearing was reset for May 10<sup>th</sup> 1989. On that day a trial was commenced before Justice Gangel Jacob. It was conducted for four days but, was not completed. Since the Herskowitzes did appear on May 10<sup>th</sup> for that trial their objection to that March 21, 1989 date of hearing date became moot and so they withdrew their Motion to Reargue. In a *May 8, 1990 Order* Justice Silbermann allowed the Herskowitzes to withdraw their prior motion to reargue her March 8, 1989 order.

7. In that same May 8<sup>th</sup> 1990 order Justice Silbermann also directed to continue the trial referred to as the traverse hearing before Justice Gangel. Unfortunately, then Justice Gangel Jacob recused herself from the case and it was then reassigned to Justice Harold Tompkins.

8. In an attempt to block the resumption of the immediate trial Charney moved to default the Herskowitzes. The Motion for Default was denied by Decision dated April 9, 1991, settled in a May 21, 1991 Order, the court finding no ground for default. The Herskowitzes were given thirty days to answer Charney's amended complaint, which also allowed them to move for dismissal because the jurisdictional issues remained undecided on their initial Motions to Dismiss.

9. Thereupon, on July 2, 1991 the Herskowitzes filed a Motion to Dismiss the amended complaint raising their previously undecided defense of lack of personal jurisdiction. In opposition to the motion Charney conceded that the jurisdictional issues were yet to be determined. Charney conceded that the extraterritorial service on XXX Herskowitz was invalid and that the New York court did not have long arm jurisdiction over him. Charney claimed that a ruling on the Motion to Dismiss was premature before she conducts discovery on jurisdiction and moved for leave to file an amended complaint to state facts for long arm jurisdiction.

**The Herskowitzes Were Deprived of Any Hearing Full and Fair or Otherwise to Show That They Have Not Withdrawn Their Objections to Personal Jurisdiction**

10. Justice Tompkins then, without resuming a trial on the service of that Order to Show Cause; without making any determination on the merits on the issue of service and long arm jurisdiction; and without making any finding of minimum contact entered an Order dated October 2, 1991 in which he purported to rely on a presumption that Justice Silbermann's order of May 8, 1990 was a waiver of personal jurisdiction by the Herskowitzes stated by Justice Tompkins as follows:

“The extensive prior history of the numerous prior motions have given the Court familiarity with the action. North Jersey and the defendant Fried and the Herskowitz defendants have repeatedly raised and reraised the issue of jurisdiction in spite of Justice Silbermann's order of May 8, 1990 which permitted the withdrawal of the jurisdictional claim. North Jersey, defendant Fried and the Herskowitz defendants may not re-raise the jurisdictional issue.”

11. In that same October 2, 1991 Order Justice Tompkins deemed the Herskowitzes' second Motion to Dismiss to be a reargument of the May 8, 1990 order, and so he declined to rule on their Motion to Dismiss. The Herskowitzes were then deprived of any hearing full or fair or otherwise, to show that they had not withdrawn their objections to personal jurisdiction. On November 21, 1991 the Herskowitzes filed a Motion to Reargue the October 2, 1991, demonstrating that Justice Silberman's order of May 8, 1990, nowhere found a waiver of jurisdictional objections. That motion was mailed back to them without any hearing and without any ruling upon instructions of Justice Tompkins to the deputy clerk.

12. Then without notice and hearing to the Herskowitzes, Charney through Delibert moved to sanction them for their "bad faith" attempts to reconsider the jurisdictional issues. In an *ex parte order dated December 10, 1991 sanctions were granted against the Herskowitzes in the sum of \$5,000.00* as fees for Delibert, on the stated basis that they were impeding Charney from reaching the merits of her case by re-raising the jurisdictional issues. On *February 6<sup>th</sup> 1992, a Judgment* was entered by the clerk on the \$5,000.00 sanction award, with direction to "have execution thereto".

13. Alex Fried died on March 25, 1992, in Miami-Dade County, Florida. Charney failed to substitute his estate and no representative qualified to act in place and stead of Fried in the New York Supreme Court case.

**The Herskowitzes Were Denied Appellate Review and Were Sanctioned by the Appellate Court in the sum of \$5,000 for Their Attempts to Be Heard on the Jurisdictional Issues**

14. The Herskowitzes sought appellate review of the October 2, 1991 order. At the same time they petitioned the New York Appellate Division, First Department for a writ of prohibition and mandamus to require Justice Tompkins to accept for filing their November 21, 1991 Motion to

Reargue and to restrain the lower court from exercising in personam jurisdiction over the Florida domiciliaries, without making a determination on these issues.

15. By *Decision dated June 23, 1992*, the Appellate Division, First Department dismissed the appeal without reviewing the merits of the jurisdictional issues. The October 2, 1991 order was treated nonappealable on the stated ground that no appeal lies from an order denying a motion deemed by the lower to be “reargument”. Since there was no order determining the Herskowitzes’ and Fried’s initial motions to dismiss on the jurisdictional defenses or on any waiver of personal jurisdiction in that May 8, 1990 order, there was no initial order from which to appeal from.

16. By *Order dated June 23, 1992* the simultaneously filed petition for writ of prohibition and mandamus was denied by the Appellate Division, First Department, on the stated ground that the proper remedy was via an appeal (an appeal that, as noted, in the companion appeal had been dismissed on other than the merits). On Charney’s motion sanctions were imposed on the Herskowitzes in the sum of \$5,000.00 deeming their continued efforts to be heard on the personal jurisdictional issues to have been

“undertaken primarily to delay the resolution of the underlying action and to harass and maliciously injure the respondents herein”.

17. The June 23<sup>rd</sup> order was amended by a *July 10, 1992 Corrected Order* providing for the entry of a judgment by the clerk of the Supreme Court New York County for Charney and against the Herskowitzes. On *August 19, 1992 a Judgment* was entered for the \$5,000.00 as counsel fees for Delibert with the direction “to have execution thereof”.

**The Herskowitzes Were Ordered to Turn over All Their North Jersey Shares Worth Over a Million Dollars in Satisfaction of the \$5,000 Sanction Imposed on Them by the**

**Appellate Court for Objecting to the New York Court's Jurisdiction and When Those Stock Were Not Turned Over, Orders Were Entered to Incarcerate Them**

18. Then by *Motion dated August 24, 1992*, Charney moved before Justice Tompkins purportedly pursuant to CPLR §5225 to compel Judith, XXXX and XXX Herskowitz “to turn over to the Sheriff of the County of New York, their shares of stock in North Jersey Trading Corporation, in aid of satisfaction of that August 19<sup>th</sup> judgment”. There was no personal service or otherwise of this motion on the nonresident Herskowitzes and CPLR §5225, by its own terms, can have no extraterritorial effect. Furthermore, pursuant to §5225, only so much of personal property “as is sufficient value to satisfy the judgment” may be directed to be delivered to the Sheriff. The Herskowitzes’ stocks based on the value of the North Jersey real property were worth in the millions, so that the objective was seize their entire interest in North Jersey.

19. Charney’s motion was granted by *Order dated September 18, 1992*, directing the Herskowitzes to turn over all their North Jersey stocks certificates to the Sheriff in the County of New York, although the court was likewise without extraterritorial authority over the stocks held by the nonresident Herskowitzes in the State of Florida. In that same September 18, 1992 Order, the court granted Charney’s motion to strike the Herskowitzes’ pleadings unless they “appear and submit to depositions commencing on October 29, 1992, 9:30 A.M. at the Supreme Court, 60 Centre Street, Room 252, New York, New York”, the courtroom of Justice Tompkins.

20. That October 29, 1992 day of deposition was set a few days following the October 16<sup>th</sup>, 1992 date the Herskowitzes were required to turn over their North Jersey shares to Sheriff in the State and County of New York making the deposition just a pretext set up by Charney to force the Herskowitzes into the New York court’s jurisdiction, to confiscate all their North Jersey shares.

21. When the nonresident Herskowitzes did not appear for the deposition, Charney moved with a *Motion dated December 18, 1993* to hold them in contempt of court for their failure to appear for their deposition. Charney moved yet with another *Motion dated December 18, 1993* to hold the Herskowitzes in contempt of court pursuant to § 753 of the New York Judiciary Act in further enforcement of the August 19, 1992 judgment, even though §753(A)(3) makes §753 inapplicable to judgments such as this, because it is limited solely to “a case where by law execution can not be awarded for the collection of such sum”. Charney also sought to imprison the Herskowitzes

“until such time as they may purge their contempt by, (i) complying with the Order of this Court heretofore issued, to deliver their shares of stock in North Jersey Trading Corp. To the Sheriff of New York County.”

22. Thereupon, Charney procured a whole succession of orders and sanctions from the Court to further punish the Herskowitzes, in retaliation for their ongoing objection to personal jurisdiction. Among these was an *Order dated January 19, 1993* holding the Herskowitzes in contempt of court for their alleged failure to appear for their deposition. Delibert was awarded the sum of \$23,500.00 for counsel fees and expenses, against the Herskowitzes to be paid on or before February 4, 1993. The order further provided that if the \$23,500.00 were not paid as directed, then on Charney’s *ex parte* application, an order would be entered to arrest and to incarcerate the Herskowitzes until compliance with that order.

23. Charney procured from Justice Tompkins yet another *Order dated January 19, 1993* striking the Herskowitzes’ pleadings for failure to appear for their deposition, the pleading in which the Herskowitzes also continued to object to personal jurisdiction. Then, without any opportunity to be heard at any hearing evidentiary or otherwise and without any further proof, Charney was declared to be the owner of a total of 40 shares of the 100 issued and outstanding shares of common stock of North Jersey.

24. Then by yet a further *Order dated January 19, 1993*, the Herskowitzes were held in contempt of court, again pursuant to that inapplicable §753, for failure to deliver their North Jersey stock certificates to the New York Sheriff in satisfaction of that August 19, 1992 judgment and an additional fee of \$7,000.00 was awarded to Delibert against the Herskowitzes. The order provided that the Herskowitzes may purge themselves of the fine by turning over their North Jersey stock certificates to the Sheriff on or before February 4, 1993. In the event of failure of compliance, the order provided for an *ex parte* application,

“for an order of commitment directing the Sheriff of the City of New York or the sheriff of any county within the state wherein the Petitioners, may be apprehended, commanding him forthwith to arrest the said Petitioners, JUDITH HERSKOWITZ, XXXX HERSKOWITZ and XXX HERSKOWITZ, to be brought before IAS Part 13 of this Court during the time when such part is in session, to be committed until they shall purge their contempt by complying with the Order of this Court entered the 21<sup>st</sup> day of September, 1992, by turning over to the Sheriff of the City of New York the shares of stock....” (Emphasis supplied)

25. On February 19, 1993, Justice Tompkins issued an *ex parte* Order of Commitment, (arrest) directing the Sheriff to arrest the Herskowitzes and to bring them before him for their alleged failure to purge themselves by paying the fine of \$7,000.00 and by delivering all their North Jersey stock certificates to the Sheriff. Still, another *ex parte Order of Commitment (arrest) dated February 19, 1993* was entered by Justice Tompkins for the arrest of the Herskowitzes for their alleged failure to pay the \$23,500.00 fine imposed on them by the January 19, 1993 order<sup>3</sup>.

26. In March 1993 North Jersey filed a petition for relief under Chapter 11 in the United State Bankruptcy Court in New Jersey Case No. 31620. On October 27, 1993 an order was entered

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<sup>3</sup> The attempted arrest of Judith Herskowitz, as the holder of the majority shares of North Jersey continued to be of great interest to Charney. When in January 1994 it was believed that she was visiting in the New York City apartment of XXX X Herskowitz, New York City police officers were dispatched to his New York City address to arrest Judith Herskowitz.

by the Bankruptcy Court granting Charney relief from the Automatic Stay. Then on November 22, 1993 Justice Tompkins entered a default judgment “in favor of Charney on behalf of North Jersey” against defendants XXXX and XXX Herskowitz in the sum \$4,251,947.87 and on January 21, 1994 against Judith Herskowitz in the sum of \$4,300.024.42. The judgments arose out of the same alleged injury, but were entered at different times because of a bankruptcy stay for Judith Herskowitz.<sup>4</sup>

**Delibert Conceded in Sworn Testimony That it is Unsupported by the Record That the Herskowitzes Have Withdrawn Their Objections to Jurisdiction**

27. On December 29, 1993 Delibert personally appeared in a Bankruptcy Court case in Dade County, Florida filed by Judith Herskowitz (dismissed at a later date). Delibert testified and conceded under oath that he knew and was fully aware that Judge Tompkins’ ruling in his October 2, 1991 order that the Herskowitzes withdrew their objections to personal jurisdiction, was unsupported by the New York record and was not true, stated as follows:

"Q.....is there any document that you have knowledge of where the defendants Judith Herskowitz, XXX Herskowitz, XXXX Herskowitz and Alex Fried withdrew their jurisdictional objections in the New York court?

A. In so many words, I don't believe so.

Q. You do not have any such document?

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<sup>4</sup> The judgment was entered on Charney’s ex parte application before a New York referee Charney claiming a loss of income on a hypothetical rental income for North Jersey from 1985 to 1993, collected 365 days a year on all the 54 apartments. She minimized expenses including only the utility bills, mortgage payments, and the super’s salary. She omitted the loss of income on apartments kept vacant by Fried to co-op or refurbish to increase the controlled rents; also the usual vacancies; nonpayment; salary for the super’s helper; taxes; legal and accounting fees; telephone; repairs; painting; capitol improvements i.e. windows, a new boiler, etc.; and most significantly the income of Fried. She claimed \$960,000,00 as loss of value of the building and an over a million dollars for prejudgment interest. In a May 13, 1996 deposition in the Florida case pgs. 99, 257, 212 and 213 Charney conceded that Fried got the income and profits of North Jersey that it was his sole source of income and that she did not get income or dividends from North Jersey.

- A. I don't believe there is such a document in so many words."  
Q. I am asking you if there is any such document wherein these parties withdrew their jurisdictional objections. The same parties as above.  
A. I know of no document stating an expressed withdrawal of the objections.”

28. This is a noteworthy concession that puts the lie to Charney’s res judicata defenses as further illustrated by the Exceptions Charney filed to the General Master’s Report of September 5, 1995 stating that the New York court’s determination on personal jurisdiction,

“was not reached in the October 2, 1991 decision” on that “earlier permitted withdrawal of their jurisdictional objections. Rather, jurisdiction was clearly determined in the April 9, 1991 decision and resulting May 21, order.”

Yet, in his order of December 10, 1999 Judge Siegel could not find that a determination on personal jurisdiction was made in that April 9, decision and May 21, 1991 order.

**Charney through Delibert Supported the Liquidation of the North Jersey Real Property Obviously, to Create a Cash Fund For the Fees of her Attorneys**

29. In August 1994 the North Jersey building at 200 Riverside Drive, New York City, was sold by the Bankruptcy Trustee, supported by Charney for about Three million dollars.<sup>5</sup> All the creditors were and all the administrative expenses were paid. Delibert received \$50,000.00 in fees.

30. In the New York case by order dated November 20, 1995 Charney purported to procure the appointment of Paul Windels III as post-judgment receiver pursuant to N.Y. CPLR §5228. The only asset that Charney found was a subscription agreement to purchase as a co-op a New York rent

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<sup>5</sup>When Charney purported to commence her lawsuit in 1988 the North Jersey real property was encumbered with only about a \$200,000.00 a mortgage. On that bankruptcy the entire debt could have been restructured for about \$600,000.00. But, because it was forced into liquidation by Charney, everyone owed money was paid dollar for dollar. One million dollars alone was used to pay the N.Y. State Cuomo tax and capitol gain taxes, and about \$120,000.00 for real estate commissions and over \$500,000.00 for administrative expenses.

controlled apartment, the prior residence of Fried that passed to the Herskowitzes upon Fried's demise. The apartment was occupied by XXXX Herskowitz and his family. Charney brought a turnover proceeding for that subscription agreement and threatened to sell it at a Sheriff's sale which she used to force a settlement. In fact Delibert himself acknowledges on page 15 par. 27 of his May 28, 2003 affirmation in support of the Motion Directing Disbursement of Assets pending now in the Supreme Court of New York that the settlement was

“concluded only by a threat to re-open the turnover proceeding regarding XXXX Herskowitz's co-op conversion rights on the ground of his bad-faith settlement negotiations.

31. Charney accepted a payment of \$150,000, from XXXX and XXX Herskowitz pursuant to a Settlement Agreement dated December 1988. The settlement was in “full payment” for all of Charney's New York judgments individually and on behalf of North Jersey against XXXX and XXX Herskowitz.

32. In a Letter Opinion dated July 10, 2000 Bankruptcy Court Judge Stripp noted that there remained close to \$700,000.00 in the estate of North Jersey. Judge Stripp stated that “this fund belongs to the debtor's shareholders” and ruled that it was to be transferred by the Trustee the New York receiver “for adjudication there of the shareholders' rights therein between Judith Herskowitz and Susan Charney”. By Order dated August 9, 2000 Judge Stripp dismissed the bankruptcy case and directed the Trustee to transfer the funds in her possession to the New York receiver.

**Delibert and Charney's Other Attorneys , Have Seized the Remaining Funds of North Jersey of Close to \$700,000.00 to Unlawfully Divide it as Fees Among Themselves Including Mr. Christu the Lawyer in this Florida Case Who Has a Personal Interest in Having this Case Closed Without Being Heard, to Confiscate Those Funds for Fees**

33. After nearly three years of holding funds of close to \$700,000.00 it surfaced only upon

Judith Herskowitz having brought a suit in federal court. Charney through Delibert filed in the Supreme Court of New York a “Motion Directing Disbursement of Assets” dated May 28, 2003, purportedly based on N.Y. Business Corporation Law §626(e).

34. That motion does not seek any distribution to the shareholders and/or to make any determination on these issues as directed by the Bankruptcy Court, but attempt to confiscate that \$700,000.00.00 in an unlawful and illegal scheme to divide it as fees among the various attorneys Charney retained for herself and for reimbursement of fees she paid to her lawyers cleaning out North Jersey to the last penny as shown below:

Attorneys	Charges Out-	Amount Agreed
	standing	
Susan Charney (partial reimbursement of sums already paid)	\$120,000.00	\$110,000.00
Steven Delibert, Esq.	\$767,904.74	\$401,950.94
Eric C. Christu, Esq.	\$102,879.45	\$105,000.00
William T. Livingston, III, Esq.	\$28,185.83	\$18,000.00
Clifford Hark, Esq.	\$44,541.12	\$25,000.00
Carlton, Fields, Ward, Emmanuel, Smith & Cutler	\$28,553.56	\$2,500.00
Paul Windels, III, E.q., Receiver	\$19,774.95	\$19,774.95
Totals	\$1,111,839.65	\$682,225.89

35. Delibert alone claims to have expended close to 5,000 hours pursuing the Herskowitzes on what he knew and was fully aware were sham and false claims and lies upon lies and concedes

“that over the years, there were many periods of weeks on end when he - a single practioner - was compelled to devote virtually full time to the action, and to expend

large sums in disbursements for travel printing, electronic research, and the like”.

Delibert acknowledges that he did this in the anticipation that all his fees would be paid from the corporate assets and as shown above to the point of forcing the liquidation of the North Jersey property for these purposes, destroying thirty-two years of hard work.

36. These procedures are in violation of N.Y. BCL 626(e) which provides only for a reasonable attorney fees in a derivative suit; limited to funds recovered from the defendants, which was only that \$150,000.00 forced settlement sum; and only for the attorney of record in that New York case. Moreover, Charney pursued the litigation mostly for her individual benefit and was represented in her personal right, for which no fees are allowed under N.Y.BCL 626(e). Additionally, the request for fees was required to be made in the Bankruptcy Court and except for awarding around \$50,000.00 for Delibert all further fees for him and fees for other attorneys including Mr. Christu were denied by that Court.

37. To clean out the corporate funds, these attorneys now attempt to seize all of Judith Herskowitzes' stocks in North Jersey with that void turnover order dated January 19, 1993, entered in retaliation for attempting to litigate the personal jurisdictional issues, even referring to her as a “fugitive”. They also seek to defraud Judith Herskowitz of her interest in North Jersey with that void 4.2 million dollar New York judgment. To eliminate any objection by Judith Herskowitz to Charney's and Delibert's unlawful and illegal agreement, they assert that Judith Herskowitz has no standing to object to their collusive scheme for distribution of the assets of North Jersey, by reason of those contempt orders and threaten Judith Herskowitz with more sanctions and even with arrest should she appear in the New York court. All this underscores the necessity for the matters noted in the pleadings and in the pending motions to be tried on the merits in this Court.

**VERIFICATION**

I hereby certify under penalty of perjury that the facts stated above are true and correct to my personal knowledge.

Executed on September 15, 2003

By: \_\_\_\_\_  
JUDITH HERSKOWITZ

Respectfully submitted,

JUDITH HERSKOWITZ J.D.  
Plaintiff Pro Se  
P.O. Box 403543  
Miami Beach, Fl. 33140  
Tel: (305) 534-7600

By: \_\_\_\_\_  
JUDITH HERSKOWITZ

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Strike for Sham Pleading was served on Eric Christu, 4800 N. Federal Highway, Suite 200E, BocaRaton, Fl. 33431, this 15th day of September, 2003.

By: \_\_\_\_\_  
JUDITH HERSKOWITZ

