

SUPREME COURT OF THE STATE OF NEW YORK

war 55

COUNTY OF NEW YORK IAS - PART 13  
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SUSAN CHARNEY,

Plaintiff,

INDEX NUMBER

-against-

24517/88

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,  
[REDACTED]

MOTION SUBMITTED:

03-19-91<sup>1</sup>

Defendants.  
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NORTH JERSEY TRADING CORP.,

Plaintiff,

INDEX NUMBER

-against-

21933/90

STEVEN DELIBERT, ESQ. and  
SUSAN CHARNEY,

MOTION SUBMITTED:

03-19-91

Defendants.  
-----X

HAROLD TOMPKINS - Justice:

North Jersey Trading Corporation's motion to compel depositions in its action against Delibert & Charney, Charney's motion for a receiver of the property of defendant North Jersey Trading Corporation, Charney's motion for a guardian ad litem for defendant Fried and for a default judgment against the other defendants and defendant North Jersey Trading Corporation's cross motion to dismiss are all consolidated for disposition and decided as noted below.

The two motions for leave to withdraw as counsel were withdrawn on March 19, 1991.

The Court notes the extensive prior motion practice in these cases. The applications for a receiver and for a guardian ad litem in the Charney action are the 20th and 21st motions.

The order of Justice Silbermann dated May 8, 1990 granted the individual defendants' applications to withdraw their motions to reargue Justice Silbermann's order setting the jurisdictional issue down for a factual hearing.

In light of complicated procedural history of this action and defendants' evident dispute with plaintiff on the underlying facts, the Court declines to grant a default judgment, but directs- defendants, with the exception of defendant Alexander Fried, to answer within 30 days after service of a copy of this order with notice of entry. Defendant North Jersey Trading Corporation's motion to dismiss is denied.

The application for appointment, of a guardian ad litem for defendant Alexander Fried is granted. The submitted papers indicate that Mr. Fried is aged and in ill health and has been determined incompetent by Judge Robert Newman of the Circuit Court of Dade County, Florida. It is therefore appropriate to protect his interests by appointment of an independent guardian ad litem.

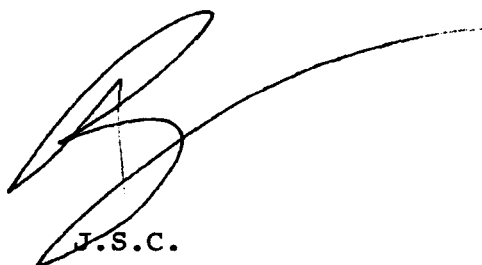
Plaintiff Charney also seeks appointment of a temporary receiver for the property of defendant North Jersey Trading Corporation. While the appointment of a temporary receiver is

not to be done lightly, the Court believes it is justified under the circumstances of this case, and the application to appoint a temporary receiver is therefore granted. Evidence has been presented that the corporation's sole asset, the building, is not being properly maintained. Plaintiff has also supplied evidence that the rent roll was approximately \$24,000 in 1982. Defendants' statement that the current monthly rent is approximately \$16,000 raises serious concern regarding the rental income. This 50% decline in rental income has not been adequately explained. These facts warrant the appointment of a temporary receiver to protect and safeguard the corporate assets.

The motion for discovery is denied. This motion is premature until after defendants answer the complaint. The Court will not entertain any application for reargument or renewal in light of the history of this action.

Settle order.

Dated: April 9 1991



J.S.C.