



original motion and could not have been known at the time. See *Garner v. Latimer*, 306 A.D.2d 209, 761 N.Y.S.2d 657 (1<sup>st</sup> Dept. 2003) (“a motion for leave to renew is intended to direct the court’s attention to new or additional facts which . . . were unknown to the movant” at the time of the original motion); *Cuccia v. City of New York*, 306 A.D.2d 2, 761 N.Y.S.2d 31 (1<sup>st</sup> Dept. 2003) (“an application to renew must be based upon additional material facts which existed at the time that the prior motion was made but were not then known to the party seeking leave to renew and a valid excuse must be offered for not supplying such facts”). Here, Herskowitz offers no excuse with respect to any of the arguments she presses on her purported motion to renew, renewal is simply unavailable to her. See *Cuccia v. City of New York*, *supra* (reversing grant of renewal motion in the absence of a valid excuse for not providing facts supporting renewal on original motion).

Herskowitz continues to ignore the central facts pertinent to the Receiver’s motion for an accounting: (a) that the Receiver has made no payments other than as directed by Orders of this Court which she did not appeal,<sup>2</sup> (b) that the Receiver paid all outstanding creditors of North Jersey in amounts agreed to by those creditors and no other creditor has appeared or sought payment from the Receiver,<sup>3</sup> and that, as a judgment debtor of North Jersey for over \$4 million, she lacks standing to make objections to the distribution of funds by the Receiver.<sup>4</sup>

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<sup>2</sup> Specifically, this Court’s decisions of April 13 and October 12, 2004, which Herskowitz did not appeal. See Affirmation of Paul Windels III dated September 12, 2005, and submitted in support of his motion for approval of his accounting, ¶¶ 5, 14-17, Ex.C, D.

<sup>3</sup> Windels Affirmation ¶ 19.

<sup>4</sup> Herskowitz’s motion to vacate that judgment was denied by the Court in its June 8, 2005, decision. Herskowitz did not appeal that decision either and therefore cannot attack it collaterally on this motion. Windels Affirmation ¶ 21, Ex. M.

In renewing her objections to the jurisdiction of the Court, Herskowitz disregards the two decisions of the Appellate Division affirming jurisdiction over the case and personal jurisdiction over her in purporting to press her jurisdictional arguments yet again. See *Charney v. North Jersey Trading Corp.*, 184 A.D.2d 409, 587 N.Y.S.2d 144 (1<sup>st</sup> Dept. 1992) (affirming May 21, 1991, Order of this Court requiring defendants to answer complaint and denying motion to dismiss for lack of jurisdiction); *Matter of Herskowitz v. Hon. Harold J. Tompkins*, 184 A.D.2d 402, 585 N.Y.S.2d 386, 388 (1<sup>st</sup> Dept. 1992) (denying a collateral subject matter jurisdiction challenge to *Charney v. North Jersey Trading Corp.* and imposing sanctions on Herskowitz). Indeed, as this Court (Tompkins, J.) observed in denying one of Herskowitz's prior motions for reargument of the jurisdictional argument in this case, "there is no legitimate basis for four rearguments on one issue." *Charney v. North Jersey Trading Corp.*, 150 Misc.2d 849, 850, 578 N.Y.S.2d 100 (Sup. Ct., N.Y. Cty. 1991). Similarly, Herskowitz's argument that the settlement between Charney and the Receiver and defendants ~~\_\_\_\_\_~~ and ~~\_\_\_\_\_~~ Herskowitz extinguishes the judgment entered against her was presented to the Court (see Memorandum No. 4 of Herskowitz dated October 1, 2003, Affidavit of Judith Herskowitz dated May 20, 2004, ¶ 28, Reply Memorandum of Susan Charney in Support of Proposed Distribution dated October 14, 2003, at 2-3) and rejected in the Court's decisions of April 13 and October 12, 2004, and June 8, 2005.<sup>5</sup>

The Receiver will not burden the Court by responding to Herskowitz's outrageous

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<sup>5</sup> *In re Kraemer*, 40 A.D.2d 1053, 338 N.Y.S.2d 813 (3d Dept. 1972), cited by Herskowitz now and in her previous objections to the Receiver's accounting, held that a receiver was not entitled to fees with respect to funds already in the bank account of the corporation at the time of his appointment. Here, the funds for which the Receiver accounted arose from the enforcement of judgment against ~~\_\_\_\_\_~~ and from the sale of the building owned by North Jersey at a surplus. Indeed, by filing for bankruptcy, Judith Herskowitz took the position that the corporation did *not* have a surplus.

accusations of fraud, larceny, and perjury in detail, other than by reiterating that he has taken no action except pursuant to Orders of this Court acting upon motions that were served on Herskowitz and that Herskowitz responded to.<sup>6</sup> That Herskowitz disagrees with the decisions made by this Court (and every other Court that has dealt with this matter) does not convert the Receiver's actions pursuant to Court orders into crimes.

#### CONCLUSION

For the reasons set forth above and in the Receiver's Affirmations dated September 12, 2005, and September 6, 2006, and his Reply Memorandum dated September 29, 2005, the motion to vacate and renew and reargue should be denied, together with such other and further relief as the Court may deem just and proper.

Dated: Scarsdale, New York  
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Respectfully Submitted,

PAUL WINDELS III



Paul Windels III  
187 Garth Road  
Scarsdale, New York 10583  
(212) 374-9260

Attorneys for Paul Windels III,  
Receiver

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<sup>6</sup> Significantly, the Attorney General of New York did not object to the Receiver's accounting. See Affirmation of Paul Windels III dated September 6, 2006, ¶ 4, Ex. D.