

To be argued by
Judith Herskowitz

New York County Clerk's Index No. 24517/88

New York Supreme Court
Appellate Division—First Department

SUSAN CHARNEY

Plaintiff - Respondent

-against-

JUDITH HERSKOWITZ,

Defendant - Appellant

NORTH JERSEY TRADING CORPORATION,
ALEXANDER FRIED,] _____ HERSKOWITZ,
and _____ HERSKOWITZ,

Defendants.

BRIEF FOR DEFENDANT-APPELLANT

JUDITH HERSKOWITZ
Defendant Appellant Pro se
P.O. Box 403543
Miami Beach, Fl. 33140
(305) 534-7600

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS.....	
ARGUMENT	
POINT I	26
THE SUPREME COURT ERRED IN APPROVING THE ACCOUNTING BASED UPON A PREARRANGED DISTRIBUTION OF THE SURPLUS THAT WAS BARRED BYTHE PROCEEDINGS AND ORDERS OF THE BANKRUPTCY COURT UNDER PRINCIPLE OF RES JUDICATA	
POINT II.....	28
THE COURT ERRED IN FAILING TO RECOGNIZE THE FULL SATISFACTION OF THE JUDGMENT FOR ITS LEGAL EFFECT AND TO MARK THEM INTO EVIDENCE	
POINT III.....	31
THE COURT ERRED IN ALLOWING WINDELS TO PROCEED AS RECEIVER OF THE DEFENDANT NORTH JERSEY TRADING CORPORATION WHERE THERE IS NO STATUTORY PROVISION FOR A GENERAL RECEIVER OF A FOREIGN CORPORATION	

TABLE OF CONTENTS(cont.)

Page
POINT IV..... 33

THE COURT ERRED IN APPROVING THE FINAL ACCOUNT OF WINDELS AND ALLOWING HIM TO PROCEED AS RECEIVER OF THE “PROPERTY OF NORTH JERSEY TRADING CORPORATION APPOINTED BY A MAY 21, 1991 ORDER” WHEN NORTH JERSEY HAD NO PROPERTY WITHIN THE STATE, WINDELS HAS TAKEN NO OATH AND POSTED NO BOND AND THE SURPLUS CAME INTO HIS HAND AS A NEUTRAL CUSTODIAN

- A. The Court Erred in its June 27, 1997 order in Placing the Burden of Herskowitz to Object to Windels’ Lack of Qualification 35
- B. The Property of a Foreign Corporation Within the State May Be Used Only to Satisfy the Claims of the Citizens of the State

POINT V..... 37

THE COURT ERRED IN ACTING BEYOND IT TERRITORIAL JURISDICTION WHERE NODETERMINATION ON PERSONAL JURISDICTION WAS MADE UNDER STATUTORY REQUIREMENTS

CONCLUSION..... 40

TABLE OF AUTHORITIES

Page

Acken v. Coughlin
103 App. Div. 1, 92 N.Y.S. 700
(1st Dept. 1905)..... 32

Application of Burge
282 App.Div. 219, 122 N.Y.S.2d 232
(1st Dept. 1953)34

Blanco v. J & H Associates
177 A.D. 2d 370; 576 N,Y,S, 2d 124
(1st Dep't 1991)30

Collins v. Smith
8 N.Y.Supp. 794; 255 App.Div. 665
(2nd Dep't 1939).....30

Cooper v. Davis
231 App. Div. 527, 248 N.Y.S. 227
(3rd Dept. 1931)..... 32

Dermott v. Hoenig
32 A.D.2d 838, 302 N.Y.S.2d 280
(2nd Dept. 1969)39

Gallivan v. Pucello
38 A.D. 2d 876; 329 N.Y.S.2d 211
(4th Dep't 1972)29

Hershbaum v. Compania Petrolera Trans-Cuba
215 N.Y.S.2d 898
(Supr. Ct. Kings Cnty, 1961)..... 34

TABLE OF AUTHORITIES (cont.)

Page

<i>The Ins. Co. of the State of Pennsylvania, v HSBC Bank</i> 10 N.Y.3d 32;882 N.E.2d 381; 852 N.Y.S.2d 812 (2008)	26
<i>Knapp v. Shoemaker</i> 82 A.D. 2d 15, 442 N.Y.S. 2d 287 (4 th Dept. 1981)	38
<i>Lynbrook Gardens, Inc. V. Ullmann,</i> N.Y. Supp.2d 888 (Supr. Ct. Nassau County 1942).....	32
<i>Maki v. Estate of Ziehm,</i> 55 A.D.2d 454, 391 N.Y.S.2d 705 (3 rd Dept. 1977)	36
<i>Makeun v. State of New York</i> 98 A.D. 2d 583; 471 N.Y.S.2d 293, 297 (2 nd Dep't 1984).....	29
<i>Manufacturers' Trust Co. V. Sadenet Realty, Inc., v. Weiss,</i> 234 App.Div. 893, 254 N.Y.S 428 (2 nd Dept. 1931).....	36
<i>Marazita v. Nelbach,</i> 91 A.D. 2d 604, 456 N.Y.S.2d 423 (2 nd Dept. 1982).....	39
<i>McCabb v. Porter Air-Lighter</i> 44 A.D. 102, 104-106 (1 st Dept.1899)	35

TABLE OF AUTHORITIES (cont.)

Page

Meyer v. Perograd Metal Works,
256 A.D. 1077, 11 N.Y.S.2d 125
(2nd Dept. 1939)32

Morris v. Davis
219 N.Y.S. 2d 279
(Supr. Ct.Kings Cty 1961)..... 35

Pack v. Saldana
178 A.D.2d 123, 577 N.Y.S.2d 12
(1st Dept. 1991)39

Pennoyer v. Neff
95 U.S. 714 (1877)..... 37

Rock v. Reed-Prentice Division
39 N.Y. 2d 34; 346 N.E.2d 520;
382 N.Y.S 2d.720, 723;(1976)..... 30

Royal Zenith Corporation v. Continental Ins. Co.
63 N.Y.2d 975, 483 N.Y.S.2d 993
(1984)38

Stephen v. Zivnostenska Bank,
140 N.Y.S 2d 323
(Supr. Ct. N.Y. Cty. 1955)36

Velazquez v. Water Taxi, Inc.,
49 N.Y.2d 762; 403 N.E.2d 172;
426 N.Y.S.2d 467, 468 (1980)29

TABLE OF AUTHORITIES (cont.)

Page

Rules and Statutes

CPLR §302	37
CPLR §304.....	39
CPLR §3215.....	39
B.C.L. §1202.....	31, 32
B.C.L. §1203(a).....	33
B.C.L. §1204.....	35
B.C.L. §1206(a).....	33
B.C.L. §1216.....	8
B.C.L. §1217.....	19
BCL §1218(a)(10).....	34
11 U.S.C. §503.....	27
11 U.S.C. §541	31