

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

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SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,  
XXX HERSKOWITZ and XXX  
HERSKOWITZ,

Index No. 24517/88

Defendants.

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**MEMORANDUM IN SUPPORT OF MOTION BY JUDITH  
HERSKOWITZ TO COMPEL PRODUCTION OF DOCUMENTS**

Judith Herskowitz hereby moved pursuant to CPLR §§3120 and 3121 and CPLR §§5020 and 5021, to compel the Plaintiff, Susan Charney, her attorney Steven Delibert and the alleged receiver Paul Windels III to comply with her Document Production Demand, dated July 14, 2003, for the production and filing of those satisfactions of judgments therein described, as prescribed by law. The Plaintiff, through her attorney, served a Notice of Rejection of Document Production Demand; Objections to said Document Production Demand, claiming essentially that she lacks standing. Plaintiff has likewise moved for protective order, claiming that her request for production of these satisfactions of judgments are “an over broad fishing expedition”, and that she lacks standing to demand that Plaintiff and her attorney comply with the dictate of law. Windels made virtually the same objections so that this Motion to Compel is to apply to him as well, if he were to have standing as a receiver (which he does not).

As to Plaintiff’s rejection of the document request served on her attorney Delibert on July 14, 2003 on the bases that he did not consent to the use of his fax service, is immaterial inasmuch

as same was also served by mail. (A copy of the affidavit attached as Exhibit C).

Plaintiff's Memorandum in support of Motion for Protective order, her attorney states that "Ms. Herskowitz now asks for discovery in order to prevent the distribution of those assets which have actually been recovered". Of course, once again, attorney Delibert tried to mislead the court. These are not recovered assets. These are fully administered assets, belonging to the corporation. The judgments Charney and Delibert continue to urge upon this Court were likewise assets of the corporation that were administered through the Bankruptcy case. In fact, the transfer of these assets from the Bankruptcy Trustee to the named receiver was with the express recognition of Judith Herskowitz's standing to litigate her claim to remaining corporate assets especially with respect to the satisfactions that Plaintiff refuses to furnish and file.

Charney and Delibert rehash their accomplishments in obtaining an "unsatisfied default judgment for over million dollars", and that her litigation tactics "have caused her to be sanctioned and/or held in contempt" although this same default judgment, and sanction or contempt orders operated against XXX and Robert Herskowitz, too. Yet Delibert negotiated a settlement agreement and satisfaction of this very same judgment and sanction orders with XXX and Robert Herskowitz, in exchange for their payment of \$150,000.00, which agreement allowed the Herskowitzes to retain conversion rights to a co-operative apartment that had been executed upon for the benefit of the corporation. The Trustee was a party to this settlement, and accepted the \$150,000.00 payment on behalf of the corporation. The Bankruptcy Court approved this settlement agreement and the satisfactions executed thereon. And Delibert was paid approximately \$50,000.00 in fees, and expenses from corporate assets under the supervision of the Bankruptcy Court for his efforts with respect to the settlement payment in satisfaction of the "over \$4 million" judgment against XXX and

Robert Herskowitz.

Judith Herskowitz contends that the satisfaction of judgment executed in favor of XXX and Robert Herskowitz, effected a satisfaction as to her too, either expressly or by operation of law. The Bankruptcy Court, at the urging of Delibert, agreed to the transfer of the remaining corporate assets to the named receiver, upon the view, supported by Delibert that this Court is the more appropriate forum to determine the effect of the satisfaction of judgments in favor of XXX and Robert Herskowitz, in accordance with New York law. Consequently, Plaintiff 's position now is inconsistent with her position before the Bankruptcy Court.

Judith Herskowitz contends that by all right, the satisfactions executed in favor of XXX and XXX Herskowitz, should likewise cover her. She contends that Charney and Delibert had improperly sought to exclude her from the benefit of this satisfaction because they recognized that her majority stock interest would give her a right to claim the more substantial portion of the corporate assets. This is why they now say that she lacks standing and the satisfactions of judgment are not relevant. However, as noted above, this was not Charney's and Delibert's position before the Bankruptcy Court.

Charney further contends that Judith Herskowitz's argument over the effect of the satisfactions of judgment are "meritless". Yet, all Charney can do is attempt to distinguish the cases relied upon by Judith Herskowitz, without citing a single case that shows that her arguments lacks merit and to substantiate his argument. His attempts to distinguish the cases is a distinction without a difference. In any event, this Court cannot de cide the merits of Judith Herskowitz's arguments in the abstract. It will need to review the satisfactions to make this determination. Indeed, the issues of standing and relevancy are bound up in that review.

**CONCLUSION**

Contrary to Charney's representation the present proceedings before the Court have nothing to do with the distribution of recovered assets, and everything to do with the distribution to the shareholders as directed by the Bankruptcy Court of funds transferred from that court for that purpose. That was the stated position of Charney before the Bankruptcy Court, in urging the transfer of funds from the Bankruptcy Trustee. They cannot deny that concession now, in what would entail a contrived position before the Bankruptcy Court, so that they can pursue their fraudulent motion for distribution here. Therefore, she should be compelled to furnish and file the satisfactions of judgment as required by law.

Dated: Miami Beach, Fl.

October 1, 2003

Respectfully submitted,

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