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December 11, 2003

Hon. Jacqueline W. Silbermann
Administrative Judge
Supreme Court, Civil Branch
State of N.Y. County of N.Y.
60 Centre Street
New York, N.Y. 10007

Re: Charney v. North Jersey et al.,
Index No. 24517/88

Dear Justice Silbermann:

In response to Your Honor's letter it is respectfully called to Your attention that by letter dated November 18, 2003 addressed to Justice Sherry Klein Heitler I requested that this matter be transferred to the Commercial Division of this Court. I have done this pursuant to the Guidelines for Assignment of Cases to the Commercial Division of the Supreme Court, New York County under which the Commercial Division entertains complex commercial and business disputes in which a party seeks compensatory damages totaling \$125,000.00 or more. At issue here is a claim of 4.2 million dollar derivative judgment. Under subsection (B) of the Guidelines actions such as a shareholder's derivative action comes under the Commercial Division. Although, this case goes back to 1988 subsection (G) allows a party to apply for transfer into the Commercial Division of cases in the General Division that have not been previously transferred out of the Division and it is further provided that

“Such an application shall be presented to the assigned Justice in the first instance by letter request (two pages maximum) copied to all parties.”
(Emphasis supplied)

As noted above I have made such application to Justice Heitler, but have not received a response yet, so that this Court's response would be premature. Accordingly, that the case was in the General Division in 1988, would not prevent a transfer to the Commercial Division. This especially since Justice Harold Tompkins who sat over the case, has retired and the case has to go to a new judge. Under Guideline(C) the cases are scrutinized by those experienced in commercial cases as to whether a case qualifies as such. A question has been raised here as to whether Charney had a derivative suit if any, when she pursued numerous claims individually including her alleged derivative suit, when no judgment was entered in favor of the corporation but, it is merely referred to by Charney as a derivative judgment to scam the corporation for the fees of her attorneys.

Moreover, pursuant to Rule 19 of the Rules of the Justices an Order to Show Cause cannot be used unless there is a genuine emergency, a stay is required or a statute so mandates, which is not the case here. Charney moved by Order to Show Cause issued by Justice Heitler on her Motion Directing Disbursement of Assets as a commercial case, under N.Y. Business Corporation Law § 626(e). However, Charney moved individually and there is no such motion for distribution of corporate assets provided under § 626(e). Therefore, it is a void motion and is without subject matter jurisdiction. § 626(e) provides only that the court may award fees in a derivative suit. In this case the corporation went through the Bankruptcy Court and that is where the application had to be made. Instead Mr. Delibert obviously connived to have all the remaining corporate assets consisting of \$700,000.00 transferred to the New York court, so that he can have the corporation cleaned out to the last penny under a contrived legalese make believe for fees. The very objective of Delibert's motion through Charney is evidence that he pursued no derivative action, because the statutory and lawful objective of a derivative suit is to confer a benefit on the corporation, not to clean it out for personal gain as is the case here.

Interestingly, this case began before Your Honor. It was Your Honor who directed that an evidentiary hearing be conducted on the issue of service. When Charney was unable to prevail on the merits of the jurisdictional issues, then we were confronted with an order saying that we have withdrawn our jurisdictional claim, which by Delibert's own admission is unsupported by the record. Yet a 4.2 million dollar judgment against me personally is predicated without a jurisdictional basis and is labeled as a derivative judgment without any proof of any wrongdoing to the corporation, issues that should be decided first in an evidentiary hearing.

Included here is a receiver pretending to be a receiver of the assets of the corporation, without any order appointing him in the final judgment to act as receiver of the assets of the corporation under Article 12 of BCL. This was reported to the Inspector General on Fiduciary Appointment in August of this year and this matter is under investigation. Needless to say this entire proceeding pursued by Delibert in the name of Charney is extremely disturbing that he could wipe out a corporation and its shareholders, ruin individuals with unproven false accusations, to appropriate the fruits of thirty years of hard work for personal gain, under pretense of the law.

Since the court has set up a Commercial Division the question arises on what basis would the General Division have jurisdiction over this case, unless this is not a commercial case.

Sincerely,

Judy Herskowitz

cc: Steven Delibert
Paul Windels
Hon. Sherry Klein Heitler

