

April 9, 1990

Hon. Jacqueline W. Silbermann  
Acting Justice of the Supreme Court  
Room 1254  
111 Centre Street  
New York, N.Y. 10013

Re: Charney V. North Jersey Trading Corp-, et al.  
Supreme Court, New York County Index No. 24517/88  
Defendants' Withdrawal of their Motion to Reargue

Dear Justice Silbermann:

The individual defendants Alex Fried, Judith Herskowitz, [REDACTED] and [REDACTED] H. [REDACTED] hereby wish to inform the Court, that they are withdrawing their "Motion To Renew, Reargue and To Vacate Order" returnable on May 9, 1989.

There were two motions before this Court on that day of May 9, 1989 a No. 11 which were motions to reargue of defendant North Jersey Trading, and a No. 12 the individual defendants' Motion To Reargue and to Renew as was noted by this Court in its now vacated order of June 19, 1989. (Exhibit A) The court in that June 19, order made a ruling on motion No. 11, but not on motion No. 12.

The thrust of the individual defendants' motion No. 12 was an opposition to plaintiff's Motion to Accelerate The Return Date of Defendants' Motions to Dismiss, and an opposition to plaintiff's Motion to Obtain Immediate Discovery. Upon motion of plaintiff the return date of June 13, 1989 set by defendants on their motion, was accelerated by this Court's order of March 8, 1989 to March 21, 1989. Defendants have appeared in accordance with this Court's order at the adjourned date of May of 1989. Likewise the deposition of defendant Alex Fried has not taken place immediately as applied for by plaintiff and cannot take place until the preliminary issues are adjudicated which is noted in this Court's order of March 29, 1990. Accordingly these issues are moot, and it leaves nothing for the consideration of this Court.

In Ackert v. Ausman, 218 N.Y.S.2d 814 (Supr. Ct. 1961) a motion to compel joinder of defendant as indispensable party was denied as moot, where the defendant has already been joined. In the recent decision of People v. Coles, Misc.2d 965, 535 N.Y.S.2d 897 (Supr. Ct. Kings County 1988) the court relying on a Court of Appeal decision ruled that a party may withdraw a motion without court permission prior to the court rendering its decision.

Inasmuch as the initial decision of March 8, 1989 was rendered in favor of plaintiff and defendants were merely seeking to reargue same, plaintiff cannot be prejudiced by the defendants' withdrawal of their motion.

Respectfully yours,

*Alex Fried*

Alex Fried

*Judith Herskowitz*

Judith Herskowitz

*RB*  
[Redacted]  
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cc/Steven Delibert  
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