

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

MILTON BALKANY and BAIS YAAKOV
OF BROOKLYN/BAIS YAAKOV
OF MIDWOOD,

Plaintiffs,

-against-

YESHIVA TORAH VODAATH, BAIS DIN
TZEDEK UMISHPOT, YERACHMIEL
BARASH and DANIEL GELDZAHLER,

Defendants.
_____X

AFFIDAVIT
Index No.:

MILTON BALKANY, being duly sworn, deposes and states:

1. I am a plaintiff in the above-entitled action. As such, I am fully familiar with the facts and circumstances set forth herein.
2. I respectfully submit this affidavit in support of the motion to enjoin and restrain the defendants from proceeding with arbitration and imposing any relief against the plaintiffs, including issuing or disseminating a “siruv”, which would effectively ex-communicate the plaintiffs from the religious Jewish community in which they are lifelong members.
3. I respectfully submit that the motion should be granted in its entirety.
4. The defendants should be enjoined and restrained from proceeding with arbitration and imposing any relief against the plaintiffs, including issuing or disseminating a “siruv” or other edict against the plaintiffs.
5. The injunction and restraining order are necessary to prevent the defendants from proceeding to fully carry out an explicit threat, communicated to the plaintiffs, to wrongfully

issue and publicly disseminate, without authorization, a “siruv”, which would effectively excommunicate the plaintiffs from the religious Jewish community in which they are lifelong members.

6. The issuance and dissemination of a “siruv” by the defendants against the plaintiffs would violate the plaintiffs’ rights, tend to render a judgment ineffectual, and cause the plaintiffs to suffer immediate and irreparable injury, loss and damage.

7. The threat to issue the “siruv” was communicated to me by the defendant, Yerachmiel Barash [“Barash”], a member of the defendant rabbinical court, Bais Din Tzedek Umishpot [Bais Din”], on September 3, 2019.

8. Barash advised me at that time that the “siruv” would be issued by Bais Din two days later, on September 5, 2019, at 8 am, unless I discontinued an action commenced by the plaintiff Bais Yaakov against the defendant, Yeshiva Torah Vodaath [“Yeshiva”], in the Supreme Court, Kings County, bearing Index Number 518985/2019 [“the Supreme Court action”]. *Id.* See Exhibit B.

9. I informed Barash at that time, as I had before, that I did not have any authority or other ability to discontinue the Supreme Court action.

10. The threat was reiterated via email dated September 3, 2019. See Exhibit C.

11. The Supreme Court action involves primarily a contract for the sale of real property by the plaintiff, Bais Yaakov of Brooklyn [“Bais Yaakov”], a charitable, religious, educational organization, to Yeshiva, another charitable, religious, educational organization, dated November 24, 2014. See Exhibit B.

12. The contract was entered on behalf of Bais Yaakov, without the benefit of counsel, without the authority or approval of its Board of Trustees, without an independent

appraisal to determine whether the contractual purchase price was reasonable and without the required approval of the Office of the New York State Attorney General or State court.

13. Via letter dated July 22, 2019, the Charities Bureau of the Office of the New York State Attorney General refused to provide a “No Objection” determination for the sale transaction, on the grounds that the purchase price for the property offered by Yeshiva was not fair and reasonable to Bais Yaakov, and the contract was entered without the benefit of counsel, an appraisal or approval of the Board of Trustees. See Exhibit D.

14. The Supreme Court action was only commenced after a dispute arose between the parties regarding the jurisdiction of Bais Din to determine the controversy over the enforceability of the contract for the sale of the plaintiff’s property.

15. The defendants wrongly insisted that jurisdiction was afforded to Bais Din by an arbitration agreement, dated December 25, 2017 [“the arbitration agreement”], that had been entered between the parties to resolve a prior dispute between them. See Exhibit E.

16. I did not have authority or approval of the Bais Yaakov Board of Trustees to execute the arbitration agreement on behalf of Bais Yaakov.

17. The prior dispute for which the arbitration agreement had been signed involved a loan agreement between Bais Yaakov and Yeshiva, which provided that the loan would be paid back out of the proceeds of the sale of the Bais Yaakov property.

18. The prior dispute was resolved in early 2018.

19. The present dispute over the contract for sale of the property did not arise until July 2019.

20. The present dispute is not governed by the arbitration agreement which was entered some nineteen months before the present dispute even arose.

21. The plaintiffs initially sought to have the present dispute adjudicated by a rabbinical court, other than Bais Din, i.e. Beth Din of America or others, to be agreed upon by the parties in accordance with the religious law under which jurisdiction all of the parties hereto subject themselves.

22. The plaintiffs refused to subject themselves to the jurisdiction of Bais Din, because they believe that Bais Din has a conflict of interest, impairing its impartiality and rendering it beholden to the promote the best interests of Yeshiva to the detriment of the plaintiffs' interests.

23. The defendants wrongly insist, however, that Bais Din maintains jurisdiction over the dispute. Accordingly, Yeshiva refuses to agree to have the dispute adjudicated by a different rabbinical court.

24. The plaintiffs were therefore compelled to seek redress in the Supreme Court action.

25. However, the defendants do not recognize the jurisdiction of the Supreme Court to adjudicate the dispute.

26. The defendants therefore threatened to issue and disseminate the "siruv", excommunicating the plaintiffs from the religious Jewish community in which they are lifelong members, unless they discontinued the Supreme Court action.

27. The applicable rules governing the resolution of disputes by the defendant Bais Din do not permit or authorize the issuance of a "siruv" under the circumstances presented.

28. The defendants carried out their threat prematurely, wrongly issuing the unauthorized "siruv" when the plaintiffs refused the defendants' demand that the plaintiffs discontinue the action, immediately after the defendants were informed that the present motion for injunctive relief was going to be made. See Exhibit E.

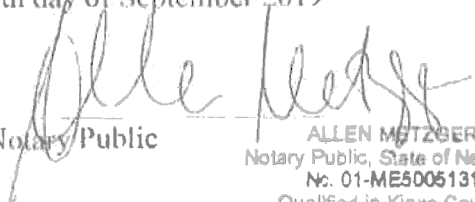
29. The issuance of the “siruv” was not permitted or authorized pursuant to the applicable rules governing the resolution of disputes by the defendant Bais Din under the circumstances presented.

30. The wrongful issuance of the “siruv”, effectively excommunicating the plaintiffs from the religious Jewish community in which they are lifelong members, violates the plaintiffs’ rights, tends to render a judgment ineffectual, and causes the plaintiffs to suffer immediate and irreparable injury, loss and damage.

FOR THE FOREGOING REASONS, it is respectfully submitted that the motion made on behalf of the plaintiffs should be granted in its entirety, and the defendants should be enjoined and restrained from proceeding with any arbitration, or granting or imposing any relief, penalty or damages against the plaintiffs, including issuing or disseminating any “siruv” against the plaintiffs.


MILTON BALKANY

Sworn to before me this
5th day of September 2019


Notary Public

ALLEN METZGER
Notary Public, State of New York
No. 01-ME5005131
Qualified in Kings County
Commission Expires NOV. 30, 2022