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COURT OF APPEALS

STATE OF NEW YORK

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PAPPAS,

Respondent,

-against-

No. 193

TZOLIS,

Appellant.

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27 Madison Avenue  
New York, New York 10010  
October 11, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE THEODORE T. JONES

Appearances:

E. LEO MILONAS, ESQ.  
PILLSBURY WINTHROP SHAW PITTMAN, LLP  
Attorneys for Appellant  
1540 Broadway  
New York, NY 10036

CARL E. PERSON, ESQ.  
CARL E. PERSON, ATTORNEY  
Attorney for Respondent  
325 West 45th Street  
New York, NY 10036

David Rutt  
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 193, Pappas.

2 MR. MILONAS: Good morning. My name is Leo  
3 Milonas. I'm the attorney for the appellant, Pappas  
4 - - - Tzolis.

5 There's no significant difference between  
6 this case and this case (sic) recent decision of  
7 Centro Empresarial. Under Centro, sophisticated  
8 parties could release fiduciary duties. In our case,  
9 instead a general release, the parties executed a  
10 specific agreement where they relinquished their  
11 fiduciary duties.

12 JUDGE READ: You're talking about the  
13 certificate?

14 MR. MILONAS: I'm talking about the  
15 certificate.

16 JUDGE GRAFFEO: Can I ask you, does the  
17 record tell us at the time the certificates were  
18 executed if the other party's counsel was present?

19 MR. MILONAS: Counsel was present.

20 JUDGE GRAFFEO: Everyone's attorneys were  
21 there?

22 MR. MILONAS: That - - - you can see that  
23 from the complaint and the affidavit that was  
24 submitted. Everyone had their own counsel. Counsel  
25 were present. Counsel handwrote the - - -

1 JUDGE SMITH: But do we know whose  
2 handwriting that is?

3 MR. MILONAS: I know.

4 JUDGE SMITH: Or does the record show?

5 MR. MILONAS: Yeah. I think it was written  
6 by Tzolis' counsel - - - excuse me - - - by Pappas'  
7 counsel dictated by Tzolis' counsel. So it was  
8 dictated by the defendant's counsel, but I think it  
9 was handwritten by one of the - - -

10 JUDGE SMITH: Is there any - - - there's  
11 nothing in the record really that tells the story, or  
12 is there, of how that came into existence with the -  
13 - - well, usually these things aren't handwritten.

14 MR. MILONAS: Well - - -

15 CHIEF JUDGE LIPPMAN: Counselor, let me - -  
16 -

17 MR. MILONAS: - - - something happened.

18 CHIEF JUDGE LIPPMAN: Let me break your  
19 reasoning for a second. Do you want any rebuttal  
20 time?

21 MR. MILONAS: Yeah, five minutes, please.

22 CHIEF JUDGE LIPPMAN: Five minutes. Okay.  
23 Go ahead. Continue. I'm sorry.

24 MR. MILONAS: Something happened  
25 apparently, and this was executed at the - - - as you

1 can see, it's handwritten after the printed document.

2 JUDGE SMITH: Does it matter to this case,  
3 in your view, that your client already had a sublease  
4 on the building?

5 MR. MILONAS: Oh, I think it matters  
6 considerably. The reason is that it establishes what  
7 is the real relationship with the parties. First of  
8 all, under the original agreement, the parties are  
9 each able to actually do business on their own  
10 account, compete with the LLC. They have - - - they  
11 could do - - - engage in any business without any  
12 obligation - - -

13 JUDGE SMITH: Yeah, but my question - - -

14 MR. MILONAS: - - - at any time.

15 JUDGE SMITH: - - - is about the sublease.

16 MR. MILONAS: But in the same originating  
17 agreement, in paragraph 4, Tzolis is given a right to  
18 sublease. So the whole agreement is set up with the  
19 concept that they can engage in their own businesses.  
20 Tzolis is going to get a sublease.

21 JUDGE SMITH: I guess the - - - maybe I  
22 should be asking your adversary this, but the - - -  
23 as I understand it, and I may be confused, the  
24 sublease essentially, even before - - - even before  
25 the deal that they're complaining about, the sublease

1 had given essentially all the upside to your client.  
2 Isn't that - - - doesn't that - - - isn't that what  
3 it does?

4 MR. MILONAS: It gave them all the  
5 obligations under the lease, which means putting up -  
6 - -

7 JUDGE SMITH: Yeah, but it was a fixed  
8 obligation, and if, I mean - - - I guess what I'm  
9 saying is this. Suppose you went to his client - - -  
10 your guy went to his guys and said, I want to buy you  
11 out, and they said, no, forget it. Can't he go back  
12 to Extell and say, I'm sorry I can't get you the  
13 lease, but I'll assign you my sublease; instead of  
14 seventeen million, give me sixteen million?

15 MR. MILONAS: No. There were two things -  
16 - - the reason I think we have the closing is that  
17 there are two parts of the sublease that were an  
18 obstacle. There was a one-day reverter at the end of  
19 the sublease that was forty-nine - - - eight years,  
20 eleven months, about one day left, and there was a  
21 prevision that the - - - all the parties had to agree  
22 - - - rather the plaintiffs had to agree to a  
23 sublease if Tzolis was going to sublease.

24 JUDGE SMITH: So they were not free to  
25 assign without the landlord's consent?

1 MR. MILONAS: That's what it says. And  
2 whether that could be unreasonably held is another  
3 issue. But yes, they needed the consent, and there  
4 was a one-day reverter. So there was a reason to buy  
5 it out.

6 JUDGE GRAFFEO: In your view, what's the  
7 extent of the fiduciary duty for limited partners,  
8 and did they waive it here? Is that - - -

9 MR. MILONAS: In our case?

10 JUDGE GRAFFEO: Is that your argument?

11 MR. MILONAS: There's no question that they  
12 waived it. First of all, the - - - Justice Gammerman  
13 believed and he wrote that they waived it in the  
14 original certificate, in the originating certificate  
15 of the LLC. Because if you can engage in - - -

16 JUDGE GRAFFEO: If they - - -

17 MR. MILONAS: - - - any business you want -  
18 - -

19 JUDGE GRAFFEO: If that language wasn't  
20 there, would there have been a fiduciary duty here?  
21 I guess that's my question.

22 MR. MILONAS: Oh, sure.

23 JUDGE GRAFFEO: What in general would have  
24 been the fiduciary duty between - - -

25 MR. MILONAS: I think there would have been

1           until they signed - - -

2                       JUDGE GRAFFEO:   - - - limited liability  
3 partners.

4                       MR. MILONAS:   - - - until they signed the  
5 certificate.  The certificate - - -

6                       CHIEF JUDGE LIPPMAN:  What about the - - -

7                       MR. MILONAS:   - - - eliminated it.

8                       JUDGE READ:    There would have been what?  
9 Disclosure?

10                      MR. MILONAS:   Excuse me?

11                      JUDGE READ:    There would have been a duty  
12 of disclosure until the certificate was signed?

13                      MR. MILONAS:   If there was, the certificate  
14 waived it and - - -

15                      JUDGE READ:    Yeah.  You don't - - -

16                      MR. MILONAS:   - - - relinquished it.

17                      JUDGE READ:    You don't think there was a  
18 duty to disclose under the operating agreement?

19                      MR. MILONAS:   Under the operating  
20 agreement?  Yes, I think there was.

21                      JUDGE READ:    Okay.

22                      CHIEF JUDGE LIPPMAN:  What about the - - -  
23 is there particular knowledge within your client's,  
24 you know, experience that the value of the property  
25 that doesn't - - - wasn't known to the other party,





1           what I'm saying. They had no reason to believe - - -  
2           to distrust your client. Let's put it that way.

3                   MR. MILONAS: I mean, first of all, they  
4           can't go to a deal like that. The special facts  
5           doctrine - - -

6                   JUDGE SMITH: They sure had reason to  
7           believe - - -

8                   JUDGE CIPARICK: Well, the complaint - - -

9                   JUDGE SMITH: - - - it was worth a million  
10          bucks to your client - - - I'm sorry.

11                  MR. MILONAS: Excuse me?

12                   JUDGE CIPARICK: The complaint makes  
13          certain allegations. In the complaint, there's an  
14          indication that the - - - they weren't able to  
15          develop the property the way they thought they would,  
16          that your client was interfering with that, et  
17          cetera. So they were on notice that there were  
18          issues.

19                   MR. MILONAS: Well, that's another part of  
20          this case. You can't say that this was a loving  
21          relationship.

22                   JUDGE CIPARICK: Right.

23                   MR. MILONAS: This was an arm's-length  
24          business deal.

25                   JUDGE CIPARICK: Between two sophisticated

1 - - -

2 MR. MILONAS: They were, from the get-go -

3 - -

4 JUDGE CIPARICK: - - - and well - - - and  
5 counseled parties.

6 MR. MILONAS: From the get-go, I'm not they  
7 were fiduciaries or what they were. I mean - - -

8 JUDGE SMITH: But going back to the point  
9 about what - - - well, what reason the sellers -- the  
10 assignors had to believe - - - your client offered  
11 them what? A million bucks?

12 MR. MILONAS: Million and a half.

13 JUDGE SMITH: Million and a half.

14 MR. MILONAS: One third - - -

15 JUDGE SMITH: They obviously had reason to  
16 believe that he had - - - that he could make at least  
17 a million-six on what we - - - that he thought he was  
18 worth more than a million and a half.

19 MR. MILONAS: Certainly, but - - -

20 JUDGE SMITH: Yeah. So I mean, I guess - -  
21 - so your point is they could have said, hey, I'll do  
22 it but not if you've got some great deal out there;  
23 tell me what you've got.

24 MR. MILONAS: Yeah, exactly.

25 JUDGE GRAFFEO: There's no duty do disclose

1 before you secure that kind of waiver?

2 MR. MILONAS: The courts - - - the cases  
3 don't hold that. You - - - the judge - - - and the  
4 judges in the Appellant Division said that up to the  
5 moment it was signed they - - - the fiduciary  
6 obligation existed, and then the moment it was  
7 signed, going forward, there was a fiduciary - - -  
8 their fiduciary obligation was ended. Well, it's  
9 really illogical, if you think about it.

10 JUDGE CIPARICK: So there's no distinction  
11 here between this case and Centro?

12 MR. MILONAS: I think there's no difference  
13 at all.

14 JUDGE CIPARICK: What about Arfa?

15 MR. MILONAS: I think Arfa is - - - it  
16 follows Centro.

17 JUDGE CIPARICK: Um-hum

18 MR. MILONAS: Arfa is - - - also seems to  
19 be similar to Centro, and I don't - - - I'm not sure  
20 there's a difference - - -

21 JUDGE SMITH: Suppose - - - let's take all  
22 the complexity - - -

23 MR. MILONAS: - - - at least in principal  
24 anyway.

25 JUDGE SMITH: - - - take all the

1 complexities out of this case and make it the  
2 simplest thing in the world, just a good old-  
3 fashioned partnership. The LLC owns the building.  
4 There are three partners. One of them gets an - - -  
5 hears that somebody's going to buy the building for a  
6 huge price, goes to his partners, doesn't tell them,  
7 says I want to buy you out. That's a breach, isn't  
8 it?

9 MR. MILONAS: First of all, this was not a  
10 good old-fashioned - - -

11 JUDGE SMITH: I understand that I've not  
12 described our case.

13 MR. MILONAS: This is by far not a good  
14 old-fashioned partnership.

15 If you sign a document and you say that  
16 you've made no representations to me - - -

17 JUDGE SMITH: No. I mean, let me - - -

18 MR. MILONAS: It depends.

19 JUDGE SMITH: Can you first address the  
20 pure hypothetical question that I asked - - -

21 MR. MILONAS: Yes. The answer is yes.

22 JUDGE SMITH: - - - that that's a breach of  
23 fiduciary duty. Okay.

24 MR. MILONAS: That's a fiduciary duty. If  
25 you're partners and you're holding back and - - -

1 definitely, that's the breach; but not under the  
2 facts of this case. You got everything - - - people  
3 should be free to enter into agreements as they wish.  
4 As long as they don't violate public policy, they  
5 should be free to do that.

6 CHIEF JUDGE LIPPMAN: But in Centro, they  
7 knew that they were not forthright, right? I mean,  
8 is there a difference in the facts here? Centro is  
9 clearer that they knew that - - -

10 MR. MILONAS: I'm not sure, but yes, Centro  
11 they may have known. But in this case they had been  
12 - - - they were fighting from the beginning. They  
13 were arguing about different things. The - - -  
14 Tzolis already had the premises under a sublease, and  
15 he was trying to develop it for his own account.  
16 Under the LLC, they could develop business on their  
17 own account. They could compete with the LLC, And  
18 they finally execute a document which says basically  
19 as is, where is, this is the deal, we waive  
20 everything, we waive fiduciary duties, and you've  
21 made no representations to us. I mean, it's very - -  
22 - this is even stronger than Centro.

23 CHIEF JUDGE LIPPMAN: Okay, counselor.  
24 You'll have your rebuttal.

25 MR. MILONAS: Thank you.

1 CHIEF JUDGE LIPPMAN: Counselor.

2 MR. PERSON: May it please the Court. Carl  
3 Person is my name.

4 CHIEF JUDGE LIPPMAN: Counselor, what's the  
5 difference between this case and Centro?

6 MR. PERSON: Well - - -

7 CHIEF JUDGE LIPPMAN: Is there a  
8 difference?

9 MR. PERSON: Yes. We have people not  
10 putting in any money of their own and selling the  
11 partnership's asset. I mean, that's not competing  
12 with a company. That's, I think - - -

13 CHIEF JUDGE LIPPMAN: You - - - there were  
14 disputes between the parties, right?

15 MR. PERSON: Only business disputes, not  
16 honesty, not a question of - - -

17 CHIEF JUDGE LIPPMAN: You have a trust  
18 relationship with the other side?

19 MR. PERSON: I'm sorry?

20 CHIEF JUDGE LIPPMAN: Did you have a trust  
21 relationship?

22 MR. PERSON: I believe there was.  
23 Otherwise, there would have been a different result  
24 here. I mean, the - - - they went into the  
25 transaction. Mr. Tzolis wanted to take this property

1 and develop a restaurant or a delicatessen or  
2 something like that, and you know, there - - -

3 CHIEF JUDGE LIPPMAN: What did it mean when  
4 you signed this - - - the language that, you know, no  
5 fiduciary representation - - -

6 MR. PERSON: Rule 11.

7 CHIEF JUDGE LIPPMAN: - - - and all of  
8 that? What significance is that?

9 MR. PERSON: Well, the certificate or the  
10 paragraph 11? The one in the operating agreement or  
11 the certificate at the closing?

12 CHIEF JUDGE LIPPMAN: The certificate at  
13 the closing.

14 MR. PERSON: The certificate at the closing  
15 was one that the client signed because they had no  
16 reason to believe that there was any wrongdoing, any  
17 reason to - - -

18 JUDGE READ: Well, weren't they a little  
19 suspicious, I mean, when - - -

20 MR. PERSON: I'm sorry?

21 JUDGE READ: Weren't they a little - - -  
22 couldn't - - - wouldn't you say you should be a  
23 little bit suspicious given the big premium they were  
24 being paid? Wouldn't that have kind of - - - the 1.5  
25 and I guess it was - - -

1 MR. PERSON: Well, they never put any money  
2 into the transaction.

3 JUDGE CIPARICK: Well, they certainly had a  
4 good return on their investment.

5 JUDGE READ: Yeah, they certainly had a  
6 good - - -

7 MR. PERSON: There was very little money -  
8 - - this was all a long-term lease. The big - - -  
9 the value was a long-term lease, and no one put up  
10 money to buy that. It was - - -

11 CHIEF JUDGE LIPPMAN: Did you not want to  
12 ask any questions, any further questions about this?

13 MR. PERSON: Well, they - - -

14 CHIEF JUDGE LIPPMAN: I mean, did - - -  
15 nothing that piqued your clients' interest?

16 MR. PERSON: They didn't have any reason to  
17 do it until a year later when they - - -

18 JUDGE SMITH: Why did they think that they  
19 were being asked to sign this certificate saying  
20 there's no fiduciary duty?

21 MR. PERSON: You know, they're only  
22 nonlawyers. I mean, they just - - -

23 JUDGE SMITH: Is he correct that counsel  
24 was present when this thing was executed?

25 MR. PERSON: Counsel for the LLC was



1 present and never - - - you know, didn't say  
2 anything. I mean, why wouldn't the counsel for the  
3 LLC explain that there's a transaction going on?  
4 There was a trust there because even the lawyer for  
5 the LLC didn't say anything. So there was no reason  
6 given for them to question that.

7 JUDGE SMITH: You're saying - - - were you  
8 your clients represented by counsel at the time this  
9 thing was signed?

10 MR. PERSON: Yes, they were.

11 JUDGE SMITH: What about the fact that you  
12 have a sublease so that at least to some degree your  
13 clients' return is capped, that is, you can't get  
14 more than the rent under the sublease anyway. Well,  
15 why doesn't that diminish the relevance of the huge  
16 deal that the other partner got?

17 MR. PERSON: Because the agreement itself,  
18 the sublease was carefully drafted so that only the  
19 value of the sublease was given to Mr. Tzolis or his  
20 associates or his affiliates but to nobody else. If  
21 there was any transfer to anyone other than Mr.  
22 Tzolis' company, it had to go back and get the  
23 approval of all three partners.

24 JUDGE SMITH: So is that - - - and was that  
25 part of the landlord-tenant relationship or part of

1 the LLC relationship; because the landlord-tenant  
2 relationship is not fiduciary?

3 MR. PERSON: That was a - - - in the  
4 operating agreement, there's a need to have a - - -  
5 an agreement of all three partners, and - - - I guess  
6 it was unanimous or two out of three if there was any  
7 sale of the property. That was built into the  
8 agreement.

9 JUDGE SMITH: Including - - - so you're - -  
10 - I guess I'm not fully understanding what the  
11 economic deal was here. What was he going to do with  
12 the sublease? He wasn't going to move his family  
13 into the building.

14 MR. PERSON: No. He was going to create a  
15 delicatessen or some kind of a business that he would  
16 own and run.

17 JUDGE SMITH: So this was only for him to -  
18 - -

19 MR. PERSON: And he was given permission to  
20 do that.

21 JUDGE SMITH: So the sublease was just for  
22 him to run his own business.

23 MR. PERSON: That is correct.

24 JUDGE SMITH: And if there was a deal, it  
25 was - - -

1 MR. PERSON: That's correct.

2 JUDGE SMITH: - - - there was still a  
3 fiduciary relationship.

4 MR. PERSON: That is correct, Your Honor.

5 CHIEF JUDGE LIPPMAN: What else, counselor?  
6 Anything?

7 MR. PERSON: Well, I - - - the certificate  
8 actually expired on February 7th, and it was not  
9 renewed, so that the closing took place after the  
10 certificate had expired, so that actually the  
11 certificate drops out because the closing did not  
12 take place within the time frame that was set up at  
13 the time that the certificate was signed. There was  
14 an arrangement to have it be closed by the 20th or  
15 something like that of February 2007 - - - or 2 - - -  
16 February 7th, but the closing took place after that,  
17 and other papers were prepared, and there was no  
18 additional - - -

19 JUDGE SMITH: What is the time that you say  
20 it expired? Time to do what? I'm sorry. What - - -

21 MR. PERSON: Well, the agreement - - - at  
22 the time of the delivery of the certificate - - -

23 JUDGE SMITH: Uh-huh.

24 MR. PERSON: - - - there was a provision  
25 that the whole deal would be over if it wasn't closed

1 by February 7th.

2 JUDGE SMITH: But wasn't that extended?

3 MR. PERSON: Well, it was extended only  
4 after the fact of the - - - after the passage of time  
5 when it was - - -

6 JUDGE SMITH: So you said the certificate  
7 died when the time - - -

8 MR. PERSON: Correct.

9 JUDGE SMITH: - - - when the deadline ran  
10 and then when they extended the time, that did not  
11 revive the certificate.

12 MR. PERSON: They - - - it was not  
13 mentioned in there, and they never created a new  
14 certificate. So at the actual close - - -

15 JUDGE CIPARICK: The discharge of the  
16 fiduciary relationship was not mentioned there? The  
17 specific discharge of the fiduciary relationship was  
18 not mentioned?

19 MR. PERSON: The - - - at the actual  
20 closing, when all the conditions were met - - -

21 JUDGE CIPARICK: Um-hum.

22 MR. PERSON: - - - we're saying there was  
23 no certificate and therefore there was - - -

24 CHIEF JUDGE LIPPMAN: So there was no  
25 fiduciary responsibility at the time that you signed

1 the certificate, and then by the time of the closing,  
2 the fiduciary relationship was back in - - -

3 MR. PERSON: Not at all, Your Honor.

4 CHIEF JUDGE LIPPMAN: - - - in place?

5 MR. PERSON: Not at all, Your Honor.

6 CHIEF JUDGE LIPPMAN: Is that what you're  
7 saying?

8 MR. PERSON: The paragraph 11 in the  
9 operating agreement does not explicitly say that  
10 there is no fiduciary - - -

11 CHIEF JUDGE LIPPMAN: No, but whatever it  
12 said - - -

13 MR. PERSON: Well, there always was a  
14 fiduciary duty.

15 CHIEF JUDGE LIPPMAN: - - - doesn't apply  
16 to the actual closing?

17 MR. PERSON: Yes, Your Honor. There was a  
18 fiduciary duty up to the date that the certificate  
19 was signed, and then if you're taking the argument  
20 that the certificate had any value, it was valid - -  
21 -

22 CHIEF JUDGE LIPPMAN: Whatever value it has  
23 was gone.

24 MR. PERSON: Is gone. It's gone.

25 JUDGE SMITH: What the certificate says is

1 in connection with the - - - with their respective  
2 assignments to Steve Tzolis of their membership  
3 interest in the LLC. Doesn't - - - why doesn't that  
4 apply to the assignment even though the time for the  
5 assignment was retroactively extended?

6 MR. PERSON: Because it talks about the  
7 assignment being delivered that day. In that  
8 agreement, there's a very specific reference to that  
9 assignment, and that assignment was not the  
10 assignment that actually assigned the - - -

11 CHIEF JUDGE LIPPMAN: But in substance it  
12 was the same, right?

13 MR. PERSON: No. I mean, the agreement  
14 said - - - on the date they signed that certificate,  
15 it referred to an assignment that was delivered that  
16 day.

17 JUDGE SMITH: Does it say that day in here?

18 MR. PERSON: Yes.

19 JUDGE SMITH: Okay. I'm having trouble  
20 finding it, but I take your word for it.

21 MR. PERSON: It does say, yeah - - -

22 JUDGE SMITH: Okay.

23 MR. PERSON: - - - delivered that day. So  
24 that's another argument that there really wasn't a  
25 certificate at all in this transaction.

1 JUDGE READ: Did you make that argument - -  
2 -

3 MR. PERSON: Thank you.

4 JUDGE READ: Did you make - - -

5 MR. PERSON: I'd reserve three minutes.

6 JUDGE READ: Did you make that argument - -  
7 -

8 CHIEF JUDGE LIPPMAN: No, no. You can't  
9 reserve, counselor. Judge Read has a question for  
10 you anyway.

11 JUDGE READ: I have - - - yeah. Did you  
12 make that argument before - - -

13 MR. PERSON: I'm sorry?

14 JUDGE READ: - - - about the expiration of  
15 the certificate? Have you made that argument before?

16 MR. PERSON: Yes, yes.

17 CHIEF JUDGE LIPPMAN: Counselor, you can't  
18 reserve any time, so anything else you have to say,  
19 say it now.

20 MR. PERSON: I've said it, Your Honor.

21 CHIEF JUDGE LIPPMAN: Okay.

22 JUDGE SMITH: I found the word "today" by  
23 the way. It is in here.

24 MR. PERSON: Okay.

25 CHIEF JUDGE LIPPMAN: Okay. Thank you,

1 counselor.

2 JUDGE CIPARICK: Counselor, what about  
3 that?

4 CHIEF JUDGE LIPPMAN: Counselor, rebuttal.

5 JUDGE CIPARICK: Yeah. What about the  
6 timing of the assignment?

7 MR. MILONAS: Well, if you look at page 222  
8 and 223 of the record, if you do it now, there's an  
9 estoppel agreement at paragraph 1, extension of 2/5  
10 deadline, "Each assignor and the assignee agree that  
11 March 12th, 2007, shall be deemed substituted for the  
12 February 5th, 2007, date so that each assignment  
13 shall be deemed to have amended to include the" - - -  
14 to make the new effective date. I mean, they have  
15 agreed to - - - it's like post adjourning or closing,  
16 they adjourned it - - -

17 JUDGE CIPARICK: And what date was the  
18 closing again? What date was the closing?

19 MR. MILONAS: It's in paragraph 222-223 of  
20 the record. There's an estoppel agreement between  
21 the parties whereby they extend the closing date  
22 basically to the March date, and then everything  
23 takes effect as of that date and - - -

24 JUDGE SMITH: What about the theory that  
25 the certificate on itself is limited to that day,



1 anything that didn't happen that day was  
2 uncertificated?

3 MR. PERSON: I don't - - - I frankly don't  
4 understand that argument. If you have a certificate  
5 on that day, which waives fiduciary duties  
6 retroactively, then that means that that's  
7 eliminated? I just don't understand the logic to it  
8 all. If that waived fiduciary duties and that it's -  
9 - - and then later on they have a closing where they  
10 exchange dollars or whatever they did later, got  
11 releases from the landlord, I think this is what you  
12 had to do.

13 JUDGE SMITH: Actually, now that I'm  
14 looking at it, what it seems to say is "the seller  
15 has not relied on any representation except as set  
16 forth in the assignment of the documents delivered to  
17 the undersigned sellers today." I guess that doesn't  
18 really terminate anything.

19 MR. MILONAS: I don't know.

20 Any other questions?

21 CHIEF JUDGE LIPPMAN: Okay.

22 MR. MILONAS: Thank you.

23 CHIEF JUDGE LIPPMAN: Thank you, counselor.

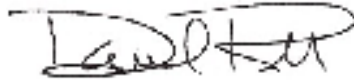
24 Thank you both. Appreciate it.

25 (Court is adjourned)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript of proceedings in the Court of Appeals matter of Pappas v. Tzolis, No. 193, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 700 West 192nd Street  
Suite # 607  
New York, NY 10040

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