

**Transport Workers Union of America Local 100
AFL-CIO v Schwartz**

2005 NY Slip Op 30213(U)

August 31, 2005

Supreme Court, New York County

Docket Number: 0600268/2003

Judge: Charles E. Ramos

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: Charles Edward Ramos PART 53
Justice

0600268/2003

TRANSPORT WORKERS UNION
VS
SCHWARTZ, ALAN G.

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

SEQ 8

~~SUMMARY~~ ~~JUDGMENT~~

Motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...
Answering Affidavits -- Exhibits _____
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with
accompanying memorandum decision and order.

FILED
SEP 08 2005
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 8/3/05

CHARLES E. RAMOS^{c.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X
TRANSPORT WORKERS UNION OF AMERICA
LOCAL 100 AFL-CIO; ROGER TOUSSAINT, as
President of Transport Workers Union of
America Local 100 AFL-CIO; ED WATT, as
Financial Secretary-Treasurer of
Transport Workers Union of America Local
100 AFL-CIO; and 80 W.E.T.H. CORP.,

Index No. 600268/03

Plaintiffs,

-against-

ALAN G. SCHWARTZ; SYLVAN LAWRENCE
COMPANY, INC.; GLEN ALLEN ASSOCIATES,
LTD.; GLEN EQUITIES, LTD.; and STEPHEN M.
ROSS,

Defendants.

FILED
SEP 08 2005
NEW YORK
COUNTY CLERK'S OFFICE

-----X
Charles Edward Ramos, J.S.C.:

Defendants Allen G. Schwartz, Glen Allen Associates, Ltd.,
and Glen Equities, Ltd., (the "Schwartz Defendants") move
pursuant to CPLR 3212 for summary judgment on the fifth cause of
action for actual fraud. Plaintiffs Transport Workers Union of
America Local 100 AFL-CIO, Roger Toussaint, Ed Watt, and 80
W.E.T.H. Corp. cross-move pursuant to CPLR 2221 to reargue this
Court's granting of summary judgment on plaintiffs' first, second
and forth causes of action in favor of the Schwartz Defendants.
Additionally, plaintiffs move to reargue their prior motion to
consolidate this case with a related action, *Transport Workers
Union of America Local 100 AFL-CIO v O'Hara*, Sup Ct, NY County,
Ramos, J., Index No. 601414/03, ("the O'Hara Action").

I. Background

Plaintiffs, collectively referred to as Transport Worker's Union of America Local 100 AFL-CIO ("TWU"), brought this action against defendants for breach of fiduciary duty, fraud, and breach of contract.

In 1981, TWU engaged defendant Schwartz, a licensed real estate broker, to represent TWU in the sale of its real property located at 1980 Broadway, New York, New York (the "Property"). Later that year, Schwartz attempted to negotiate a sale of the Property to a joint venture for \$13.5 million. That sale was never consummated. In 1984, Schwartz successfully negotiated a sale of the Property for \$13.5 million to defendant Stephen M. Ross. The sale closed in March of 1985.

TWU alleges that Schwartz served as its representative on the initial Property transaction while also acting as Ross' broker in connection with the subsequent flip sale of the Property to the American Broadcasting Corporation ("ABC") for \$29 million, which closed in November of 1985. Additionally, TWU alleges that Schwartz's dual representation was never disclosed to them. Finally, TWU alleges that Schwartz received commissions from both the initial sale of the Property to Ross, and from the flip sale to ABC. In January of 2003, TWU filed its initial complaint against defendants, which was later amended in March 2003. In their amended complaint, TWU alleges eight causes of action against Schwartz. The first and third were for breach fiduciary duty. The second was for breach of contract. The fourth and fifth alleged constructive and actual fraud,

respectively. The sixth was for unfair business practices while the seventh and eighth causes of action stated a claim for disgorgement of commissions earned by Schwartz.

TWU alleges that Schwartz failed to provide full, fair and proper disclosure of material facts to TWU while serving as its representative in connection with the sale of the Property.

These alleged material facts included: the simultaneous representation by Schwartz of both TWU and Ross, changed market conditions between 1981 and 1985, the true value of the Property, and Ross' pending transaction with ABC.

On January 7, 2004, this Court granted defendants' motion to dismiss plaintiff's third, fifth and sixth causes of action.

On March 7, 2005, plaintiffs perfected and briefed their appeal to the First Department on certain aspects of the January 7, 2004 decision. Subsequent to the appeal, the parties engaged in extensive discovery. As a result, the Schwartz Defendants moved for summary judgment on the first, second and fourth causes of action, which this Court subsequently granted after oral arguments held on February 2, 2005.

This Court's decision was twofold. First, the Court found that TWU possessed a sufficient amount of information that they knew or should have known that a viable claim existed concerning the Property sale around the time it had closed. In addition, this Court held that TWU knew about the relationship between Schwartz and Ross and could have discovered the purchase price of the flip sale on the Property since it was a matter of public

record that derived from litigation between TWU and ABC. Finally, the Court held that the statute of limitations on the Property sale began to run in 1985 once the Property sale contract was signed by TWU and Ross

The Schwartz Defendants allege that this Court's February 2, 2005 dismissal of the three remaining claims rendered TWU's cross-appeal of the January 7, 2004 decision moot. Therefore, on February 23, 2005, counsel for the Schwartz Defendants withdraw their appeal from consideration by the First Department.

Thereafter, on April 19, 2005, the First Department issued its decision regarding TWU's appeal of this Court's January 2004 order. Notably, the First Department held that:

[T]he Commercial Division properly found that the first and forth causes of action ... were timely as to the Schwartz defendants because they had a continuous fiduciary relationship with the plaintiffs until 2000. Those defendants were equitably estopped from asserting a statute-of-limitations defense as to the second cause of action for breach of contract.

Transport Workers Union of America Local 100 AFL-CIO v Schwartz, 17 AD3d 218 (1st Dept 2005). Consequently, the First Department reinstated TWU's fifth cause of action for actual fraud.

Lastly, it is important to note the O'Hara Action. In that case, TWU alleges that defendant Richard O'Hara, who had served as TWU's former attorney, allegedly shared in Schwartz's brokerage commissions and fees relating to the Property sale and the subsequent flip sale. Previously, this Court denied plaintiff's motion to consolidate this action with the O'Hara case. (*Transport Workers Union of America Local 100 AFL-CIO v*

Schwartz, Sup Ct, NY County, January 3, 2005, Ramos, J., Index No. 600268/03). Additionally, TWU was granted leave to renew the motion to consolidate upon the completion of discovery and the disposition of other pending motions in this action.

On May 20, 2005, the parties and the Court stipulated to adjourn trial on the O'Hara Action until the First Department reached a decision on TWU's appeal.

II. Discussion

A. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1. Summary Judgment Standard

A court may grant summary judgment if "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 (b)). Furthermore, summary judgment will be granted "unless the opposing party demonstrates that there exist material issues of fact as would warrant a trial ..." (*Garrett v Unanimity Construction, Inc.*, 160 AD2d 546, 547 [1st Dept 1990]; see also CPLR 3212(b)). Therefore, the ultimate purpose for granting summary judgment involves "issue-finding rather than issue-determination." (*Pirelli v Long Island R.R.*, 226 AD2d 166, 166 [1st Dept 1996]).

2. Statute of Limitations on TWU's Claim of Actual Fraud

The Schwartz Defendants argue that TWU's claim for actual fraud is untimely. The statute of limitations for actual fraud is either (1) six years from time that the fraud took place; or

(2) two years from the time when the plaintiff discovered the fraud, or would have, with reasonable diligence, discovered the fraud. (CPLR 213 (8); CPLR 203 (g); see *Chambi v Kaye, Scholer, Fierman, Hays & Handler*, 257 AD2d 475, 476 [1st Dept 1999]).

Additionally, the Schwartz Defendants argue that summary judgment on plaintiffs' fifth cause of action for actual fraud should be granted because the actual fraud claim is identical to the constructive fraud claim that this Court considered in its February 2, 2005 summary judgment ruling. (*Transport Workers Union of America Local 100 AFL-CIO v Schwartz*, Sup Ct, NY County, February 2, 2005, Ramos, J., Index No. 600268/03). At that hearing, this Court dismissed the constructive fraud claim based on the statute of limitations, because it held that TWU knew or should have known the facts necessary to provide notice of any alleged fraud at the time of closing on the Property sale in 1985. The Schwartz Defendants argue that the law of the case doctrine dictates that this Court must apply its February 2, 2005 statute of limitations ruling to the actual fraud claim with equal force. This action was commenced in 2003. Therefore, under the six-year limitations standard for fraud, TWU's fraud claims would be barred because the transaction at issue took place in 1985.

Here, TWU argues for application of the two-year discovery exception to the standard six-year statute of limitations for an action in fraud. (CPLR 203(g)). The Schwartz Defendants argue that the statute of limitations cannot be tolled, because the

fiduciary relationship which would have tolled the statute ended in 1985 upon the close of the Property sale. (*See Dubbs v Stribling & Associates*, 96 NY2d 337, 341 [2001]). Moreover, the Schwartz Defendants argue that TWU's tolling argument derives from Schwartz's representation of TWU in connection with another TWU-owned property located at 80 West End Avenue, New York, New York ("80 West End"). The Schwartz Defendants allege that the representation concerning 80 West End had no relation to the 1980 Broadway property sale to Ross. However, even if the transactions relating to the 80 West End property tolled the statute of limitations, the tolling would have stopped in 1992.

This Court held in its decision dated February 2, 2005 that TWU had notice or, at the very least, should have known of any alleged fraud as early as 1985. (*Transport Workers Union of America Local 100 AFL-CIO v Schwartz*, February 2, 2005). Specifically, this Court found "that a sufficient amount of information was in the hands of the union that they knew or should have known a long time ago that they would have had a claim with regard to this transaction." (R. at 47:12-16, Summ. J. Arg., Feb. 2, 2005). In particular, this Court found that "all of the facts necessary for the union to bring this action were in the possession of the union's attorney's." (*Id.* at 25:10-12). Notably, these facts included (1) Sonny Hall's knowledge of the Ross-ABC flip sale in 1985;¹ and (2) public records of the

¹ Sonny Hall was President of Transport Workers Union of America Local 100 AFL-CIO in 1985.

\$29 million sale price in the ABC-Ross flip sale. (*Id.* at 25, 47).

In addition, the statements of TWU's counsel from the February 2, 2005 oral argument establish that TWU had constructive notice of their fraud claims against the defendants, because TWU had previously been involved in litigation with ABC and Ross in 1985 concerning the Property sale. (R. at 6-10). Plaintiff could have discovered the purchase price of the Property during that litigation if it had exercised the most basic diligence.

3. Law of the Case

The prior findings of this Court, particularly the determinations on February 2, 2005, constitutes the law of the case. The law of the case doctrine precludes a court of coordinate jurisdiction from repeatedly adjudicating a matter if a decision has already been rendered on a particular issue in that case. (*Martin v Cohoes*, 37 NY2d 162, 165 [1975]). As a result, the law of the case doctrine has been likened to issue and claim preclusion, because it is designed to prevent relitigation of issues. (*People v Evans*, 94 NY2d 499, 502 [2000]). However, unlike *res judicata*, this principle only applies to the various stages of a single litigation. (*McGrath v Gold*, 36 NY2d 406, 413 [1975]; *see also Evans*, 94 NY2d at 502).

This Court previously found that enough information existed during the years of 1985 and 1986 to put plaintiffs on notice of

any potential fraud claims against the defendants. This finding is the law of the case.

4. The "Continuous Representation Doctrine" Does Not Toll the Statute of Limitations

The application of the continuous representation doctrine will toll the statute of limitations if a representation exists that is directly connected with a particular transaction related to a professional relationship. (*Zaref v Berk & Michaels*, 192 AD2d 346, 347-348 [1st Dept 1993]). The doctrine has been applied to professional and client relationships that go beyond an "extended and general relationship." (*Id.*) Courts have declined to apply the continuous representation doctrine to insurance brokers or investment advisors because such relationships are not unfairly one-sided. (See *Id.*; see also *Eastman Kodak Co. v Prometheus Funding Corp.*, 283 AD2d 216 [1st Dept 2001]). Likewise, the continuous representation doctrine did not apply where attorneys advised individuals on the purchase of a farm. (See *Dignelli v Berman*, 293 AD2d 565, 566 [2d Dept 2002]).

A party seeking to invoke the continuous representation doctrine must establish facts which demonstrate that a continued representation existed involving a specific matter which is "directly under dispute." (*Zaref*, 192 AD2d at 348; See also *Dubbs*, 96 NY2d at 341 (holding that a broker's continuing fiduciary duty ends after the signing of the real property contract). Therefore, the "professional relationship" for a broker is viewed on a transaction-by-transaction basis. (*Id.*)

The plaintiffs in *Zaref* attempted to apply the continuous representation doctrine to their relationship with the defendants in the case who had served as their investment advisors. (192 AD2d at 346). The issue in *Zaref* was whether plaintiffs asserted sufficient facts to show the necessary continuous representation applicable to a breach of fiduciary duty claim. (*Id.* at 347).

In concluding that it had not, the court in *Zaref* held that defendants' general control of plaintiffs' financial affairs was not enough to toll the statute of limitations pursuant to the continuous representation doctrine. (*Id.* at 348). Instead, the court in *Zaref* looked for specific instances where particular transactions took place, and since none fell within the statute of limitations, the action was held to be time-barred. (*Id.*)

Similarly, in *Dignelli*, the defendant-attorneys represented the plaintiffs in connection with the potential purchase of a farm. (293 AD2d at 565). The *Dignelli* plaintiffs alleged that the defendants advised them against the farm purchase. (*Id.*) Additionally, the *Dignelli* plaintiffs alleged that "the defendants represented the plaintiffs in their various general business dealings" over the next four years. (*Id.*) On review of these allegations, the court in *Dignelli* found that the continuous representation doctrine was inapplicable because the defendants' representation ended with the transaction at issue; the closing of the sale of the farm. (*Id.* at 566). The Second Department held that the statute of limitations barred the action because the plaintiffs only alleged general representations for

the time after the farm sale but claimed no specific transaction that would toll the statute. (*Id.*)

Here, TWU argues that its "relationship" with Schwartz continued into 2000. (R. at 16:14-17). However, TWU's argument does not suggest that a contract-based duty existed which is required to toll the statute of limitations beyond the last official transaction between the parties. (See *Zaref*, 192 AD2d at 347-348). It is not disputed that the 1980 Broadway transaction closed in 1985. Plaintiff merely proffers that a general relationship existed between Mr. Schwartz and TWU after 1985. No other transaction between Schwartz and TWU is alleged. Therefore, the allegation that the relationship extended into 2000 is, at best, akin to the general business relations that were found insufficient to extend the statute of limitations in *Zaref* and *Dignelli*. Furthermore, any subsequent representation of the plaintiff regarding matters unrelated to the purchase of 1980 Broadway does not warrant application of the doctrine because the continuous representation doctrine looks only to the transaction that is the subject matter of the action. (See *Zaref*, 192 AD2d at 348). The 1980 Broadway transaction is the transaction in dispute.

Arguably, Schwartz, as a real estate broker, holds no more influence over his client than an investment advisor or an insurance broker. Therefore, as in *Zaref* and *Dignelli*, the continuous relationship doctrine should not be applied to Schwartz.

Assuming that the continuous representation doctrine were applied to the relationship between Schwartz and TWU, the statute of limitations can only be tolled until the time of the completion of their professional relationship. (See *Zaref*, 192 AD2d at 348). As a matter of law, the fiduciary relationship between Schwartz and TWU ended in 1985 when the Property closed after the sale to Ross. (*Dubbs*, 96 NY2d at 341). Therefore, even if the continuous relationship doctrine were applied, any tolling of the statute of limitations would have ended in 1985. Consequently, the statute of limitations still bars this action.

As a result, there is no issue of fact as to whether the statute of limitations bars this action because the transaction at issue ended in 1985 and the continuous representation doctrine does not work to toll the statute of limitations beyond that date. Therefore, defendants' motion for summary judgment is granted.

B. PLAINTIFF'S CROSS-MOTION FOR LEAVE TO REARGUE AND RENEW

1. Timeliness of the Motion

TWU argues that this Court should grant its cross-motion for leave to reargue and renew should be granted for the following reasons. First, TWU argues that the First Department held in its April 19, 2005 decision that this Court misapplied the statute of limitations on the first, second, and fourth causes of action. Alternatively, TWU argues that leave for renewal and reargument should be granted, because the First Department's April 19, 2005 decision is now the law of the case. A motion for leave to

reargue "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry." (CPLR 2221(d)(3)).

However, under certain circumstances, it may be appropriate for a court to look past the thirty-day requirement. (See *Garcia v Jesuits of Fordham, Inc.*, 6 AD3d 163, 164 [1st Dept 2004]) (holding that it was not an abuse of discretion for the trial court to reconsider its prior ruling despite thirty days passing from the notice of entry of the prior order, because an issue had arisen regarding plaintiff's claims due to the fact that plaintiff testified through a Spanish-speaking interpreter).

TWU seeks to reargue this Court's prior summary judgment decision entered on March 18, 2005. However, it did not file this cross-motion until May 4, 2005, sixteen days after the deadline. Pursuant to CPLR 2221(d)(3), TWU's motion is deemed untimely.

2. Merits of Reargument Moreover, TWU fails to provide a sufficient basis for this Court to grant the motion. Under CPLR 2221 (d)(3), a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion ..." A reargument is an appeal to the court's discretion in hopes of persuading the court that there were legal deficiencies in its prior decision. (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). However, reargument is not an opportunity for an unsuccessful

party to repeat its initial arguments or present new legal theories. (*Id.*)

TWU argues that this Court, in its February 2, 2005 decision, misapplied the law that works to toll the statute of limitations. However, as discussed above, the statute of limitations could not be tolled because (a) the continuous representation doctrine could not be applied to real estate brokers; (b) even if it did, it could only toll the statute of limitations until 1985 when the transaction at issue closed; and (c) any allegation that plaintiff and defendant had a general business relationship after the 1980 Broadway transaction is inconsequential to a tolling inquiry; all of which the Court explained in its February 2, 2005 decision.

3. Application of the Law of the Case Doctrine

Alternatively, TWU argues that the April 19, 2005 decision of the First Department affirming this Court's January 7, 2004 decision denying defendants' motion to dismiss the first, second and fourth causes of action is now law of the case. According to TWU, because the First Department affirmed the denial of defendants' prior motion to dismiss, this Court must allow the first, second, and fourth causes of action to continue.

Contrary to TWU's argument, the law of the case doctrine does not apply when a summary judgment motion follows a motion to dismiss. (*Riddick v City of New York*, 4 AD3d 242, 245 [1st Dept 2004]) (reversing lower court's denial of summary judgment based on an erroneous application of the law of the case doctrine to a

dismissal ruling). A motion to dismiss merely addresses the adequacy of the pleadings while a summary judgment motion searches the record and looks to the sufficiency of the underlying evidence. (*Tenzer, Greenblatt, Fallon & Kaplan v Capri Jewelry, Inc.*, 128 AD2d 467, 469 [1st Dept 1987]).

Initially, the complaint alleged that Schwartz was a fiduciary of TWU by serving as its "exclusive real estate broker ... throughout the period 1981 to 2000." In its January 7, 2004 decision, this Court held that this claim had been sufficiently pled to survive a motion to dismiss under CPLR 3211. In other words, on a motion to dismiss, "where the facts pleaded are assumed to be true and accorded every favorable inference," this Court found that the facts, as plead, may have supported plaintiffs' argument. (See *Franklin v Winard*, 199 AD2d 220, 220 [1st Dept 1993]; see also CPLR 3211).

However, during oral argument on February 2, 2005, this Court reviewed the evidentiary record and found that nearly all of TWU's contentions were without merit. Therefore, the disparity between this Court's ruling on a motion to dismiss and on a motion for summary judgment is easily resolved. Consequently, the First Department's April 19, 2005 affirmance of this Court's January 7, 2004 decision denying defendants' motion to dismiss does not compel an identical ruling on defendants' current motion for summary judgment.

C. PLAINTIFF'S CROSS-MOTION TO RENEW ITS MOTION TO CONSOLIDATE

A motion to renew pursuant to CPLR 2221 "is intended to

direct the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention." (*Garner v Latimer*, 306 AD2d 209 [1st Dept 2003]; see also *Foley v Roche*, 68 AD2d 558, 594 [1st Dept 1979]) (holding that a motion to renew was improper because no additional material facts were alleged).

In its memorandum of law in support of the motion for leave, and in the affirmation of plaintiff's counsel, John Van Der Tuin, TWU refers the Court to its prior memorandum of law for consolidation, dated March 16, 2004. Logic dictates that any facts presented for consolidation in 2004 cannot serve as new facts today. Therefore, plaintiff's renewal motion is deficient on its face.

The only other basis for consolidation offered by plaintiff is that:

Claims against the Schwartz defendants have now been reinstated, reconsideration of consolidations is ripe and consolidation should be granted ... These cases, which involve the same claims, witnesses, and factual circumstances, and that have had joint discovery, should not be tried separately.

(Pls. Mem. of Law at 23).

However, TWU's claims have not been reinstated. The First Department held that this Court should rule on the one remaining cause of action for actual fraud. Moreover, even if the First Department reinstated plaintiff's claims, this does not constitute a new fact within the contemplation of CPLR 2221.

(*Healthworld Corp. v Gottlieb*, 12 AD3d 278, 279 [1st Dept 2004])

(holding that new facts are those not presented to the court previously and were not available for some good reason).

It is within this Court's discretion to grant a motion to consolidate. (*Dias v Berman*, 188 AD2d 331 [1st Dept 1992]). Furthermore, this Court can deny a motion to consolidate where the two actions at issue, although both containing common questions of law and/or fact, "are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter." (*Abrams v Port Auth. Trans-Hudson Corp.*, 1 AD3d 118 [1st Dept 2003]).

Here, by granting summary judgment in favor of the Schwartz Defendants on the fifth cause of action for actual fraud, there will no longer be any claims against the Schwartz Defendants by TWU. On the other hand, the O'Hara Action is ready for trial. However, the disposition of the O'Hara Action is currently stayed, because the parties entered into a stipulation, with the consent of the Court on May 20, 2005, adjourning the trial date until the First Department reaches a decision on TWU's appeal.

Therefore, since this Court did not misapply the tolling statutes under the CPLR, and considering the procedural deficiencies of TWU's application for renewal, and the practical considerations against consolidation, TWU's cross-motion for leave to reargue and renew its January 18, 2005 motion is denied.

Accordingly, it is:


ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed with costs and

disbursements to defendants as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that plaintiffs' motion for leave to renew and reargue is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: August 31, 2005



J.S.C.
CHARLES E. RAMOS

Counsel are hereby directed to obtain an accurate copy of this Court's opinion from the record room and not to rely on decisions obtained from the internet which have been altered in the scanning process.

FILED
SEP 08 2005
NEW YORK
COUNTY CLERKS OFFICE