

Tico Inc. v Borrok

2006 NY Slip Op 30129(U)

July 11, 2006

Supreme Court, New York County

Docket Number: 0650235/2006

Judge: Richard B. Lowe

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

Index Number : 650235/2006

PART 36

TICO INC.

vs.

BORROK, CHARLES R.

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. 650235/06

MOTION DATE 5/17/07

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JUN 14 2007

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION**

RECEIVED
JUN 14 2007
MOTION
SUPPORT OFFICE

Dated: 6/11/07

RICHARD B. LOWE III

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

MDATE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 56

-----X

TICO INC and TRUST u/w/o BENJAMIN
COHEN ARTICLE EIGHTH A f/b/o
BARBARA COHEN, JAY COHEN, Trustee,
Individually and as Limited Partners of 425
Park Avenue Company, a Limited Partnership,
suing on behalf of themselves and all others
similarly situated, for the benefit of
425 Park Avenue Company,

Index No: 650235/06

Plaintiffs

-against-

DECISION AND ORDER

CHARLES R. BORROK, ANDREW SINGER
BORROK, individually and as General Partners
of 425 Park Avenue Company, ARENT FOX
KINTNER PLOTKIN & KAHN PLLC a/k/a
Arent Fox PLLC, HJ BEHRMAN & PARTNERSHIP,
LLP, CUSHMAN & WAKEFIELD, INC., and
425 PARK AVENUE COMPANY,

FILED

JUN 14 2007

**NEW YORK
COUNTY CLERK'S OFFICE**

Defendants

-----X

RICHARD B. LOWE III, J:

Motion Sequences 001 and 002 are consolidated for disposition.

Plaintiffs Tico, Inc and Trust u/w/o Benjamin Cohen Article Eighth A f/b/o Barbara Cohen and Jay Cohen ("the Plaintiffs"), bring the instant action individually and as limited partners of 425 Park Avenue Company ("the Partnership") on behalf of themselves and all others similarly situated

for the benefit of the Partnership. The instant action is brought against Defendants Charles R. Borrok (“Charles Borrok”); Andrew Singer Borrok (“Andrew Borrok”) (collectively “Messieurs Borrok”); Arent Fox Kintner Plotkin & Kahn, PLLC (“Arent Fox”); HJ Behrman & Partnership LLP (“Berhman”); Cushman & Wakefield, Inc (“Cushman”); and the Partnership for breach of fiduciary duty, conspiracy, and unjust enrichment. In Motion Sequence 001, Defendant Berhman moves to dismiss the claims against it pursuant to CPLR 3211(a)(1) and (a)(7). In Motion Sequence 002, Defendants Messieurs Borrok and the Partnership move to dismiss the claims against them under the same CPLR provisions. ¹

BACKGROUND

The Partnership was formed prior to June 7, 1965 by non-party decedent Benjamin Cohen and four other non-party individuals. It is organized pursuant to New York Partnership Law, with its principal place of business at 425 Park Avenue on the 24th floor. It is the owner of said building. Under the partnership agreement, Benjamin Cohen’s interest was that of a limited partner.

Benjamin Cohen established a trust for the benefit of his daughter, Barbara Cohen, and his son, Jay Cohen. It is organized under New York law. Upon his death, his 6.21 % interest in the Partnership devolved to the trust. Barbara Cohen and Jay Cohen each received one half of his partnership interest (3.105% each).

In 2002, Messieurs Borrok each purchased a .0775% interest in the Partnership. Charles Borrok is a New York resident. He is Vice President of Defendant Cushman, a New York corporation with its place of business here. Andrew Borrok is also a New York resident. He is

¹ In their notice of motion, Messieurs Borrok and the Partnership state that they are moving pursuant to both CPLR 3211(a)(1) and (a)(7). However, their Memorandum of Law only addresses arguments under CPLR 3211(a)(7) for the claims’ dismissal.

Counsel to Defendant Arent Fox, a limited-liability company engaged in the practice of law and licensed to do business in New York. Its principal address is in Washington, D.C.

In May 2002, Messieurs Borrok became the Partnership's managing General Partners; Andrew Borrok also became its General Counsel. On October 9, 2004, a fire erupted in 425 Park Avenue, destroying the entire electrical system. The building's tenants had to evacuate, but were able to return less than a month later. During the same time, the Plaintiffs aver that the Partnership's administrative costs were increasing. They began to suspect that Messieurs Borrok were mismanaging the Partnership's assets and sought a review of its financial information from 2002 onward.

On or about June 23, 2006, the Plaintiffs reviewed the Partnerships books and records and, based upon their review, aver Messieurs Borrok engaged in self-dealing with respect to its assets. Specifically, the Plaintiffs allege that Messieurs Borrok paid themselves excessive fees to manage the business; paid Arent Fox hefty legal fees while Andrew Borrok was its Counsel; paid Cushman commission and management fees totaling \$600,000.00 for its role as the exclusive leasing agent for the building's premises while Charles Borrok was its Vice President; and hired Berhman as the accounting firm, paying it fees over four times greater than those paid to the prior accounting firm.

In a letter dated July 14, 2006, the Plaintiffs notified the General Partners about their findings. The Partnership's counsel responded to the letter, denying that the payments complained about amounted to any wrongdoing.

On November 7, 2006, the Plaintiffs commenced the instant action against the Defendants. They aver that the Defendants breached their fiduciary duties to the plaintiffs, conspired to divert the Partnership's assets, and were unjustly enriched at the expense of the Partnership. In the

consolidated motions, Behrman, Messieurs Borrok, and the Partnership move to dismiss the complaint as against them under CPLR 3211(a)(1) and (a)(7). They collectively argue that the Plaintiffs lack standing to bring the suit, and have failed to plead any claim cognizable at law.

DISCUSSION

The Plaintiffs' Standing to Commence the Instant Action

The threshold issue to address is whether the Plaintiffs have standing to commence the instant action. “A limited partner may bring an action in the right of a limited partnership. . .if all general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.” (*Partnership Law § 121-1002(a)*) “In a derivative action, the complaint shall set forth with particularity the efforts of the plaintiff[s] to secure the initiation of such action by a general partner, or the reasons for not making such effort.” (*Id.*, § 121-1002(c))

Here, the Plaintiffs plead

[They] have not demanded that the general partners. . .take the action taken by the Plaintiffs because the individual Defendants were. . .and still are the managing General Partners. . .and. . .the only active General Partners. . .They were. . .the beneficiaries of the wrongs herein complained of and of the wrongful acts, conduct, and conspiracies herein alleged. They. . .have persisted in their course of action injurious to the Partnership. Demand upon the Partnership and/or the individual Defendants and/or the General Partners. . .would. . .have required them to institute suit against themselves such that any such demand would have been futile.

(*Complaint at page 13*, ¶ 89)

The Plaintiffs, however, contradict their own pleading in their opposition to this motion. They assert that they “sent a demand to the General Partnership. The letter. . .was received and responded to by the General Partners attorneys. . .If the General Partners wanted to take action they

were on notice. . .(Memo in Opp'n in Motion Sequence 002 at pages 4-5) The letter notified the

General Partners:

There appears to be an actionable breach of fiduciary duty owed to the partnership based upon the self dealing of Andrew Borok, Esq. Mr. Borok has caused to be paid to himself a monthly retainer. . .of \$220,000.00 per annum although not performing legal services which would even justify this. . .

There appears to be an actionable breach of fiduciary duty owed to the partnership based upon the self dealing of Andrew Borok, Esq. . .and Charles Borok. . .The documents reveal that they have taken exorbitant management fees (over \$620,000.00 for each of them) while there is an independent management agent (Cushman). . .as well as an on-site property manager. . .it is our understanding that Mr. Charles Borok is an employee of Cushman. . .and that he is independently compensated for rentals in the premises.

. . .[T]he accounting firm engaged by Messieurs Borok has more than quadrupled the accounting fees charged to the partnership by the previous accounting firm.

(*Id, Ex 1*)

A plain reading of this letter to the General Partners clearly demonstrates that the Plaintiffs alerted them of their contention. Indeed, the Plaintiffs presented their assertion of a potential fiduciary-duty breach, and how they reached this conclusion: Messieurs Borok paid themselves allegedly excessive fees and Berhman overcharged the Partnership for services rendered. But as the Plaintiffs plead in their complaint, this letter fails to constitute the necessary demand.

The Plaintiffs's demand in the letter:

That Messieurs Borok and each of them return to the partnership of all sums paid to them for the years 2003, 2004, 2005, and 2006.

That an independent board of the partners and general partners be appointed. . .to review and set reasonable compensation for Messieurs Borok for the years [2003-2006].

(*Id*)

But this falls short of demanding that an action be commenced against the-now Defendants. Rather, the Plaintiffs seek redress separate and apart from litigation. The attention, therefore, must be on the

demand's futility.

Summarily, the Plaintiffs aver that demand would be futile because Messieurs Borrok control the board, and "would not want to sue themselves." Indeed, it is Messieurs Borrok's conduct of paying themselves and the other Defendants allegedly excessive fees that breached their duties to the Partnership.

To be sure, if Messieurs Borrok were the only general partners, demand would be futile because, as the Plaintiffs aver, "the general partners will not sue because they are the very persons who would be liable. . ." (*CCG Associates I v Riverside Associates*, 157 AD 2d 435 [1st Dept 1990], quoting *Riviera Congress Associates v Yassky*, 18 NY 2d 530 [1966].) But this is not the case. There are three other General Partners, not accused of wrongdoing, whose ownership in the Partnership in fact exceeds that of Messieurs Borrok. (*See, Berhman Memo of Law, at pages 2, 8-10; Memo in Opp'n in Motion Sequence 002, at page 5, ¶ 9-10*)

Furthermore, the Plaintiffs contention that these other General Partners are "inactive" has no merit. Under New York law, "all partners have equal rights in the management and conduct of the partnership business." (*Partnership Law § 40*) The Partnership agreement itself makes no distinction between active or inactive partners. (*See, Goldwasser Aff'd, Ex. A*) Nor do the Plaintiffs plead how the other General Partners are allegedly inactive.

It was incumbent upon the Plaintiffs, as limited partners, to make a demand upon all General Partners. Since they failed to do so, they lack standing to commence the instant action, and the complaint is therefore dismissed on this ground.

The Complaint's Causes of Action

In the alternative, this Court will address the other grounds for the complaint's dismissal as against Messieurs Borrok, the Partnership, and Berhman.

"A party may move for judgment dismissing one or more causes of action asserted against him on the grounds that the pleading fails to state a cause of action. . ." (*CPLR 3211(a)(7)*) In a motion to dismiss, the court takes the facts as alleged in the complaint as true and accords the benefit of every possible favorable inference to the non-movant (*see AG Capital Funding Partners, LP v State Street Bank and Trust Co*, 5 NY 3d 582 [2005]). "The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail." (*Ackerman v 204 East 40th Owners Corp.*, 189 AD 2d 665 [1st Dept 1993].)

I. Breach of Fiduciary Duty

"When a cause of action. . .is based upon fraud. . .or breach of trust. . .the circumstances constituting the wrong shall be stated in detail." (*CPLR 3016(b)*) "CPLR 3016(b) has been interpreted as requiring only that the misconduct complained of be set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of and is not to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it would be impossible to state in detail the circumstances constituting the [malfeasance]." (*Board of Managers of 411 East 53rd Street Condominium v Dylan Carper, Inc.*, 182 AD 2d 551 [1st Dept 1992], quoting, *Jered Contr. Corp v New York City Transit Authority*, 22 NY 2d 189 [1968].)

a. First Cause of Action/Messieurs Borrok's Alleged Breach of Fiduciary Duty

As against Messieurs Borrok and the Partnership, the Plaintiffs plead

[Messieurs Borrok] diverted revenues of the Partnership and arranged to pay themselves exorbitant sums of money to the detriment of the Partnership

(*Complaint page 4, ¶ 22*)

...[I]t became apparent that administrative costs were spiraling out of control while distributions to partners were reduced to a mere fraction of the years prior to their tenure. . .

(*Id, ¶ 23*)

For 2004. . .Andrew Borrok drew. . .a monthly retainer of legal fees in the sum of \$18,333.33. . .and a fee for acting as managing General Partner in the sum of \$150,000.00. . .for less than part time occupation! . . .For 2005 . . .[he] drew. . . \$18,333,33 [as a legal retainer fee] and \$625,000.00 [as a fee for acting as General Partner] for less than part time occupation!

(*Id at page 5, ¶ 27 & 29*)

For 2004. . .Charles R. Borrock drew a fee for acting as managing General Partner in the sum of \$850,000.00 for less than part time occupation. . .For 2005 [he drew] \$625,000.00. . .

(*Id, ¶ 28 & 30*)

In addition, the Plaintiffs allege that Messieurs Borrok authorized “excessive” payments to Cushman, in 2004, and to Arent Fox. Messieurs Borrok have an independent relationship with these two companies separate from the Partnership’s. (*Id at pages 5-6, ¶ 31-32*) Finally, the Plaintiffs contend that Messieurs Borrok hired Berhman, who “more than quadrupled the accounting fees charged . . .by the previous accounting firm.” (*Id, ¶ 34-35*)

Here, there can be no doubt that Messieurs Borrok, as its two managing General Partners, owe “the punctilio of honor the most sensitive” to it. (*See, Meinhard v Salmon, 249 NY 458 [1928].*) Summarily, the Plaintiffs conclude that the fiduciary duty was breached because Messieurs Borrock gave themselves high salaries and paid out excessive fees to their lawyers, the accounting firm, and

their real estate agent. But these “bare legal conclusions” will not overcome Messieurs Borrok and the Partnership’s motion to dismiss. (*See, Stuart Lipsky, PC v Price*, 215 AD 2d 102 [1st Dept 1995].)

First, the mere allegation that Messieurs Borrok received considerable compensation does not satisfy the heightened-pleading requirement found in CPLR 3016(b). Indeed, simply because a professional is paid handsomely is not indicative that a wrong was committed. To be sure, Messieurs Borrok General-Partnership role was only part-time, and their salaries for the years in question is indeed higher than many individuals earn for a full-time job. But this was also during the period in which the fire disrupted the building’s operations, and Messieurs Borrok were lauded for quickly returning the building to its operational status. (*See, Pell Aff’d, Ex B*) The pleading is devoid of any detail as to the Plaintiffs’ rationale for their contention that the salaries withdrawn were in excess of what was reasonable in relation to the work performed, thereby breaching the duty.

Second, the pleading that Messieurs Borrok breached their duty because of the fees paid to Cushman, Arent Fox, and Berhman also fails. Because Andrew Borrok is affiliated with Arent Fox, and Charles Borrok with Cushman, does not in and of itself demonstrate the occurrence of a wrong. As to Arent Fox’s fees, the Plaintiffs do not plead the amount of fees paid, let alone how said fees were excessive. As to Cushman’s fees in 2004, the Plaintiffs do not articulate how these fees were unreasonable. They fail to assert how the commissions and management fees paid are disproportionate with the services rendered. Finally, the assertion that Messieurs Borrok breached their duty because of the fees they paid to Berhman similarly fails. Their blanket allegation that Berhman was paid four times as much as the previous accountants is not supported by a pleading specifying how said fees failed to correspond with the actual accounting-work performed.

The Plaintiffs fail to plead with the required particularity and offer only conclusory allegations with respect to Messieurs Borrok's alleged fiduciary-duty breach. Accordingly, the first cause of action is dismissed.

b. Third Cause of Action: Berhman's Alleged Breach of Fiduciary Duty

As against Berhman, the Plaintiffs plead that

Berhman, in rendering accounting services to the Partnership had a fiduciary duty to act for the benefit of and in the best interest of the Partnership.

(*Id* page 9, ¶ 55)

Berhman, knew and/or should have known that the fees charged for its accounting services were excessive. . .[and] it breached its duty to the Partnership in that it accepted fees in excess of the value of the services actually rendered.

(*Id* ¶ 56-57)

Unlike the earlier discussion, where it was undisputed that Messieurs Borrok stand in a fiduciary relationship with the Partnership and owe it such a duty, Berhman is not similarly situated. "In New York, the accountant-client relationship is not fiduciary in nature absent special circumstances, such as the accountant's commission of active fraud on the client." (*Ernst Lawrence Group v Marketing Americas, Inc.*, 2006 WL 2811781 [SDNY], *applying New York law*; *See also, DC Liquidation, Inc v Anchin, Block, & Anchin, LLP*, 300 AD 2d 70 [1st Dept 2002].) The special circumstances alluded to is when the accountant allegedly makes representations to the client that she/he relies on to her/his detriment. (*See, Lavin v Kaufman, Greenhut, Lebowitz, & Forman*, 226 AD 2 107 [1st Dept 1996].)

The Plaintiffs claim for Berhman's fiduciary-duty breach falls on its face. They do not plead that Behrman made representations to the Partnership that were relied on to its detriment. Rather, the alleged duty breach is premised on the unsupported assertion that Berhman overcharged the

Partnership for services rendered. This allegation, however, fails to uplift the relationship between Berhman and the Partnership from independent auditor/non-fiduciary-client to one of fiduciaries.

In addition, Berhman moves pursuant to CPLR 3211(a)(1) to dismiss this claim against it. “A party may move for judgment dismissing one or more causes of action asserted against him on the grounds that a defense is grounded in documentary evidence.” (*CPLR 3211(a)(1)*) Factual claims that are “either inherently incredible or flatly contradicted by documentary evidence” are to be dismissed pursuant to CPLR 3211(a)(1). (*Kliebert v. McKoan*, 228 AD 2d 232 [1st Dept 1996].)

Here, Berhman proffers the engagement letters that it sent to the Partnership, after the latter retained the former. (*See, Goldwasser Aff'd, Ex B, C, and D*) Summarily, these letters indicate that Berhman was hired to conduct an audit “in conformity with U.S. generally accepted accounting principles.” (*Id*) To be sure, these letters support that Berhman was hired as the Partnership’s independent auditor, and is therefore not its fiduciary. However, if, *arguendo*, the Plaintiffs had in fact adequately plead that Berhman made a representation that the Partnership detrimentally relied on, the letters do not conclusively disprove that assertion. They merely demonstrate the general rule in New York concerning the accountant-client relationship.

Berhman, as the Partnership’s independent auditor, is not the latter’s fiduciary. Nor have the Plaintiffs adequately plead facts that would transform their relationship into one. Accordingly, the motion to dismiss the third cause of action pursuant to CPLR 3211(a)(7) is granted.

II. Conspiracy

“...New York does not recognize civil conspiracy to commit a tort as an independent cause of action.” (*Steier v Schreiber*, 25 AD 3d 519 [1st Dept 2006].) However, a plaintiff may allege that the Defendants conspired to commit a specific tort when said tort is adequately plead. (*See, Sokol*

v Addison, 293 AD 2d 600 [2nd Dept 2002].) The conspiracy claim therefore “stands or falls with the underlying tort.” (*Ward v City of New York*, 15 AD 3d 392 [2nd Dept 1005].)

Fifth Cause of Action: Conspiracy by Messieurs Borrok

Here, the Plaintiffs plead that

[Messieurs Borrok]. . .in violation of their fiduciary obligations. . .conspired together. . . and with the remaining Defendants, to cause. . .a sum in excess of \$3,500,000.00 to be diverted from the proper business purposes of the Partnership.

(*Complaint at page 11*, ¶ 69)

Pursuant to the conspiracy, the Defendants Borrok, caused excessive sums of Partnership revenues to be paid to them and to others. . .[and they]. . .acted in concert to steal from. . .misappropriate from. . .[and]. . .defraud the Partnership of its assets.

(*Id.*, ¶ 70-73)

While the Plaintiffs plead that Messieurs Borrok allegedly committed their nefarious plan in unison to defraud the Partnership, it is a conspiracy that is premised on them breaching their duty to it. This Court finds that the Plaintiffs have failed to adequately plead the fiduciary-duty-breach tort. Accordingly, the fifth cause of action for conspiracy must fall with the first cause of action for the fiduciary-duty breach.

Sixth Cause of Action: Conspiracy by all Defendants

Here, the Plaintiffs plead that

. . .Defendants, in violation of their fiduciary obligations as General Partners and licensed professionals to the limited partners of the Partnership. . .conspired together to cause, and they did cause. . .\$3,500,000.00 to be diverted from. . .the Partnership.²

(*Id.*, at page 12, ¶ 77)

As in the previous cause of action, the conspiracy plead here is premised on the tort of breach

² This cause of action is against all named defendants, including Arent Fox and Cushman. These two Defendants have not moved for dismissal.

of fiduciary duty. The Plaintiffs failed to satisfy that pleading requirements with respect to Messieurs Borrok, and do not have the benefit of a fiduciary relationship with Berhman. Accordingly, this claim falls alongside those for fiduciary-duty breach in the first and third causes of action.

III Unjust Enrichment

“Unjust enrichment occurs when one party is not adequately compensated for the benefit it bestows on another party.” (*Wiener v Lazard Freres & Co*, 241 AD 2d 114 [1st Dept 1998].) A cause of action for unjust enrichment is stated “where the plaintiff properly assert[s] that a benefit was bestowed by the plaintiff, and that the defendant will obtain such benefit without adequately compensating plaintiff therefor.” (*Id.*)

Here, the Plaintiffs plead that Messieurs Borrok received the benefit of serving as the Partnership’s managing General Partners and Berhman received the benefit of obtaining it as a client. (*Complaint at page 13*, ¶ 85-86) However, Messieurs Borrok and Berhman allegedly were unjustly enriched because the salaries and fees they took, from the partnership, respectively, were greater than the actual services performed. (*Id.*)

But as discussed, *supra*, the Plaintiffs fail to articulate their basis for the alleged disparity between the services rendered and salary received. Rather, they conclude that these named Defendants were overcompensated, but fail to plead how they were so. They do not adequately plead this claim, and it is therefore dismissed.

As an alternative basis for dismissal, the Defendants herein argue that the unjust enrichment claim fails because the existence of a valid, enforceable contract nullifies it. In New York, when there is a valid, written contract governing a particular subject matter, a party is precluded from asserting an unjust enrichment claim on the events that arise from it. (*See, Clark-Fitzgerald, Inc v*

Long Island Railroad Co., 70 NY 2d 382[1987].) In order to succeed on this ground, the contract referred to must address the issue plead under the unjust enrichment claim. Berhman achieves this success; Messieurs Borrok do not.

The engagement letters between the Partnership and Berhman form the basis for their professional relationship. Indeed, a claim by the Partnership that Berhman did not perform its end of the bargain, i.e., over-charging for under-performing, would be premised on that agreement.

The Partnership Agreement establishes the formation of the Partnership. Indeed, it addresses the purpose of the partnership, its ownership, and operations. (*See, Goldwasser Aff'd, Ex D*) It does not, however, address compensation by its managing partners or recompense for when they allegedly misuse the Partnership's assets. A properly-plead claim for unjust enrichment would not be duplicative of the rights asserted under the Partnership Agreement. Accordingly, the Partnership Agreement does not provide the basis for dismissing this claim.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the complaint is dismissed with respect to Defendants Andrew Borrok, Charles Borrok, the Partnership, and Berhman, and the Clerk of the court is directed to enter judgment in favor of said Defendants, dismissing the complaint as against them, with costs and disbursements to Plaintiffs as taxed by the Clerk.

This shall constitute this Court's decision and order.

Date: June 11, 2007

FILED
JUN 14 2007
NEW YORK
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Entered

RICHARD B. LOWE III

Richard B. Lowe, III, J.S.C.