

**Ziffer v Levi**

2010 NY Slip Op 31498(U)

June 10, 2010

Supreme Court, Nassau County

Docket Number: 007348-10

Judge: Timothy S. Driscoll

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**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X  
**JANE LEVI ZIFFER, Individually, as an Officer and  
Director of Tower Isles Frozen Foods, Ltd., and  
Derivatively on Behalf of Tower Isles Frozen Foods, Ltd.,  
JEANETTE PRINGLE, Individually, and Derivatively on  
Behalf of Tower Isles Frozen Foods, Ltd., and  
STEVEN LEVI, Individually, and Derivatively on Behalf  
of Tower Isles Frozen Foods, Ltd., and RONY KESSLER  
and JEANETTE PRINGLE as Co-Executors of the  
Estate of Earl Levi,**

**Plaintiffs**

**- against -**

**BERYL JOY LEVI and TOWER ISLES FROZEN  
FOODS LTD., as nominal defendant.**

**Defendants.**

**TRIAL/IAS PART: 22  
NASSAU COUNTY  
Motion Seq. No: 1  
Submission Date: 5/28/10**

**Index No: 007348-10**

-----X  
**JEANETTE PRINGLE, JANE ZIFFER, and  
STEVEN LEVI, individually and as shareholders  
owning collectively 50% of the outstanding and  
issued shares of and on behalf of and in the right  
of Tower Isles Frozen Foods, Ltd.,**

**Plaintiffs,**

**-against-**

**BERYL JOY LEVI, PATRICK JOLLY, GROVER  
NICHOLS, and TOWER ISLES FROZEN FOODS, LTD.,**

**Defendants.**

**Index No. 015598-03**

**The following papers have been read on this Order to Show Cause**

<b>Order to Show Cause, Emergency Affirmation, Affidavits in Support (2) and Exhibits.....</b>	<b>X</b>
<b>Supplemental Affirmation in Support and Exhibit.....</b>	<b>X</b>
<b>Affidavit of K. Meng and Exhibits.....</b>	<b>X</b>
<b>Affidavit of B. Levi in Opposition and Exhibits.....</b>	<b>X</b>
<b>Defendant's Memorandum of Law in Opposition.....</b>	<b>X</b>
<b>Reply Affirmation in Further Support, Reply Affidavits (3) and Exhibits.....</b>	<b>X</b>
<b>Affirmation in Response.....</b>	<b>X</b>
<b>Letter dated 5/28/10 from J. Ortego.....</b>	<b>X</b>
<b>Letter dated 5/28/10 from R. Rosenberg and Exhibits.....</b>	<b>X</b>
<b>Letter dated 5/28/10 from K. Meng.....</b>	<b>X</b>
<b>Blue Binder with Financial Records re: Tower Isles.....</b>	<b>X</b>
<b>Blue Binder with Transcripts re: Tower Isles.....</b>	<b>X</b>

This matter is before the Court for decision on the Order to Show Cause filed by Plaintiffs on April 14, 2010 and submitted on May 28, 2010. In addition to considering the papers listed above, the Court heard oral argument on Plaintiff's application on April 28, 2010. For the reasons set forth below, the Court 1) denies, as moot, Plaintiffs' application for an Order appointing independent counsel for Tower Isles Frozen Foods, Ltd., in light of the decision by that company to retain Steven R. Schlesinger as its attorney; 2) denies Plaintiffs' application for injunctive relief, except that the Court directs that the Temporary Restraining Order issued on April 14, 2010 and amended on April 28, 2010 remains in effect; and 3) denies Plaintiffs' application to remove M. Kathryn Meng as the court-appointed neutral director of Tower Isles Frozen Foods, Ltd.

**BACKGROUND**

**A. Relief Sought**

Plaintiffs Jane Levi Ziffer ("Jane"), Individually, as an Officer and Director of Tower Isles Frozen Foods, Ltd. ("Company") and Derivatively on Behalf of the Company, Jeanette Pringle ("Jeanette"), Individually and Derivatively on Behalf of the Company, and Steven Levi ("Steven"), Individually, and Derivatively on Behalf of the Company, and Rony Kessler ("Kessler") and Jeanette as Co-Executors of the Estate of Earl Levi ("Earl") move for an Order:

1) removing Defendant Beryl Joy Levi (“Joy”) as an officer and director of the Company for cause pursuant to Business Corporation Law (“BCL”) §§ 706(d) and 716(c) and removing attorney M. Kathryn Meng (“Meng”) as the court-appointed neutral director of the Company; 2) appointing Plaintiffs, who are shareholders of the Company, as directors of the Company with full authority to manage its affairs; or, alternatively, appointing a receiver for the Company pursuant to CPLR § 6401 *et. seq.*; or, alternatively, 3) scheduling an evidentiary hearing and directing expedited discovery in aid of that hearing; 4) compelling specific performance of a 1993 Stipulation of Settlement (“1993 Stipulation”) requiring Joy to sell the Company to a bona fide purchaser and directing the immediate sale of the Company to Meadow Ridge Capital LLC (“Meadow Ridge”) or, alternatively, authorizing Plaintiffs to execute all necessary documents in place of Joy to effectuate that sale or, alternatively, appointing a Special Referee, pursuant to CPLR § 5103 to effectuate the sale of the Company to Meadow Ridge; 5) appointing independent counsel for the Company; 6) enjoining and prohibiting Joy and Meng from a) acting or purporting to act on behalf of the Company; b) receiving payment from the Company; c) using Company funds to defend or indemnify them in this action or related actions; and d) seeking indemnification or defense from the Company in this action or related actions; 7) directing Meng to produce certain invoices, books, records and other documentation regarding the Company; 8) directing Joy to preserve all documents, and books and records including electronically stored information, concerning this action and the related Meadow Ridge Action; 9) consolidating this action with two related actions titled *Beryl Joy Levi v. Rony Kessler, Co-Executor of the Estate of Earl Levi and Jeanette Pringle, Co-Executor of the Estate of Earl Levi*, Index No. 14416/03 (formerly Kings County Index Number 30991/03) (“Kings County Action”) <sup>1</sup> and *Meadow Ridge Capital LLC v. Beryl Joy Levi and Tower Isles Frozen Foods, Ltd.*, Index No. 10-006594; and 10) compelling the Defendants to comply with the terms and provisions of a So-Ordered Stipulation dated November 26, 2003.

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<sup>1</sup> In their Order to Show Cause, Plaintiffs affirm that Index Number 14416/03 contains the caption *Beryl Joy Levi v. Jeanette Pringle, Steven Levi and Jane Ziffer*. The Complaint that Plaintiffs provide, however (Ex. C to Ps’ Order to Show Cause), as well as the Order of Justice Austin transferring that matter from Kings County to Nassau County, contain the caption that the Court has set forth in this decision.

B. The Parties' History

Joy formed the Company in 1969 with Earl, her husband at the time. The Company is a food manufacturing company whose primary product is Jamaican beef patties. On December 1, 1983, Joy and Earl entered into a Shareholders' Agreement (Ex. A to Joy Aff. in Opp.). Section 5 of that Agreement, titled "Purchase of Shares of Deceased or Withdrawing Shareholder," provides, *inter alia*, that in the event of the death of a shareholder, the deceased shareholder's shares shall be transferred to the remaining shareholders in accordance with the provisions of an Insurance Trust Agreement that was executed simultaneously with the Shareholders' Agreement.

In the early 1990s, Joy commenced a matrimonial action against Earl which resulted in the execution of a Stipulation of Settlement dated December 10, 1993 ("1993 Stipulation") (Ex. C to Joy Aff. in Opp.). The first paragraph of Article VI of the 1993 Stipulation, titled "Additional Property Distributions," provides in pertinent part as follows:

Each of the parties own one-half of the issued and outstanding shares of [the Company]. The parties...acknowledge it is in their mutual best interests to immediately sell the business of the Corporation and/or substantially all of the assets of [the Company]... To accomplish this mutually beneficial objective, the parties shall, individually and jointly, seek out a qualified buyer and, with the help of their accountant, Rony Kessler, attempt to expeditiously dispose of all of the assets of [the Company]. Notwithstanding any provision to the contrary in Article XIII hereof [titled Mutual Release and Discharge of Claims in Estates], the rights and obligations of each party pursuant to this Article VI respecting the sale of [the Company] shall survive the death of either party, and in the event of such a death, shall become the right and obligation of the deceased party's Estate with the same force and effect had said party survived.

Notwithstanding their agreement in the 1993 Stipulation to sell the Company, Joy and Earl continued to operate the Company. Earl died in 1995. Kessler, his accountant, and Jeanette, his sister, were Co-Executors of his estate ("Estate").

Issues arose among the affected parties regarding the distribution of Earl's property, including the ownership and operation of the Company, prompting the filing of the complaint by Kessler and Jeanette in their capacities as Co-Executors of the Estate and shareholders of the Company, against Joy, Patrick Jolly ("Jolly"), Grover Nichols ("Nichols") and the Company. The complaint to that action (Ex. B to OSC), which was filed on October 14, 2003 and assigned

Index Number 15598/03, alleges that Jolly is the comptroller, and Nichols the plant manager, of the Company. Paragraph 2 of that complaint alleges as follows:

Although the plaintiffs and [Joy] have successfully operated [the Company] as equal owners without incident or problems over the last 8 years, the defendants have now embarked on [a] fraudulent scheme to try and wrongfully freeze the plaintiffs out of the company, prevent plaintiffs from exercising any ownership or management rights with respect to [the Company], and have terminated all compensation paid to the plaintiffs and the Estate's beneficiaries in an attempt to force the sale of the plaintiffs' 50% interest in the company to [Joy], for a price which is far below the company's true value.

In connection with that action, the parties entered into a stipulation dated November 26, 2003 ("2003 Stipulation") (Ex. K to OSC) to resolve an Order to Show Cause filed by the plaintiffs in that matter. In paragraph 26 of the 2003 Stipulation, the shareholders of the Company consented to the election of the following directors of the Company, effective immediately: 1) Rony Kessler, on behalf of the 50% shareholder the Estate, 2) Joy, and 3) a neutral director appointed by the Court.

By Order dated June 11, 2004 (Ex. L to OSC), the Honorable Leonard B. Austin appointed Meng "to serve as a neutral director on the Board of Directors of [the Company] until further order of the Court[.]" Subsequently, the parties executed a "Further So-Ordered Stipulation" dated June 15, 2005 (Ex. M to OSC) which, *inter alia*, 1) imposed limitations on the ability of the Board of Directors ("Board") and individual directors to vote on issues relating to employee retirement benefits; and 2) amended the manner in which a notice or demand under the 2003 Stipulation was to be made.

Plaintiffs' instant Order to Show Cause is based on its claim that Meng has exceeded her authority as a neutral director on the Board of the Company and engaged in improper activity. Specifically, Plaintiffs allege that Meng has, *inter alia*, improperly sided with Joy in making decisions that are detrimental to the Company.

By way of example, Plaintiffs allege that Joy improperly withdrew her consent to a proposed sale of the Company to Meadow Ridge. Ronald J. Rosenberg, Esq. ("Rosenberg"), counsel for Plaintiffs, provides tremendous detail regarding the settlement negotiations leading to that proposed sale purportedly in support of his allegation that "Joy abruptly cancelled the deal

notwithstanding that all material terms had been fully, exhaustively, and successfully negotiated” (Rosenberg Emerg. Aff. at ¶ 6) and that “Joy never intended to sell [the Company] and only used the Meadow Ridge deal and terms as a platform to negotiate a sale of the plaintiffs’ shares to her, as evidenced by the fact that less than 24 hours after she cancelled the deal, she offered to buy out the plaintiffs [emphasis in original] (see letter from Joy’s counsel dated March 17, 2010 annexed as Exhibit “E” hereto)” (*Id.*).

While the March 17, 2010 letter to which Rosenberg refers does contain language regarding Joy’s offer to purchase the plaintiffs’ shares, it also contains the following introductory paragraph:

Dear Ron:

I took a read of your letter. It is indeed ironic that this letter came from the most forceful opponent of the deal. In fact, your pet phrase, as I remember it, was that [the Company] would be “crazy to do the deal.” I won’t address your letter any further at this time, since it is wasteful to trade barbs as long as the possibility exists of working collaboratively.

The letter goes on to outline why Joy’s proposal to purchase Plaintiffs’ shares would be superior to the proposed Meadow Ridge deal, including the fact that the parties would not have to deal with the subordination issues involved with the Meadow Ridge deal. Joy addresses, in her Affidavit in Opposition to Plaintiffs’ Order to Show Cause, her specific objections to the Meadow Ridge deal which included 1) after almost nine months of negotiations, which included Meadow Ridge’s presence at the Company to conduct due diligence and extensive discussions with lenders, Meadow Ridge began changing the terms of payment to terms that would have made the Company’s payment contingent on Meadow Ridge first paying off its lenders; 2) the terms of Meadow Ridge’s financing with its lenders to pay for the acquisition were onerous, including a 16% interest rate, which prompted concerns by the Board, Company shareholders and counsel whether the proposed promissory note would ever be paid; and 3) in light of the Company’s shareholders’ concerns, the shareholders requested that the Meadow Ridge principals personally guarantee the promissory note, which they declined to do.

Rosenberg also takes issue with Meng’s purportedly improper failure to consult with counsel while serving as neutral director. Rosenberg alleges, for example, that Meng “sent ex

parte communications to the plaintiffs, without the knowledge of plaintiffs' counsel and without copying plaintiffs' counsel on the email" (Rosenberg Emerg. Aff. at ¶ 72). Rosenberg affirms, further, that "upon being reminded that she had been directed not to communicate directly with the plaintiffs, Meng falsely denied [emphasis in original] being told that and further insisted that she would continue to communicate with them regardless, stating 'I do not remember receiving anything in writing from you about not speaking with your clients but even if I did I would not accept it as valid as it would be contrary to my fiduciary duty. I will continue to speak with them if they wish to speak with me.' (Exhibit "T" hereto)" (*Id.* at ¶ 74).

Rosenberg refers to only a portion of Meng's e-mail. That e-mail also includes the following language:

Ron - As you know I was appointed by the Court as a Director of [the Company]. I have a fiduciary [d]uty to act in the best interest of the Corporation and its shareholders. If I did NOT [emphasis in original] speak to the shareholders I could be severely criticized. I do not remember receiving anything in writing from you about not speaking with your clients but even if I did I would not accept it as valid as it would be contrary to my fiduciary duty. I will continue to speak with them if they wish to speak to me.

Your clients are well aware that I have not acted on [Joy's] behalf alone and have prevented her, on more than one occasion, from taking steps that she wanted to do that they were opposed to.

In her Affidavit in Opposition, Joy affirms that "[a]s neutral director, Ms. Meng has worked to build a consensus on the Board" (Joy Aff. in Opp. at ¶ 20). Joy avers that, during the time that Meng, Jane and Joy have been on the Board, all votes of the Board have been unanimous. Joy also confirms that Meng has persuaded Joy to reconsider her position on certain issues, including the distribution of a dividend to shareholders.

Despite Rosenberg's lengthy and vociferous insistence that Meng has acted improperly, his own comments at a Board meeting support the conclusion that the Board has generally worked well together. At a board meeting on March 5, 2009 (Ex. I to Transcripts Binder), at which Meng was present, Rosenberg said the following:

Let me raise the issue that I think this is touching upon, which is, I don't know if it can be done or should be done on the record in a board meeting as opposed to amongst you privately and then with counsel, but the question I would raise, and luckily Allan [Cohen, Esq.] is here because I wouldn't raise it unless he was here or someone from his firm, is the need for the continuation of the lawsuit all together. We've been kind of in a resolution situation for about over five and a half years now, and I mentioned earlier that, in fact, the judge on the file, Leonard Austin, just yesterday I was advised, has been elevated to the appellate division, so we're going to be getting a new judge on the case. Judge Austin has been phenomenal in terms of being remarkably cooperative in allowing us to let the case to, kind of, just hang out there with nothing going on, because everyone is, luckily and very fortunately and it's in everyone's best interest, getting along and working collaboratively together to everyone's mutual interest, and so what I would recommend is to suggest that you all consider, and that Joy would need to speak with her attorneys, and you have the three of you speak with me, is getting rid of the lawsuit all together and, kind of, working out the arrangements you want to make going forward, under the same thing you've been doing but without having a court case pending and this way, you know...

(Transcript at pp. 35-36)

These comments by Rosenberg are instructive for at least two reasons. The first is that they confirm the affirmations of Joy and Meng that the Board was working collaboratively. Second, Rosenberg's comments belie Rosenberg's current claims that Joy has been systematically conducting herself in an improper and dishonest fashion.

Plaintiffs also provide Affidavits in Support of Jane and Steven. Steven affirms that he is a shareholder of the Company and a beneficiary of the Estate. He avers, further, that he wishes to conclude the sale of the Company to Meadow as soon as possible.

Jane affirms, *inter alia*, that 1) between 1999 and 2001, Joy participated in negotiations for the sale of the Company but then changed her mind about selling and instead sought to purchase the shares of the Company for less than their market value; 2) beginning in and around 2001, Joy began to exclude the Plaintiffs from the affairs of the Corporation; 3) during 2002 and 2003, frustrated with her inability to force the Estate to sell the shares to her on her terms, Joy repeatedly threatened to cease all payments to Plaintiffs; and 4) Jane wishes to conclude the sale of the Company to Meadow Ridge as soon as possible.

The Financial Records provided to the Court reflect the following retained earnings for

the Company between 2002 and 2009: 1) 2002 - \$2,302,346, 2) 2003 - \$2,939,181, 3) 2004 - \$3,507,665, 4) 2005 - \$3,595,788, 5) 2006 - \$4,156,876, 6) 2007 - \$4,430,766, 7) 2008 - \$4,385,733, and 8) 2009 - \$6,563,501.55

Subsequent to the filing of this Order to Show Cause and oral argument before the Court, the Company retained Steven R. Schlesinger (“Schlesinger”) as counsel, thereby rendering moot Plaintiffs’ application for an Order appointing independent counsel for the Company.

Schlesinger submits an Affirmation in Response in which he affirms that 1) based on his conversations with each of the interested parties or their counsel, the Board is unlikely to permit the Company to pursue the derivative claims asserted by Plaintiffs; 2) the Company should not take a position as to the dispute between the shareholders over the governance of the Company and, therefore, it would be unreasonable to interpose the defense of failure to make a proper demand on the Board prior to the commencement of this action because such a demand would likely be futile; and 3) as counsel to the Company, he is prepared to assist the Court to the extent requested but takes no position with respect to the Complaint or Order to Show Cause, and interposes no defenses to the claims asserted on the grounds that the shareholders and neutral director are the proper parties to litigate the issues raised.

With respect to Plaintiff’s application for consolidation, counsel for Defendants asserts in his Memorandum of Law that the Kings County Action, which is Nassau County Index Number 14416/03, was consolidated with the pending matter containing Index Number 015598/03. Plaintiffs’ counsel asserts in his Emergency Affirmation that there are two prior actions already pending in this Court, and submits that consolidation of those two cases with this action should be granted as there are common questions of fact and law and the parties are identical.

### C. The Parties’ Positions

Plaintiffs submits that they have demonstrated their right to injunctive relief by establishing, *inter alia*, 1) their likelihood of success on the merits by establishing Joy’s improper conduct, which included her cancelling the proposed sale of the Company to Meadow Ridge, 2) the irreparable harm that will befall the Company if Joy and Meng are permitted to continue in their current capacities on the Board, in light of their alleged intention to continue to serve their own best interests to the detriment of the Company and its shareholders, and 3) a balancing of the

equities in favor of Plaintiffs who submit that they, unlike Joy, have not engaged in self-dealing or acted in their own self-interests.

Defendants oppose Plaintiffs' applications submitting, *inter alia*, that 1) Plaintiffs do not dispute the success of the Company, which they describe in their Complaint as a "successful, multi-million dollar business;" 2) Plaintiffs have prevented Joy from exercising her rights under the 1993 Stipulation, which remains in effect; 3) Joy has complied with the 2003 Stipulation by, *inter alia*, providing Plaintiffs' counsel, on a weekly basis, documentation including a) correspondence regarding Board matters, b) cash disbursements and receipts, c) daily factory production sheets for the prior seven days, and d) daily sales runs with price variations and adjustments; 4) the presence of Meng on the Board has facilitated the successful operation of the Company; and 5) Joy's decision not to proceed with the sale to Meadow Ridge was appropriate under all the circumstances.

### RULING OF THE COURT

#### A. Standards for Preliminary Injunction

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

A plaintiff has not suffered irreparable harm warranting injunctive relief where its alleged injuries are compensable by money damages. *See White Bay Enterprises v. Newsday*, 258

A.D.2d 520 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record demonstrated that alleged injuries compensable by money damages); *Schrager v. Klein*, 267 A.D.2d 296 (2d Dept. 1999) (lower court's order granting preliminary injunction reversed where record failed to demonstrate likelihood of success on merits or that injuries were not compensable by money damages).

#### B. Consolidation

Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts. *Cf. Viafax Corp. v. Citicorp Leasing, Inc.*, 54 A.D.3d 846, 849 (2d Dept. 2008).

#### C. Application of these Principles to the Instant Action

The Court concludes that Plaintiffs have not met their burden of establishing the need for the injunctive relief they request. First, the Court concludes that Plaintiffs have not demonstrated a likelihood of success on the merits in light of, *inter alia*, 1) the factual disputes regarding the appropriateness of the proposed sale of the Company to Meadow Ridge, 2) the extent to which the parties have complied with the applicable stipulations, and 3) the apparent financial health of the Company, which arguably belies Plaintiffs' claims that Joy has acted in a fashion that is detrimental to the Company. The Court also concludes that Plaintiffs have not demonstrated that they will suffer irreparable harm without injunctive relief, as Plaintiffs' injury, if any, is compensable by money damages. Finally, given all the parties' interests in the Company and the factual disputes regarding their conduct with respect to the Company, the Court cannot conclude that the equities balance in favor of Plaintiffs.

Moreover, the Court concludes that Plaintiffs have not demonstrated that Meng has acted inappropriately in her capacity as neutral director. Significantly, when asked by the Court at oral argument why she wished to remain as a director in the face of Plaintiff's accusations, Meng pointed to the increased financial success of the Company during her tenure, rather than defending her own conduct. The Court thus denies Plaintiffs' application to remove Meng and/or appoint a different individual.

Accordingly, the Court denies Plaintiffs' applications for injunctive relief, except that the Court directs that the Temporary Restraining Order issued on April 14, 2010 and modified on April 28, 2010 remains in effect. Counsel are to meet and confer regarding an appropriate bond for the continuation of that relief, and are to advise the Court at the next court conference as to the results of that discussion.

Finally, given the commonality of issues among the pending cases before the Court, the Court concludes that consolidation of all related cases is appropriate. The Court directs counsel for Plaintiffs to prepare an Order for the Court's signature setting forth the full captions and index numbers of the related cases before the Court and directing the consolidation of those matters before the Court.

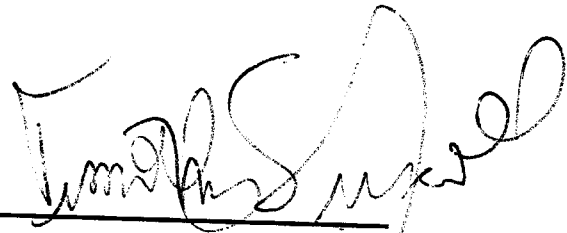
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court on July 14, 2010 at 9:30 a.m.

ENTER

DATED: Mineola, NY  
June 10, 2010

  
\_\_\_\_\_  
HON. TIMOTHY S. DRISCOLL

**ENTERED**  
JUN 14 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE