Supreme Court
State of New York

Thomas J. McNamara
Acting Justice

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January 2, 2007

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Re: People of the State of NY, et al. v. County Bank of Rehoboth Beach, et al.
Index No. 6046-03; RJI No. 01-04-080549

Dear Counsel:

Enclosed is the decision and order with regard to the above matter. The original together with all papers submitted are being forwarded to Mr. Fleischer filing.

In addition, I have scheduled a conference for January 29, 2007 at 11:30 a.m. in Room 274 of the Albany County Courthouse. The purpose of the conference will be to schedule a trial date.

Very truly yours,

Thomas J. McNamara
Acting Supreme Court Justice

TJM/ljb
Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, Attorney General of the State of New York,

Plaintiffs,

DECISION and ORDER
Index No. 6046-03

-against-

COUNTY BANK OF REHOBOTH BEACH, DELAWARE, CRA SERVICES CORP., d/b/a CASHNET and TC SERVICES CORP., d/b/a TELECASH,

Defendants.

(Supreme Court, Albany County, Motion Term, November 20, 2006)
(RJI No. 01-04-080549)
(JUSTICE THOMAS J. MCNAMARA, Presiding)

APPEARANCES:

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MCNAMARA, J.:

With discovery completed, both plaintiffs and defendants have moved for summary judgment. All parties contend that the essential facts of this case have been established by both documentary evidence and deposition testimony. Plaintiffs assert that they are therefore entitled to judgment as a matter of law; defendants assert that they are the parties to whom judgment

must be granted. A careful search of the record discloses that summary judgment is proper with regard to certain issues in this case, yet there remain a number of material factual questions that can only be determined at a trial.

This litigation arises out of the conflict between New York State's usury laws and the preemptive federal Banking Law. Under New York law, it is a criminal offense to lend money at an interest rate exceeding twenty-five percent per annum (Penal Law § 190.40), and it is a violation of civil law to lend money at an interest rate exceeding sixteen percent per annum (GOL § 5-501). Federal law, however, permits an out-of-state bank to lend money at any interest rate that is permissible in the bank's home state (12 USC § 85; 12 USC § 1831d). In this case, defendant County Bank of Rehoboth Beach, Delaware (County Bank) and defendants CRA Services Corporation (CRA) and TC Services Corporation (TCS) had a contractual relationship by which they made short-term loans to New York consumers for approximately six years, from 1997 to 2003. The annual percentage rates for all of these loans far exceeded New York's maximum allowable rates. Plaintiffs concede that County Bank could make these loans legally, as Delaware has no statutory ceiling on interest rates; defendants concede that CRA and TCS could not, as they are not entities which operate under the protective aegis of the federal Banking Law. The focus of the pending motions – indeed, the heart of this entire lawsuit – is the question of the identity of the true lender of the funds for the loans in question. Defendants contend that County Bank is the one and only lender, with CRA and TCS acting only as loan marketing and servicing companies. Plaintiffs allege that the Bank is nothing more than a front for an illegal

loansharking operation organized, funded and controlled by the principals of CRA and TCS, one of whom was a convicted felon who had served a federal prison sentence for money laundering and tax evasion.

FACTUAL BACKGROUND

In 1997 Charles Hallinan, president of Telecash, Inc. (a predecessor of TCS) approached Harold Slatcher, president of County Bank. Hallinan suggested that his company could market and service short-term unsecured loans to out-of-state consumers. Hallinan's company was involved in "payday loans," transactions by which individuals borrowed relatively small amounts of money (usually from one hundred to five hundred dollars) which would be repaid on the borrower's next payday, with interest of typically thirty dollars on a one hundred dollar loan. Slatcher told him that County Bank was not involved in that type of lending at the time, but suggested that he meet with Leonard Goodman, a Pennsylvania attorney who had a working relationship with the bank and could be of assistance. Hallinan spoke with Goodman, who ultimately represented both Telecash and County Bank on the initial agreement that brought the two entities together in a working relationship.

On July 31, 1997 Slatcher and Hallinan signed their first contract between County Bank and Telecash. Its essential terms provided that:

1. Telecash would market payday loans as "undisclosed agent" of County Bank;

2. Telecash would open a "funding account" with County Bank and maintain in it a minimum balance of at least three days' average total of payday loans extended;

3. Telecash would buy from County Bank a 95% "participation interest" in each payday loan within no more than one business day of the loan's funding;

4. Telecash would pay County Bank its remaining 5% share of principal and interest on each payday loan on the loan's due date, regardless of whether the borrower had paid any or all of the debt;

5. Telecash would deposit with the bank one hundred thousand dollars ($100,000.00) as a "security fund" from which County Bank could make withdrawals without notice to Telecash in the event the bank incurred any expense whatsoever relative to the payday loan operation;

6. Telecash guaranteed County Bank a minimum profit of four thousand dollars ($4,000.00) per month;

7. County Bank would hold title to all loan documents as trustee of Telecash;

8. Telecash would screen loan applicants for credit worthiness and "recommend" to County Bank the acceptance of loan applications. If County Bank did not communicate rejection of the application to Telecash within two hours (regardless of whether the bank was open for business at the time), County Bank would be deemed to have approved the loan and Telecash was authorized to direct the funding of the loan through a clearing house directly into the borrower's bank account.

9. Telecash would indemnify County Bank from all potential liabilities arising out of any of the loan transactions. This indemnification would include counsel fees or arbitration costs incurred by the bank. Telecash further authorized County Bank to set off any such expense

against the security account, funding account or operating account maintained by Telecash.

Telecash proceeded to market and service payday loans to consumers, including New York residents, in accordance with this contract for approximately two years. At that time, the parties revised some of the terms of their agreement. Telecash and its successor entity, TCS, continued to make payday loans until 2003, about the time of the commencement of this lawsuit. During the life of the relationship between Telecash/TCS and County Bank more than thirty million dollars was lent to New York consumers alone, with interest charges exceeding fifteen million dollars.

On October 21, 1998 County Bank and CRA entered into a similar agreement. Their contract was signed by Slatcher as president of County Bank and Adrian Rubin as president of CRA. Rubin, then the principal and owner of one hundred percent of the stock of CRA, is the convicted federal felon referred to above.

The essential terms of the contract between County Bank and CRA were identical to those of the contract between County Bank and Telecash. CRA, however, was only required to maintain two days' worth of average loan funds in its funding account. It was also only required to deposit fifty thousand dollars ($50,000.00) in its security account.

County Bank maintained its relationship with CRA until 2003 as well. At one point, when the bank learned of Rubin's federal felony conviction, it threatened to terminate its contract with CRA. Rubin's subsequent transfer of his 100% ownership of the company to his father-in-law satisfied the bank that he was no longer in control of the entity, and so the bank did not

follow through with its threat.

At some point in 1999, County Bank decided that it was necessary to modify some of the essential terms of its contracts with TCS and CRA. This decision was the result of pressure from bank examiners as well as concerns raised by litigation then pending against other banks over what came to be called the "rent-a-bank" scheme by which alleged usurers were hiding their illegal operations behind the charters of federally protected banks. TCS and CRA then entered into amended contracts with County Bank. The significant changes from the original agreements included:

1. Making the sale by the bank and purchase by the company of the 95% "participation interests" in funded loans optional instead of mandatory;

2. Removing the requirement of the company's indemnifying the bank for unpaid interest and principal on defaulted loans;

3. Removing the requirement of the company's maintaining a "funding account" with the bank; and

4. Establishment of "operating accounts" in County Bank's, not the company's, name (but granting signatory authority over the accounts to designated officers of the companies).

At about this time County Bank also created a written policy manual outlining its criteria for determining the creditworthiness of potential borrowers. County Bank required TCS and CRA to comply with the requirements of this manual. In addition, County Bank also began to require TCS and CRA to utilize a particular outside agency to do credit checks on potential

borrowers via electronic means.

Meanwhile, TCS and CRA continued to make payday loans to New York customers. While the typical payday loan of one hundred dollars required the repayment of the loan with thirty dollars in interest within two weeks, the companies also offered a "rollover" option by which the payment of principal could be deferred by up to four payday cycles. Under this system, the original one hundred dollar loan would accrue one hundred twenty dollars in interest within two months of its origination. Even without calculation of the compounding of interest, such a loan has an annual percentage rate well in excess of seven hundred percent.

In 2003 the defendants ceased making payday loans to New Yorkers at about the time of the commencement of this action. In 2005 the Federal Deposit Insurance Corporation (FDIC) issued a Cease-and-Desist Order directing County Bank to stop all short-term loan activity because of evidence of lack of control over third-party loan providers, lack of internal controls over their operations, operations in contravention of County Bank's own policy and procedure manual and the like. The defendants apparently have no intention of resuming their operations in New York.

In September of 2003 the Attorney General commenced this action under Executive Law § 63(12) and General Business Law §§ 349(b) and 350-d. Plaintiffs seek injunctive relief, restitution, civil penalties and fees. The gravamen of the complaint alleges that TCS and CRA repeatedly engaged in criminal and civil usury, made loans without being licensed and engaged in fraudulent and deceptive business practices. Plaintiffs allege that County Bank participated in

a fraudulent scheme and criminally facilitated the conduct of TCS and CRA.

In October of 2003, upon application of defendants, this action was removed to the Federal District Court for the Northern District of New York. In May of 2004 that Court granted the application of plaintiffs for an Order remanding the action to Supreme Court, Albany County.

DISCUSSION

Plaintiffs allege in their complaint that defendants TCS and CRA engaged in criminal and civil usury, unlicensed lending, fraudulent business conduct, deceptive business practices and false advertising. Plaintiffs allege in their complaint that County Bank committed criminal facilitation by having assisted the other defendants in their commission of criminal usury. They also allege that County Bank engaged in repeated fraudulent business conduct and deceptive business practices. Plaintiffs seek summary judgment on all nine of their causes of action, contending that they have proven their case against all three defendants as a matter of law.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). That evidence must be presented in admissible form in order for a court to consider it as part of the proponent's proof (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [citation omitted]). With regard to defendants TCS and CSA, plaintiffs have met this initial burden of going forward as to the allegations arising out of consumer loan transactions initiated prior to the amendment of their contracts with County Bank in 1999.

The initial operating agreements provide ample evidence that defendants TCS and CSA were, in every respect except name only, the true lenders on all payday loans. They set up the "funding accounts" and provided the seed money for the operation; they advertised the loans; they solicited prospective borrowers; they screened applicants for credit worthiness; they "recommended" acceptance of loans under a system which gave them *de facto* decision-making authority;[1] they directed and controlled the funding of the loan proceeds into the borrowers' bank accounts; they bought, as they were required to buy, 95% participation interests in every loan they procured within one business day of the loan's funding; they paid County Bank's 5% share of principal and interest on the loan's maturity date regardless of whether the borrower had made any payment whatsoever; they were the owners of the loan documents which County Bank merely held in trust for them; and they had set up and funded indemnification accounts from which County Bank could draw, without notice, in the event it were to incur any expense whatsoever in connection with the payday loan operation. In short, plaintiffs have put forth proof in admissible form that defendants TCS and CRA, under the terms of their initial contracts with County Bank, ran an illegal loansharking operation which hid its true nature behind the facade of a federally protected out-of-state bank.

The specific causes of action against defendants TCS and CRA are brought under

[1] Not only was County Bank contractually deemed to have approved a loan if two hours had passed without its having communicated a notice of rejection (even if the recommendation was submitted when the bank was closed), but Harold Slatcher, president of County Bank, testified that he was unaware of any instance where a payday loan application was ever rejected by the bank after it had been recommended by TCS or CRA.

Executive Law § 63(12), which empowers the Attorney General to sue for injunctive relief, restitution and damages upon proof that a person or business has engaged in repeated acts of fraud or illegality. Repeated acts are defined as those affecting more than one person (*State v Empyre Inground Pools*, 227 AD2d 731, 732 [1996]). Repeated acts of fraud or illegality occur when an individual or entity carries on or continues in fraudulent or illegal conduct (*Id.* at 733).

Here, plaintiffs have met their initial burden of showing that TCS and CRA engaged in repeated acts of illegality by lending money at criminally and civilly usurious rates; by engaging in the business of making consumer loans without a license under Banking Law § 340; by attempting to circumvent New York usury and consumer protection statutes by deceptively representing to consumers that their loans were made and held by a federally protected bank; and by engaging in deceptive business practices and false advertising through this same subterfuge. The burden therefore shifts to defendants on this motion to demonstrate the existence of a triable issue of fact that would defeat summary judgment (*see Zuckerman v City of New York, supra,* at 562; *Romano v St. Vincent's Medical Center*, 178 AD2d 467 [1991]).

In their submissions, defendants not only oppose plaintiffs' motion, they also seek summary judgment on their own behalf. The main basis for their position is the claim that the evidence shows that County Bank was the real lender in the payday loan transactions and, as such, was authorized by federal law to make the loans in question. The roles played by TCS and CRA, on the other hand, were merely those of marketers and servicers of the loans. Thus, defendants contend, this entire lawsuit must be dismissed under federal preemption and the

commerce clause of the United States Constitution.

As noted earlier, there is no dispute between the parties regarding the legality of a Delaware bank making payday loans available to New York consumers. The clear language of the federal Banking Law not only authorizes such activities, it also expresses a congressional determination that state law was to be preempted in this area. The single most important question in this litigation remains, however, "Who made the loans?"

The importance of determining the true party in interest in this case is underscored by the holding in *Goldman v Simon Property Group*, (31 AD3d 382 [2006]). That case, a class action brought against a corporation for alleged violations of law in charging exorbitant "dormancy fees" on gift certificates, had been dismissed by Supreme Court on the grounds of federal preemption. In reversing the order of dismissal, the Appellate Division, Second Judicial Department held that the absence of proof that the federally protected bank and not the defendant servicing company was the real party in interest" in the financial transactions precluded dismissal.[2]

In attempting to provide an analysis in the present case that might answer this question

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[2] New York is not the only state to have grappled with the question of whether third-party loan servicing companies can escape regulation under the cover of federal banking laws. The North Carolina Commissioner of Banks, for example, has issued a cease-and-desist order for violations of state lending laws by a servicing company acting in the name of a federally protected bank (*In re: Advance America, Cash Advance Centers of North Carolina, Inc.* [Dec 22, 2005]). Georgia has passed a statute regulating the activities of loan servicing companies that have a majority stake in the loans they process (Ga Code Ann § 16-17-1 *et seq*). This statute was unsuccessfully challenged in a federal declaratory judgment action, but the appellate determination holding the statute constitutional in that it sought only to restrict the actions of non-bank entities was later vacated on grounds of mootness (*BankWest v Baker*, 411 F3d 1289 [11th Cir 2005], *rehearing granted* 433 F3d 1344 [11th Cir 2005], *vacated* 446 F3d 1358 [11th Cir 2006]).

favorably to themselves, defendants blur the distinction between the contractual relationship between County Bank and the corporate defendants as it existed under the original operating agreements and as it later appeared to evolve through successive changes to the contracts. Defendants provide successive versions of County Bank's written policies and procedures in support of their position, yet they ignore plaintiffs' proof that these documents did not exist at the beginning of the payday loan operation. Defendants continue to repeat the allegation that County Bank lost over eight million dollars on payday loans, without commenting on the proof adduced by plaintiffs that County Bank did not and could not have lost one cent until after the operating agreements were amended in response to complaints by examiners and concerns raised by other litigation.[3]

The only affirmative factual allegation advanced by defendants that would arguably apply to the entire term of the payday loan operation is the claim put forth by Harold Slatcher both in his deposition testimony and in his supplemental affidavit that "County Bank . . . funded 100% all [sic] of the loans it approved *with its own funds*" (Affidavit of Harold L. Slatcher at para 28 [emphasis added]). This conclusory allegation, however, is shown by defendants' own documents to be sophistry, at least as applied to the early years of the payday loan program. While the assertion is correct in the limited sense that the name on the account from which loans were disbursed was that of County Bank, under the original operating agreements not one dollar

[3] Indeed, the record suggests that the eight million dollar figure represents a mere "paper loss" due in the main to unrealized interest, as there is evidence that County Bank's profits on the payday loan operation amounted to tens of millions of dollars over the course of a few years.

could leave that account unless three dollars were already on deposit in the Telecash funding account to which County Bank had unfettered rights of access, further guaranteed by another hundred thousand dollars in the indemnity account. Thus, for the president of County Bank to allege that the loans were made with the bank's funds ignores both the fungibility of money and the reality of the parties' working relationship.

Defendants have, however, succeeded in coming forward with proof that would raise triable issues of fact for those loan transactions made under the successor agreements entered into by the parties in and after 1999. Those contracts appear to have created a very different relationship between County Bank and the corporate defendants. Under the later agreements, as noted above, the sale of participation agreements was no longer mandatory; County Bank bore the risk of loss on unsold loans and on its proportionate percentage of loan participations; County Bank appeared to have greater control over the loan approval process; and the requirement that the corporate defendants maintain funding accounts was abolished.

Defendants have not, however, demonstrated that they are entitled to judgment as a matter of law. The mere fact that the later operating agreements appear to have manifestly altered the business relationship between County Bank and the corporate defendants does not, without more, constitute dispositive proof that the bank became the real lender after these contractual revisions went into effect. Plaintiffs have adduced proof that tends to suggest that the later contracts were merely "window dressing" intended to disguise the fact that the parties continued to act as though their original operating agreements were still in effect. For example,

plaintiffs have produced a number of letters from officers of the corporate defendants to County Bank personnel in which it appears that TCS and CRA, not the bank, were the ones who made the *de facto* determinations of the eligibility of prospective borrowers. Thus a trial will be necessary to determine whether TCS and CRA continued to be in control of the payday loan operation run through County Bank even after the revision of the operating agreements.

As to the three causes of action brought by plaintiffs against County Bank, both sides also seek summary judgment. The cause of action, (number 7 in the complaint), brought under Executive Law § 63(12) and alleging criminal facilitation, must be dismissed for plaintiffs' failure to have produced any evidence of an essential element of that offense.

The crime of criminal facilitation under Penal Law § 115.00 occurs when a person "believ[es] it probable that he is rendering aid . . . to a person who intends to commit a crime" and the actor "engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony" (Penal Law § 115.00[1]). As defined, an essential element of this offense is the culpable mental state of knowledge of the likelihood that the actor is assisting a person who intends to commit a crime (*see People v Gordon*, 32 NY2d 62 [1973]). While a corporate defendant can commit a crime requiring a *mens rea* through the knowledge shared by its principals, (*see generally, Southland Corp. v New York State Liquor Authority*, 181 AD2d 19, 25 [1992]), the record of the instant case is devoid of any evidence that County Bank, through its principals, was aware that the payday loan scheme violated the criminal and not merely the civil usury laws of New York.

Thus, in the absence of proof that County Bank entered into its arrangements with TCS and CRA knowing that the latter intended to commit criminal acts, summary judgment is granted to defendants as to count 7 of the complaint.

The remaining two causes of action against County Bank allege fraudulent business conduct and deceptive business practices. The summary judgment analysis of these two claims parallels that employed with regard to those causes of action alleged against TCS and CRA. Plaintiffs have met their burden of going forward in the first instance by presenting evidence in admissible form that, through the initial operating agreements entered into between County Bank and the corporate defendants, County Bank allowed TCS and CRA to use the bank's name to perpetrate their loansharking scheme on New York consumers under the guise of legitimate banking transactions. Defendants, on the other hand, have not presented evidence that would raise a triable issue of fact with regard to the transactions that occurred under the original operating agreements. As a result, plaintiffs are entitled to partial summary judgment on these causes of action as well.

Defendants contend that County Bank is entitled to summary judgment because of the express federal preemption of 12 USC § 1831d. They contend that, since federal law allows an institution like County Bank to lend money at the interest rates allowed in its home state, County Bank cannot be subjected to civil prosecution under Executive Law § 63(12). This reasoning is circular, however: it begins with the premise that County Bank was the real lender in the transactions at issue and then concludes that County Bank's activities were federally preempted

because it was the real lender. In reality, as seen by the analysis above, plaintiffs have proven that, at least in the initial years of the payday loan operation, TCS and CRA were the lenders, not County Bank. Thus, County Bank is not a defendant in this lawsuit because it made payday loans to New Yorkers; it is a defendant precisely because it did not. It is County Bank's having allowed TCS and CRA illegally to make usurious loans, and its having profited by this illegality, and its having actively shielded the other defendants from the appearance of illegality, that has drawn it into this litigation.

Moreover, while preemptive federal law may authorize out-of-state banks to engage in financial transactions in New York that would otherwise be violative of state law, the federal Banking Law does not give County Bank *carte blanche* to engage in fraudulent and deceptive business practices. Indeed, this case is strikingly similar to *Morelli v Weider Nutrition Group, Inc.*, (275 AD2d 607 [2000]). In *Morelli*, plaintiffs brought an action under General Business Law §§ 349 and 350 against a food product manufacturer for allegedly deceptive business practices in misrepresenting the contents of a so-called "power bar." The defendants contended that they were entitled to dismissal of the action on the grounds that federal law (the Federal Nutritional Labeling and Education Act [NLEA]) preempted the field of food labeling. In affirming the denial of the motion to dismiss, the Appellate Division, First Judicial Department, held: "We perceive no reason to suppose that, in committing the power to enforce the NLEA to the Federal government, Congress intended to limit a State's otherwise undoubted power to afford consumers within its borders a statutory remedy for injuries caused by knowingly

deceptive and misleading business practices where, as here, such remedy in no way interferes with the Federal prerogative to promulgate and enforce uniform food labeling standards" (275 AD2d at 607, 608). Likewise in the present case, there is no indication that Congress intended federal banking laws to preclude state prosecution of banks that engage in fraudulent and deceptive business practices. The advancement of New York's interest in protecting its residents from predation by usurers does not in any way interfere with a chartered bank's right to lend money throughout this country within the confines of its home state's interest restrictions. *A fortiori*, the enforcement of New York's consumer protection laws in this case does not encroach on the federal government's authority to regulate interstate banking activities.

Defendants also contend that the prosecution of the instant action is barred by the statute of limitations. They claim that some of the causes of action are governed by one-year statutes of limitation, others by at most three-year statutes. Defendants' arguments overlook the specific holding of the Court of Appeals in *State v Cortelle Corp.*, (38 NY2d 83 [1975]), that actions brought by the Attorney General under Executive Law § 63(12) are governed by the residual six-year statute, and not the individual statutes of limitation that may be applicable to the underlying offenses supporting the causes of action. Thus, with the exception of those few transactions that may have taken place in New York between the execution of the first operating agreement between Telecash and County Bank on July 31, 1997 and September 25, 1997 (six years before the date of commencement), this action is timely.

Nonetheless, as plaintiffs concede (at p 25 of their Memorandum of Law in Support of

Summary Judgment), the claim for civil penalties under General Business Law § 350-d is subject to a three-year statute of limitations (CPLR 214). Thus, only transactions dating after September 25, 2000 could potentially subject defendants to civil penalties.

Since a trial will be required in order to determine whether plaintiffs can prove their case with regard to payday loans extended to New York residents subsequent to the amendments to the operating agreements between County Bank and the corporate defendants, it would be a waste of scarce judicial resources to schedule a hearing at this time to determine damages and restitution for transactions consummated under the original operating agreements. Similarly, plaintiffs may not be entitled to injunctive relief if the parties have indeed fundamentally changed the nature of their relationship after execution of the amended contracts. The determination of these ultimate issues must therefore abide the result of the trial.

For the reasons stated, plaintiffs' motion for summary judgment is granted as to causes of action 1, 2, 3, 4, 5, 6, 8 and 9 of the amended complaint and is, in all other respects, denied. Defendants' motion for summary judgment as to the seventh cause of action is granted. Defendants' motion for summary judgment is granted to the limited extent that any civil penalties to be imposed shall be restricted to those flowing from transactions consummated within three years prior to the date of commencement of this action and is, in all other respects, denied.

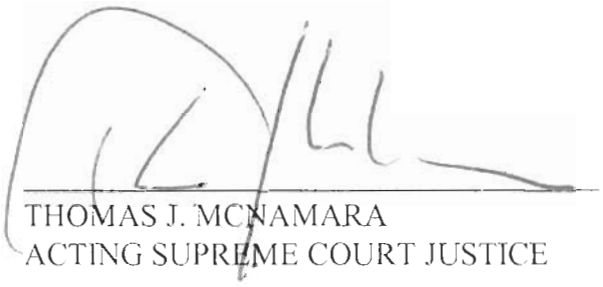
This memorandum shall constitute both the decision and the order of the Court. All papers, including this decision and order, are being returned to the attorneys for the plaintiffs.

The signing of this decision and order shall not constitute entry or filing under CPLR 2220.

Counsel is not relieved from the applicable provisions of that section relating to filing, entry and notice of entry.

IT IS SO ORDERED!

Dated: January 2, 2007
Albany, New York



THOMAS J. MCNAMARA
ACTING SUPREME COURT JUSTICE

The Court considered the following papers:

By Plaintiffs:
Notice of Motion dated August 18, 2006;
Affirmation of Mark D. Fleischer, Esq. in Support of Plaintiffs' Motion dated August 18, 2006 with exhibits 1-59;
Memorandum of Law in Support of Plaintiffs' motion dated August 22, 2006 with addenda A and B;
Affirmation of Mark D. Fleischer, Esq. dated September 27, 2006 in Opposition to Defendants' Motion, with exhibits A-K;
Memorandum of Law in Opposition to Defendants' Motion dated September 27, 2006 with addendum;
Reply Memorandum of Law in Further Support of Plaintiffs' Motion dated October 11, 2006.

By Defendants:
Notice of Motion dated August 18, 2006;
Affirmation of Susan Verbonitz, Esq. in Support of Defendants' Motion dated August 17, 2006 with exhibits 1-6;
Affidavit of David Gillan in Support of Defendant's Motion dated August 15, 2006 with exhibits A-H;
Affidavit of Harold L. Slatcher in Support of Defendant's Motion dated August 15, 2006 with exhibits A-D;
Defendants' Memorandum of Law in Support of Defendants' Motion dated August 18, 2006;
Supplemental Affirmation of Susan Verbonitz, Esq. in Opposition to Plaintiffs' Motion dated

September 25, 2006 with exhibits 1-6;
Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion dated September 26, 2006;
Affidavit of Deborah Maull dated September 22, 2006 with exhibit;
Reply Memorandum of Law in Support of Defendants' Motion and in Opposition to Plaintiffs' Motion dated October 11, 2006.