

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IRVING H. PICARD,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	11-CV-03605 (JSR)(HBP)
	:	
SAUL B. KATZ, et al.,	:	
	:	
Defendants.	:	
	:	
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**SUPPLEMENTAL DECLARATION OF DANA M. SESENS  
IN FURTHER SUPPORT OF DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

I, Dana M. Seshens, declare, pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am a partner with the firm of Davis Polk & Wardwell LLP, attorneys for Defendants. I submit this supplemental declaration in further support of Defendants’ motion for summary judgment.

2. In my role as counsel for Defendants, I was involved in and responsible for Defendants’ response to the Trustee’s discovery requests in this action, including, but not limited to, the production of documents. As a result, I am personally familiar with the facts set forth herein.

3. Per order of this Court, discovery in this action concluded on January 13, 2012.

4. On January 17, 2012, this Court issued an opinion and order denying the Trustee’s motion for entry of a final judgment and for certification of

interlocutory appeal. *Picard v. Katz*, No. 11 Civ. 3605, 2012 U.S. Dist. LEXIS 5143 (S.D.N.Y. Jan. 17, 2012). Pursuant to that opinion and order, the Court also reinstated Count 9 of the Trustee's Complaint, which, in relevant part, seeks recovery of subsequent transfers pursuant to 11 U.S.C. § 550(a). *Id.* at \*21-22.

5. On January 20, 2012, the parties held a telephone conference with the Court wherein the Court permitted limited discovery regarding the reinstated subsequent transfer claims.

6. On January 20, 2012, the Trustee sought additional discovery on these claims with respect to twenty-two individuals and entities that had been reinstated as Defendants on Count 9 (the "Reinstated Defendants"). The Reinstated Defendants are alleged to have received subsequent transfers during the relevant two-year period under 11 U.S.C. § 548(a)(1)(A), but are not alleged to have received any initial transfers during that time.

7. The Trustee's additional discovery requests sought documents and/or communications "concerning any Transfer(s) or any Subsequent Transfer(s)" to the Reinstated Defendants and specifically sought bank statements for each such Defendant for 2007 and 2008.

8. Defendants agreed to provide 2007 and 2008 bank statements for any Reinstated Defendant that had them reasonably accessible. Between January 24, 2012 and February 3, 2012, Defendants produced all such bank statements, with the exception of one individual's bank statements produced on February 8, 2012. Defendants represented to the Trustee that any Reinstated Defendant for

which bank statements were not produced either did not have a bank account or had no reasonably accessible bank records for the years in question.

9. The parties also met and conferred several times so that Defendants could apprise the Trustee of the progress of their document collection and production, given the February 9, 2012 filing deadline for the Trustee's opposition to Defendants' motion for summary judgment, and so that Defendants could apprise the Trustee of the results of their diligence into any other potentially responsive information they could provide.

10. As a result of their diligence, Defendants determined that a significant number of the Trustee's subsequent transfer claims could not be sustained because no monies were transferred as the Trustee had alleged. Defendants informed the Trustee of this determination on February 1, 2012 and offered sworn testimony, or another acceptable form of evidence, to support their representation. Counsel for the Trustee took Defendants' offer under advisement, but never responded.

11. Since the parties' meet-and-confer on February 1, 2012, the parties have had no further discussions regarding subsequent transfer discovery.

12. Attached hereto as Exhibit BB is a true and correct copy of excerpts from the Bankruptcy Rule 2004 deposition of Peter Stamos, dated August 19, 2010.

13. Attached hereto as Exhibit CC is a true and correct copy of excerpts from the deposition of Basil Stamos, dated January 3, 2012.

14. Attached hereto as Exhibit DD is a true and correct copy of excerpts from the deposition of Michael Katz, dated December 9, 2011.

15. Attached hereto as Exhibit EE is a true and correct copy of excerpts from the deposition of Leonard Labita, dated November 22, 2011.

16. Attached hereto as Exhibit FF is a true and correct copy of excerpts from the Bankruptcy Rule 2004 deposition of Saul B. Katz, dated August 4, 2010.

17. Attached hereto as Exhibit GG is a true and correct copy of excerpts from the Bankruptcy Rule 2004 deposition of Mark Peskin, dated July 29, 2010.

Dated: New York, New York  
February 16, 2012

s/ Dana M. Seshens  
Dana M. Seshens