In the

UNITED STATES SUPREME COURT

At a Stated Term of the United States Supreme Court, Pursuant to Allotment Order designated for the Second Circuit, assigning Associate Justice Ruth Bader Ginsburg, held at the Supreme Court Washington, D.C., on the 29th day of March, two thousand and nineteen.

Alan Giordani, individually and as Proposed Executor for the Estate of Nancy Giordani, and Alan Giordani, Individually,

Petitioner-Appellant

NOTICE OF MOTION TO STAY/REVESRSE AND REINSTATE APPEAL

v.

Docket No. 18-1164

United States District Court for the Southern District of New York,

Respondent-Appellee.

Appellant Alan Giordani duly swears and deposes pursuant to U.S.C. Section 1001 that,

Pursuant to 28 U.S.C. 165(a), the jurisdictional predicate for this motion is its inter-relationship to the Petition for an Extraordinary Writ previously filed with this Court on March 5, 2019, that sought and requested mandamus relief

together with an immediate stay at that time and date. The scheduled March 6, 2019 docketing of a strike order and default, unfortunately was entered, in spite of this timely submission (see attached stamped and dated U.S. Supreme Court documents).

This Court's Rule 20(1), provides... "that exceptional circumstances warrant the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form of from any other Court."

Rule 20(2) further states that... "all contentions in support of the petition for an Extraordinary Writ shall be included in the petition." See attached copy from the Second Circuit, indicating that this default was subsequently entered with a stamped mandate, dated March 7, despite the timely filing for a stay that was included in the Writ, served on this Court on March 5. In what appears to have been an unfortunate oversight of this prong of relief that was sought, was timely submitted, and presented to this Court, (see attached stamped copy and Conclusion/Order together within the appendix section of this currently pending Writ), indicative of the need for this application, which now must be reconciled with the March 7, 2019 entry error. Additionally, see attached Court of Appeals 2d Circuit od service of this motion via E.C.F. on March 4, 2019 as part of the additional effort that timely sought this relief and stay).

In as much as the underlying default resulted from the Appellant's inability to file a completed Appellate Brief (See attached motions submitted on January 17, 2019 and then again, on January 23, 2019, containing the proposed Appellate Brief that was attached as an exhibit in support, and the January 29, 2019

decision appears to have entirely failed to recognize the problem, which is essentially a denial, of the motion(s). Again, on February 1, 2019 the petitioner sought this relief in a motion to reconsider, which again was rebuffed by Hon. Ralph Winter on February 13, 2019 failing to grant the necessary relief to upload its E.C.F. System, so that the Brief could be properly filed by February 19, 2019. This Petitioner has now been forced to undertake this remarkable avenue for necessary relief in the interest of justice.

Respectfully, this matter has, entirely been the Second Circuit's failure, or refusal to provide an appropriate review and remedial directives to its administrative personnel and clerks, including an order to properly upload its E.C.F. System with the April 9, 2018 submission(s), designated by the underlying Court's Docket Sheet by the submission(s) on that date, as Document "1" "2" and "3".

The continued failure and refusal of the Second Circuit to upload these necessary parts of the record, resulted in the lack of capacity of this Petitioner, to file a joint appendix, or otherwise furnish the Second Circuit's case manager "Jason" with the ability to accept the filing for the Second Circuit's consideration or review of the attached Brief on its substantive merits.

This appellant timely moved the Second Circuit in January for this, and other specified needed relief. The decision(s) decided January 29, 2019 by Judge Ralph Winter, without appropriate directions to remediate the problem and existing glitch in the Court's record, failed to utilize, provide or contain the explicit language sufficient to order or direct it's subordinate court personnel to upload

the relevant Documents, into to E.C.F. System, upon which the District Court's June 25, 2018 "sua sponte" dismissal was entirely based. This failure has now resulted in the unfair dismissal of the petitioner's appeal, that requires a reversal of the Second Circuit's March 7, 2019 dismissal of the appeal with mandate, together with a reinstatement of the appeal together with requisite directives.

This Court, should take further notice that each of these motions were submitted and supported with the attached proposed brief that had already been drafted demonstrating that Judge Colleen McMahon "sua sponte" dismissal dated June 25, 2018 was a complete error, and demonstrated that the District Court obviously failed to adequately read and understand the significant and material matter(s) before it.

This included the District Court's prejudicial review and misunderstanding of the terminology in the underlying record of "a certain parcel," that actually referred to a tract of abandoned property from a 1997 adverse possession claim, rather than the issue(s), that were pending before the Court. The term pertained to the underlying history, and was not submitted for the purpose of obtaining a judicial review or appellate type determination, on the adverse possession claim, but instead to gain bearing on this complex factual history.

The District Court further failed to comprehend that the matter presented in the April 9, 2018 Petition, instead was ultimately seeking a title determination at least in part, on a second tract of real estate, that was part of the decedent's property title deed and curtilage rights. The District Court completely failed to comprehend that at the time of its "sua sponte" dismissal, this matter pertaining

to the curtilage and titled premises, had never been reviewed, and there was no adjudication on this relevant property tract, or any legitimate reason to apply the "Rooker-Feldman" Doctrine."

The failure of the District Court to comprehend that the survey maps, and metes and bounds involved and related to this completely separate and distinct parcel of land, certainly should have been a signal at the time of its review, that this was not part of the abandoned premises, that was the subject of the earlier 1997 adverse possession claim.

The District Court's failure to immediately assign a court evaluator, or other personnel, and to schedule a timely preliminary conference, or to notify the petitioner that it decided to undertake this draconian summary review, was clearly a crucial due process error. The District Court's mistake could have been readily rectified, and easily rebutted, had the petitioner been provided the opportunity to participate in this part of the process, and submit papers that would easily explain or rebut Judge McMahon's erroneous presumption.

The lower court(s) at every juncture appears to have blocked and preempted any genuine review on the substantive merits. This, and the other matters raised in the petition were not at all "frivolous," and this petitioner should have prevailed on the underlying case based on both facts and law, but for what appears to be the repressive unconstitutional efforts of the lower court(s), to squelch basic fundamental constitutional rights and principles set forth much more completely in the attached supporting documents.

The underlying "error" failing to provide a federal monitor or such other

appropriate relief, as to provide any opportunity to be heard, or to properly review this matter is a full, fair and complete judicial context, forum or format. The petitioner's attempt that sought a review and oversight was completely warranted in light of the history of abuses described in the April 9, 2018 submission, required appropriate pre-action relief prior to serving pleadings, and the dismissal and continued efforts to obstruct justice, describes a complete abuse of power. The District Court failure to "appoint" or designate such a monitor, trustee, or Special Master, so that any ex-parte implications could be avoided and that these matters could be completely scoped out in a timely manner, is likewise a significant part of the District Court's underlying "error."

The Second Circuit Court recognized this procedural problem initially, at the time the Notice of Appeal was filed last August, by appointing the U.S. Attorney for S.D.N.Y. But, in as much as there has been no meaningful contact, the appellant must believe that this was little more than a nominal appointment.

There has been no objection by the U.S. Attorney, with respect to the proposed appendix, which has been served and presented to it in the proposed Appellate Brief, and which was submitted as a supporting exhibit in the underlying motion practice. This was a demonstration that the failure to submit the Appellate Brief on the scheduled dates, was not the fault of this undersigned movant. Instead, this is indicative of a matter and condition well beyond this Petitioner's control.

Respectfully, this Court should be mindful of the recent C-Span interview between Second Circuit Chief Judge Robert Katzman and Associate Justice Sonia

Sotomayor, expressing or describing what appears to be at the very least, some reflection of how an ordinarily prudent S.D.N.Y. District Court Judge, should proceed in her duties. Indicating at the very minimum, that a reasonably prudent District Court Judge should have had some form of contact, (even if indirect) and communication with the litigant to adequately comprehend the matters before it, and to further understand what the end goal of the party to the litigation is, or needs to be.

Petitioner practiced Law in Bronx County for more than ten years, and perceives this C-Span interview, to have been a reasonable expectation of jurisprudence of any judge. The failure of Judge McMahon, to contact this petitioner prior to her undertaking and deciding the June 25, 2018 "sua sponte dismissal", was such a remarkable error, that completely ignored the most basic Constitutional notions of fairness, is now compounded by the additional Second Circuit error preempting the filing of the brief, so that the error can be reversed.

These matters are completely unrecognizable as any part of American jurisprudence, containing obvious notions of fair notice and due process. This matter(s) must be deemed as suspect, together with the Second Circuit's failures to remediate the multiple underlying errors that appear to be compounding.

These errors and failures appear to be part of the same continued effort and nefarious pattern of government officials in New York to obstruct and frustrate a genuine review of the underlying matters, and ultimately to obstruct justice, with a full, fair and complete review.

Attached, please find a copy of a letter from former U.S. Congressman

Anthony Wiener, dated 1999, that was submitted as part of the correspondence, demonstrating an effort to exhaust all administrative remedies. This letter, was one of the 260 pages from the April 9, 2018 petition, that this Court refused to upload into its E.C.F. System. The petitioner believes that he is one of the many scoundrels who pervaded New York State, City and Queens County government, to such an extent, that the underlying scheme persisted from that time to the present, in what must questionably be an appearance of continued concealment or omission of duties.

Petitioner believes Mr. Wiener stood at or near the periphery and pinnacle of New York's political power and influence, that included a seat on the U.S. Congressional Judiciary Committee, as well as at the vortex of Queens County political contributors and it's "dark money." It is a factor as to why he, and a significant number of other New York officials failed to undertake any meaningful or additional affirmative measures to assist their afflicted constituents in the underlying "beer-garden" scheme.

Likewise, the underlying filing on April 9, 2018 contained a roadmap of the many other officials who knew or should have known of the conspiracy to violate and deprive constituent civil rights, and who did nothing, all in furtherance of their own career ambitions and political support and funding, and raises the question as to whether the failure to upload these documents into the E.C.F. System, and thereby permit the petitioner to proceed is part of this inter-relationship.

This Court should also be mindful that the April 9, 2018 filing, contained an

application seeking protective relief that included what appears to be a profound reason and need for an expansion of Heller-McDonald and Second Amendment Law and jurisprudence, that should include, an alternate access to firearms and licensing, through prescriptive remedies that should utilize a Special Masters list, separate and apart from what appears to be New York's ubiquitous pervading graft and systemic corruption, that includes licensing and permits. This was the essence of the underlying filing that the Second Circuit refuses to upload, or allow the petitioner to advance, as a necessary litigation component, toward settlement of these matters.

This Petitioner cited the Second Circuit Court's February 23, 2018 decision by Judge Lynch in "New York State Rifle and Pistol Assoc. v. New York State and N.Y.P.D. Firearms Licensing Division," that describes New York's current policies as error and inconsistent with the U.S. Constitution, and further advocated the need to recognize the need for a necessary federal remedy with prescriptive measures and relief, including the development of a "constitutional carry provision." Additionally, the petitioner asserts that New York's current subjective "may issue" standard needs to adapt an objective "shall issue" standard, to get beyond its long history of corruption and abuse, especially with licensing and permits. This petitioner has hoped for an opportunity to expand and enlarge this application, which could not be developed as a result of the premature dismissal and now what appears to be additional dubious procedure in the failure to upload the file. This Court should be mindful of the U.S. Senate Judiciary Committee hearing conducted on March 26, 2019 on the issue of "mental health and gun legislation."

Several prominent national experts provided testimony that included Denver University Law Professor Dave Kopel, asserting that his previous efforts to work on the creation of a National Model with the Uniform Law Commission, was shut down by anti-gun advocates and special interest "Giffords" Organization, in November 2018, as it sought to curtail and block any expansion of positions beyond their own "viewpoint".

Amanda Wilcox, as chairperson to California's Brady Campaign Legislation, and mother of a fatal gun-shot victim, described judges simply not ready to deal with issues presented. Ric Bradshaw as palm beach county sheriff described innovative tools and expertise in dealing with extreme risk, protective measures, and civil remedies that can be undertaken through easily preventable pattern of continued government failures to provide the citizenry with a high level of safety and security, that this petitioner envisioned at the time of his April 9, 2018 submission to the District Court, that sought protective measures from bar room thugs and political clubhouse "operatives."

Judge McMahon completely ignored this Second Amendment prong of the application for relief that was sought. Rather than refer it to a Court of appropriate jurisdiction, if she was not capable of fairly reviewing the matter(s) this failure may be indicative of prejudice, bias or some attempt to advance or maintain a policy preference or agenda. Likewise, to the Second Circuit has been incapable of ordering an upload of the underlying file, then this too appears to raise questions as to an abuse of power, or misuse of discretion.

In as much as N.Y.S.R & P was appealed and granted certiorari before the

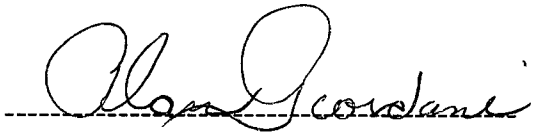
U.S. Supreme Court on January 22, 2019 then it is incumbent on this Court to now refer this prong of the Petitioner's underlying submission, together with the pending Extraordinary Writ, submitted to the U.S. Supreme Court on March 5, 2019 for its immediate review, and thereafter, provide necessary remedial directions and measures.

Accordingly, the Court needs to immediately stay any and all proceedings resulting from the oversight and the docketing and entry dated March 7, 2019 of the default and dismissal order with resulting "mandate," and further grant any other relief deemed appropriate.

There has been no other application for the relief requested with made before this or any other court, other than that described above.

Accordingly, and in the interest of justice, this motion should be granted in its entirety.

March 29, 2019



ALAN GIORDANI

No. _____

In The

Supreme Court of the United States

IN RE: ALAN GIORDANI, AS PROPOSED EXECUTOR FOR THE ESTATE OF DECEDENT NANCY GIORDANI, AND ALAN GIORDANI, INDIVIDUALLY,

Petitioner,

v.

UNITED STATES SOUTHERN DISTRICT COURT OF NEW YORK,

Respondent.

On Petition For Leave Of An Extraordinary Writ To The Second Circuit

PETITION FOR AN EXTRAORDINARY WRIT

ALAN GIORDANI, *Pro Se*
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Committee Chairman of Queens County, has stacked the bench with his "nominees," and, also in a nepotistic manner, with his cousins, who have been provided with government "jobs" inside the Queens County courthouse's patronage system.

In the process of seeing something, and saying something, petitioner would be a "judas goat" not to raise objection to this "service," that smells of servitude. As a matter of conscience, New York State needs to be compelled to show cause why this jury service should be imposed upon the petitioner that compels the participation in dubious and questionable judicial processes. This Supreme Court should also evaluate whether in raising this issue, New York's Federal Court has in solidarity, engaged in an underlying unconstitutional exercise at the petitioner's expense and detriment.

CONCLUSION/PROPOSED ORDER

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

The Second Circuit and its clerks are immediately stayed from the docketing of its February 20, 2019 strike order, and default, and directed to immediately reinstate this appeal, so that this Supreme Court can undertake and conduct a full, fair and complete review, in these matter(s), including further, that appropriate directions be provided so that the Southern District

of New York, and its intake clerks are ordered to commence and complete uploading into its Electronic Court Filing System (E.C.F.) those materials and documents, and properly docket items enumerated as "1" "2" and "3", filed on April 9, 2018, by the petitioner, and captioned as Re: ALAN GIORDANI; and further that this Court will determine the underlying merits, to the extent that they require further remand, review or directions and instruction to the Second Circuit, or the District Court.

Furthermore, this Court remands to the District Court (S.D.N.Y.), directing a framed issue hearing, as to whether the State of New York can Show Cause as to why this jury service should be compelled, or is constitutionally warranted, and further; Granting a writ of certiorari, permitting Pro Se Appellant Alan Giordani, previously admitted Pro Hac Vice by order, dated November 2, 2018 to the Second Circuit, and in furtherance direct this applicant to draft, submit and argue before this Court, in an enlarged brief, and make determinations as to this Court's need to provide instruction and direction with respect to those issues pertaining to, this Court's Heller-McDonald determinations and decision as to whether a federal national licensing provision, should be recognized in the Constitution, and further that this Court will appoint or designate a Special Master or Magistrate, to maintain oversight of this litigation upon its remand, together

with all other
and fair.

Dated: March

with all other relief this Court deems fair, appropriate and fair.

Dated: March 5, 2019

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of March, two thousand and nineteen.

Alan Giordani, individually and as Proposed Executor for the Estate of Nancy Giordani,

Petitioner-Appellant

v.

United States District Court for the Southern District of New York,

Respondent-Appellee.

NOTICE OF MOTION TO STAY AND REINSTATE

Docket No. 18-2546

Appellant Alan Giordani duly swears and deposes pursuant to U.S.C. Section 1001 that,

This motion is submitted requesting this Court to immediately stay the docketing of its strike order and default, resulting from the Appellant's non-compliance to file an appeal brief by February 19, 2019 and further reinstate the appeal, together with granting leave to file an extraordinary writ with the U.S. Supreme

Court, together with all other relief this Court deems just and appropriate at this time.

In as much as the appellant's non-compliance to timely file the brief in this matter by February 19, 2019 appears to be entirely this Court's refusal to provide appropriate directives to its administrative personnel and clerks, to properly upload its E.C.F. System with the April 9, 2018 submissions, that the Docket Sheet designates as Document "1" "2" and "3", then this failure resulted in the lack of capacity to file a joint appendix, or otherwise furnish this Court's case manager "Jason" the ability to accept the filing for this Court's review on the merits. This appellant made two motions in January for this specific and much needed relief, that were decided January 29, 2019 by Judge Ralph Winter, with two orders that failed to contain the explicit language sufficient to order or direct this upload of the Documents upon which the June 25, 2018 dismissal was entirely based. Additionally, this matter was thereafter submitted to this Court on February 1, 2019 in a Motion to "reconsider," and by order dated February 13, 2019 again denied the necessary relief, that would have enabled this appellant to timely file his brief.

This Court, should take further notice that each of these motions were submitted and supported with a proposed brief that demonstrated that Judge Colleen McMahon dismissal was a complete error and demonstrated the District Court's obvious failure to read and understand that the matters before her, at that time had not previously been adjudicated, and that her

failure to comprehend that the survey maps, and metes and bounds involved two separate and distinct parcels of land, and that this and the other matters in the petition were not at all "frivolous," and that the appellant should have prevailed on the underlying substantive merits.

This "error" included the failure to provide a federal monitor or other relief, so that this matter could be properly reviewed in a proper judicial context, and not ex-parte. The Second Circuit Court recognized this initially at the time the Notice of Appeal was filed last August, by appointing the U.S. Attorney for S.D.N.Y. In as much as there has been no meaningful contact, the appellant must believe that this was little more than a nominal appointment. There has been no objection made with respect to the proposed appendix which has been presented in the brief, and submitted as a supporting exhibit in the motion practice demonstrating that the failure to submit was not the fault of this undersigned movant, but instead indicative of a matter beyond his control.

Respectfully, this Court should be mindful of the C-Span interview earlier this month between Judge Robert Katzman and Justice Sonia Sotomayor, describing what appears to be at least some reflection of how an ordinarily prudent S.D.N.Y. District Court should proceed in her duties, which at the very minimum should include some communication with the litigant to understand what the end goal of the party is, or needs to be. Petitioner practiced Law in Bronx County for more than ten years, and perceives this to have

been a reasonable expression of jurisprudence of all of the judges before who this petitioner appeared. This does not necessarily hold true in Queens County, and in this matter, where anomalies and irregularities exist, then the result must be deemed as suspect. The failure of Judge McMahon, to contact this petitioner prior to undertaking and deciding her June 25, 2018 "sua sponte dismissal", was such a remarkable error, that completely ignored the most basic Constitutional notions of fair notice and due process, that this matter too, must be construed as suspect. Had she made contact, or alternatively assigned a U.S. Attorney, or other party to do so, then her obvious misunderstanding would have readily been clarified. This failure appears to be part of the same continued effort of government officials in New York to obstruct and frustrate the underlying matter and pervert justice.

Attached, please find a copy of a letter from former U.S. Congressman Anthony Wiener, dated 1999, that was submitted as part of the correspondence, demonstrating an effort to exhaust all administrative remedies. This letter, was one of the 260 pages from the April 9, 2018 petition, that the Court refused to upload into its E.C.F. System. The petitioner believes that he is one of the many scoundrels who pervaded New York State, City and Queens County government, to such an extent, that the underlying scheme persisted from that time to the present, in what must questionably be an appearance of continued concealment or omission of duties. Petitioner believes Mr. Wiener stood at or near the periphery of political power and influence, that

included a seat on the U.S. Congressional Judiciary Committee, as well as at the vortex of Queens County political contributors and "dark money," and which is the motive why he failed to take any additional affirmative measures to assist his afflicted constituents. Likewise, the underlying filing contains a roadmap of the many other officials who knew and should have known of the conspiracy to violate and deprive constituent civil rights, and who did nothing, in furtherance of their own career ambitions.

This Court should also be mindful that the April 9, 2018 filing, contained an application seeking protective relief that included what appears to be a profound need for an expansion of Heller-McDonald and Second Amendment Law and jurisprudence, that includes an alternate access to firearms and licensing, that this Petitioner truly believes is part of New York's ubiquitous pervading graft and systemic corruption, that is the essence of this entire litigation.

This Petitioner cited this Court's February 23, 2018 decision by Judge Lynch in "New York State Rifle and Pistol Assoc. v. New York State and N.Y.P.D. Firearms Licensing Division," that describes New York's current policies as error and inconsistent with the U.S. Constitution, and further advocated the need to recognize the need for a necessary federal remedy and prescriptive relief including and in the form of a "constitutional carry" provision. Additionally, the petitioner asserts that New York's current subjective "may issue" standard needs to adapt a objective "shall issue" standard. Judge McMahon completely ignored this

prong of the application for relief that was sought. Rather than refer it to a Court of appropriate jurisdiction, this failure may be indicative of prejudice, bias or some attempt to advance or maintain a policy preference or agenda. This failure appears to have been an abuse of power, or misuse of discretion.

In as much as N.Y.S.R & P was appealed and granted certiorari before the U.S. Supreme Court on January 22, 2019 then it is incumbent on this Court to now refer this prong of the Petitioner's underlying submission, together with this extraordinary writ, to the U.S. Supreme Court for its immediate review, and thereafter, await for its remedial directions. Accordingly, the Court needs to immediately stay the docketing of the default and dismissal order, and further refer the extraordinary writ accordingly.

There has been no other application for the relief requested within made before this or any other court, other than that described above, aside from a motion submitted electronically to the Second Circuit on February 27, 2019 to stay the docketing of the default in the event the Court is delayed with this review.

Accordingly, and in the interest of justice, this motion should be granted in its entirety.

March 5, 2019

ALAN GIORDANI

Congress of the United States
House of Representatives
Washington, DC 20515

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COMMITTEE:

JUDICIARY

FRESHMAN WHIP

May 4, 1999

James Leonard
Commissioner
Department of Buildings
126-06 Queens Boulevard
Forest Hills, NY 11415

Dear Commissioner Leonard:

I have been contacted by my constituents with regard to extension work at a pub located at 82-11 Eliot

Avenue, between 82nd Street and 83rd Street, in Queens, in my district, that allegedly has been found to be in violation of building codes.

According to my constituents, the owner of this property has already been issued violations by the Department of Buildings, but the extension has yet to be dismantled.

Please investigate this matter thoroughly and inform me of your findings so that I may notify my constituents.

Thank you in advance for your prompt attention and reply to this important matter.

Sincerely

/s/ Anthony D. Weiner
ANTHONY D. WEINER
Member of Congress

ADW:jh

cc: Allan [sic] Giordani

From: cmecf@ca2.uscourts.gov
Sent: Tuesday, January 29, 2019 3:34 PM
To: alangiordani@gmail.com
Subject: 18-2546 In re: Alan Giordani "Motion Order FILED denying to stay"

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Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 01/29/2019

Case Name: In re: Alan Giordani

Case Number: 18-2546

Document(s): Document(s)

Docket Text:
MOTION ORDER, denying motion to stay the briefing schedule [85] filed by Appellant Alan Giordani, by RKW, FILED. [2484655] [89] [18-2546]

Notice will be electronically mailed to:

Mr. Alan Vincent Giordani, -: alangiordani@gmail.com, pchelpme@optimum.net

Notice will be stored in the notice cart for:

Quality Control 1

The following document(s) are associated with this transaction:
Document Description: Motion Order FILED
Original Filename: 18-2546 ord.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1161632333 [Date=01/29/2019] [FileNumber=-2484655-0] [7340be-aale1e95edd108df9f4135b4edd0ac0ac5f5b00379fb437348e56ac22c9035f02385fb3869c77ab7c50666e4bd8e31f26aaa4c5c786f8181eb8525731978]]

From: cmecf@ca2.uscourts.gov
Sent: Tuesday, January 29, 2019 3:39 PM
To: alangiordani@gmail.com
Subject: 18-2546 In re: Alan Giordani "Order FILED"

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Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 01/29/2019

Case Name: In re: Alan Giordani
Case Number: 18-2546
Document(s): Document(s)

Docket Text:
ORDER, dated 01/29/2019, dismissing apppeal [sic] by 02/19/2019 unless Appellant Alan Giordani submits a brief and appendix, FILED.[2484671] [18-2546]

Notice will be electronically mailed to:

Mr. Alan Vincent Giordani, -: alangiordani@gmail.com, pchelpme@optimum.net

The following document(s) are associated with this transaction:
Document Description: Default_Dis_Brief/Due_Pro_Se_APET
Original Filename:
/opt/ACECF/live/forms/JasonWang_182546_2484671_Default_Dis_Brief_Due_Pro_Se_APET_347.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1161632333 [Date=01/29/2019] [FileNumber=2484671-0] [c2b7151bf85e53cd388abdeea3e9285cbc47d2ea05secc761ef8f1e508445aa75be0bf9e794e97779d4828a8ec772bdd9472842a5617740cb276b912fe24e13e25]]
Recipients:

- Mr. Alan Vincent Giordani, -

From: cmecf@ca2.uscourts.gov
Sent: Wednesday, February 13, 2019 3:03 PM
To: alangiordani@gmail.com
Subject: 18-2546 In re: Alan Giordani "Motion Order FILED denying to reconsider"

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Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 02/13/2019

Case Name: In re: Alan Giordani

Case Number: 18-2546

Document(s): Document(s)

Docket Text:
MOTION ORDER, denying motion to reconsider the 01/29/2019 order[92] filed by Appellant Alan Giordani, by RKW, FILED. [2496107][96] [18-2546]

Notice will be electronically mailed to:

Mr. Alan Vincent Giordani, -: alangiordani@gmail.com, pchelpme@optimum.net

Notice will be stored in the notice cart for:

Quality Control 1

The following document(s) are associated with this transaction:
Document Description: Motion Order FILED
Original Filename: 18-2546 den recon ord.pdf
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From: cmecf@ca2.uscourts.gov
Sent: Wednesday, February 20, 2019 11:41 AM
To: alangiordani@gmail.com
Subject: 18-2546 In re: Alan Giordani "Schedule Default FILED"

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

App. 14

Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 02/20/2019

Case Name: In re: Alan Giordani

Case Number: 18-2546

Docket Text:
ORDER, [90] appeal dismissed for Appellant Alan Giordani failure to file brief and appendix, EFFECTIVE. [2500532] [18-2546]

Notice will be electronically mailed to:

Mr. Alan Vincent Giordani,-: alangiordani@gmail.com, pchelpme@optimum.net

Notice will be stored in the notice cart for:

Quality Control 1

New York Times (1857-Current file); Sep 7, 1972

8 POLICE INDICTED IN ADDICT ARRESTS

Accused of Stealing $10,000 From Suspects in Bronx During Last 2½ Years

By DAVID BURNHAM

Three detectives and five patrolmen have been indicted for stealing money from addicts while making narcotics arrests in the last two and a half years, District Attorney Burton B. Roberts of the Bronx announced yesterday.

The investigation leading to the indictment of the eight men on a variety of robbery, grand larceny, conspiracy and official misconduct charges was unusual because it was sparked by information from a police undercover agent and completed with the assistance of a second policeman who agreed to cooperate after he reportedly had been caught stealing.

The men were accused of having stolen $10,000. Mr. Roberts said at a news conference that the investigation was continuing and that more indictments were expected.

The importance of the case and the unusual techniques used to investigate it—in the eyes of the Police Department—were indicated by the presence at the conference of Commissioner Patrick V. Murphy, First Deputy Commissioner William H. T. Smith, Deputy

Commissioner William P. McCarthy, who is in charge of organized-crime control, and other police officials.

In another unusual development in the case, Mr. Roberts asked Supreme Court Justice Joseph P. Sullivan to release from jail two addicts who the prosecutor said had pleaded guilty to possession of heroin and cocaine and had been sentenced to jail on the basis of untrue sworn statements by two of the eight indicted policemen.

Mr. Roberts said his office had decided to make similar requests for the defendants in four other cases because of apparent police perjury and still was investigating 15 additional cases.

The two prisoners were released yesterday, pending a final decision Sept. 14. Each has already served seven and a half months in jail.

Mr. Roberts said that the investigation by his office and the Police Department, which resulted in the charges against the eight policemen, proved that intimate cooperation existed between the two branches of law enforcement and their sincere desire "to rid the department of corruption."

"We must eliminate the scourge of police corruption if we are to eliminate the scourge of crime that infects this city," he declared.

Commissioner Murphy, sitting at the prosecutor's side in his office in the State Supreme Court Building at 151 Grand Concourse in the Bronx, said he found it

"troubling" that corruption appeared to continue despite the many efforts to prevent it.

The Commissioner announced he was conducting his own investigation to determine whether the commanders involved had "lived up to their responsibilities."

If the investigation found commanders who had failed to properly supervise their men, he said, they could be removed from their commands, demoted or face Police Department charges.

Questioned about the impact of the indictments on police morale, Mr. Murphy said "morale is strengthened as our integrity is strengthened."

The investigation disclosed yesterday is the second major inquiry on police corruption to emerge here in the last few months in which policemen implicated in criminal acts have been persuaded to collect evidence against their colleagues.

This investigative technique, pioneered here by the Knapp Commission, resulted in criminal or department charges being brought five months ago against 37 policemen assigned to enforce gambling laws in Brooklyn.

The Bronx indictments were different in that the initial investigation, which began in February, was triggered by leads provided by a policeman specifically assigned to narcotics enforcement in the Bronx to spot indications of corruption.

According to Mr. Roberts, the information of Edward Williams, as undercover policeman, led to the indictment of three other policemen on charges of robbery and grand larceny for allegedly stealing $250 in cash while making a narcotics arrest on Feb. 11.

From the initial lead provided by the undercover policeman and the additional assistance of the "turned" detective, who Mr. Roberts identified as Vincent O'Keefe, the investigators identified 11 instances where money—anywhere from $47 to $4,000—was stolen from addicts.

Not all of the eight policemen were involved in each alleged theft but two groups of them were indicted for conspiring to steal and share the funds taken from those they were arresting.

The eight policemen pleaded not guilty at their arraignment yesterday before Justice Sullivan and were paroled without bail pending a hearing Wednesday.

The detectives indicted are John Reilly, 28 years old; James Connolly, 36, and Theodore Crews, 38. The patrolmen indicted are Robert Petro, 34; Patrick Kelly, 28; Joseph DeRoss, 27; Barney Cohen, 37, and Lewis Orologio, 41.

All have now been suspended from the department pending final disposition of their cases.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 7, 2019

Mr. Alan Giordani
82-14 60th Road
Middle Village, NY 11379

Re: In Re Alan Giordani, Petitioner
No. 18-1164

Dear Mr. Giordani:

The petition for a writ of mandamus and/or prohibition in the above entitled case was filed on March 5, 2019 and placed on the docket March 7, 2019 as No. 18-1164.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by

Clayton Higgins
Case Analyst

Enclosures

MANDATE

N.Y.S.D. Case #
18-cv-3112(CM)

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of January, two thousand and nineteen,

---

Alan Giordani, individually and as Proposed Executor for the Estate of Nancy Giordani,

Plaintiff - Appellant,

v.

United States District Court for the Southern District,

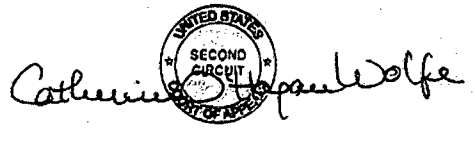
Defendant.

ORDER
Docket Number: 18-2546

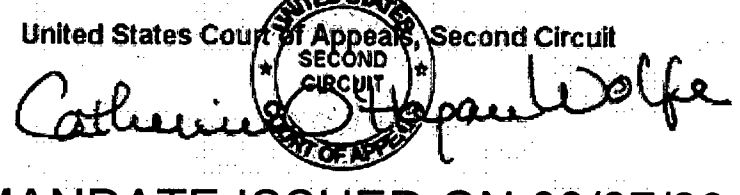
A notice of appeal was filed on August 24, 2018. Appellant's brief and any required appendix, due January 22, 2019 has not been filed. The case is deemed in default.

IT IS HEREBY ORDERED that the appeal is dismissed effective February 19, 2019 if the brief and any required appendix are not filed by that date. No extension of time to file will be granted.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



MANDATE ISSUED ON 03/07/2019

ALAN GIORDANI
Attorney at Law
82-14 60TH Road
Middle Village, New York 11379
(718) 898-7077

March 8, 2019

UNITED STATES SUPREME COURT
One First Street, N.E.
Washington D.C. 20543
ATTN: Honorable Justices on a time sensitive Extraordinary Writ

Re: Alan Giordani, Individually and as proposed executor of the Estate of Nancy Giordani v S.D.N.Y., Appeal pending Second Circuit 18-2546cv

Dear Honorable Justices,

Please take immediate notice that this matter, was served timely upon this Court on March 6, 2019, and included an application that sought immediate relief on that date, including a request to stay the docketing of a strike order and

default, that was pending and scheduled for March 7, 2019.

Unfortunately, this application, was printed inside the bound petition, and was not recognized as an urgent matter, during this Court's intake process. Nor, was the other remedial directions, required at the time, to remediate the underlying "error(s)," that were amply set out within the "extraordinary petition." This matter, and the other underlying relief requested was not timely conveyed to the Second Circuit, or it's docketing clerks, resulting in the docketing of the default order, which has now been stamped as a "mandate." (See attached E.C.F. communication of the formal strike order).

Respectfully, I ask this Court "Nunc Pro Tunc" to undertake this review of the attached motion, and to stay, or reverse this default order, together with all other relief required in the interest of justice.

Very truly yours,

Alan Giordani, (Pro Se)

alangiordani@gmail.com

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4TH day of March, two thousand and nineteen.

Alan Giordani, individually and as Proposed Executor for the Estate of Nancy Giordani,

Petitioner-Appellant

NOTICE OF MOTION

TO STAY AND REINSTATE

v.

Docket No. 18-2546

United States District Court for the Southern District of New York,

Respondent-Appellee.

Appellant Alan Giordani duly swears and deposes pursuant to U.S.C. Section 1001 that,

This motion is submitted requesting this Court to immediately stay the docketing of its strike order and default resulting from the Appellant's non-compliance to file an appeal brief by February 19, 2019 and further reinstate the appeal, together with granting leave to file an extraordinary writ with the U.S. Supreme Court, together with all other relief this Court deems just and appropriate at this time.

In as much as the appellant's non-compliance to timely file the brief in this

matter by February 19, 2019 appears to be entirely this Court's refusal to provide appropriate directives to its administrative personnel and clerks, to properly upload its E.C.F. System with the April 9, 2018 submissions, that the Docket Sheet designates as Document "1" "2" and "3", then this failure resulted in the lack of capacity to file a joint appendix, or otherwise furnish this Court's case manager "Jason" the ability to accept the filing for this Court's review on the merits. This appellant made two motions in January for this specific and much needed relief, that were decided January 29, 2019 by Judge Ralph Winter, with two orders That failed to contain the explicit language sufficient to order or direct this upload of the Documents upon which the June 25, 2018 dismissal was entirely based. Additionally, this matter was thereafter submitted to this Court on February 1, 2019 in a Motion to "reconsider," and by order dated February 13, 2019 again denied the necessary relief, that would have enabled this appellant to timely file his brief.

This Court, should take further notice that each of these motions were submitted and supported with a proposed brief that demonstrated that Judge Colleen McMahon dismissal was a complete error and demonstrated the District Court's obvious failure to read and understand that the matters before her, at that time had not previously been adjudicated, and that her failure to comprehend that the survey maps, and metes and bounds involved to separate and distinct parcels of land, and that this and the other matters in the petition were not at all "frivolous," and that the appellant should have prevailed on the underlying substantive merits.

This "error" included the failure to provide a federal monitor or other relief, so that this matter could be properly reviewed in a proper judicial context, and not ex-parte. This Second Circuit Court recognized this initially at the time the Notice of Appeal was filed last August, by appointing the U.S. Attorney for S.D.N.Y. In as much as there has been no meaningful contact, the appellant must believe that this was little more than a nominal appointment. There has been no objection made with respect to the proposed appendix which has been presented in the brief, and submitted as a supporting exhibit in the motion practice demonstrating that the failure to submit was not the fault of this undersigned movant, but instead indicative of a matter beyond his control.

Respectfully, this Court should be mindful of the C-Span interview earlier this month between Judge Robert Katzman and Justice Sonia Sotomayor, describing what appears to be at least some reflection of how and ordinarily prudent S.D.N.Y. District Court should proceed in her duties, which at the very minimum should include some communication with the litigant to understand what the end goal of the party is or needs to be. Petitioner practiced Law in Bronx County for more than ten years, and perceives this to have been a reasonable expression of jurisprudence of all of the judges before who this petitioner appeared. This does not necessarily hold true in Queens County, and in this matter where anomalies and irregularities exist, then the result must be deemed as suspect. The failure of Judge McMahon, to contact this petitioner prior to undertaking and deciding her June 25, 2018 "sua sponte dismissal", was such a remarkable error, that completely ignored the most basic Constitutional notions

of fair notice and due process, that this matter too, must be construed as suspect. Had she made contact, or alternatively assigned a U.S. Attorney, or other party to do so, then he obvious misunderstanding would have readily been clarified. This failure appears to be part of the same continued effort of government officials in New York to obstruct and frustrate the underlying matter and pervert justice.

Attached, please find a copy of a letter from former U.S. Congressman Anthony Wiener, dated 1999, that was submitted as part of the correspondence, demonstrating an effort to exhaust all administrative remedies. This letter, was one of the 260 pages from the April 9, 2018 petition, that this Court refused to upload into its E.C.F. System. The petitioner believes that he is one of the many scoundrels who pervaded New York State, City and Queens County government, to such an extent, that the underlying scheme persisted from that time to the present, in what must questionably be an appearance of continued concealment or omission of duties. Petitioner believes Mr. Wiener stood at or near the periphery of political power and influence, that included a seat on the U.S. Congressional Judiciary Committee, as well as at the vortex of Queens County political contributors and "dark money," and which is the motive why he failed to take any additional affirmative measures to assist his afflicted constituents. Likewise, the underlying filing contains a roadmap of the many other officials who knew and should have known of the conspiracy to violate and deprive constituent civil rights, and who did nothing, in furtherance of their own career ambitions.

This Court should also be mindful that the April 9, 2018 filing, contained an application seeking protective relief that included what appears to be a profound

need for an expansion of Heller-McDonald and Second Amendment Law and jurisprudence, that includes an alternate access to firearms and licensing, that this Petitioner truly believes is part of New York's ubiquitous pervading graft and systemic corruption, that is the essence of this entire litigation.

This Petitioner cited this Court's February 23, 2018 decision by Judge Lynch in "New York State Rifle and Pistol Assoc. v. New York State and N.Y.P.D. Firearms Licensing Division," that describes New York's current policies as error and inconsistent with the U.S. Constitution, and further advocated the need to recognize the need for a necessary federal remedy and prescriptive relief including and in the form of a constitutional carry provision. Additionally, the petitioner asserts that New York's current subjective "may issue" standard needs to adapt a objective "shall issue" standard. Judge McMahon completely ignored this prong of the application for relief that was sought. Rather than refer it to a Court of appropriate jurisdiction, this failure may be indicative of prejudice, bias or some attempt to advance or maintain a policy preference or agenda, this failure appears to have been an abuse of power, or misuse of discretion.

In as much as N.Y.S.R & P was appealed and granted certiorari before the U.S. Supreme Court on January 22, 2019 then it is incumbent on this Court to now refer this prong of the Petitioner's underlying submission, together with this extraordinary writ, to the U.S. Supreme Court for its immediate review, and thereafter, await for its remedial directions. Accordingly, the Court needs to immediately stay the docketing of the default and dismissal order, and further refer the extraordinary writ accordingly.

There has been no other application for the relief requested with made before this or any other court, other than that described above.

Accordingly, and in the interest of justice, this motion should be granted in its entirety.

March 4, 2019

S/ALAN GIORDANI

ALAN GIORDANI

From: cmecf@ca2.uscourts.gov
Sent: Thursday, March 7, 2019 12:12 PM
To: alangiordani@gmail.com
Subject: 18-2546 In re: Alan Giordani "Strike Order FILED"

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 03/07/2019

Case Name: In re: Alan Giordani
Case Number: 18-2546
Document(s): Document(s)

Docket Text:
STRIKE ORDER, striking Appellant Alan Giordani's motion to stay [102] from the docket, FILED.[2512599] [18-2546]

Notice will be electronically mailed to:

Mr. Alan Vincent Giordani, -: alangiordani@gmail.com, pchelpme@optimum.net

The following document(s) are associated with this transaction:
Document Description: Order_Document_Striken
Original Filename:
/opt/ACECF/live/forms/RalphObas_182546_2512599_Order_Document_Striken_178.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1161632333 [Date=03/07/2019] [FileNumber=2512599-0] [1b81667efb50a083b58d8e1b85ce1ba7f617fbf190bc910f664310db5e0df5974b92bdccbf20579f5a8da89cf9c13f66791ad764e94ea342c07183906b64cf8d]]
Recipients:

- Mr. Alan Vincent Giordani, -

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT DISTRICT OF NEW YORK

----------X

IN RE: ALAN GIORDANI AS PROPOSED EXECUTOR FOR

THE ESTATE OF DECEDENT NANCY GIORDANI, AND

ALAN GIORDANI INDIVIDUALLY, 18-2546 cv

APPELLANT **AFFIDAVIT OF**

V. **CERTIFICATION**

SOUTHERN DISTRICT OF NEW YORK, BY THE

U.S. DEPARTMENT OF JUSTICE

APPELLEE

----------X

ALAN GIORDANI, being duly sworn deposes, and certifies pursuant to U.S.C. TITLE 18 Section 1001 that:

ON MARCH 8, 2019 the undersigned deponent served via U.S. MAIL AND STAY OF DOCKETING DEFAULT and STRIKE ORDER;

U.S. DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY SOUTHERN DISTRICT OF NEW YORK

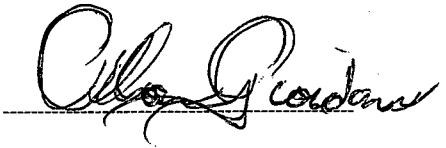
CHIEF APPELLATE ATTORNEY BENJAMIN TORRANCE/GEOFFREY BERMAN

86 CHAMBERS STREET

NEW YORK, N.Y. 10007

Deponent further certifies that the within MOTION is now being served in supplementation upon the appellee as of today's date MARCH 8, 2019.

Dated: MARCH 8, 2019



ALAN GIORDANI

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 18, 2019

Alan Giordani
82-14 60th Road
Middle Village, NY 11379

RE: In Re Alan Giordani
Application

Dear Giordani:

Your application that was received March 12, 2019 is herewith returned for the following reason(s):

The document that you sent includes a motion addressed to the U.S. Court of Appeals for the Second Circuit. If you wish to file an application with this Court, you must do so in a separate, dedicated document. Your application must be addressed to this Court and must clearly state the relief sought.

Note that you must comply with Rule 23.3 of the Rules of this Court which requires that you first seek the same relief (for example, a stay) in the appropriate lower courts and attach copies of the orders from the lower courts to your application filed in this Court. If you are seeking a stay, you must comply with the requirements of Rules 22 and 23 of the Rules of this Court.

You must attach a certificate of service showing that you have served all parties with a copy of the application.

You are required to state the grounds upon which this Court's jurisdiction is invoked, with citation of the statutory provision.

Sincerely,
Scott S. Harris, Clerk
By:
Mara Silver
(202) 479-3027

Enclosures

18-2546

In the
United States Court of Appeals
For the Second Circuit

ALAN GIORDANI, INDIVIDUALLY AND AS PROPOSED EXECUTOR FOR THE ESTATE OF NANCY GIORDANI,

Plaintiff-Appellant,

– v. –

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR PLAINTIFF-APPELLANT

ALAN GIORDANI, ESQ.
Plaintiff-Appellant, Pro Se
82-14 60th Road
Middle Village, New York 11379
(718) 898-7077

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TABLE OF AUTHORITIES

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Cases:

Rules, Laws and Statutes:

Preliminary Statement

Chief District Court Judge Colleen McMahon, rendered the sua sponte dismissal and decision dated June 25, 2018 of the underlying pre-action filing and application dated April 9, 2018. The decision was not reported.

Jurisdictional Statement

The Southern District Court of New York had jurisdiction to review the matter(s) submitted, in as much as the matters asserted included Constitutional and Federal Civil Rights and Statutes being violated under Color of Authority Title 18 U.S.C. 1983, and that the pre-action matter sought protection from those officials who engineered and maintained the underlying "beer garden scheme" that intended and did violate multiple fundamental rights of the petitioner, his late mother, as well as multiple other individuals, who the petitioner readily believes would be intimidated from providing testimony in support of the anticipated claim, especially in the absence of federal oversight and protection[1].

The filing dates establishing timeliness of Appeal is January 22, 2019.

---

[1] Petitioners April 9, 2019 Pre-Action filing ubiquitously describes criminal patterns and practices of political machine bosses and the government operatives under their command and control, that was readily cognizable to the District Court, or anyone else ready, willing and able to read it in good faith. Paragraph 101 cited Robert Hughes v. P.B.A, et al, 850 F. 2d 876, (2d Cir. 1988), that described a malicious harassment campaign directed at the plaintiff who came into conflict with other members of N.Y.P.D. Floyd v. City of New York, 959 F.Supp. 2d 514 (2013) in pre-action filing paragraph 102, Monell v. N.Y.C. Dept. of Social Services 436 U.S. 658(1978) in pre-action filing paragraph 103, sought to convey the policy of deliberate indifference, by Departmental Policy makers that were widespread and persistent from 1997 until the present time that demands jurisdiction be placed in New York County where City Hall and One Police Plaza are located.

The Circuit Court accepted the Pacer E-filings of Forms C and D, Addendum "A" and "B", and the attached dismissal order, docket dated June 25, 2018, and Notice of Appeal dated August 23, 2018. This Appeal is taken timely, and Appellant is in full compliance with this Court's internal rules to do so.

Statement of Issues Presented for Review

1. Did the District Court commit error in dismissing the application for pre-action relief?
2. Did this dismissal constitute a violation of the Due Process and Equal Protection Clauses and deprive the Appellant's fundamental rights, which included the right to petition for a redress of grievances?
3. Did the Court's initial failure to appoint a evaluator, Special Master or magistrate precipitate its subsequent error(s)?
4. Whether the failure to address the Second Amendment and Jury Service issues, were likewise an abuse of authority or discretion?

Statement of the Case

The Appeal is taken from the June 25, 2018 Sua Sponte dismissal, that appears to be predicated on the District Court's failure to adequately understand the matters presented. First and foremost, the dismissal appears based upon its misapplication of the "Feldstein-Rooker doctrine." The District Court relies on a phrase in the underlying December 16, 1997 Order by Judge David Goldsmith Supreme Court Queens County, contained in his review, stating his decision is

based upon "a certain parcel of land 98 feet long and 20 feet wide" against which a adverse possession claim was made.

In error, the District Court mistakenly failed to recognize that the April 9, 2018 pre-action filing, was instead related to the "other" adjacent parcel of land, next to the abandoned lot, 8 inches below the retaining wall and containing a completely different metric, distinctive history, and that was never evaluated by Judge Goldstein. The June 25, 2018 dismissal order of the pre-action application, failed to recognize or comprehend that there was no applicable res judicata, concerning the subject driveway and encumbrance tainting the house title that is part of the decedent's estate. The district Court needed to undertake an independent appropriate and complete review, rather than jump to a conclusion and erroneously rely on the 1997 order.

The Court failed to further recognize that in the subject 1997 order, was submitted in context to demonstrating and providing evidence that the adjacent commercial entitie(s), its principles, and representatives were on actual notice of those objections made by the residents, of the resulting trespassing and nuisance(s), created by the illegal 1997 re-configuration. Furthermore, there has never been an assertion of a claim or right, or exercise of any valid incident of ownership of the residential driveway, and was at all relevant times maintained by an illicit arrangement that the commercial operatives entered into with corrupt elements of New York State and City government officials who obstructed and frustrated all administrative remedial measures that were

undertaken from 1997. This would naturally be the material issues in the contemplated civil action.

Statement of Facts

The Appellant has resided at the subject location since October 1962, and the matter involves the family home on 60th Road, in which the decedent was domiciled until her death on May 13, 2017. The property, and related claims arise against the third-party tortfeasors that engineered an illegal public-private partnership agreement with local authorities, and requires compensation and other remedial measures, punitive damage awards and attorney fees with respect to the twenty-one years of hardship, and deprivation of legal and civil rights caused, created and maintained by and through the connivance of State, City, and County officials, acting in league and as a concerted effort to deprive significant constitutional rights. Part of this scheme involves the conspiracy to cheat the adversely affected homeowners, who owned a tenancy in common, by unjustly enriching those political supporters and contributors, who participated and benefitted from these continued commercial operations, including a "beer garden." The cronies and vendors illegally operated through the home-owners premises, without consent and in violation of local ordinances, rules and regulations, that the State and City overlooked in return for valuable consideration.

The underlying pre-action filing contains extensive support in asserting these matters, which were the result of corrupt and willful blindness of those duties ignored by officials that commanded and controlled Queens County, as part of New York State and City.

In submitting the papers to the District Court, the Appellant anticipated violent or other reprisal. As part of the concerted efforts to create and maintain the unlawful operation, a climate of fear was created, intending to inflict continued emotional distress, that sought to discourage the objections and assertions of our civil and legal rights. The Appellant was not able to proceed until the passing of his mother, as part of the fear that she would be harmed. It should be noted that the decedent was a widow, who continued, to derive rights, related to this homeownership, as a protected class which included the fact that this family home was purchased with her late husband (Appellant's father deceased in 1983), and through these W.W. II Veterans benefits, from the G.I. Bill. As husband and wife, Appellant's mother and father continuously maintained this home as their matrimonial abode.

Summary of Argument

The District Court erroneously dismissed the pre-action application and the prongs of relief sought in the form of a protective order. The beer garden scheme, and the unconstitutional measures undertaken to maintain the scheme warranted the relief sought, that included the assignment of a Special Master, or some form of Court evaluator or magistrate, to review and schedule preliminary conference(s) related to conducting orderly proceedings against the State and City, including satisfying their Notice of Claim and Municipal Law 50(h) requirement as a condition preceding the filing of the lawsuit(s). Additionally, the appellant further sought relief with respect to hearing the Second Amendment issue and Jury Service question issues. The underlying filing describes corrupt patterns and practices which the Appellant believes were at all times related, and inter-related to decades of unlawful and unconstitutional dealings by New York officials that includes maintaining the Sullivan Act and other subsequent restrictive and overly narrow fire-arms licensing, issuance and their respective distribution, that impinges and infringes upon those other fundamental rights raised[2]. The Appellant contends that this is a significant component to the systemic graft and corruption, that caused the violation of our civil rights and liberties, from 1997, until the present time. The District Court's decision to completely ignore this application(s), requires this Circuit Court to

[2] See pre-action filing paragraphs 37-43, and 51-58. Computer glitch omitted paragraphs 44-48

reverse and remand the issue with detailed directives. In as much as The Federal Court has co-jurisdiction[3] with respect to Second Amendment and derivative issues, and that it should inherently follow that the right to petition for redress of grievances should not be impaired or abridged by intimidating or menacing threats.

[3] Ibid paragraph 143 citing Hodell v Virginia Surface Mining 252 U.S. at 288, stating state law may be preempted by Federal rules and regulations. The District Court has access to multiple modes and solutions to remediate these retrograde matters.

LAW

It is an axiomatic principle of Anglo-American jurisprudence that real property rights can not simply materialize out of thin air. Yet the subject adjacent commercial property and its operatives appear to have achieved that exactly, through their nefarious dealings with local political leadership and officials. Through the course of this misconduct, the subject Estate finds itself with an encumbrance and imperfect title, due solely from the back-room agreement by these third-party tort-feasors.

There has been no purchase, sale, rental, consent or other conveyance to the adjacent commercial property owners, who at all relevant times relied on their illicit arrangements and conspiracy made with and entered into and with local governing officials. Under U.S,C. Title 18 section 242 and while under Color of Authority, these abuses and deprivations of civil rights and in violation of Common Law Fraud, this concocted scheme was perpetrated to the detriment of the legal rights of adjacent home owners and residents, and more specifically against the appellant and the decedent, who were detrimentally placed and impacted, at the center and ground zero of the scheme. Appellant questions the intentions and scope and reasoning behind this targeting. The scheme was maintained through menacing and intimidating threats, that included bar-room goons, and former N.Y.P.D. members asserting that their political ties were sufficient to engineer, manipulate and maintain this abuse. These goons referred

to the conditions as "da fix", which was sanctioned and condoned by New York officials. These matters required disclosure of official records together with hearings with testimony, concerning the scope of this scheme, incidents past involving menacing threats and underlying intimidation. The establishment of these factual issues explains why the filing was made in this form on April 9, 2018, that attempted to proceed discretely. The District Court was provided with adequate and sufficient evidence and a massive amount of materials to recognize that the issue and the application(s) before it.

Obviously, protective measures and mechanisms, were sought on behalf of all those proximately situated to the conditions who could describe and substantiate the matters set forth in the filing. This included a need to preserve testimony and statements so that they would not be dissipated by threats and intimidation, by elements appearing to assert organized crime ties. In the absence of appropriate Federal oversight and intervention, the appellant reasonably expected that notification of proceedings would again trigger the abuses unduly imposed on the residents in the past.

The District Court's failure to timely recognize, acknowledge and schedule a preliminary conference prior to its sua sponte dismissal without notice, is one of several substantial errors, that requires a complete reversal, together with remedial directives.

At all relevant times, the series of Federal Citations dealing with N.Y.P.D.'s unconstitutional misconduct, was provided in support of the underlying filing, seeking protective measures including oversights, so that the litigation could be commenced without proceedings marred by any further abuses. This required a "preponderance of evidence to determine relevant conditions, including the District Court to schedule framed issue hearing(s), to determine the underlying facts and scope of Law that needed to be ascertained, together with determining what protective measures were required. The Court appears to have ignored its most basic judicial standards and protocols, by prejudging the case, and ignoring material facts before it. Prior to beginning any undertaking or determination including dismissal efforts, it needed to acquire a full and complete understanding of the matters before it.

The chief infirmity of the District Court's "sua sponte" dismissal is that it is completely premature and the failure to permit the development of the record in support of the assertions made, that implicates political and police corruption as the causal factor, appears to be more of an effort to conceal, impede and obstruct justice, rather than as any genuine case management tool.

The District Court's Standard of Review is inherently flawed in as much as it cites and relies on *Fitzgerald v. First E. Seventh Tenants Corp.,* 221 F.3d 362, 363-64 2d Cir. (2000) (per curiam), citing *Pillay v INS*, 45 F. 3d 14, 16-17 2d Cir. 1995 per curiam, holding that the Court of Appeals has inherent

authority to dismiss frivolous appeals, which the District Court relied upon as its basis for dismissal. The District Court misconstrued that the procedural history in "*Fitzgerald,*" involved several dismissals of the same subject matter. The initial dismissal granted the plaintiff leave to replead within 21 days to remediate the subject matter defect. The plaintiff, instead waited two years to recommence the action, which was still based on the same issue, that pertained to the same apartment unit described two years earlier.

Unlike "*Fitzgerald,*" this appellant was not given any opportunity to rectify any perceived "defect." in procedure or recitation of the facts. Had clarification been needed or sought, this appellant would have readily provided it, or any other remedial measure required. Had the District Court instead granted the part the appellant's application calling for and assigning an evaluator, special master or magistrate to hold a preliminary conference, then the District Court would have readily been able to recognize prior to dismissal that it completely misapprehended the fact that the underlying "*Horwin*" litigation and ruling, involving "a certain parcel" was not the same property as the one in the instant matter.

The David Goldstein (Sup. Ct. Queens Co.) decision is based on an abandoned lot and an adverse possession claim made in 1997 involving a parcel that measured 98 feet long and 30 feet wide, is landlocked and sits eight inches

above the retaining wall, and the driveway was a different parcel, and distinct history.

The subject parcel involving the 2018 filing, instead related to a residential easement (driveway) running in common with the home title(s), that measures 16 feet wide running 144.07 feet westerly to 82nd street. Only superficially does this case resemble "*Fitzgerald,*" and the underlying error appears to be the District Court's failure to read and understand the submitted documents, their context, overreaching in failing to recognize its role as a trial court, and an apparent over eagerness to dismiss and "manage" its caseload.

Likewise, "*Pillay*" is misapplied, in that the legal points raised within this brief clearly demonstrate that this matter is not frivolous, and readily demonstrates arguable issues, which are set out more extensively. (See *Collins v Virginia* below). Only superficially, does this case resemble "*Fitzgerald*" *or "Pillay,*" in as much as all were all Pro Se litigants, and which appear to contain "sua sponte" dismissals. However, the "*Fitzgerald*" sua sponte dismissal was actually triggered by the defendant sending a letter to chambers, in lieu of an answer that the matter was previously litigated, and "*Pillay,*" by a review of movants long criminal history, in which the courts readily determined that his deportation was a forgone conclusion, and that appointment of counsel with respect to the one pending particular criminal charge under review, was futile to the outcome. The District Court's recitation of the dismissal in *Ruhrgas AG v*

Marathon Oil, 526 U.S. 574 (1999), which is based on a lack of personal jurisdiction, appears mostly off-point, except to the extent that it perhaps suggests that the matter should have been filed in Eastern District, rather than Southern District of New York. However, this venue suggestion completely ignores the jurisdictional issue that as a New York City resident, this Appellant maintained substantial ties in both Districts and respective Boros. However, One Police Plaza and City Hall, and its occupants maintained illicit, corrupt and unconstitutional policies, that readily flowed from Manhattan and into Queens County.

Such distinction was never made by S.D.N.Y. in any number of Police misconduct, and organized crime cases cited, in the subject filing, and which the Appellant readily believes was the causal factor of the "Beer Garden" scheme, which was the central issue is this matter.

Respectfully, the District Court jumped to erroneous conclusions, which the appellant readily believes were caused by filing this pre-action matter, pro se. In an effort to obtain immediate federal oversight, Appellant sought relief through the Court's IFP track. This appellant has expected and anticipated that the malicious harassment campaign suffered over the course of years, would again be triggered upon notifying State Authorities, of any contemplated

litigation against it.[4] This would appear to suggest that this Court may have a defect in its intake system. The Standard of Review also implicates obvious overreaching by the District Court. In its failure to recognize its place in the judicial hierarchy, it has appeared to prejudge this matter, and preempted conducting necessary preliminary hearings, the gathering of relevant evidence, testimony and other statements in support of setting out a prima facie case on its merits. The premature dismissal has impeded, delayed and obstructed meaningful disclosure, that implicates and insulates those government officials, who engineered the scheme and sought to and did deprive civil rights described at length within the filing. One can only ask whether the District Court's error(s) are in any way part of the pattern and practice of what can best be described as running interference.

Summary Judgment and F.R.C.P. 56, is primarily based on the absence of genuine issues of material facts, coupled with the movant's entitlement to summary judgment as a matter of Law. The District Court appears to have taken on an adversarial role in its sua sponte dismissal. The sua sponte dismissal in "*Fitzgerald*" obviously contained some aspect of notice, that was absent in the instant matter. This appellant was essentially ambushed by the District Court's

[4] Appellant cited Adrian Schoolcraft v City of New York et al 1:2010 cv06005 assigned to Hon. Robert Sweet, that involved N.Y.P.D. whistleblower abducted from his home by E.S.U. Unit, that falsely declared him a E.D.P., and placed him in a mental ward as a Soviet style tactic to suppress dissent. The assailants were never criminally charged and the incident appears to be sanctioned and condoned by New York Authorities, at paragraph 126 in pre-action filing.

dismissal. The matter pending before it, was an application that sought a protective order and assignment and scheduling of pre-action hearings, not dismissal. Had the District Court acted fairly, then it would have given an opportunity to remediate, rectify or clarify issues, before undertaking the draconian result of dismissal. Had the Court undertaken an effort to contact or communicate with "Horwin," then it would have readily learned that it lacked any legitimate claim with respect to the subject driveway, and that its continued misappropriation, was the result of the injustice perpetrated. "*Horwin*" has never made a claim of right, paid tax, maintained or made improvements, and has no basis to believe it maintains title, with respect to this subject parcel and driveway. The subject property in this matter, (which is divided by the 8-inch retaining wall, and its fencing erected in 1997), at all relevant times and is separate and distinct from the "certain parcel" in the 1997 litigation. Had, the District Court readily undertaken a good faith review, then it would have learned that the continued use, misuse and trespass into the residential driveway was without consent, and through thuggish extortion, threats and intimidation. All of this was condoned and sanctioned by corrupt State and City officials, maintaining a public-private partnership and illicit rent seeking arrangement.

When analyzing the issue of summary judgment or dismissal, it is incumbent upon the court to determine, whether there exists an issue of material fact requiring trial. *Anderson v Liberty Lobby Inc*,, 477 U.S, 242, 242-243, 106

s. ct. 2505, 2511 1986. A material fact is genuinely in dispute if the evidence is such that a reasonable jury could return a verdict for the non-moving party.' Id.; *Rovtar v. Union Bank of Switzerland*, 852 F. Supp. 180, 182 S.D.N.Y. 1994. In determining whether such a question of fact is raised, the Court must make all credibility assessments, resolve any ambiguities, and draw all inferences, in favor of the non-moving party, and may grant the motion only if the evidence, taken in that light, reflects that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The instant matter indicates that the District Court improperly jumped to a prejudicial conclusion, which as a matter of fact and law

was error.

Frankly, in as much as the District Court's sua sponte determination and dismissal was made prior to commencing the action and in the absence of any pleadings, the Circuit Court and Judicial Conference needs to evaluate whether this "error" was intentional, or driven by an attempt to protect those political bosses and operatives, (including some who maintain national leadership positions) who have been described in the underlying filing, who engineered and benefitted from the illicit scheme, that sought to deprive our civil rights.

In *Matsushita Electric Industrial Co. Ltd. V Zenith Radio Corp.*, 475 U.S. 574 (1986) the Supreme Court remanded the case for a determination of whether there was sufficient, unambiguous evidence that the defendants

conspired, or in the absence of evidence would have the right to reinstatement of the dismissal.

This appellant attempted to advance an adverse possession claim in the 1997 Queens County case based upon an underlying history, that included the Commercial Property Landlord denying its ownership of the fallow abandoned lot in or about 1965, of a "certain parcel" described in the "*Horwin*" decision. This denial of ownership, thereby frustrated recovery of the Appellant's father, in any claim involving attractive nuisance, where his young son Paul, (and appellant's brother), was seriously injured and permanently scarred in an incident involving broken glass hidden in the weeds of that fallow tract. The 1997 "reclamation" by the Landlord or successors in title of the abandoned lot a/k/a "a certain parcel" was predicated on fraud and the illicit influence and arrangement made between the landlord, representatives, principles and the political bosses and Judge Goldstein, who denied the claims in equity, and of the relevant issues, that sounded in collateral estoppel, and reliance. The 1962 survey map designated that the two separate parcels were never divided by a fence or barrier, until the 1990's when the Commercial Landlord at that time, appears to have asserted a claim under the original title. Appellant asserts that these facts support the position, that these matters were predicated on fraud, and an underlying fraud, within the fraud, that remains ongoing and that now requires justice.

In contemplating this action, the Appellant questions whether the Commercial Landlord's representatives have failed to properly review the survey map(s), titles or leases, and the scope of their metes and bounds, or lack of rights thereof. It follows that reasonably prudent practitioners would have readily recognized that the Law with respect to unfenced property, especially in urban settings over the course of decades, would naturally give rise to third party claims, resulting in the heavy-handed thuggish tactics utilized.

The Circuit Court should consider whether any part of the scheme, including improper influence, involved any effort to avoid professional liability questions concerning landlord's representatives. These implications give rise inherently to a review of these underlying historical leases, and other documents, that can better reveal the mindset and motives. The "*Horwin*" case file naturally requires a review or inventory, so that the factual and legal issues can be ascertained with greater clarity. The dismissed filing was not seeking injunctive relief with respect to the Horwin ruling from the District Court, but instead was forward looking as to the elements of the fraud case that had to be pleaded and proved. This obviously included the issue of mindset and implications of "da fix" and any accompanying criminal conspiracy could be proved with the file contents of the 1997 case, as just part of the res gestae of the conspiracy. The Appellant asserts that an honest, reasonably prudent jurist, or attorney practicing law, would not have given these matters the short shrift

that Judge Goldstein or Kalb did, and furthermore, believes such matters will tend to disclose mindset of the participants. The Appellant verily believes that he should have prevailed in the 1997 matter, as well as the 2018 filing, as matters of Law, supported by facts. But for the presence of fraud and impropriety, Appellant did not prevail.

At no point in time was the District Court being asked to sit in "direct review" of the underlying state court decision and *Rooker-Feldman* doctrine *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 262(1983), were misapplied by the District Court.

That public policy considerations have even contained exceptions of this doctrines application with respect to "habeas corpus" and the so called "Palm Sunday Compromise" which are now trending. and to avoid injustice.

Since the Appellant's dismissed filing addresses a different parcel of property not adjudicated in 1997, there has been no review on the underlying merits and therefore no res judicata. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), Justice Ginsberg determined that the *Rooker-Feldman* doctrine was narrowly confined to such state court proceedings that invited the district court to reject such. Parallel litigation in both state and federal court does not automatically trigger *Rooker-Feldman* judgment.

The 1997 judgment in its proper context, indicates and implicates that the adjacent commercial landlord, its representatives, operatives and tenants knew at the time of the decision and reconfiguration, that they blocked their own legitimate ingress-egress, that preexisted during the prior six decades, and then placed this burden on the adjacent residential homeowners, through the onerous threats and intimidation.

By participating and arranging "da fix," namely the engineering of the illegal arrangement that maintained these commercial operations through residential premises, they were in violation of N.Y.S. and City ordinance codes, Rules and Regulations, and the Law. Through menacing threats and intimidation, together with their reliance placed on local and state officials who participated in the scheme from that time to the present, they also violated Federal Constitutional and Civil Rights. The 1997 ruling was simply presented to the District Court as an essential milestone and element in determining when and what was known with respect to the violations and deprivations of our legal rights.

In Celotex Corp., v. Catrett, 477 U.S. 317 (1986) the standard of review applied, permits an inference to be drawn based upon a non-movant's failure to produce evidence. It should be noted that Harold Kalb Esq., in the underlying adverse possession matter did not support his case with any documents at all. Title, survey maps, leases were not produced, only his assertion that he "could

not remember" his assertion that he previously claimed ownership, and that he had maintained a long term attorney client relationship with the Horowitz family.

The underlying 1997 dismissal that pertained to a "certain parcel," was not the subject tract of property in the 2018 dismissed filing. The 1997 dismissal, was also completely anomalous to any genuine judicial review, and supports the conclusion, that "da fix" was predicated on government and judicial fraud, and is a jury question. The lack of "judicial reasoning" by Judge Goldstein in failing to review the pertinent issues, including, that the certain parcel lay fallow during the preceding sixty years, underscores the fact that this history supports the further conclusion that political bosses Tom Manton and his protégé Joe Crowley were able to reach former Judge David Goldstein, through their Politically connected law firm, "Manton, Sweeney and Crowley," and arranged this improper illegal favor and influence over the assigned judge. The underlying record, together with the lack of one, and the resulting ambiguities, supports this position that the Goldstein decision involving the abandoned lot, was predicated on Common Law Fraud under color of authority in violation of Federal Law.

A fair-minded jury could readily and easily return a verdict based upon the Appellant's prima facie showing, that these matters were at all times skewed and tainted by the misconduct of New York State and City officials, and their

illicit joint effort with the commercial landlord, operatives, representatives and tenants, pursuant to an illegal arrangement to cheat, defraud and deprive this family of substantial legal rights.

Assuming arguendo that the District Court correctly applied the "*Feldstein- Rooker* Doctrine", then at the very least, would be indicative that the doctrine or its supporting statute, was unconstitutional, to the extent that it supports the criminal misconduct of corrupt State and City officials, and their cronies and supporters, in violation of enumerated provisions of the U.S. Constitution. Sustaining this doctrine and statute under the facts and circumstances, would be in violation of the 14th Amendment incorporation of Due Process and Equal Protection clauses, through the Fifth Amendment's "Taking's Clause". Our Constitutional rights, existed in and through, the subject private "residential driveway," which in other words, was the "other parcel", not adjudicated by the Goldstein decision. Judge Goldstein, and the Commercial Landlord knew they had no title, right or any valid claim. Instead, the decision made, was to ignore this fact and our other rights and accompanying complex implications.

Likewise, in this decision to ignore our rights, the Fourth Amendment ("effects"), and Ninth Amendment's "penumbra of privacy",[5] further implicates

[5] Olmstead v United States 277 U.S. 438 (1928) was cited in underlying filing paragraph 9 to remind the Court of the Brandeis dissent and origins of the privacy right and if the government becomes a lawbreaker, it breeds contempt for the law.

unconstitutional misappropriations. The suppression of the right to petition and be heard on the merits, is likewise implicated through the unconstitutional dismissals. Furthermore, to any extent this abuse of power result in our being maliciously targeted, then it further warrants pleadings implicative of violations of relevant federal Civil Rights statutes.

That at all relevant times, through the course of this government misconduct, officials who have maintained command and control of New York and Queens County, maintained the scheme and the subject parceled tracts through its willful blindness and illicit rent seeking. They ignored the threats made by the Commercial Landlord's principals, including former members of N.Y.P.D., rendering the homeowners without a genuine Rule of Law through the course of this scheme.

The Circuit Court should further be mindful that on May 29, 2018 the U.S. Supreme Court decided Collins v Virginia 584 U.S.___(2018). The Court held that the area immediately surrounding and associated with the home is considered part of the home for Fourth Amendment purposes. In as much as a lawful right to access must exist...to allow otherwise would constitute an unmooring and render hollow the core protections of the Constitution extended to the home and its curtilage rights. This case expounds issues that readily overlap with the instant case, in that the denial of Fourth Amendment "effects"

must be deemed to include our sense of security, safety and well-being,[6] as part of our inherent "pursuit of happiness." "Collins" overlaps with our assertion that contained with this right, are the "penumbra" of other fundamental rights, including our privacy, that was grossly invaded and violated throughout the years, during the course of this unconstitutional scheme.

It is quite remarkable that the Chief District Court Judge's failed to recognize the significance of Collins during her "review" which appears to be well settled Law, demonstrated by the 8-1 decision,[7]

Through this unwarranted dismissal the District Court has delayed proceedings on the substantive merits, denied due process and equal protection, and forced the expenditure of resources as part of the continued efforts, reticent of the underlying patterns and practices employed over the years, that prevented, the Appellant from ever being heard on the underlying substantive merits. The back-room fraudulent scheme and conspiracy to violate our rights and unjustly enrich the adjacent commercial property's owners, principles and the political operatives and supporters who were involved, was orchestrated and maintained by Democrat Committee Chairman Tom Manton and his protégé Joe

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[6] See James Madison 29 March 1792 papers 14;266--68 essay on "property"...he has a property very dear to him in the safety and liberty of his person.

[7] Justice Alito's dissent relates to "hot pursuit chases" and may only be relevant to the extent the May 13, 2004 search by N.Y.P.D. Homicide detectives of Kelly's Pub and Beer Garden and into the subject driveway, was precipitated by their following the blood trail left by the killer(s) described in the dismissed filing at paragraph 67 and exhibit 10.

Crowley, on behalf of their cronies, and to the great detriment of the homeowners.

The Circuit Court and Judicial Conference must evaluate whether any part of the District Court's misreading of the record, and its misapplication of Law is a component of suppressing the facts and our respective legal rights, or is the result of any political bias, preference, or alignment. The Appellant take great exception to the District Court "deeming" these matters as "frivolous" in that they implicate matters that go to the very core integrity of this Court and the Constitution.

The District Court appears to have punted on the issues that pertain to Second Amendment firearms "licensing" and Qui Tam, which the Appellant believes are part of the rent seeking criminal patterns and practices, graft and corruption, that at all times, thrived and was the concurrent dynamic underscoring the political chicanery and government influence peddling.

With respect to the "jury service" issue, that arises miscellaneously, and arose through the service of the jury summons notice by New York State and its Jury Commissioner, the premature dismissal denied a review on these issues. This Appellant has anticipated raising these matters upon restoration and remand. While the undersigned does not dispute the State Authority or jurisprudence that deemed to exist as an essential part of the reasoning applied in *Arver v U.S.* 245 U.S. 366 (1918), and the progeny of selective services

cases, the appellant's objection is to a State or government that ignores the unconstitutional misconduct of its officials, and then thereafter attempts to compel participation in its own tainted processes, which is in violation of deeply held sincere beliefs that compels the Appellant to raise moral objections sounding in the First Amendment's right to conscience and demands civil disobedience in this form, forum and format. The petitioner does not object to the reasoning of the jurisprudence that sustained the conscripted service, but the Court must be mindful that at its core was the argument that the duty derived by citizenship, is part of the social contract with the government, and that the efforts within are by a dutiful citizen.

This must now be construed to include the issues set out in the underlying filing, that included issues that pertain to the political patronage and nepotism in Queens County government and especially its Court system. Whether military, or in this case of "jury service", due process requires and demands a hearing on the merits. Aside from the obvious forty dollar per day stipend, that is well below the minimum wage, and stinks of servitude, peonage and thirteenth amendment violations. The filing raises another necessary Constitutional question, as to the extent "da fix" in the dismissed filing, was any part of a corrupt pattern and practice involving improper political and judicial influence peddling in Queens County. The filing questions the scope of improper influence maintained by Political Boss Tom Manton and his protégé Joe

Crowley in 1997, and thereafter maintained to this present time. An obvious question needs to be asked and answered as to whether the Queens County political boss and ex-cop Tom Manton was related, descended or maintained a "special relationship" to the defendant and former Second Circuit Court judge cited in *U.S. v Tom Manton*, et al 107 F.2d 834(2d Cir.1938), and whether these intergenerational relationships resulted in other conspiracies to cheat and defraud, especially in the underlying *Horwin* matter. It should be noted that the historical record implicates that some part of Judge Manton's influence was derived through his relationship with corrupt elements inside N.Y.P.D.'s subculture, and whether Pat and Mike Kelly and their bar room clique were able to access this deep Departmental corrupt influence, through clannish relationships, and years of Pub chatter and drunken secrets. Whether any part of the dismissed filing that asserts a new or resurrected "Tammany" doing business under a new banner of progressive ideology in any way offended the District Court, then this review must consider whether the obvious short shrift and series of error(s), that caused this unconstitutional reflex, was fused with irrational bias, prejudice, political or tribal factionalism,[8] or preferences from any misplaced sense of loyalty. The instant Circuit Court and Judicial conference, must evaluate whether any judicial politics exists and resulted in this "error." This Court recognized in Re: Complaint of Judicial Misconduct jc

[8] See Federalist 10.

no. 02-17-90118 the "seriousness of the misconduct alleged" that involved an important federal judge, described as a "feeder" implicating his institutional influence, and reticent of the matters raised by the Appellant in the dismissed filing describing patronage courthouse "jobs" and citing Margarita Lopes Torres v State Board of Elections 462 F.3d 161 2d Cir. 2006 overruled at 552 U.S 196, (cited in the dismissed filing in paragraph 87) and People v. Clarence Norman, No. 5617/03 __ Misc___ Sup. Ct. Kings County, (cited at paragraph 88 of the dismissed filing) providing a glimpse of the inner workings of the State and City Political machine, and leaving the outstanding question as to the nexus and extent this is applicable at the Federal and National level, and the 10th Amendment questions raised in the filing.

Contrary, to Justice John Roberts apparent efforts to push back at the Article II, Chief Executive who asserts or implicates the presence of activist Article III Judges are apparently participating in "resistance" against his "2016" platform and re-alignment,[9] the underlying dismissal, simply does not appear to be a "level best" by the District Court, but instead an effort to avoid and evade a review on the substantive underlying merits, or motivated by any attempt to

[9] Both Judicial and Executive branches appear to assert authority to draft orders to remediate regional and national problems and conditions resulting from Congressional inertia, and which the appellant proposes is the partial solution necessitating a need for a standardized national firearm license. Justice Scalia describes the dissenters in "Heller" as "wrong headed" and this evaluation is readily applicable to the New York Policy makers maintain the dissents view.

obstruct, impede investigation and disclosure involving these underlying issues, in any furtherance of the unconstitutional scheme to deprive our civil rights.

This Court should be further mindful that while ex judge Alex Kosinski's invidious misconduct persisted for an extended period, so did the misconduct in the instant matter. Both involved abuses of power and indiscretions while protected under and by a Color of Authority. Both ignored the rights and boundaries of others.

This Court should take notice that the Jury Service demanded by N.Y.S., which has now been rescheduled until February 2019. Exemption, or accommodation, through a rescheduling or comprehensive protective order may be required. If deemed necessary, this Court should be mindful as to the Constitutional rights of the Appellant, including those within the Establishment Clause, and further consider that this service offends the fundamental notions that concern faithfully upholding the Constitutional Oath undertaken and compelled by this Court. Furthermore, that in the subversive nature of the political and government misconduct and its corrupt influence peddling, the enemies both "foreign and domestic" of the Constitution, are at work. The Appellant's conscientious objections, as set forth need to be respected, and any compulsion to participate in N.Y.S.'s demands to participate in any sham state processes, should be stayed, enjoined, or deemed as voidable, and antithetical to the Appellant's deeply held convictions and underlying beliefs in the magisterium, including that the Crucifixion was the causal result of corrupt back

room politics. This compelled service for the reasons stated, is inherently repugnant, morally objectionable and would be a First Amendment Constitutional violation.

The underlying petition and filing sets forth that some part of the targeting that occurred was with unconstitutional animosity of those New York State officials who maintained a lust for political power "by any means necessary," and who consorted and conspired to purge those from the community and District, its electorate and population demographic. That these political operatives belong to a political faction that deems those who do not support them, as "unevolved", "deplorable," "Thomistic," and are those who bitterly cling to "guns and bibles" and "do not have a right to exist in New York."

That the government services withheld, including the failure to provide full, fair complete inspections, investigations and reviews, together with omissions of duty, was at all times derived through this bias, hatred and animosity, of those operatives who perpetrated and maintained the scheme. This requires the Court to provide a heightened standard and strict standard of review in assessing the targeting and failure to remediate.

In *District of Columbia, et al., Heller* 478 F. 3d 370, the Court recognized the right to keep and bear arms was not limited to a collective military purpose on behalf of the State, but extended to the natural right of individual self-

defense. The dismissed filing sought protective measures based upon and citing of *Heller*, and set out that New York's hyper restrictive firearms licensing scheme has historically been and remains a part of the State's systemic graft and a remnant of Tammany. In as much as the Federal government maintains co-jurisdiction concerning firearms, and their distribution, the Appellant sought in his application protective mechanisms that included needed access that reasonably would allow an applicant to the existing threat.

This requires an applicant to adequately assemble a sufficient battery and accompanying gear in preparation to defend against the existing threat, that can not be accomplished through New York's "licensing schemes". At the very least the licensing provisions are designed to overly burden, frustrate and obstruct New Yorker's from keeping and bearing arms, and acquiring the training, to be, become and remain "well regulated" in the proficient use of firearms. Both New York, and National law enforcement agencies have accrued protocols, sufficient to ascertain some common denominators as to what the existing threat is, and how to combat it.

Justice Scalia in Heller, comprehensively describes the historical right, reasons and restrictions which have included the protection of religious minorities and political dissidents, and recognizes how this right has remained undeveloped, and that his opinion is the first expansive jurisprudence that welcomes meaningful discourse, including an alternative firearms licensing

review process beyond New York's corrupt processes. The District Court dismissal appears to be an attempt to suppress that discussion and ultimate need of resolutions.

Civilian licensing needs to be consistent with existing city, state and national law enforcement standards, training and protocols, not political connections and patronage. New York State and City disallows and infringes on features and detachable capacities, and training regiments, that are in common use by law enforcement personnel, both in New York City, State and nationally, as part of its effort to unconstitutional burden the right, and maintain its patronage system. The requirements deemed sufficient for its law enforcement personnel, should be equally applicable to its citizens with "shall issue directives" by promoting objective standards and eliminating its subjective criteria.

The District Court in its dismissal completely failed to review or address this issue. This omission now requires this Court to give directions in furtherance of this unaddressed prong of the application.

Conclusion

The failure to "comprehend" the underlying facts, and application of law was part of the patterns and practices and "willful blindness" of an unconstitutional "Monell" violation. Accordingly, the Court of Appeals should grant the appeal and reverse, remand and reassign this matter to District Court, together with adequate and extensive directives, including an interlocutory measure, so that the Appellant can proceed to the merits in a timely and orderly manner. To any extent these matters need greater clarity or amplification, the Court should schedule a conference and provide direction and permission as to the extent this Appellant can expand this brief.

Dated: Middle Village, New York
January 17, 2019

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APPENDIX

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CLOSED,APPEAL,ECF,PRO-SE,SUA-SPONTE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:18-cv-03112-CM

In re: Alan Giordani
Assigned to: Judge Colleen McMahon
Cause: 42:1983 Civil Rights Act

Date Filed: 04/09/2018
Date Terminated: 06/25/2018
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

In Re

Alan Giordani
as Proposed Executor for the Estate of Nancy Giordani

represented by **Alan Giordani**
82-14 60th Road
Middle Village, NY 11379
(718) 898-7077
PRO SE

Plaintiff

Alan Giordani
individually

represented by **Alan Giordani**
(See above for address)
PRO SE

Date Filed	#	Docket Text
04/09/2018		Case Designated ECF. (sac) (Entered: 04/10/2018)
04/23/2018	4	LETTER addressed to Judge Colleen McMahon from Alan Giordani, dated 4/11/18 re: Letter contains attached copy of Petition for a pre-action comprehensive protective order which has been filed in the U.S.D.C. for the Southern District of New York describing a twenty year hardship, imposed and suffered by residents of 60th Road in Queens County that included the plaintiff's late mother and her final years etc. Document filed by Alan Giordani.(sc) Modified on 4/24/2018 (sc). (Entered: 04/24/2018)
05/02/2018	5	ORDER DENYING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is denied because Plaintiff has sufficient assets to pay the fees. See 28 U.S.C. § 1915(a)(1). Plaintiff is directed to pay $400.00 in fees a $350.00 filing fee and a $50.00 administrative fee within 30 days of the date of this order. If Plaintiff fails to comply with this order within the time allowed, the action will be dismissed. The Clerk of Court is directed to assign this action to my docket, mail a copy of this order to Plaintiff, and note service on the docket. Filing Fee due by 6/1/2018. (Signed by Judge Colleen McMahon on 5/2/2018) (sac) (Entered: 05/03/2018)
05/02/2018		Transmission to Docket Assistant Clerk. Transmitted re: 5 Order Denying IFP Application, to the Docket Assistant Clerk for case processing. (sac) (Entered: 05/03/2018)

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05/02/2018		NOTICE OF CASE ASSIGNMENT - SUA SPONTE to Judge Colleen McMahon. Judge Unassigned is no longer assigned to the case. (sac) (Entered: 05/03/2018)
05/03/2018		Mailed a copy of 5 Order Denying IFP Application to Alan Giordani 82-14 60th Road Middle Village, NY 11379. (mhe) (Entered: 05/03/2018)
05/24/2018		Pro Se Payment of Fee Processed:$400.00 Check processed by the Finance Department on 05/24/2018, Receipt Number 465401210108. (jvs) (Entered: 05/24/2018)
05/24/2018	6	LETTER from Alan Giordani, dated 5/15/18 re: Plaintiff submits this letter with attached documents related to the underlying Federal matters which were inadvertently returned to the plaintif; and he informs the Court that this file requires the supplementation and updates so that the Court can follow and understand the New York Administrative efforts undertaken to acquire the necessary Testamentary Letters etc. Document filed by Alan Giordani. (Attachments: # 1 Exhibit)(sc) (Entered: 05/24/2018)
06/25/2018	7	ORDER OF DISMISSAL: The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Petitioner, and note service on the docket. Petitioner's request for Rule 27 relief is denied and his request for "protective relief" is dismissed for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). (Signed by Judge Colleen McMahon on 6/25/2018) (sac) (Entered: 06/25/2018)
06/25/2018	8	CIVIL JUDGMENT: IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under Rule 12(h)(3) of the Federal Rules of Civil Procedure. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's judgment would not be taken in good faith. IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to Plaintiff and note service on the docket. (Signed by Judge Colleen McMahon on 6/25/2018) (sac) (Entered: 06/25/2018)
06/25/2018		Transmission to Docket Assistant Clerk. Transmitted re: 7 Order of Dismissal, 8 Judgment - Sua Sponte (Complaint), to the Docket Assistant Clerk for case processing. (sac) (Entered: 06/25/2018)
06/26/2018		Mailed a copy of 7 Order of Dismissal 8 Judgment - Sua Sponte (Complaint), to Alan Giordani 82-14 60th Road Middle Village, NY 11379 with right to appeal forms attached. (mhe) (Entered: 06/26/2018)
07/23/2018	9	MOTION for Extension of Time to File Notice of Appeal. Document filed by Alan Giordani.(nd) (Entered: 07/23/2018)
08/06/2018	10	ORDER. The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court grants Plaintiff's motion for an extension of time to file a notice of appeal within thirty days of the date of this order, and the Clerk of Court is directed to terminate the motion. (ECF No. 9.) Attached to this order is a notice of appeal form. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). SO ORDERED. Granting 9 Motion for Extension of Time to File Notice of Appeal. (Signed by Judge Colleen McMahon on 8/6/2018) (rjm) (Entered: 08/06/2018)

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08/06/2018		Transmission to Docket Assistant Clerk. Transmitted re: 10 Order on Motion for Extension of Time to File to the Docket Assistant Clerk for case processing. (rjm) (Entered: 08/06/2018)
08/06/2018		Mailed a copy of 10 Order on Motion for Extension of Time to File to Alan Giordani 82-14 60th Road Middle Village, NY 11379. (aea) (Entered: 08/06/2018)
08/23/2018	11	NOTICE OF APPEAL from 7 Order of Dismissal,, 8 Judgment - Sua Sponte (Complaint),. Document filed by Alan Giordani. Filing fee $ 505.00, receipt number 465401216774. Form D-P is due within 14 days to the Court of Appeals, Second Circuit. (nd) (Entered: 08/24/2018)
08/24/2018		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 11 Notice of Appeal,. (nd) (Entered: 08/24/2018)
08/24/2018		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 11 Notice of Appeal, filed by Alan Giordani were transmitted to the U.S. Court of Appeals. (nd) (Entered: 08/24/2018)
10/16/2018	12	LETTER from Alan Giordani, dated 6/23/18 re: Plaintiff submits this letter with attached copy of confidential letter from the New York State Commission on Judicial Conduct to Alan Giordani notifying him of its acknowledgement of receipt of hs complaint dated 4/24/18. Document filed by Alan Giordani.(sc) (Entered: 10/17/2018)

PACER Service Center			
Transaction Receipt			
01/15/2019 11:18:56			
PACER Login:	ai0873	Client Code:	
Description:	Docket Report	Search Criteria:	1:18-cv-03112-CM
Billable Pages:	3	Cost:	0.30

A-4

CERTIFICATE OF TITLE

THE TITLE GUARANTEE COMPANY

(A NEW YORK CORPORATION HEREINAFTER CALLED "THE COMPANY")

No. 2183002

Certifies to SIDNEY MOSKOWITZ, ESQ.
261 BROADWAY
NEW YORK, NEW YORK

that it has examined title to the premises described in Schedule A in accordance with its usual procedure and agrees to issue its standard form of insurance policy in the amount of $ 21,600.00 insuring A FEE TITLE and the marketability thereof, after the closing of the transaction in conformance with procedures approved by the Company excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, incumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of said policy.

This Certificate shall be null and void (1) if the fees therefor are not paid (2) if the prospective insured, his attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company (3) upon delivery of the policy. Any claim arising by reason of the issuance hereof shall be restricted to the terms and conditions of the standard form of insurance policy. If title, interest or lien to be insured was acquired by the prospective insured prior to delivery hereof, the Company assumes no liability except under its policy when issued.

THIS CERTIFICATE IS INTENDED FOR LAWYERS ONLY. SUCH EXCEPTIONS AS MAY BE SET FORTH HEREIN MAY AFFECT MARKETABILITY OF TITLE. YOUR LAWYER SHOULD BE CONSULTED BEFORE TAKING ANY ACTION BASED UPON THE CONTENTS HEREOF. THE COMPANY'S REPRESENTATIVE AT THE CLOSING HEREUNDER MAY NOT ACT AS LEGAL ADVISOR TO ANY OF THE PARTIES OR DRAW LEGAL INSTRUMENTS FOR THEM. SUCH REPRESENTATIVE IS PERMITTED TO BE OF ASSISTANCE ONLY TO AN ATTORNEY. IT IS ADVISABLE TO HAVE YOUR ATTORNEY PRESENT AT THE CLOSING.

Dated 9 A.M. 11/23/62
Redated 9 A.M.

Premises in Section 12 Block 2860
on land map of County of Queens

HARRIET J. BROWN
TITLE OFFICER

THE TITLE GUARANTEE COMPANY

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Title No. [redacted]

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, incumbrances and other matters, if any, set forth in this certificate may be conveyed or mortgaged by:

FLORENCE G. HRIBAR

Title Recorded in Anthony Giordani & Nancy by deed 2/?/62

Source of title: By deed from EDWARD R. CLARK, as Executor of the Last Will & Testament of MARY [illegible] CLARK, deceased, dated 4/18/61, recorded 4/21/61 in Liber 7321 cp 594.

Inspection discloses: Dated 12/3/62 - #82-14 60th Road - 2 story brick semi-detached dwelling; flat roof; brick stoop on north side; garage rear under.

Disposition

We set forth the additional matters which will appear in our policy as exceptions from coverage, unless disposed of to our satisfaction prior to the closing or delivery of the policy.

Disposition	
Omit	1. Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth herein.
Omit	2. Mortgages returned herewith and set forth herein. (ONE) INSERT NUMBER
Omit	3. Any state of facts which an accurate survey might show.
Except	4. Survey exceptions set forth herein.
Omit	5. Affidavit of Title will be required on closing.

There are no restrictive covenants, conditions or easements of record unless set forth immediately following.

Disposition		
Except	A.	Declaration of Easement in Liber 3977 cp 75. As Amended by Declaration of Easement in Liber 3987 cp 24.
Except	B.	Rights of tenants, if any.
Omit	C.	Survey by William L. Savacool dated 5/13/38 shows vacant land. (as to premises and more), with proposed building outlined. No variations. Except changes since said date.
Omit	D.	Proof is required that Florence G. Hribar has not been known by any other married or maiden name within the last ten years; otherwise such other name must be revealed to the company and office searches amended to cover.
Omit	E.	A Judgment search against Anthony Giordani and Nancy Giordani discloses no returns.
Omit	F.	Proof is required that Nancy Giordani has not been known by any other married or maiden name within the last ten years; otherwise such other name must be revealed to the company and office searches amended to cover.

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Restrictive covenants, conditions, easements, or leases of record, if any, are set forth below:

AMENDED DECLARATION EASEMENT

QUEENS PARK HOMES INC. Dated 10/7/38

-to- Rec'd: 10/15/38

Liber 3987 cp 24.

Whereas, the parties hereto desire to supplement and amend said easement.

1. That said easement be supplemented and amended so that a perpetual and unobstructed right of way a easement in, upon and over that portion of the above described premises as is bounded and described as follows:

Beginning northeasterly side of 82nd Street distant 90.93 feet southeasterly from the intersection of the southeasterly side of 60th Road and northeast side of 82nd Street; thence northeast at right angles to 82nd Street and along the southeasterly boundary of said premises 144.07 feet to the northeasterly boundary of said premises, thence northwesterly along the northeasterly boundary of said premises 16 feet; thence southwesterly along a line 16 feet northwesterly of the southeasterly boundary of said premises and parallel thereto, to the northeasterly side of 82nd Street; thence southeasterly along the northeasterly side of 82nd Street 16 feet to beginning.

Said strip of land being the most southeasterly 16 feet of said premises first above described be and the same hereby is created located and established for use in common bythe present owner and future owners and occupants of the premises first above described, or any portion thereof, as a driveway or passageway for pleasure automobiles for ingress and egress from 82nd Street to the respective garages erected or to be erected on the premises first above described.

2. That the liens of the aforesaid mortgages now held by the party of the second part be and the same hereby are made subject and subordinate to the easement as herein supplemented and amended, which easement shall also bind and enure to the benefit of the holders of said mortgages with the same force and effect as if said easement as supplemented and amended had been created by declaration or agreement executed, delivered and recorded prior to the making if any of the aforesaid mortgages.

The said easement or right of way shall run with the land and bind the parties hereto, their respective successors and assigns.

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Restrictive covenants, conditions, easements, or leases of record, if any, are set forth below.

RIDER--Liber 3987 cp 24

The party of the first part owns:-
Beginning at the southeasterly side of 60th Road and the northeasterly side of 82nd Street; thence southeasterly 90.93 feet along 82nd Street; thence northeasterly 144.07 feet at right angles to 82nd Street to a point distant 120.32 feet southeasterly from the southeasterly side of 60th Road; thence northwesterly at right angles to 60th Road 120.32 feet to the southeasterly side of 60th Road; thence southwesterly along 60th Road 120.61 feet to beginning.

Whereas, the Dime Savings Bank of Brooklyn is owner and holder of mortgages by (1) ~~xxx~~ (2) in Liber 4461 mp 272 and others covering a portion of the above described premises, and

Whereas, aforesaid mortgages are subject to an easement for ingress and egress of pleasure automobiles which easement is recited in said mortgages, and which easement is in Liber 3977 cp 75.

Excepted

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Title No. 2147553

Restrictive covenants, conditions, easements, or leases of record, if any, are set forth below.

DECLARATION OF RIGHT OF WAY

QUEENS PARK HOMES INC.
a domestic Corporation

Dated: 8/26/38

-to-

Rec'd: 9/2/38
Liber: 3977 cp 75.

The party of the first part owns Lots 105 to 110 inclusive in Block 5 on said map. Now the party of the first part does hereby declare and agree that a perpetual and unobstructed right of way or easement in, upon and over that portion of the above described premises as in described as follows:

All that strip of land 15 feet wide running easterly from 82nd Street along the entire length of the southerly line of the lots first above described, said strip of land being the most souhterly 15 feet of said lots, and the same hereby is created, located and established for use in common by the present owner and future owners and occupants of the premises first above described, or any portion thereof, as a driveway or passageway for pleasure automobiles ofor ingress and egress from 82nd Street to the respective garages erected or to be erected on the premises first above described.

That said right of way or easement shall run with the land.

Except

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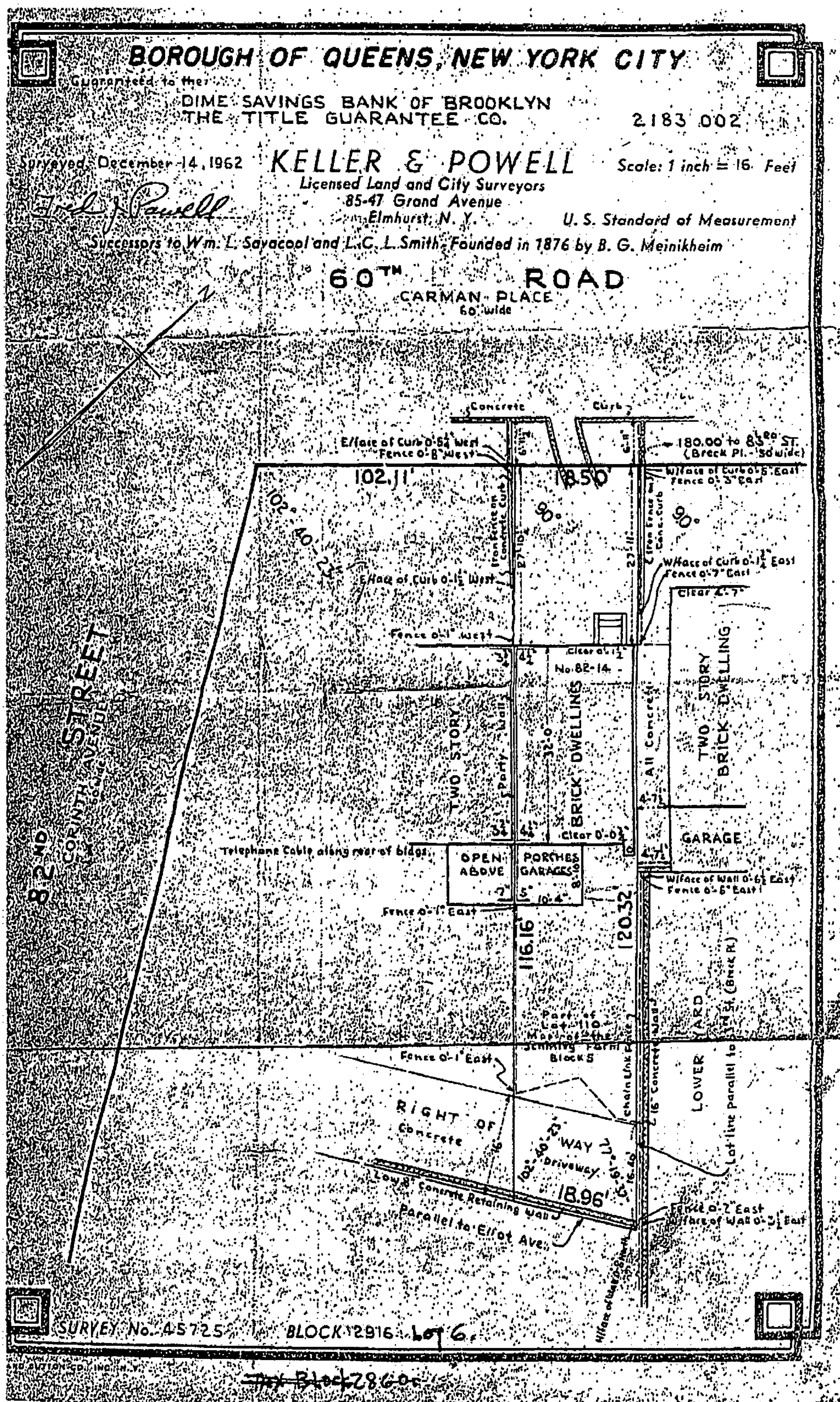
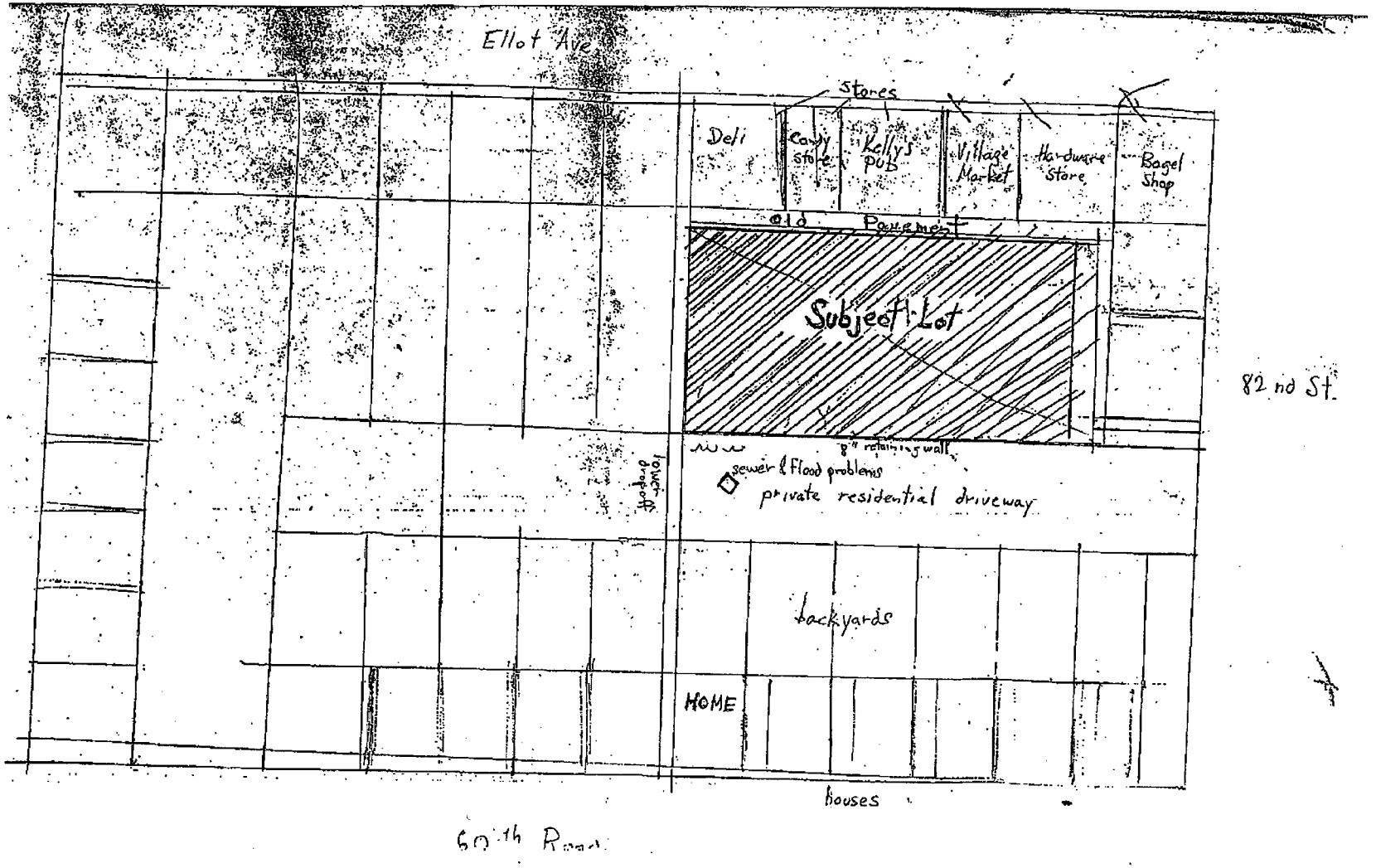
SCHEDULE A

A-10


BOROUGH OF QUEENS, NEW YORK CITY
Guaranteed to the
DIME SAVINGS BANK OF BROOKLYN
THE TITLE GUARANTEE CO.
2183 002
Surveyed December 14, 1962
KELLER & POWELL
Licensed Land and City Surveyors
85-47 Grand Avenue
Elmhurst, N. Y.
Scale: 1 inch = 16 Feet
U. S. Standard of Measurement
Successors to Wm. L. Sayacool and L. C. L. Smith. Founded in 1876 by B. G. Meinikheim
60TH ROAD
CARMAN PLACE
60' wide
N
Concrete Curb
180.00 to 83RD ST.
102.11'
18.50'
90°
102° 40' 22"
TWO STORY BRICK DWELLING
No. 82-14
TWO STORY BRICK DWELLING
GARAGE
OPEN ABOVE
PORCHES GARAGES
Telephone Cable along rear of bldgs.
116.16'
120.32'
82ND STREET
CORINTH AVENUE
RIGHT OF WAY
Concrete driveway
18.96'
LOWER YARD
Low 8" Concrete Retaining Wall Parallel to Eliot Ave.
SURVEY No. 45725
BLOCK 2916 Lot 6.
Tax Block 2860


Eliot Ave
Stores
Deli
Candy store
Kelly's Pub
Village Market
Hardware Store
Bagel Shop
Old Pavement
Subject Lot
8" retaining wall
sewer & Flood problems
private residential driveway
Power Poles
backyards
HOME
houses
82 nd St.
South Road

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SHORT FORM ORDER
NEW YORK SUPREME COURT - QUEENS COUNTY

IAS PART 14

----------X

ALAN GIORDANI, and others to be named,

Plaintiff,

-against-

HORWIN REALTY CO., In Rem premises Block 2916 LOT 30 A/k/A 82-01, 82-02, 82-05, 82-07, 82-09 AND 82-11 Eliot Avenue, HAROLD KALB, "COVEL'S" SERVICE STAR HARDWARE, VILLAGE MARKET, KELLY'S PUB & GRILL, "ANDY'S" DELICATESSEN & HUGHES CONTRACTING and other to be named,

Defendants.

----------X

Index No.: 15667 002
Motion Date: Dec. 16, 1997
Motion Cal. No.: 28

HON. DAVID GOLDSTEIN

The following papers numbered 1 to 10 read on this motion for summary judgment and cross-motion to strike affirmative defenses.

	PAPERS NUMBERED
Notice of Motion-Affirmation-Exhibits.....	1-5
Cross-motion-Affidavits-Exhibits	6-9
Answering Affirmations-Exhibits	
Reply Affirmation	10-11

Upon the foregoing papers, it is ordered that this motion by defendant Harold Kalb for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint as to him, is granted.

In this action, plaintiff seeks multiple relief with respect to a certain parcel of land, 98 feet long and 30 feet wide, which plaintiff claims he had acquired by adverse possession, by reason of his having continuously and openly played on the property when he was between 3 and 13 years. The complaint seeks multiple relief, including, *inter alia*, back rent, damages resulting from defendants having interfered with plaintiff's right of quiet enjoyment and maintenance fees to remove hazardous objects

It is unnecessary on this motion to reach the merits of the pleaded causes of action, since it is clear on this record that, at all relevant times, movant acted only as attorney for Horwin Realty and had no ownership or management interest in the property. Nor has any conflicting proof been offered by plaintiff to establish a genuine triable issue as to any interest on the part of Kalb in the subject property or any action by him which would give rise to a cognizable claim for relief. The barren claim that some tenant had told plaintiff that "Harold Kalk" was in charge is patently insufficient for that purpose. Nor is there any claim of fraudulent, collusive or tortious conduct by Kalb.

The cross-motion by plaintiff for multiple relief is denied. The branch of the cross-motion to strike Kalb's affirmative defenses is denied as academic in view of the dismissal of the complaint as to that defendant. The jurisdictional defense has been waived in any event, since no motion was made within 60 days after service of the answer.

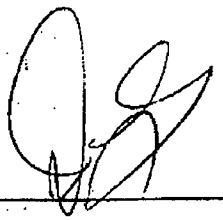
So much of the cross-motion as seeks leave to serve a supplemental summons and complaint against five named individuals is denied, without prejudice. The cross-moving papers fail to identify who these persons are or the basis of claimed liability. Moreover, to the extent any are shareholders of any corporate defendant, which is also not disclosed on this record, they may not be joined as party defendants.

Accordingly, upon the foregoing, the motion by defendant Kalb for summary judgment dismissing the complaint as to him is granted and the complaint is dismissed as against Kalb. The cross-motion is

denied in all respects in accordance with the foregoing.

Serve a copy of this order with notice of entry without undue delay.

Dated: December 18, 1997



J.S.C.

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13667/1997

Opened: 6/30/1997 Type: **Other**

GIORDANI,ALAN vs. **HORWIN REALTY CO ETAL**

Atty: Atty:

Filed	Actions	RecRoom
2/10/1998	COPY OF ORDER WITH NOTICE OF ENTRY	
12/29/1997	AFFTS,NOTICE OF MOTION,CROSS MOTION,ORDER SIGNED CM 12/30/97	
10/1/1997	AFFIDAVIT OF SERVICE	
10/1/1997	CONSENT TO CHANGE ATTORNEY,DEMAND	
9/4/1997	AFFIDAVITS OF SERVICE	
7/28/1997	NOTICE OF APPEAL, COPY FORWARDED TO APPELLATE DIVISION	
7/25/1997	AFFTS,UNSIGNED ORDER TO SHOW CAUSE-JUDGES MEMO	
7/22/1997	REQUEST FOR JUDICIAL INTERVENTION	
6/30/1997	SUMMONS AND COMPLAINT	
	Total: 9	

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(718) 875-1300

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
45 Monroe Place
Brooklyn, N. Y. 11201

MARTIN H. BROWNSTEIN
CLERK OF THE COURT

ARNOLD EDMAN
MEL E. HARRIS
DEPUTY CLERKS

August 4, 1997

Alan Giordani
82-14 60th Road
Elmhurst, N. Y. 11373

Re: Giordani v Horwin Realty Co.

Dear Sir:

The determination of Justice Goldstein to not sign your order to show cause is not appealable and, if the order to show cause was submitted on notice to the other party, it is not subject to review under CPLR 5704.

Your papers are herewith returned to you.

Yours truly,

CLERK'S OFFICE

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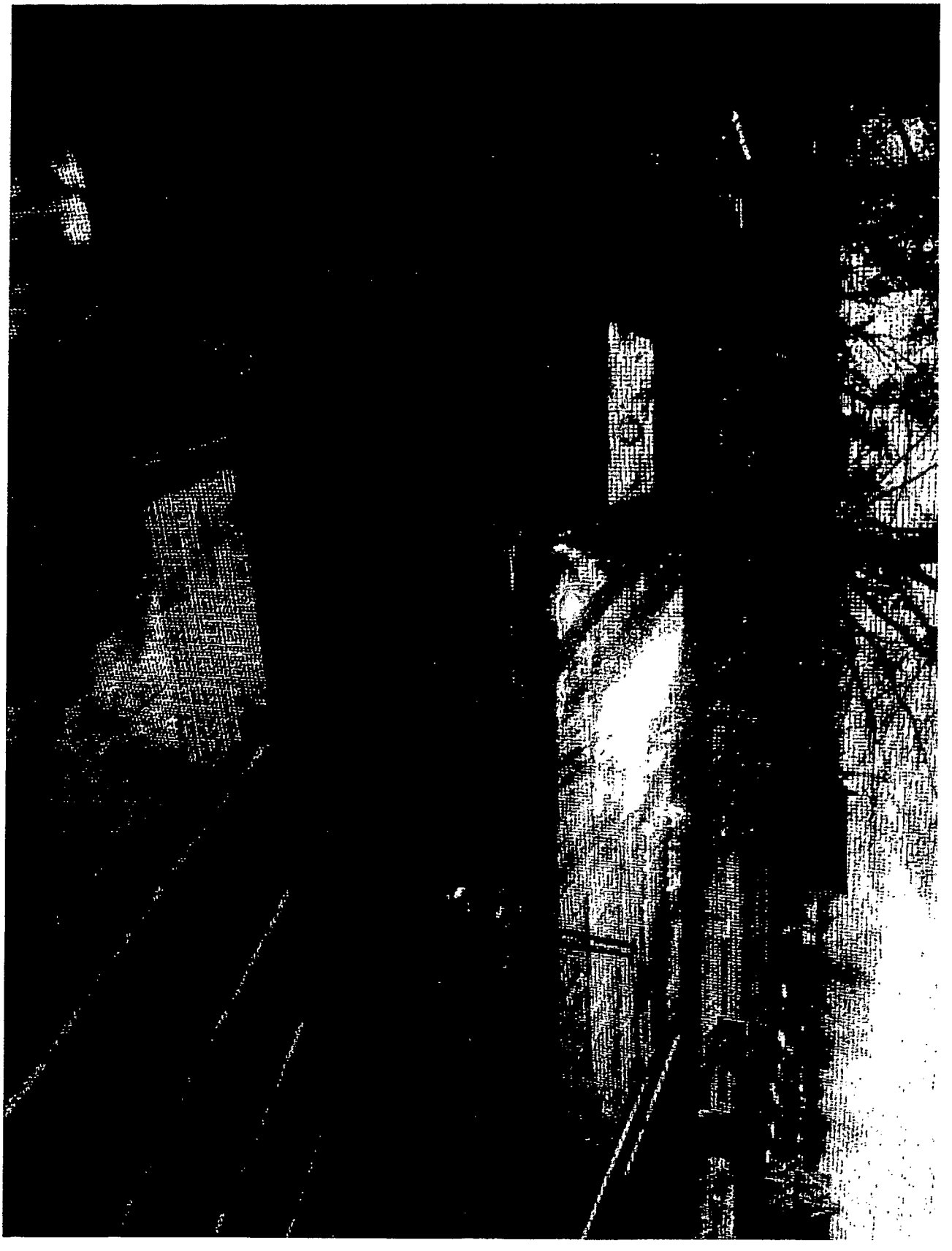

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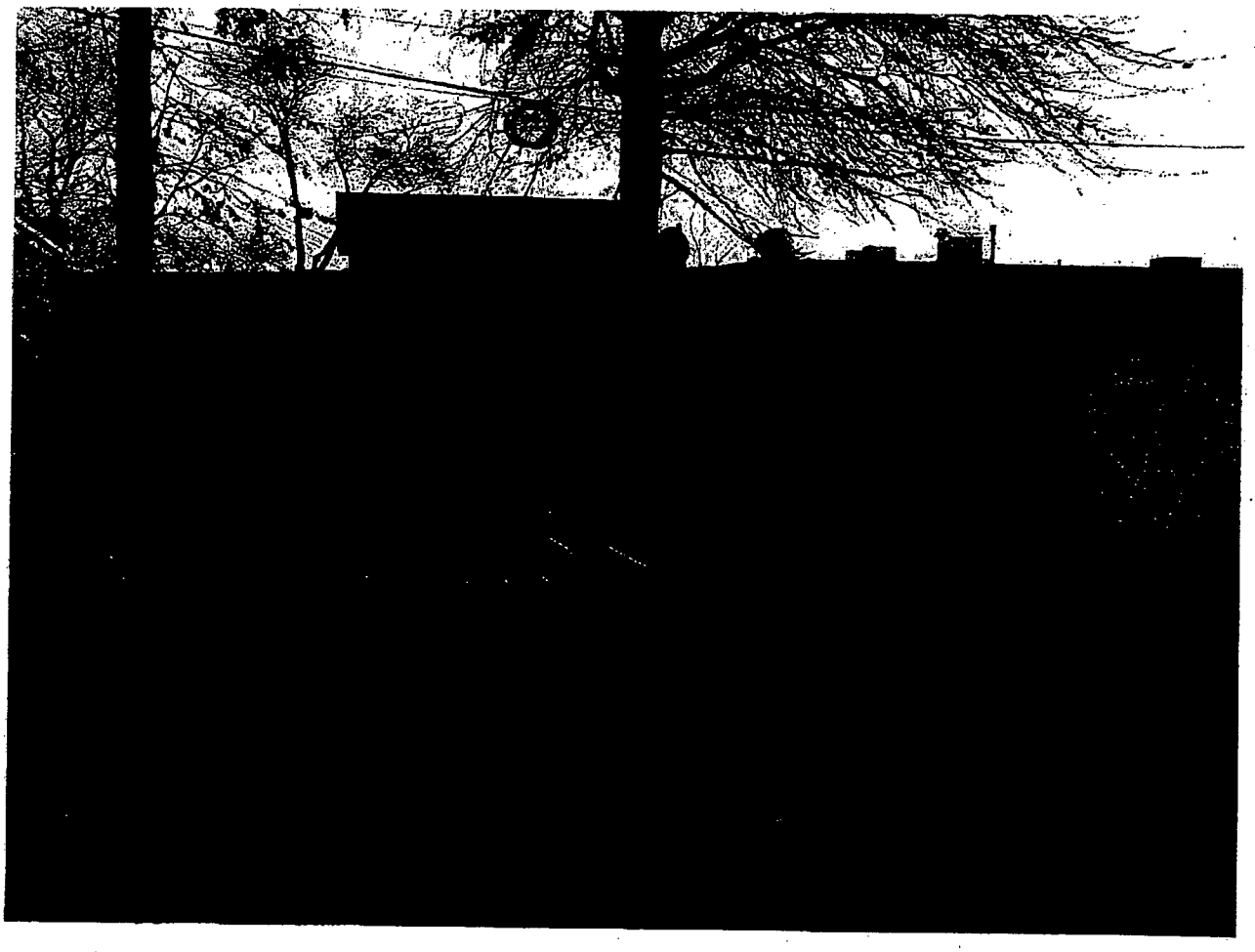
A-19



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Swastika/"Weekend Warriors" photo taken in June 1997 of the back entryway and side of Horwin building a/k/a 60-35 82nd Street. At the inception of the "Beer Garden" this site operated as a Cosa Nostra gambling den a/k/a "Café Village" for years and evidenced the mentality of its absentee landlord Horwin/Horowitz family. It was padlocked and grafitti removed only as a result, of embarrassing public pressure applied.

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8 POLICE INDICTED IN ADDICT ARRESTS
By DAVID BURNHAM
New York Times (1857-Current file); Sep 7, 1972; ProQuest Historical Newspapers The New York Times
pg. 1

8 POLICE INDICTED IN ADDICT ARRESTS

Accused of Stealing $10,000 From Suspects in Bronx During Last 2½ Years

By DAVID BURNHAM

Three detectives and five patrolmen have been indicted for stealing money from addicts while making narcotics arrests in the last two and a half years. District Attorney Burton B. Roberts of the Bronx announced yesterday.

The investigation leading to the indictment of the eight men on a variety of robbery, grand larceny, conspiracy and official misconduct charges was unusual because it was sparked by information from a police undercover agent and completed with the assistance of a second policeman who agreed to cooperate after he reportedly had been caught stealing.

The men were accused of having stolen $10,000. Mr. Roberts said at a news conference that the investigation was continuing and that more indictments were expected.

The importance of the case and the unusual techniques used to investigate it—in the eyes of the Police Department—were indicated by the presence at the conference of Commissioner Patrick V. Murphy,

Continued on Page 50, Column 1

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8 Policemen Indicted for Stealing Addicts' Money

Continued From Page 1, Col. 1

First Deputy Commissioner William H. T. Smith, Deputy Commissioner William P. McCarthy, who is in charge of organized-crime control, and other police officials.

In another unusual development in the case, Mr. Roberts asked Supreme Court Justice Joseph P. Sullivan to release from jail two addicts who the prosecutor said had pleaded guilty to possession of heroin and cocaine and been sentenced to jail on the basis of untrue sworn statements by two of the eight indicted policemen.

Mr. Roberts said his office had decided to make similar requests for the defendants in four other cases because of apparent police perjury and still was investigating 15 additional cases.

The two prisoners were released yesterday, pending a final decision Sept. 14. Each has already served seven and a half months in jail.

Mr. Roberts said that the investigation by his office and the Police Department, which resulted in the charges against the eight policemen, proved that intimate cooperation existed between the two branches of law enforcement and their sincere desire "to rid the department of corruption."

"We must eliminate the scourge of police corruption if we are to eliminate the scourge of crime that infects this city," he declared.

Commissioner Murphy, sitting at the prosecutor's side in his office in the State Supreme Court Building at 851 Grand Concourse in the Bronx, said he found it "troubling" that corruption appeared to continue despite the many efforts to prevent it.

The Commissioner announced he was conducting his own investigation to determine whether the commanders involved had "lived up to their responsibilities."

If the investigation found commanders who had failed to properly supervise their men, he said, they could be removed from their commands, demoted or face Police Department charges.

Questioned about the impact of the indictments on police morale, Mr. Murphy said "morale is strengthened as our integrity is strengthened."

The investigation disclosed yesterday is the second major inquiry on police corruption to emerge here in the last few months in which policemen implicated in criminal acts have been persuaded to collect evidence against their colleagues.

This investigative technique, pioneered here by the Knapp Commission, resulted in criminal or department charges being brought five months ago against 37 policemen assigned to enforce gambling laws in Brooklyn.

The Bronx indictments were different in that the initial investigation, which began in February, was triggered by leads provided by a policeman specifically assigned to narcotics enforcement in the Bronx to spot indications of corruption.

According to Mr. Roberts, the information of Edward Williams, an undercover policeman, led to the indictment of three other policemen on charges of robbery and grand larceny for allegedly stealing $250 in cash while making a narcotics arrest on Feb. 11.

From the initial lead provided by the undercover policeman and the additional assistance of the "turned" detective, who Mr. Roberts identified as Vincent O'Keefe, the investigators identified 11 instances where money—anywhere from $47 to $4,000—was stolen from addicts.

Not all of the eight policemen were involved in each alleged theft but two groups of them were indicted for conspiring to steal and share the funds taken from those they were arresting.

The eight policemen pleaded not guilty at their arraignment yesterday before Justice Sullivan and were paroled without bail pending a hearing Wednesday.

The detectives indicted are John Reilly, 28 years old; James Connolly, 36, and Theodore Crews, 38. The patrolmen indicted are Robert Petro, 34; Patrick Kelly, 28; Joseph DeRosa, 27; Barney Cohen, 37, and Lewis Orologio, 41.

All have now been suspended from the department pending final disposition of their cases.

The New York Times/Patrick A. Burns

District Attorney Burton B. Roberts speaking at the conference on indictment of policemen and detectives. With him in his Bronx office are Police Commissioner Patrick V. Murphy, left, and Deputy Commissioner William P. McCarthy, center rear.

DEATH SALOON: Owner Pat Kelly (in white hat) talks with police outside his Middle Village cop and fire[illegible] — a father of two — was shot to death yesterday. [illegible]

Immigrant killed in Qns. bar

By [illegible]ORENA MONGELLI, [illegible]EX GINSBERG and [illegible]ASANI GITTENS

[illegible] hard-working immi[illegible] only six months [illegible] returning to his [illegible] children in Ecua[illegible] was murdered yester[illegible] the Queens bar [illegible] he worked.

[illegible] Cajas, [illegible] was [illegible] between the stove [illegible] a counter in the [illegible]en at the back of Kel[illegible] Bar in Middle Village lying in a pool of blood with a gunshot wound in his chest, cops said.

A knife was found by Cajas' body, which initially led police to believe he was stabbed.

Police yesterday were still searching for a suspect and motive for the crime, which took place at a bar locals in the quiet neighborhood described as a cop and fireman hangout.

LOUIS CAJAS
Saving for Ecuador return.

Cajas started his day washing dishes and cleaning up at about 9 a.m. Police sources said he was last seen alive at about 9:30 by bar owner Pat Kelly and his son. They left the bar, and Kelly's wife was working in the basement when Cajas was killed upstairs.

She apparently heard nothing, the sources said. Kelly and his son returned at about 10:20 a.m. and made the gruesome discovery.

Distraught over the death of Cajas, who had worked 12-hour days, seven days a week as a dishwasher and cleaner, Kelly said, "This kid was a sweetheart."

Relatives said Cajas had been in the city for 10 years and was working to save enough money to return to his wife and two teenage daughters in Ecuador.

"I don't know how we can tell her," said Manuel Alao, 34, of his sister, Zoila, Cajas' wife.

Alao, who rooms with Cajas in an apartment on Trinity Avenue in the Melrose section of The Bronx, said his brother-in-law was only six months away from reuniting with his family in a newly built house.

"He was ready to go [back]," said Alao, who couldn't believe that anybody would want to hurt Cajas. "He had no enemies; he was a really good person.

"I don't know why anyone would do something like [that]. I don't know why anyone would take an honest man's life. How can somebody be so evil? I want to remember him with love."

Alao went on: "He liked to play sports; he liked to play soccer, and when he had the chance he liked to go fishing out on Long Island."

Cajas' sister-in-law Luisa Alao said the family is setting up a fund to send his body back to Ecuador. Donations can be sent to the family at 39-63 65th St., Woodside, N.Y. 11377. For more information, call (718) 446-4137.

Additional reporting by Erika Martinez

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JUROR QUALIFICATION QUESTIONNAIRE

- NOTICE OF DELINQUENCY -
QUEENS COUNTY

Office Use
WGN3

Our records indicate that you have not responded to a qualification questionnaire previously sent to you. The law requires you to complete this questionnaire. All answers are confidential. Please respond within 10 days. This is not a summons. You are NOT required to appear for service at this time. The questionnaire must be completed:

ON THE WEB: www.nyjuror.gov/qualify

***OR* BY PHONE:** TOLL FREE 1-866-648-4880

***OR* BY MAIL:** RETURN COMPLETED QUESTIONNAIRE IN ENCLOSED ENVELOPE.

*** PLEASE MARK APPROPRIATE BOX WITH ☒ ***

The New York State Court System does not ask for information such as credit card or bank account numbers or personal information such as names and ages of family members. Do not give this kind of information to anyone claiming to represent the courts. If you receive this type of request, contact your county Commissioner of Jurors.

If you have questions, please call **718-262-7200** OR visit **www.nyjuror.gov.**

ALAN GIORDANI
8214 60TH RD
MIDDLE VLG, NY 11379

703085297 **17023**

Please indicate here if your name or address has changed or if you use a different mailing address.

Name_____

Address_____ Apt.#____

City/Town_____ Zip_____

Phone_____ Email_____

1. What is your date of birth? 1961

2. Can you understand and communicate in English? YES ☐ NO ☐

3. Are you a citizen of the United States? YES ☐ NO ☐
   IF NO, mail a copy of a current Visa, Passport, Green Card or Employment Authorization Card with the completed questionnaire.

4. Are you a resident of **QUEENS COUNTY?** YES ☐ NO ☐
   IF NO, mail copies of **TWO** forms of proof with the completed questionnaire:
   Acceptable proof includes tax return (with amounts deleted), voter registration card, deed, lease, mortgage, driver's license, DMV-ID, utility bill. Only one can be a utility bill. Commissioner has discretion to require tax return. You will be advised if this is required.

5. Are you at least 18 years old? YES ☐ NO ☐
   IF NO, mail a copy of birth certificate with the completed questionnaire.

6. Have you been convicted of a felony? YES ☐ NO ☐
   IF YES, indicate crime, sentence, court and date of conviction in the space provided on back of this form and return a copy of the certificate of disposition. If you have a Certificate of Good Conduct or Relief from Civil Disabilities, you are eligible to serve.

7. Have you served as a juror in a court in New York state or a federal court in the last six years? YES ☐ NO ☐
   IF YES, mail a copy of certificate of service with completed questionnaire.

False statements are punishable as a crime under Penal Law Section 210.45.

SIGNATURE: _____ DATE: ____/____/____
Month Day Year

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Re: ALAN GIORDANI as proposed Executor of the Estate of decedent Nancy Giordani, and ALAN GIORDANI individually.	18-CV-3112 (CM) ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Petitioner,[1] proceeding *pro se*, brings this action under Rule 27 for "Preaction Relief." Petitioner claims entitlement to protective orders arising from alleged civil rights violations under § 1983.

In addition to this submission, Petitioner filed an *in forma pauperis* application, but declared that he was able to pay the costs of these proceedings. The Court therefore denied the application, and Petitioner paid the relevant fees.

For the reasons set forth below, the Court denies Petitioner's request and dismisses the action for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

STANDARD OF REVIEW

The Court has the authority to dismiss a filing, even when the plaintiff has paid the filing fee, if it determines that the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (*per curiam*) (citing *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (*per curiam*) (holding that Court of Appeals has inherent authority to dismiss frivolous appeal)), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Petitioner, who is proceeding *pro se* in this matter, is currently

[1] Rule 27 characterizes a request made to perpetuate testimony as a "petition" and the party making such a request as "the petitioner." Fed. R. Civ. P. 27. Therefore, this order refers to Alan Giordani, who filed the request, as the "Petitioner." In the request, Giordani also refers to himself as a "Petitioner."

admitted to the New York State Bar. Because Petitioner is an attorney, he is not entitled to the special solicitude usually granted to *pro se* litigants. *See Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010).

BACKGROUND

Petitioner Alan Giordani requests "preaction relief" to enable him to prepare a 42 U.S.C. § 1983 claim against the alleged conspirators involved in a scheme to construct and operate a beer garden. He asserts that a commercial development that includes a beer garden ("the beer garden") encroached on his private driveway, co-owned by him and his neighbors. As a result of the scheme, the alleged conspirators allowed the beer garden to operate in violation of local zoning ordinances and allowed patrons to continually trespass on Petitioner's property.

Since 1997, when the encroachment first occurred, Petitioner has filed numerous complaints and requested the assistance of several Queens County, New York City, and New York State officials. Petitioner claims that the alleged conspirators refused to intervene because of their "illegal arrangement and special relationship" with the beer garden owner and patrons, and that they did so to "unjustly enrich" themselves and consolidate political power at the expense of Petitioner's civil rights. He also alleges that a "patronage" system for appointing judges "may" exist, and that the system prevented him from obtaining relief in the state courts on this matter in *Giordani v Horwin Realty Co.* No. 15667/1997 (N.Y. Sup Ct. July 22, 1997) ("*Giordani*"). Petitioner filed that action in 1997, and he lost when the court granted summary judgment for the defendants. He also asserts that this system prevented him from succeeding on unrelated cases brought in state court in Queens County on behalf of his clients.

Petitioner claims that the encroachment and the continued presence of the beer garden is an unconstitutional "taking" under the Fifth Amendment and "a seizure and theft of valuable property rights" under the Fourth Amendment. He also claims that the beer garden's operation

and the "menace of bar room thugs" produced a level of noise and anxiety that resulted in "inhuman and degrading treatment" constituting torture in violation of the Eighth Amendment.

Furthermore, Petitioner claims, his neighbors were likely selected as targets, in violation of the Fourteenth Amendment, because they are foreign nationals and immigrants. He also asserts that the alleged conspirators mistreated him and his family, in violation of the First Amendment, because his late mother was "readily identifiable as a devout Roman Catholic" and his family holds conservative values that "are not in lockstep" with the "political agenda" of the Democratic Party in New York, or nationally. Additionally, Petitioner claims that he was subjected to a "harassment, surveillance and spying campaign" to "suppress [his] further objections through intimidation." He also expresses concerns about officials including him on a "political enemies list" in retaliation for his complaints, resulting in "illicit . . . surveillance" and excessive investigation.

Petitioner also asserts that the alleged conspirators conspired to deny him and his neighbors the right to vote. He claims that Queens County officials worked to "suppress the vote" and may have engaged in voter fraud, and that the "patronage system has transformed New York State and more specifically Queens County from a constitutional democracy into a kleptocracy . . . resulting in the deprivation of Petitioner's civil rights."

Several of Petitioner's claims arise out of the actions of the New York City Police Department ("NYPD"). Petitioner asserts, for example, that off-duty NYPD officers frequent the beer garden, in violation of the Third Amendment, as money provided by the federal government caused "the [NYPD] to evolve into a quasi-military organization." He also alleges that the NYPD and the State of New York are involved in "successive firearms licensing scandals" that violate New York City residents' Second Amendment rights. According to Petitioner, these

scandals have provided "quasi-judicial discretion to non-judges" through a "hyper restrictive licensing process" that denies due process. He claims that these licensing regulations may be used to further a "caste system" by "issuing valuable permits to insiders and depriving them to outsiders." Petitioner believes that, as a result of these policies, he would be unable to "acquire [the] tools, gear, and kit necessary and proper to undertake meaningful self-defense measures" should he attempt to protect himself from anticipated retaliation resulting from his claims.

Petitioner requests that the Court provide the following: (1) "An order appointing a Federal Magistrate and/or Federal Monitor, including directions and protective measures in the event New York State or City targets the Petitioner with any form of reprisal"; (2) "An order directing the Queens Country Clerk's Office to transfer to [the] District Court [the *Giordani* file] together with any and all files [the] Court deems relevant toward the disposition of the matters described with[in]"; (3) "An order enjoining the Queens County Clerk Commissioner of Jurors Office from further enforcement on it[s] jury process and demands, until such a time that this Court deems appropriate"; and (4) "An order compelling the disclosure of all relevant documents and official records, memos, and data etc., as part of the comprehensive disclosure demands anticipated with this matter."

DISCUSSION

A. Petition for Preaction Relief

Rule 27 of the Federal Rules of Civil Procedure authorizes the taking of a deposition prior to commencing an action by "a person who wants to perpetuate testimony about any matter cognizable in a United States court." Fed. R. Civ. P. 27. But "the purpose of [Rule 27] is to preserve and perpetuate known testimony, not to provide litigants with a vehicle for the ascertainment of evidence." *Bryant v. Am. Fed'n of Musicians of the US & Canada*, No. 14-CV-2598 (PAC) (HBP), 2015 WL 7301076, at *2 (S.D.N.Y. Nov. 18, 2015), *aff'd sub nom. Bryant*

v. Am. Fed'n of Musicians of the United States & Canada, 666 F. App'x 14 (2d Cir. 2016) (quoting *Shuster v. Prudential Sec. Inc.*, No. 91-cv-901(RWS), 1991 WL 102500, at *1 (S.D.N.Y. June 6, 1991)). "It is not a method of discovery to determine whether a cause of action exists; and, if so, against whom action should be instituted." *Id.*

To prevail on his request for a Rule 27 deposition, Petitioner must satisfy three elements:

> First, [he] must furnish a focused explanation of what [he] anticipate[s] any testimony would demonstrate. Such testimony cannot be used to discover evidence for the purpose of filing a complaint. Second, [he] must establish in good faith that [he] expect[s] to bring an action cognizable in federal court, but [is] presently unable to bring it or cause it to be brought. Third, [Petitioner] must make an objective showing that without a Rule 27 [deposition,] known testimony would otherwise be lost, concealed, or destroyed.

In Re Allegretti, 229 F.R.D. 93, 96 (S.D.N.Y. Aug. 2, 2005). Petitioner has failed to satisfy any of these elements. Thus, his request for preaction relief is denied.

B. Other Claims for Relief

In addition to requesting relief under Rule 27, Petitioner claims he is entitled to protective orders arising from alleged civil rights violations under § 1983. The Court lacks subject matter jurisdiction over these claims and, therefore, cannot provide the requested relief.

1. Rooker-Feldman

To the extent that Petitioner challenges the outcome of *Giordani*, or seeks a federal review of a state court matter, such a claim is barred under the *Rooker-Feldman* doctrine. The doctrine – created by two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983) – precludes federal district courts from reviewing final judgments of the state courts. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that federal district courts are barred from deciding cases "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting

district court review and rejection of those judgments."). The *Rooker-Feldman* doctrine applies where the federal-court plaintiff: (1) lost in state court, (2) complains of injuries caused by the state-court judgment, (3) invites the district court to review and reject the state court judgment, and (4) commenced the district court proceedings after the state-court judgment was rendered. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014). Here, the doctrine applies because Petitioner lost in state court when his case was dismissed on summary judgement, and this court cannot review that decision. Thus, any claim Petitioner seeks to reassert arising out of his state court matter is barred under the *Rooker-Feldman* doctrine.

2. Standing and Lack of Controversy

Article III, Section 2 of the Constitution limits the jurisdiction of the federal courts "to the resolution of 'cases' and 'controversies.'" *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62 (2d Cir. 2012) (citation and internal quotation marks omitted). This requires federal courts to adjudicate only "actual and concrete disputes, the resolutions of which have direct consequences on the parties involved." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013). Standing to bring a lawsuit is a threshold requirement that prevents a plaintiff from bringing claims before a court unless there exists a case or controversy. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975) ("[W]hether the plaintiff has made a 'case or controversy' . . . within the meaning of Article III . . . is the threshold question in every federal case, determining the power of the court to entertain the suit."); *see also Arizonians for Official English v. Ariz.*, 520 U.S. 43, 64 (1997). The burden of establishing standing to bring a lawsuit rests with the party bringing the action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

To have standing to sue in a federal court, a plaintiff must show that: (1) he has suffered "an invasion of a legally protected interest which is concrete and particularized, and actual and imminent, not conjectural or hypothetical"; (2) his injury is "fairly traceable to the challenged

action of the defendant and not the result of the independent action of some third party not before the court"; and (3) "the injury will be redressed by a favorable decision." *Id.* at 560-61 (internal quotations omitted). "'If [a] plaintif[f] lack[s] Article III standing, a [federal] court has no subject matter jurisdiction to hear [his] claim.'" *Mahon*, 683 F.3d at 62 (citation omitted). And "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the [claim]." Fed. R. Civ. P. 12(h)(3).

Petitioner fails to establish standing to bring claims arising out of his interactions with the alleged conspirators. First, while Petitioner may allege personal injuries arising out of the continued operation of the beer garden, he fails to assert personal injuries arising out of his other interactions with the alleged conspirators. Second, even if he did satisfy the first element with respect to his beer garden claims, he fails to name any defendants, and therefore fails to connect any of his alleged injuries to the actions of a party before the Court.

Finally, Petitioner fails to assert how the relief he requests would redress his alleged injuries. It is not clear what his injuries are or how this Court could fashion a remedy to address them. Rather, it appears that Petitioner seeks federal intervention to protect him as he contemplates litigating a future matter. This Court does not have the jurisdiction to issue the protective orders. Because Petitioner cannot satisfy all of the requirements for any of his claims, he has not established standing to bring a claim, and the Court lacks subject matter jurisdiction and cannot provide the requested "protective relief." *See id.*

3. Venue

The Court notes that if Petitioner could establish standing and assert a claim not barred under the *Rooker-Feldman* doctrine, the Eastern District of New York ("EDNY") appears to be the proper venue for such an action. *See* 28 U.S.C. § 1391(b)(2). Should Petitioner choose to file a claim against a named party, he should do so in the EDNY. The Court offers no opinion on the

merits of such a claim and declines to transfer this petition in the interest of justice under 28 U.S.C. § 1404(a).

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Petitioner, and note service on the docket. Petitioner's request for Rule 27 relief is denied and his request for "protective relief" is dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 25, 2018
New York, New York

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Re: ALAN GIORDANI as proposed Executor of the Estate of decedent Nancy Giordani, and ALAN GIORDANI individually.	18-CV-3112 (CM) CIVIL JUDGMENT

Pursuant to the order issued June 25, 2018, dismissing the complaint,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under Rule 12(h)(3) of the Federal Rules of Civil Procedure.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's judgment would not be taken in good faith.

IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to Plaintiff and note service on the docket.

SO ORDERED.

Dated: June 25, 2018
New York, New York

COLLEEN McMAHON
Chief United States District Judge

A-34

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Re: ALAN GIORDANI as proposed Executor of the Estate of decedent Nancy Giordani, and ALAN GIORDANI individually

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

18-CV-3112 (CM)( )

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: N/A

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☒ order entered on: June 25 2018 and August 6 2018

(date that judgment or order was entered on docket)

that: Petitioner appeal Sua Sponte dismissal dated June 25 2018 and August 6, 2018 scope of review failing to appoint a "special committee"

(If the appeal is from an order, provide a brief description above of the decision in the order.)

August 23, 2018
Dated

A. Giordani
Signature

GIORDANI, ALAN V
Name (Last, First, MI)

82-14 60th Road Middle Village N.Y. 11379
Address City State Zip Code

(718) 898-7077
Telephone Number

alangiordani@gmail.com
E-mail Address (if available)

Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

Rev. 12/23/13

$505.00 8/23/18 4654012116774

UNITED STATES SUPREME COURT

----------X

IN RE: ALAN GIORDANI AS PROPOSED EXECUTOR FOR

THE ESTATE OF DECEDENT NANCY GIORDANI, AND

ALAN GIORDANI INDIVIDUALLY, 18-1164

APPELLANT **AFFIDAVIT OF**

V. **CERTIFICATION**

SOUTHERN DISTRICT OF NEW YORK, BY THE

U.S. DEPARTMENT OF JUSTICE

APPELLEE

----------X

ALAN GIORDANI, being duly sworn deposes, and certifies pursuant to U.S.C. TITLE 18 Section 1001 that:

ON MARCH 29, 2019 the undersigned deponent served via UNITED PARCEL SERVICE

A MOTION TO STAY/REVERSE AND REINSTATE APPEAL;

U.S. DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY SOUTHERN DISTRICT OF NEW YORK

CHIEF APPELLATE ATTORNEY BENJAMIN TORRANCE/GEOFFREY BERMAN

86 CHAMBERS STREET

NEW YORK, N.Y. 10007

Deponent further certifies that the within MOTION is now being served in supplementation upon the appellee as of today's date MARCH 29, 2019.

Dated: MARCH 29, 2019

ALAN GIORDANI