

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC :
GROUP LLC, :
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 Plaintiffs, :
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 :
 -against- :
 :
 RONALD E. SWEENEY, CORTEZ BRYANT, :
 ASPIRE MUSIC GROUP LLC and YOUNG MONEY :
 ENTERTAINMENT, INC., :
 :
 Defendants. :
 :
 -----X

Index No. 652560/12
Assigned to
Justice Shlomo Hagler
Motion No. 002

**AFFIRMATION IN OPPOSITION TO PLAINTIFFS'
MOTION FOR POST NOTE OF ISSUE DISCOVERY AND
FOR A COMMISSION TO TAKE OUT-OF-STATE DEPOSITION**

PHILIP R. HOFFMAN, an attorney duly licensed to practice before the courts of the State of New York, affirms under penalties of perjury as follows:

1. I am a member of the firm of Pryor Cashman LLP, attorneys for defendants Ronald E. Sweeney ("Sweeney"), Cortez Bryant ("Bryant"), Aspire Music Group LLC ("Aspire") and Young Money Entertainment, Inc. I submit this affirmation in opposition to Plaintiffs' motion for an order: (a) granting them permission to open up Bryant's deposition, notwithstanding that they closed it on August 7, 2013 and filed their Note of Issue on May 8, 2014; and (b) issuing a commission to take an out-of-state deposition of non-party witness Sharlene Clarke ("Clarke"), notwithstanding that the discovery deadline of September 18, 2013 is long past and that they claim a need to question her based upon documents that they have had in their possession since October 2013. For the reasons set forth herein, Plaintiffs' motion should be denied in its entirety. I have personal knowledge of the facts set forth below.

Plaintiffs Have Received At Least \$2 Million Since This Case Began

2. In his description of the case, Mr. Eisenstein states that Aspire agreed to pay Plaintiffs a percentage of the compensation payable to Aspire from the profits derived from the recordings of the artist Aubrey Graham, professionally known as "Drake" and that, "[a]side from certain initial payments, Aspire has not made payments as promised, even though Drake's recordings have been enormously successful." (Moving Affirmation of Jethro Eisenstein ["Eisenstein Aff."], ¶2). Mr. Eisenstein, however, has omitted the following critical facts:

a. Aspire pays Plaintiffs a percentage of the monies it receives from Cash Money Records, Inc. ("Cash Money") and has done so on all monies it has received from Cash Money to date;

b. Cash Money owes Aspire several million dollars which, despite due demand by Aspire, Cash Money has refused to pay, thus making it impossible for Aspire to pay any money to Plaintiffs;

c. Aware of the difficulties Aspire has had collecting money from Cash Money, Plaintiffs bypassed Aspire and went directly to Cash Money and have, since this litigation began, received \$2 million from Cash Money (without any further money being paid by Cash Money to Aspire); and

d. Believing they are entitled to even more than the \$2 million already paid to it by Cash Money, Plaintiffs on August 19, 2014 commenced an action against Cash Money in the U.S. District Court for the Southern District of Florida, No. 1:14-cv-23057-JLK, in which they seek an accounting and additional payments. That action is pending.

3. In short, since this litigation began, Plaintiffs have received \$2 million from Cash Money, while Aspire has received nothing. If anyone has been harmed here, it is Aspire.

The Bryant Deposition Should Not Be Reopened

4. Plaintiffs seek an order “pursuant to §202.21(d) of the Uniform Rules for permission to conduct additional pretrial proceedings after the filing of the note of issue.” (Eisenstein Aff. ¶1). In particular, Plaintiffs wish to open up the deposition of defendant Bryant, which began and was concluded on August 7, 2013. (Eisenstein Aff. ¶3, Exhibit 2, p. 59).

5. Plaintiffs admit that they moved forward with Bryant’s deposition on August 7, 2013 notwithstanding that certain documents they had requested had not yet been produced. (Eisenstein Aff. ¶4). There is no dispute that Plaintiffs also concluded the deposition without reserving the right to continue the deposition in any way. Mr. Eisenstein’s last words were “Thank you,” after which his co-counsel, James McMillan stated “No questions.” (Eisenstein Aff., Exhibit 2, p. 59).

6. Mr. Eisenstein fails to tell the Court that on the previous day, August 6, 2014, he took the deposition of defendant Sweeney. The deposition went until 5 p.m. at which time Mr. Eisenstein’s last words on the record were: “The deposition is done for the day to be continued on a date to be determined. Thank You.” Copies of the cover page and page 123 of Sweeney’s deposition transcript are annexed hereto as Exhibit A.

7. Plaintiffs now claim that documents produced by Aspire after they closed Bryant’s deposition allegedly show that, notwithstanding his testimony that he did not receive compensation from Aspire, he apparently did receive certain compensation in 2011 and 2012. (Eisenstein Aff. ¶¶ 4-6, 8). The short response to this allegation is “so what?” Bryant’s right to receive compensation from Aspire has nothing whatsoever to do with the merits of the present dispute. Plaintiffs admit that they were only entitled to a percentage of Aspire’s income (Eisenstein Aff. ¶¶2, 6), so what Aspire did with the rest of its income should be of no concern

to them. If Plaintiffs believe there are inconsistencies between the documents and Bryant's deposition testimony, they can attempt to demonstrate that at the trial. There is simply no reason, however, to open up a deposition that Plaintiffs themselves closed over 16 months ago in August 2013.

8. Mr. Eisenstein, in ¶7 of his affirmation, makes several statements which are factually inaccurate and need to be corrected here. He writes:

Immediately after receiving the ledger entries showing these transactions, plaintiffs sought to continue Bryant's deposition (see Exhibit 9). Defendants' attorney declined to produce Bryant again, and then became unavailable for some months because of a medical issue. I filed the note of issue on May 8, 2014 with what I understood was the agreement of defendants' attorney that the remaining discovery could be completed with the case on the trial calendar (see Exhibit 10).

The truth is far different.

9. Although he admits receiving the ledger entries on September 17 and October 8, 2013 (Eisenstein Aff. ¶5), it was not until November 7, 2013, one month later (and certainly not "immediately") that Mr. Eisenstein, notwithstanding that discovery was over: (a) served a third document request; (b) stated that he needed to continue the depositions of Sweeney and Bryant; and (c) asked if I would extend the note of issue date. (Eisenstein Aff, Ex. 9). I responded that same day via e-mail, writing:

Discovery is over. You can't keep serving document requests. I will take a look at what you sent without waiving any rights.

Bryant's deposition is over. You closed it. It's not getting reopened.
As for Sweeney, we did agree to continue that and we can set a date. (*Id.*)

On November 8, 2013, I sent Mr. Eisenstein a follow-up e-mail stating:

I have no problem in extending the note of issue or summary judgment dates.

Discovery, however, remains closed. I will continue to send you documents previously requested as they come into my possession and hope that you will do the same with respect to documents you receive from your client.

I will also make Ron Sweeney available for the continuation of his deposition at a mutually convenient date. (*Id.*)

10. Mr. Eisenstein and I had additional e-mail exchanges on November 11, 2013 which exclusively concerned Plaintiffs' third document request without any reference to any depositions. (*Id.*). On November 27, 2013, without any obligation to do so but as a show of good faith, Defendants responded to Plaintiffs' untimely document request and produced the requested documents, including Aspire's tax returns. A copy of that response is annexed hereto as Exhibit B.

11. Mr. Eisenstein seeks to excuse his delay by claiming that I "became unavailable for some months because of a medical issue." (Eisenstein Aff. ¶7). In fact, I had two operations between March 13 and April 18, 2014 but was working every day during that period and was only out of the office for about 15 business days. And while Mr. Eisenstein was very courteous during that period, when he did write me on April 16, 2014, the only discovery he mentioned was the continuation of Sweeney's deposition: "I hope you are recovering and feeling better. Are you back in action? I would like to get Sweeney's continued deposition scheduled. (Eisenstein Aff., Ex. 10). Nothing was said about reopening Bryant's deposition.

12. As for his statement that "I filed the note of issue on May 8, 2014 with what I understood was the agreement of defendants' attorney that the remaining discovery could be completed with the case on the trial calendar" (Eisenstein Aff. ¶7), the only understanding we had was that Sweeney's deposition could be continued, as we had agreed at the August 6, 2013 deposition and confirmed thereafter.

13. In response to Mr. Eisenstein's April 16, 2014 e-mail about scheduling Sweeney's continued deposition, I responded the next day: "I have been back in action but am getting knee surgery tomorrow. I will be in mid-week and will follow up with you then if that's ok." (*Id.*). It was not until May 8, 2014 that Mr. Eisenstein responded to that e-mail, writing: "Glad you are recovering. I confirm your agreement that I can file the Note of Issue in this case and you will not object to completing the outstanding discovery after it has been filed." (*Id.*) There can be no credible dispute that the only outstanding discovery at that time was the continuation of Sweeney's deposition, which we permitted and Plaintiffs eventually concluded three months later in August 2014.

14. Mr. Eisenstein closes this section of his affirmation by stating that Bryant's August 7, 2013 deposition should be reopened sometime in 2015 because he never had the opportunity to ask Bryant about documents produced in September and October 2013. (Eisenstein Aff. ¶8). We respectfully submit that if Mr. Eisenstein wanted to extend the discovery deadline beyond September 18, 2013, he should have asked the Court to do so well over one year ago and certainly should never have filed a Note of Issue with a Certificate of Readiness on May 8, 2014 which stated, at ¶¶ 7 through 10:

Discovery proceedings no [sic – should be now] known to be necessary completed.

There are no outstanding requests for discovery.

There has been a reasonable opportunity to complete the foregoing paragraphs.

There has been compliance with any order issued pursuant to pursuant to [sic] the Precalendar Rules (22 NYCRR 202.12).

A copy of the Note of Issue is annexed hereto as Exhibit C.

15. Plaintiffs' motion to reopen Bryant's deposition is made pursuant to §202.21(d) of the Uniform Rules (Eisenstein Aff. ¶1), which provides:

Where a party is prevented from filing a note of issue and certificate of readiness because a pretrial proceeding has not been completed for any reason beyond the control of the party, the court, upon motion supported by affidavit, may permit the party to file a note of issue upon such conditions as the court deems appropriate. Where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.

Here, Plaintiffs fail to satisfy either prong of §202.21(d).

16. If Plaintiffs wanted to file their Note of Issue and reopen the deposition of Bryant, they could have made a motion to this Court setting forth why they needed to do so, and the Court could have, if it deemed appropriate, granted permission to Plaintiffs to file their Note of Issue and continue Bryant's deposition thereafter. Plaintiffs failed to make such a motion and simply filed their Note of Issue as described above.

17. The second prong of §202.21(d) permits the Court to allow additional discovery proceedings "[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue ..." Here, the circumstances cited by Plaintiffs are based upon documents produced by Aspire in September and October 2013, several months prior to the May 8, 2014 filing by Plaintiffs of the Note of Issue. Thus, Plaintiffs fail to satisfy the second prong.

18. In short, Plaintiffs are not entitled to the relief they seek pursuant to §202.21(d) and their motion to reopen Bryant's deposition, which concluded on August 7, 2013, should be denied in its entirety.

No Commission Should Issue For Clarke's Deposition

19. Plaintiffs also seek an order "pursuant to CPLR §3108 for an order of commission and a commission to take an out-of-state deposition of non-party witness Sharlene Clarke in this

action to preserve her testimony for trial.” (Eisenstein Aff. ¶1). This request should also be denied.

20. Mr. Eisenstein claims that “[w]hile Aspire has produced several thousand documents in discovery [including tax returns], it is not possible to determine from these documents how much income Aspire has received and from where” and therefore he needs to depose, well over one year after receiving the documents and long after discovery has closed, Sharlene Clarke, who keeps Aspire’s books and is located in Pembroke Pines, Florida. (Eisenstein Aff. ¶¶9-10, 12).

21. According to Mr. Eisenstein, Ms. Clarke is apparently “the only person who has knowledge of what funds Aspire has taken in, what money it has disbursed, to whom and on whose authority.” (Eisenstein Aff. ¶11). Even if that were true, however, the fact is that all of Aspire’s financial records as requested by Mr. Eisenstein have been turned over to him. If he believed it was important to depose Ms. Clarke, he should have subpoenaed her long ago. He failed to do so.

22. In alleged support of his belated application to take Ms. Clarke’s deposition, Mr. Eisenstein quotes CPLR §3108, which states: “A commission or letters rogatory may be issued where necessary or convenient for the taking of a deposition outside the state.” (Eisenstein Aff. ¶13). That deposition, however, should have been taken prior to the closing of discovery on September 18, 2013 and no excuse is provided by Mr. Eisenstein for his failure to do so. Although he now says that he wants to preserve Ms. Clarke’s testimony for trial (Eisenstein Aff. ¶14), he should have made sure that he took that deposition when discovery was still permitted.

23. For the above reasons, Plaintiffs’ request to take the deposition of Sharlene Clarke should be denied in its entirety.

* * * * *

24. Finally, if the Court should nevertheless determine that Mr. Bryant's deposition should be reopened (and it would have to take place in California where he lives) and/or that Ms. Clarke's deposition should take place in Florida, then we respectfully submit that: (a) the Note of Issue filed by Plaintiffs on May 8, 2013 be vacated; and (b) Plaintiffs should be ordered to pay for all attorney's fees and expenses incurred by Defendants' counsel in connection with such depositions (including the time spent travelling to and from California and/or Florida), with at least 50% of such fees and expenses to be paid prior to the deposition(s).

WHEREFORE, for the reasons stated herein, Plaintiffs' motion should be denied in its entirety.

Dated: New York, New York
December 11, 2014



PHILIP R. HOFFMAN

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EXHIBIT A

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

-----X
JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC GROUP, LLC,
Plaintiffs,

-against-

Index No. 652560/12

RONALD E. SWEENEY, CORTEZ BRYANT, ASPIRE MUSIC GROUP,
LLC and YOUNG MONEY ENTERTAINMENT,
Defendants.

-----X
Profeta & Eisenstein
45 Broadway - 22nd Floor
New York, New York 10006

August 6, 2013
10:50 a.m.

EXAMINATION BEFORE TRIAL of, RONALD SWEENEY, a
Defendant, taken on behalf of the Plaintiff, parties and
held before Sandra D. Clipper a Court Reporter and a
Notary Public of the State of New York.

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R. SWEENEY

from Paul Schindler, I only took my -- my fees were only off of the EI and what's his name, Cortez.

Q. Only off, I didn't hear the first.

A. Cortez and EI; Derrick Lawrence, I'm sorry.

(Whereupon, a short recess was taken.)

MR. EISENSTEIN: The deposition is done for the day to be continued on a date to be determined.

Thank you.

(Whereupon, the examination of RONALD SWEENEY was concluded at 5:00 p.m.)

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EXHIBIT B

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

-----X
JAMES "JAS" PRINCE and YOUNG EMPIRE MUSIC :
GROUP LLC, :

Index No. 652560/12

Plaintiffs, :
:

-against- :

RONALD E. SWEENEY, CORTEZ BRYANT, :
ASPIRE MUSIC GROUP LLC, and YOUNG MONEY :
ENTERTAINMENT, :

Defendants. :

-----X
**DEFENDANTS' RESPONSE TO
PLAINTIFFS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to CPLR 3122, Defendants object and respond to Plaintiffs' Third Request For
Production of Documents ("Requests") as follows:

RESPONSES AND OBJECTIONS

Defendants incorporate by reference their General Objections to Plaintiffs' First and
Second Document Requests as if such General Objections were fully set forth herein. Subject to
such General Objections, which apply to each Request as if set forth fully below, Defendants
make the specific responses and objections set forth below. Copies of those responsive
documents in Defendants' possession, custody or control are produced herewith.

REQUEST NO. 1

Federal and State tax returns filed by Aspire from the date of its formation to the present.

RESPONSE TO REQUEST NO. 1

In addition to the foregoing General Objections, Defendants object to this request on the

grounds that it seeks documents containing confidential or proprietary business information and is not calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General and Specific Objections, Defendants hereby produce Aspire's federal tax returns.

REQUEST NO. 2

Documents and communications concerning the transactions listed below, including but not limited to the invoices identified.

Date: 3/9/11
Amount: \$50,000
Docpro #: Aspire 02510
Invoice/Account No.: 030911.14
Description: Payment to Bryant Mgmt., Inc. for "Professional Services Rendered"

Date: 3/9/11
Amount: \$50,000
Docpro #: Aspire 02510
Invoice/Account No.: 030911.14
Description: Payment to On the Road LLC for "Professional Services Rendered"

Date: 12/2/11
Amount: \$100,000
Docpro #: Aspire 02513
Invoice/Account No.: 120211.22
Description: Payment to Young Money Records: "50% payment from Universal Canada Income rec'd on 12/2/11"

Date: 12/16/11
Amount: \$32,638
Docpro #: Aspire 02514
Invoice/Account No.: 1160-004
Description: OTC Withdrawal to purchase xmas gift for Wayne's mom

Date: 1/3/12
Amount: \$50,000
Docpro #: Aspire 02559
Invoice/Account No.: 010312.19
Description: Payment to On the Road LLC "Officer payout"

Date: 1/3/12
Amount: \$50,000

Docpro #: Aspire 02559
Invoice/Account No. 010312.14
Description: Payment to Bryant Mgmt. Inc. "Officer payout"

Date: January 2012
Amount: \$60,616.35
Docpro #: Aspire 02572-73
Invoice/Account No. 1160-006
Description: Online transfers to Cortez Bryant
[Balance in Account "Due from Cortez Bryant" at 1/31/12 = \$199,425.64]

Date: 11/13/12
Amount: \$50,000
Docpro #: Aspire 02563
Invoice/Account No. 111312.14
Description: Payment to Bryant Mgmt., Inc. for "Outside Services Rendered"

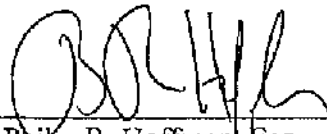
Date: 11/13/12
Amount: \$50,000
Docpro #: Aspire 02563
Invoice/Account No. 111312.19
Description: Payment to On the Road LLC for "Outside Services Rendered"

RESPONSE TO REQUEST NO. 2

In addition to the foregoing General Objections, Defendants object to this request on the grounds that it is overbroad, seeks documents containing confidential or proprietary business information, and is not calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General and Specific Objections, Defendants state that all relevant documents responsive to this request have already been produced.

Dated: New York, New York
December 2, 2013

PRYOR CASHMAN LLP

By: 
Philip R. Hoffman, Esq.
Attorneys for Defendants
7 Times Square

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phoffman@pryorcashman.com

To: Jethro M. Eisenstein, Esq.
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45 Broadway, Suite 2200
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JAMES E. McMILLAN, P.C.
110 West 40th Street, Suite 900
New York, New York 10018
(212) 986-6262
james.mcmillan@jempc.com

- Attorneys for Plaintiff -

AFFIRMATION OF SERVICE

PHILIP R. HOFFMAN, an attorney authorized by law to practice in this state, subscribes and affirms under penalties of perjury as follows:

1. I am not a party to this action, am over 18 years of age and reside in New York.
2. On November 27, 2013, I served the within Defendants' Response To Plaintiffs' Third Request For Production Of Documents (along with the responsive documents) by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to Profeta & Eisenstein, attorneys for plaintiffs, at their office located at 45 Broadway, Suite 2200, the address designated by them for that purpose and by sending a copy of the response electronically (without the responsive documents) to Jethro M. Eisenstein, Esq. at jethro19@gmail.com and James E. McMillan, P.C. at james.mcmillan@jempc.com.

Dated: November 27, 2013
New York, New York



PHILIP R. HOFFMAN

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EXHIBIT C

NOTE OF ISSUE

For use of clerk

Calendar No. (if any) _____
Index No.: 652560/12
SUPREME Court, NEW YORK County, N.Y.

JAMES "JAS" PRINCE and YOUNG
EMPIRE MUSIC GROUP, LLC

Plaintiff(s)

-against-

RONALD E. SWEENEY, CORTEZ
BRYANT, ASPIRE MUSIC GROUP,
LLC, YOUNG MONEY ENTERTAINMENT,
INC.,

Defendant(s)

Hon. Shlomo Hagler
Name of Judge Assigned

NOTICE FOR TRIAL

- Trial by jury demanded
 - Of all issues
 - Of issues specified below
 - Or attached hereto
- Trial without jury

Filed by attorney for Plaintiffs
Date summons served 7/24/12
Date service completed 11/29/12
Date issue joined 1/30/13

NATURE OF ACTION OR SPECIAL PROCEEDING

- Tort Motor Vehicle negligence
- Medical Malpractice
- Other tort

- Contract
- Contested matrimonial
- Uncontested matrimonial
- Tax certiorari
- Condemnation
- Other (note itemized above) specify tortious interference, conversion, accounting
- This action is brought as a class action

Amount demanded \$ to be determined at trial
Other relief _____

Special preference claimed under _____
on the ground that _____

Insurance carrier(s), if known: _____

PROFETA & EISENSTEIN
Attorney(s) for Plaintiff
Office and P.O. Address:
45 Broadway, Suite 2200
New York, New York 10006
Phone No.: (212) 577-6500

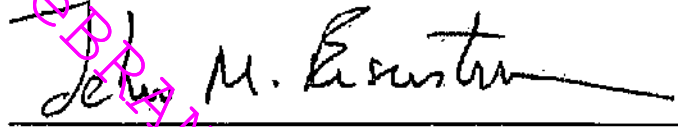
PRYOR CASHMAN
Attorney(s) for Defendant(s)
Office and P.O. Address:
7 Times Square
New York, New York 10036
Phone No.: (212) 421-4100

CERTIFICATE OF READINESS FOR TRIAL
(Items 1-7 must be checked)

For Clerk's Use		
N.I. served		
on		

- | | Completed | Waived | Not required |
|---|-----------|--------|--------------|
| 1. All pleadings served | X | | |
| 2. Bill of particulars served | | X | |
| 3. Physical examinations completed | | | X |
| 4. Medical reports exchanged | | | X |
| 5. Appraisal reports exchanged | | | X |
| 6. Compliance with the Rules in matrimonial actions (22 NYCRR 202.16) | | | X |
| 7. Discovery proceedings no known to be necessary completed | X | | |
| 8. There are no outstanding requests for discovery. | | | |
| 9. There has been a reasonable opportunity to complete the foregoing proceedings. | | | |
| 10. There has been compliance with any order issued pursuant to the Precalendar Rules (22 NYCRR 202.12). | | | |
| 11. If a medical malpractice action, there has been compliance with any order issued pursuant to 22 NYCRR 202.56. | | | |
| 11. The case is ready for trial. | | | |

Dated: New York, New York
May 8, 2014



PROFETA & EISENSTEIN
Attorneys for Plaintiff
45 Broadway, Suite 2200
New York, New York 10006
(212) 577-6500

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

Stacey Sekzer, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and reside in Kings County, New York.

That on the _____ day of _____, 20____, deponent served the within note of issue and certificate of readiness on _____ attorneys for _____ at _____, the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a official depository under the exclusive care and custody of the United States Postal Service within New York State.

STACEY SEKZER

Sworn to before me this _____ day of _____, 20____

