

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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NYMP ACQUISTION, LLC as acquirer

Index No. 600282/13

Of substantially all of the assets of

NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

VERIFIED ANSWER

-against-

LONG BEACH CHECK CASHING CORP.,

VAN WYCK CHECK CASHING CROP.,

“XYZ CORP.”, the name of said defendant being

Fictitious and unknown to plaintiff, person intended

being as described herein AND

SANFORD J. HERMAN a/k/a SANFORD

HERMAN A/K/A SANDY HERMAN,

Defendants.

-----X

Defendants, LONG BEACH CHECK CASHING CORP., VAN WYCK CHECK
CASHING CORP. XYZ CORP., and SANFORD J. HERMAN, by their attorneys
Naidich Wurman Birnbaum & Maday, LLP, as and for their Answer to the Complaint,
respectfully show and allege as follows:

1. Deny the allegations contained in paragraphs 2, 3, 4, 7, 8, 15, 16, 17, 18,
24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55,
56, 57, 58, 59, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81,
82, 83, 85, 86, 87, 88, 90, 91 and 92 of the Complaint.

2. Deny information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, 34, 37, 44, 45, 46, 47, 48, 49, 60, and 63 of the Complaint.

3. Admits the allegations contained in paragraph 5 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Defendants repeat and reallege the allegations contained in paragraphs 1 through 3 of this Answer with the same force and effect as if fully set forth at length herein.

5. That the Complaint fails to state a cause of action for which relief may be granted.

6. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. Defendant repeat and reallege the allegations contained in paragraphs 1 through 6 of this Answer with the same force and effect as if fully set forth at length herein.

8. That the relief sought in the Complaint is barred by the applicable Statute of Limitation.

9. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

10. Defendants repeat and reallege the allegations contained in paragraphs 1 through 9 of this Answer with the same force and effect as if fully set forth at length herein.

11. That the relief sought in the Complaint is barred by lack of privity of contract.

12. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. Defendants repeat and reallege the allegations contained in paragraphs 1 through 12 of this Answer with the same force and effect as if fully set forth at length herein.

14. That the relief sought in the Complaint is barred by the Statute of Frauds.

15. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

16. Defendants repeat and reallege the allegations contained in paragraphs 1 through 15 of this Answer with the same force and effect as if fully set forth at length herein.

17. That the plaintiff lacks standing to commence this action.

18. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

19. Defendants repeat and reallege the allegations contained in paragraphs 1 through 18 of this Answer with the same force and effect as if fully set forth at length herein.

20. That the relief sought in the Complaint is barred due to lack of consideration and plaintiff's failure to mitigate whatever damages it alleges to have sustained.

21. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

22. Defendants repeat and reallege the allegations contained in paragraphs 1 through 21 of this Answer with the same force and effect as if fully set forth at length herein.

23. That the relief sought in the Complaint is barred by the doctrine of waiver.

24. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. Defendants repeat and reallege the allegations contained in paragraphs 1 through 24 of this Answer with the same force and effect as if fully set forth at length herein.

26. That the relief sought in the Complaint is barred by the doctrine of estoppel.

27. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

28. Defendants repeat and reallege the allegations contained in paragraphs 1 through 27 of this Answer with the same force and effect as if fully set forth at length herein.

29. That the relief sought in the Complaint is barred by the doctrine of laches.

30. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

31. Defendants repeat and reallege the allegations contained in paragraphs 1 through 30 of this Answer with the same force and effect as if fully set forth at length herein.

32. That the relief sought in the Complaint is barred by the doctrine of unclean hands.

33. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

34. Defendants repeat and reallege the allegations contained in paragraphs 1 through 33 of this Answer with the same force and effect as if fully set forth at length herein.

35. That the relief sought in the Complaint is barred by the doctrine of champerty and because the plaintiff is in violation of Section 489 of the Judiciary Law.

36. That by reason of the foregoing, the Complaint should be dismissed.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

37. Defendants repeat and reallege the allegations contained in paragraphs 1 through 36 of this Answer with the same force and effect as if fully set forth at length herein.

38. That the rights sought to be enforced by the plaintiff herein may not be enforced because the duties and responsibilities of its assignor are non delegable and the agreement may not be assigned to the plaintiff.

39. That by reason of the foregoing, the Complaint should be dismissed.

WHEREFORE, defendant demands judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as to the Court may seem just and proper.

Dated: Great Neck, New York
March 18, 2013

Yours etc.,



NAIDICH WURMAN BIRNBAUM
& MADAY, LLP

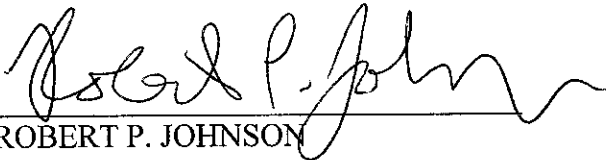
Attorneys for Defendant
80 Cuttermill Road - Suite 410
Great Neck, NY 11021
(516) 498-2900

TO: CERTILMAN, BALIN, ADLER & HYMAN, LLP
Attorneys for Plaintiff
90 Merrick Avenue
East Meadow, NY 11554
(516) 296-7000

ATTORNEY VERIFICATION

ROBERT P. JOHNSON, an attorney duly admitted to practice in the Courts of the State of New York hereby affirms that I have read the annexed ANSWER and know the contents thereof and the same are true to my knowledge except as to those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true. My beliefs as to those matters that are not stated upon knowledge are based upon conversations with the defendant and a review of applicable files and documents. The reason I make this verification instead of the defendant is that the defendant is located in a different county than the county wherein your affirmant maintains his law office.

Dated: Great Neck, New York
March 19, 2013


ROBERT P. JOHNSON

NYMP ACQUISITION, LLC as acquirer
of substantially all of the assets of
NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Plaintiff,

-against-

LONG BEACH CHECK CASHING CORP.,
VAN WYCK CHECK CASHING CROP.,
"XYZ CORP.", the name of said defendant being
Fictitious and unknown to plaintiff, person intended
being as described herein AND
SANFORD J. HERMAN a/k/a SANFORD
HERMAN A/K/A SANDY HERMAN,

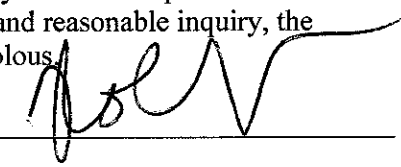
Defendants.

VERIFIED ANSWER

**NAIDICH WURNMAN BIRNBAUM & MADAY, LLP
ATTORNEYS FOR DEFENDANTS
80 CUTTERMILL ROAD - SUITE 410
GREAT NECK, NEW YORK 11021
(516) 498-2900**

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

DATED: March 19, 2013

Signature: 

Print: Robert P. Johnson, Esq.

Service of a copy of the within
Dated:

is hereby admitted.

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE that the within is a (certified) true copy of an Order entered
OF ENTRY in the office of the clerk of the within named Court on , 201_.

NOTICE OF that an Order of which the within is a true copy will be presented for
SETTLEMENT settlement to the Hon. , one of the judges of
within named Court, at on , 201_ at
a.m.

DATED: Great Neck, New York
March 19, 2013

NAIDICH WURNMAN BIRNBAUM &
MADAY, LLP
Attorneys for Defendants
80 CUTTERMILL ROAD - SUITE 410
GREAT NECK, NEW YORK 11021
(516) 498-2900