SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

----------X

MARGARET HEALY,

Plaintiff-appellant,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

Defendants-respondents,

----------X

Index No.: 21646/11

COUNSEL'S AFFIDAVIT

Appellate Division Docket No.:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Michael J. Devereaux, Esq., an attorney duly admitted to practice law in the state of New York, avers under penalties of perjury that:

1. I am a member of the law firm Devereaux, Baumgarten, with offices at 39 Broadway, Suite 910, New York, New York 10006, attorneys for the herein plaintiff-appellant, and familiar with the pleadings and prior proceedings heretofore had herein, including the matters herein stated based on personal knowledge and a review of the files maintained in our offices.

2. I respectfully submit my affidavit in support of the relief requested by plaintiff-appellant's instant Order to Show Cause. The Order appealed from is the Order of the Court Below, dated March 6, 2012, entered on March 14, 2012, a copy of which is annexed hereto as **Exhibit 1**, along with notice of appeal, RADI, notice of entry and proof of service.

3. The critical, novel and unprecedented issue presented here is the Order of the Court Below ordering visitation by defendant-respondent Slaney O'Hanlon ("defendant") of plaintiff-appellant's service dog named Lucy, registered and licensed by the Department of Health and Mental Hygiene as a service dog, thus depriving plaintiff-appellant ("plaintiff") of

her statutorily guaranteed right under New York Civil Rights Law §47-b (1) (2) and (6) to have her service dog in her immediate custody:

> "McKinney's Civil Rights Law §47-b
>
> §47-b. Miscellaneous provisions
>
> ...
>
> "1. Persons with a disability accompanied by... service dog[s] shall be guaranteed the right to have such dog[s] in their immediate custody..."
>
> ...
>
> "2. No person or legal entity, public or private...shall [impose] any conditions or restrictions not specifically set forth in this article..."
>
> ...
>
> "6. Any law, rule, or regulation conflicting with any provision of this article is, to the extent of said conflict only, deemed to be superseded by the provisions of this article."

(McKinney's Civil Rights Law §47-b) (1), (2) and (6)). The Order of the Court Below plainly and unequivocally violates plaintiff's statutorily guaranteed rights under both the Civil Rights Law §47-b (and the Americans With Disabilities Act ["ADA"]).

4. Alternatively, the second critical, novel and unprecedented issue is the consideration and awarding of exclusive visitation by the Court Below despite the well-settled law that a dog is personal property subject to an action in replevin to which "visitation" has never applied throughout New York jurisprudence, and based on nothing more than an allegation of purported past ownership. In awarding visitation, the Court Below rejected the "best interests" standard used in custody cares in favor of an entirely new legal standard created by the Court Below of "no deterrent in the way of suspected harm either to Ms. Healy or Lucy in ordering visitation," which new legal standard was not enunciated until after the close of

evidence and after summations and which, in any event, was improperly applied contrary to the weight of the evidence in light of the undisputed evidentiary facts.

5. The Court Below also erred in considering visitation based on nothing more than an allegation of purported past ownership and erroneously finding a likelihood of success on the merits by the defendants on the action in replevin although the Hearing concerned solely visitation, not ownership, custody or possession. Defendants made absolutely no such showing at this preliminary stage and there has been absolutely no discovery and no trial.

PROCEDURAL HISTORY

6. The within action was commenced by filing a summons and verified complaint which were personally served on defendants, together with an Emergent Order to Show Cause signed by The Honorable Sylvia G. Ash, J.S.C., which granted plaintiff an order of protection by restraining defendants from having contact with plaintiff or her family and taking any steps to obtain possession of Lucy because defendants had engaged in violent, menacing and threatening misconduct against plaintiff. (Copies of the Complaint and Emergent Order to Show Cause are annexed hereto as **Exhibit 2**).

7. Defendants opposed plaintiff's Order to Show Cause and cross-moved for visitation.

8. Due to the heavy motion calendar of seventy-six (76) motions before the Court Below, the Court Below directed that a Hearing take place on February 23, 2012.

9. On February 23, 2012, the parties appeared before the Court Below for the Judicially-Mandated Hearing. Plaintiff withdrew her Order to Show Cause, without prejudice to renewal in the event defendants again engaged in any further menacing misconduct. The Hearing proceeded solely on the defendant's application for visitation. Plaintiff objected to the

Court Below considering visitation based on, among other grounds, Civil Rights Law § 47-b (and the ADA) and the lack of any legal basis or authority to allow visitation of any dog, much less a service dog because of the well-settled law that a dog is personal property subject to an action in replevin. (A true and accurate copy of the Certified Transcript of the Hearing taken by the Court Below on February 23, 2012, is annexed hereto as **Exhibit 3**).

10. It is well-settled that a dog is "personal property." (*Freger v. Warwick Animal Shelter,* 29 AD3d 515, 516, 814 NYS2d 700, 702 [2d Dept 2006] (pets are personal property limiting recoverable damages); *Jason v. Parks,* 224 AD2d 494, 495, 638 NYS2d 170 [2d Dept 1996] ("It is well established that a pet owner in New York cannot recover for emotional distress caused by the negligent destruction of a dog."); *Schrage v. Hatzlacha Cab Corp.,* 13 AD3d 150, 788 NYS2d 4, 5 [1st Dept 2004] ("pets are treated under New York law as personal property..."); *Young v. Delta Air Lines, Inc.,* 78 AD2d 616, 432 NYS2d 390 [1st Dept 1980] (recoverable damages for death of passenger's dog limited); *Fowler v. Town of Ticonderoga,* 131 AD2d 919, 921, 516 NYS2d 368, 370 [3d Dept 1987] ("a dog is personal property and damages may not be recovered for mental distress..."); *Johnson v. City of New York*, 20 Misc3d 1141(A), 872 NYS2d 691 [Supreme Court, Kings County 2008] ("a dog is personal property"); see also, e.g., 26 U.S.C.A §6334(a)(2) (2006) (animals, including poultry and livestock are property exempt from levy for unpaid taxes); 25 U.S.C.A. §453 (2006) (animals, including livestock are personal property); 25 U.S.C.A. §640d-12 (2006); 12 U.S.C.A. §348 (2006); *Gluckman v. American Airlines, Inc.,* 844 FSupp 151, 158 [SDNY 1994] ("overwhelming authority..." that pets are personal property); *Fackler v. Genetzky,* 595 NW2d 884, 891 [Supreme Court, Neb. 1999] (animals are regarded as personal property)). As personal property, there is no visitation (see *Bennett v. Bennett,* 625 So.2d 109 [District Court of Appeal of Florida, First District 1995]

(dog is personal property not subject to visitation)). The Court Below, however, proceeded with the Hearing.

11. The Court Below was requested to take judicial notice of the New York City Department of Health and Mental Hygiene's registering and licensing of Lucy as a service dog. The Court Below took judicial notice of the fact as follows:

Proceedings

21

2 ... I have here documents
3 which I want the Court to take judicial notice of and
4 which I don't want to surprise my adversary during
5 his visitation hearing. This is a certification that
6 the dog, Lucy, is a service dog for the plaintiff,
7 Margaret Healy.
8 There's an elaborate process requiring proof
9 of a medical condition, which necessitates the use of
10 a service dog. There's a training program for the
11 dog to become a service dog and I have the letter and
12 the license of certification with me. I have a copy
13 for Mr. Alter, and also, a copy for the Court that I
14 intend to use and mark into evidence. I did not
15 want, however, to spring it in the middle of the
16 proceeding at the point in time when we call Margaret
17 Healy.

18 THE COURT: Okay. Are we ready to proceed?

...

(**Exhibit 3**, p. 9). Based on the Court's taking judicial notice of the New York City Department of Health and Mental Hygiene's registering and licensing of Lucy as plaintiff's service dog, plaintiff relied on her sworn-to Hearing testimony that her primary care treating physician, James A. Underberg, M.D., had diagnosed her disability and treated this disability since 2006, and prescribed Lucy as her service dog (id, at pp. 64-71). Plaintiff also testified about the process, including training and medical evidence submitted to the New York City Department of Health and Mental Hygiene and the service dog license and medal (id.) No further evidence, i.e., the calling of and testimony of Dr. Underberg appeared necessary in light of the Court Below taking judicial notice of the registering and listing of Lucy as a service dog by the New York City Department of Health and Mental Hygiene.

12. During the course of the Hearing, the letter by the Department of Health and Mental Hygiene, dated January 3, 2012, registering and listing the dog Lucy as her service dog, together with Lucy's license as a service dog was admitted into evidence as Exhibit 1 at the Hearing. (**Exhibit 3**, pp. 88-89) (plaintiff's Exhibit 1 in evidence at the Hearing is attached hereto as **Exhibit 4**).

13. On March 6, 2012, the parties appeared before the Court Below for summations. (a true and accurate copy of the Certified Transcript of the Hearing before the Court Below taken on March 6, 2012 is annexed hereto as **Exhibit 5**).

14. After the close of evidence and after summations, the Court Below, in deciding on visitation, despite having had taken judicial notice during the evidentiary phase of the Hearing

and admitting into evidence that Lucy was a service dog registered and listed by the Department of Health and Mental Hygiene surprisingly held:

> "There is no medical evidence of the disability from any medical professional. So, the Court does not believe that the designation by plaintiff and plaintiff's counsel of Lucy as a service dog is such that the Court must accept it."

(**Exhibit 5**; p. 30, line 22 to p. 31, line 1). The Court Below plainly erred in stating that the plaintiff and plaintiff's counsel, not the New York City Department of Health and Mental Hygiene, had designated Lucy as a service dog. The Court Below also plainly erred in, after the close of evidence, and after having taken judicial notice, then refusing to take judicial notice of what Her Honor had already taken judicial notice of, namely, the registering and listing of Lucy as a service dog by the Department of Health and Mental Hygiene, and inexplicably disallowing or not crediting plaintiff's uncontradicted Hearing testimony of her disability and of her physician who treated her disability and prescribing Lucy as her service dog.

15. The evidentiary proof that had been submitted to the New York City Department of Health and Mental Hygiene, including the medical documentary evidence of plaintiff's disability (copy attached as **Exhibit 6**) would have been put in evidence had the Court Below, during the evidentiary phase of the Hearing, before the close of evidence and before summations, held that the Court Below was not taking judicial notice of what the Court Below was obligated to do (*Administrative Code of the City of New York* §1-104(a); *Sansivero v. Garz*, 20 AD2d 723, 247 NYS2d 596 [2d Dept 1964] (pursuant to the *Administrative Code*, judicial notice of rules and regulations of New York City officers and agencies is mandatory); *People v. Patterson,* 169 Misc2d 787, 646 NYS2d 762 [Supreme Court, Kings County 1996]). Additionally, Dr. Underberg would have been called to testify to his fifteen (15) years of treating plaintiff and the

history of diagnosis and treating plaintiff's disability and prescribing Lucy as her service dog (**Exhibit 6**).

16. In any event, the plaintiff testified as to her disability (**Exhibit 3**, pp. 64-71). Plaintiff's treating physician, James A. Underberg, M.D., submitted his letter to the New York City Department of Health and Mental Hygiene attesting to plaintiff's disability and need for Lucy as her service dog. A true and accurate copy of the medical evidence is attached as **Exhibit 6**. The Order of the Court Below is therefore erroneous, contrary to the law, against the weight of the evidence, misapplying, misconstruing and misapprehending the law and evidence and constitutes an abuse of discretion.

17. The second critical, novel and unprecedented issue is the consideration by the Court Below of visitation of a dog which is well-settled to be personal property subject to a an action in replevin (*Freger,* 29 AD3d at 516, 814 NYS2d at 702 [2d Dept 2006] (pets are personal property limiting recoverable damages); *Jason,* 224 AD2d at 495, 638 NYS2d at 170 [2d Dept 1996] ("It is well established that a pet owner in New York cannot recover for emotional distress caused by the negligent destruction of a dog."); *Schrage,* 13 AD3d at 150, 788 NYS2d at 5 [1st Dept 2004] ("pets are treated under New York law as personal property..."); *Young,* 78 AD2d at 616, 432 NYS2d at 390 [1st Dept 1980] (recoverable damages for death of passenger's dog limited); *Fowler,* 131 AD2d at 921, 516 NYS2d at 370 [3d Dept 1987] ("a dog is personal property and damages may not be recovered for mental distress..."); *Johnson*, 20 Misc3d at 1141(A), 872 NYS2d at 691 [Supreme Court, Kings County 2008] ("a dog is personal property"); see also, e.g., 26 U.S.C.A §6334(a)(2) (2006) (animals, including poultry and livestock are property exempt from levy for unpaid taxes); 25 U.S.C.A. §453 (2006) (animals, including livestock is personal property); 25 U.S.C.A. §640d-12 (2006); 12 U.S.C.A. §348

(2006); *Gluckman,* 844 FSupp at 158 [SDNY 1994] ("overwhelming authority..." that pets are personal property); *Fackler,* 595 NW2d at 891 [Supreme Court, Neb. 1999] (animals are regarded as personal property)).

18. Furthermore, the Court Below also erred in rejecting the "best interests" standard (*Raymond v. Lachmann*, 264 AD2d 340, 341, 695 NYS2d 308, 309 [1st Dept 1999] (applying the standard of "best interests of the cat that it remain in home of possessory party where it had lived for four years")).

19. The Court Below also erred in creating a new legal standard and not enunciating the new legal standard until after the close of evidence and after summations in the decision of the Court Below. The Court Below enunciated the new legal standard "no deterrent in the way of suspected harm either to Ms. Healy or to Lucy in ordering visitation," in Her Honor's decision after the close of evidence and after summations (see p.31 lines 9-21 of the true and accurate copy of Certified Transcript of the Judicially-Mandated Hearing, taken on March 6, 2012, attached as **Exhibit 5**). Had the Court Below notified the parties that the new legal standard of "no deterrent in the way of suspected harm either to Ms. Healy or to Lucy," was created and being applied, I would have called the veterinarian Marc Siebert, VMD, CVA, who has been Lucy's veterinarian most of her life. A true and accurate copy of Dr. Siebert's Affidavit, sworn-to the 15th of March, 2012, is attached as **Exhibit 7**. I would have, of course, elicited his expertise and requested his expert opinion within a reasonable degree of veterinarian certainty.

20. Also erroneous was the holding of the Court Below that visitation was based on a finding of a likelihood of success on the merits of an action in replevin although the Hearing had nothing to do with ownership, but solely visitation, defendants made absolutely no showing of likelihood of success on the merits, there having been absolutely no discovery of and relating to

ownership, custody and possession the trier-of fact not yet having any opportunity to decide the replevin issue, and it being well-settled that a dog is personal property for which visitation is simply inapplicable .

21. The Court Below also erroneously considered or failed to consider or properly weigh the evidentiary facts that Ms. Healy and Lucy would be harmed by visitation. The following are evidentiary facts established at the Hearing:

- the uncontradicted testimony is that the defendant Slaney O'Hanlon had miserably failed to care for Lucy by abandoning Lucy, as an eight month-old puppy to her two (2) brothers who were away attending college out-of-state. The dogs were left alone, uncared for and unloved, without veterinary care, training, etc. During all this time, defendants never checked-in on Lucy or followed-up to ensure she was being properly cared for.

- the defendants never contributed any time, effort nor money for over two (2) years to Lucy's care, including, but not limited to food, training, shelter, and/or veterinary care.

- defendants admitted, by their pleading at ¶61, that Lucy has been in plaintiff's custody most of her life, and failed to properly weigh and credit this crucial evidentiary fact (copy of marked pleadings is attached as Exhibit 8).

- it is undisputed that the defendant Slaney O'Hanlon has had no contact with Lucy for over two years and made no effort to even visit her. At the time that defendant left the home in Manhasset where she was living with Lucy in September, 2009, Lucy was only eight months old. There is no doubt that harm would occur if Lucy was not to remain with plaintiff because she needed her service dog for her disability and because she had exclusively loved, taken care of and trained Lucy continuously since Lucy was abandoned by defendants. Allowing broad, unsupervised visitation with strangers in an unfamiliar environment is obviously harmful to Ms. Healy and Lucy.

- as a dog grows and matures so does the dog's attachment to the owner. It would be traumatic for Lucy to be removed from the only home and owner she knows and is familiar with and be brought to Upper Brookville, New York twenty-nine (29) miles away every two weeks. There is no evidence in the record with respect to specifically how the defendant Slaney O'Hanlon is going to take care of Lucy, if at all, and what her daily activities will be. Other than her general statement that the house where

she lives has open space outside in the yard, there is no evidence with respect to how this environment will contribute to Lucy's health and happiness.

- in stark contrast, plaintiff testified that she is retired and devotes her full-time attention to the care and maintenance of Lucy. Plaintiff walks Lucy three (3) miles per day and it is undisputed that she takes excellent care of her.

- plaintiff personally trained Lucy for two (2) years to be her service dog, and Lucy underwent extensive expert service dog training by a certified expert trainer to be plaintiff's service dog and as a result the bond between Lucy and plaintiff has become even stronger unique and very special.

- plaintiff testified that Lucy gets car sick and the round trip car ride from Queens to Upper Brookville every two weeks cannot be good for Lucy.

- the Court Below failed to take note of the means that defendants employed to take Lucy from plaintiff. They engaged in violent road rage against plaintiff and menacingly descended on her apartment in September, 2011 and sought to force their way into the building thus leading to both police involvement and a Temporary Restraining Order being entered against them in this action based on the threat to physical safety they posed to plaintiff. Since they came to Court with unclean hands, the Court Below should not have sanctioned the defendants' abandonment of Lucy and inappropriate and unlawful methods of obtaining possession by allowing a broad, unsupervised visitation of two (2) weeks interval duration.

22. Plaintiff appeals as of right from the Order of visitation because the Order of the Court Below is a result of defendants' application or cross-motion for visitation made on notice and a Hearing was held with respect to same. However, if the defendants assert that the Order of the Court Below is not appealable as of right, and the Court accepts the defendants' assertion, plaintiff then, respectfully, requests leave to appeal in light of the unprecedented novel issues presented here, including allowing visitation to preempt the plaintiff's right guaranteed by statute, the Civil Rights Law §47-b to have her service dog in her immediate custody; allowing visitation of personal property for the very first time in the history of New York jurisprudence, the creation of a new legal standard for visitation of a dog, namely, "no deterrent in the way of

suspected harm to either Ms. Healy or Lucy," and the irreparable harm that would be caused in the event that the stay is not granted.

23. The emergent nature of the stay sought herein is that plaintiff and Lucy will be irreparably harmed if visitation commencing on March 24, 2012 is allowed.

24. The relief requested herein has not been made to this or any other Court.

WHEREFORE, plaintiff respectfully requests that the Court stay the March 6, 2012 Order of the Court below, and such other and further relief as the Court deems just and proper.

ORIGINAL

Michael J. Devereaux, Esq.

Sworn to before me this
19th day of March 2012

Notary Public

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

MARGARET HEALY,

plaintiff,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

Index No.: 21646/11

NOTICE OF APPEAL

COUNSEL:

PLEASE TAKE NOTICE, that plaintiff MARGARET HEALY, by and through her attorneys DEVEREAUX, BAUMGARTEN, 39 Broadway, Suite 910, New York, New York 10006, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from each and every part of the Order of the Supreme Court, Kings County, IAS Part 32 (Hon. Yvonne Lewis, J.S.C.), dated March 6, 2012, entered on March 14, 2012, and served upon all parties with Notice of Entry on March 14, 2012. A copy is annexed hereto as Exhibit "A".

Dated: March 14, 2012
New York, New York

Michael J. Devereaux, Esq.
DEVEREAUX, BAUMGARTEN
Attorneys for Plaintiff, MARGARET HEALY
39 Broadway, Suite 910
New York, New York 10006
(212) 785-5959 (T)
(212) 785-4487 (F)

TO: Stanley Alter, Esq.
ALTER & ALTER LLP
Attorney for Defendants, SLANEY O'HANLON and SUSAN McCARTHY
300 East 42nd Street, 10th Floor
New York, New York 10017
(212) 867-7777

Supreme Court of the State of New York
Appellate Division : Second Judicial Department

Form A - Request for Appellate Division Intervention - Civil

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

e Title: Set forth the title of the case as it appears on the summons, notice of petition or er to show cause by which the matter was or is to be commenced, or as amended.

ARGARET HEALY,

Plaintiff-appellant,

- against -

ANEY O'HANLON and SUSAN McCARTHY,

Defendants-respondents,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☐ al Action
- ☐ LR article 75 Arbitration
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceeding
- ☐ Transferred Proceeding
- ☐ CPLR 5704 Review

Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.

dministrative Review

- Freedom of Information Law
- Human Rights
- Licenses
- Public Employment
- Social Services
- Other

iness & Other Relationships

- Partnership/Joint Venture
- Business
- Religious
- Not-for-Profit
- Other

tracts

- rokerage
- ommercial Paper
- onstruction
- mployment
- surance
- eal Property
- ales
- ecured
- her

D. Domestic Relations

- ☐ 1 Adoption
- ☐ 2 Attorney's Fees
- ☐ 3 Children - Support
- ☐ 4 Children - Custody/Visitation
- ☐ 5 Children - Terminate Parental Rights
- ☐ 6 Children - Abuse/Neglect
- ☐ 7 Children - JD/PINS
- ☐ 8 Equitable Distribution
- ☐ 9 Exclusive Occupancy of Residence
- ☐ 10 Expert's Fees
- ☐ 11 Maintenance/Alimony
- ☐ 12 Marital Status
- ☐ 13 Paternity
- ☐ 14 Spousal Support
- ☐ 15 Other

E. Miscellaneous

- ☐ 1 Constructive Trust
- ☐ 2 Debtor & Creditor
- ☐ 3 Declaratory Judgment
- ☐ 4 Election Law
- ☐ 5 Notice of Claim
- ☒ 6 Other

F. Prisoners

- ☐ 1 Discipline
- ☐ 2 Jail Time Calculation
- ☐ 3 Parole
- ☐ 4 Other

G. Real Property

- ☐ 1 Condemnation
- ☐ 2 Determine Title
- ☐ 3 Easements
- ☐ 4 Environmental
- ☐ 5 Liens
- ☐ 6 Mortgages
- ☐ 7 Partition
- ☐ 8 Rent
- ☐ 9 Taxation
- ☐ 10 Zoning
- ☐ 11 Other

H. Statutory

- ☐ 1 City of Mount Vernon Charter §§ 120, 127-f, or 129
- ☐ 2 Eminent Domain Procedure Law § 207
- ☐ 3 General Municipal Law § 712
- ☐ 4 Labor Law § 220
- ☐ 5 Public Service Law §§ 128 or 170
- ☐ 6 Other

I. Torts

- ☐ 1 Assault, Battery, False Imprisonment
- ☐ 2 Conversion
- ☐ 3 Defamation
- ☐ 4 Fraud
- ☐ 5 Intentional Infliction of Emotional Distress
- ☐ 6 Interference with Contract
- ☐ 7 Malicious Prosecution/ Abuse of Process
- ☐ 8 Malpractice
- ☐ 9 Negligence
- ☐ 10 Nuisance
- ☐ 11 Products Liability
- ☐ 12 Strict Liability
- ☐ 13 Trespass and/or Waste
- ☐ 14 Other

J. Wills & Estates

- ☐ 1 Accounting
- ☐ 2 Discovery
- ☐ 3 Probate/Administration
- ☐ 4 Trusts
- ☐ 5 Other

Appeal

Paper Appealed From (check one only):

- ❑ Amended Decree
- ❑ Amended Judgment
- ❑ Amended Order
- ❑ Decision
- ❑ Decree
- ❑ Determination
- ❑ Finding
- ❑ Interlocutory Decree
- ❑ Interlocutory Judgment
- ❑ Judgment
- ☒ Order
- ❑ Order & Judgment
- ❑ Partial Decree
- ❑ Resettled Decree
- ❑ Resettled Judgment
- ❑ Resettled Order
- ❑ Ruling
- ❑ Other (specify):

Court: SUPREME COURT	County: KINGS
Dated: March 6, 2012	Entered: March 14, 2012
Judge (name in full): Yvonne Lewis	Index No.: 21646/2011
Stage: ❑ Interlocutory ☒ Final ❑ Post-Final	Trial: ❑ Yes ☒ No If Yes: ❑ Jury ❑ Non-Jury

Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case? ❑ Yes ☒ No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? ❑ Yes ❑ No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

Original Proceeding

Commenced by: ❑ Order to Show Cause ❑ Notice of Petition ❑ Writ of Habeas Corpus | Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court:	County:
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order

Court:	County:
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Appeal from each and every part of Order dated March 6, 2012 granting visitation of service dog Lucy. It is contrary to the applicable law, statute; contrary to the weight of the evidence; misapplied misapprehended, misconstrued the law, facts and evidence and constitutes an abuse of discretion; it is unjust.

Amount: If an appeal is from a money judgment, specify the amount awarded.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

ues Continued:

Use Form B for Additional Appeal Information

Party Information

ctions: Fill in the name of each party to the action or proceeding, one per line. If this form is to be filed for an appeal, indicate the status of the in the court of original instance and his, her, or its status in this court. If this form is to be filed for a proceeding commenced in this court, fill in e party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

Party Name	Original Status	Appellate Division Status
Margaret Healy	Plaintiff	Appellant
Slaney O'Hanlon	Defendant	Respondent
Susan McCarthy	Defendant	Respondent

Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

ttorney/Firm Name: Michael J. Devereaux, Esq., DEVEREAUX, BAUMGARTEN
ddress: 39 Broadway, Suite 910
ity: New York State: NY Zip: 10006 Telephone No.: 212-785-5959
ttorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
arty or Parties Represented (set forth party number[s] from table above or from Form C): 1

ttorney/Firm Name: Stanley Alter, Esq., ALTER & ALTER
ddress: 300 East 42nd Street, 10th Floor
ity: New York State: NY Zip: 10017 Telephone No.: 212-867-7777
ttorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
rty or Parties Represented (set forth party number[s] from table above or from Form C): 2 & 3

torney/Firm Name:
dress:
y: State: Zip: Telephone No.:
torney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
ty or Parties Represented (set forth party number[s] from table above or from Form C):

orney/Firm Name:
dress:
y: State: Zip: Telephone No.:
orney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
ty or Parties Represented (set forth party number[s] from table above or from Form C):

rney/Firm Name:
ress:
: State: Zip: Telephone No.:
rney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
y or Parties Represented (set forth party number[s] from table above or from Form C):

rney/Firm Name:
ess:
State: Zip: Telephone No.:
ney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
or Parties Represented (set forth party number[s] from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

se of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If
orm is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division
ention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required
onal Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a
of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal
re taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

EXHIBIT A

At an I.A.S. Trial Term, Part 32 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 6th day of MARCH 2012

PRESENT:
Hon. YVONNE LEWIS
Justice

MARGARET HEALY

Plaintiff(s)

Cal. No. 1
Index No. 21646/11

- against -

SLANEY O'HANLON. and SUSAN McCARTHY,

Defendant(s)

The following papers numbered 1 to read on this motion

Papers Numbered 1 of 2

Notice of Motion - Order to Show Cause
and Affidavits (Affirmations) Annexed
Answering Affidavit (Affirmation)
Reply Affidavit (Affirmation)
Affidavit (Affirmation)
Pleadings - Exhibits
Stipulations - Minutes
Filed Papers

AFTER A HEARING IT IS ORDERED that the defendant, Slaney O'Hanlon have visitation with the dog Lucy. Visitation shall occur away from the residence of the plaintiff, and will commence on Saturday March 24, 2012 at 1 PM and continue uninterrupted for a period of two weeks. The defendant Slaney O'Hanlon shall have public visitation with Lucy for the other two week period. The defendant Slaney O'Hanlon and plaintiff shall meet at 1 PM on the Saturday when the dog is to be

For Clerks use only
MG___
MD___
Motion Seq. #

ENTER

J.S.C.

EJV-rev 11-04

INDEX# 21646/11 -- DATE 3/6/12

PLAINTIFF HEALY vs DEFENDANT O'HANLON

exchanged (picked up and/or returned) at the ~~Mojave~~ Mojave Restaurant located on Astoria Queens. THE DOG LUCY WILL BE PICKED UP IN FRONT OF MOJAVE RESTAURANT BY SEANEY O'HANLON ONLY & RETURNED IN FRONT OF MOJAVE RESTAURANT BY SEANEY O'HANLON ONLY TO MARGARET HEALY.

Forthwith

ENTERED/SO ORDERED

HON. YVONNE LEWIS

JSC

KINGS COUNTY CLERK
FILED

2012 MAR -8 AM 8:46

ate	Title	Index	Type	No	Receipt
5/8/12	Tedyn v. O'Hanlon	216461	SFR	1	NANCY T. SUNSHINE

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JONATHAN PALADINI, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age and resides in Kings County, New York.

On March 14, 2012, deponent served the within

- **NOTICE OF APPEAL with RADI, and with EXHIBIT A (notice of entry, order, and affidavit of service)**

Upon:

Stanley Alter, Esq.
ALTER & ALTER LLP
300 East 42nd Street, 10th Floor
New York, New York, 10017

by depositing true copies of the same in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, properly addressed to each of said attorneys at the above address designated by them for those purposes.

JONATHAN PALADINI

Sworn to before me this
14th day of March, 2011

Notary Public

MICHAEL J. DEVEREAUX
Notary Public, State of New York
No. 4912694
Qualified in Nassau County
Commission Expires March 3, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

MARGARET HEALY,

Index No.: 21646/11

plaintiff,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

NOTICE OF APPEAL with RADI, and with EXHIBIT A
(notice of entry, order, and affidavit of service)

DEVEREAUX BAUMGARTEN

39 BROADWAY, Suite 910
NEW YORK, NEW YORK 10006
TEL. (212) 785-5959 (T) / FAX (212) 785-4487 (F)

JPREME COURT OF THE STATE OF NEW YORK
OUNTY OF KINGS

----------X

ARGARET HEALY,

plaintiff,

- against -

ANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

Index No.: 21646/11

NOTICE OF ENTRY

OUNSEL:

PLEASE TAKE NOTICE that the within is a true copy of the stamped Decision and der of The Honorable Yvonne Lewis, J.S.C., dated March 6, 2012, and duly entered in the unty Clerk's Office on March 14, 2012.

ted: March 14, 2012
New York, New York

Michael J. Devereaux, Esq.
DEVEREAUX BAUMGARTEN
Attorneys for Plaintiff, MARGARET HEALY
39 Broadway, Suite 910
New York, New York 10006
(212) 785-5959 (T)
(212) 785-4487 (F)

: Stanley Alter, Esq.
ALTER & ALTER LLP
Attorney for Defendants, SLANEY O'HANLON and SUSAN McCARTHY
300 East 42nd Street, 10th Floor
New York, New York 10017
(212) 867-7777

At an I.A.S. Trial Term, Part 32 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 6th day of March 2012

PRESENT:
Hon. YVONNE LEWIS
Justice

MARGARET HEALY
Plaintiff(s)

- against -

SLANEY O'HANLON. and Susan McCARTHY,
Defendant(s)

Cal. No. 1
Index No. 21646/11

The following papers numbered 1 to read on this motion — Papers Numbered 1 of 2

Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed
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MG___
MD___
Motion Seq. #

ENTER

J.S.C.

EJV-rev 11-04

INDEX# 21646/11 -- DATE 3/6/12

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Forthwith

ENTERED/SO ORDERED

HON. YVONNE LEWIS

JSC

KINGS COUNTY CLERK
FILED

2012 MAR -8 AM 8:46

Date	Title	Index	Type	No	Receipt
[illegible]	[illegible]	[illegible]	[illegible]	1	NANCY T. SUNSHINE

AFFIDAVIT OF SERVICE BY MAIL

TATE OF NEW YORK)
) ss.:
OUNTY OF NEW YORK)

JONATHAN PALADINI, being duly sworn, deposes and says: Deponent is not a party to e action, is over 18 years of age and resides in Kings County, New York.

On March 14, 2012, deponent served the within

NOTICE OF ENTRY

on:

unley Alter, Esq.
LTER & ALTER LLP
0 East 42nd Street, 10th Floor
w York, New York, 10017

depositing true copies of the same in a post-paid wrapper, in an official depository under the clusive care and custody of the United States Postal Service within the State of New York, perly addressed to each of said attorneys at the above address designated by them for those poses.

JONATHAN PALADINI

orn to before me this
1 day of March, 2011

ary Public

MICHAEL J. DEVEREAUX
Notary Public, State of New York
No. [illegible]
Qualified in Nassau County
Commission Expires March 6, [illegible]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

MARGARET HEALY,

Index No.: 21646/11

plaintiff,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

NOTICE OF ENTRY

DEVEREAUX BAUMGARTEN
39 BROADWAY, Suite 910
NEW YORK, NEW YORK 10006
TEL. (212) 785-5959 (T) / FAX (212) 785-4487 (F)

EXHIBIT 2

At the IAS Part 32 of the Supreme Court of the State of New York, County of Kings, located at 360 Adams Street, Brooklyn, New York on the 13th day of September 2011

Present: Hon. HON. SYLVIA G. ASH

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

MARGARET HEALY,

plaintiff,

- against -

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

Index No.: 21644/11

EMERGENT ORDER TO SHOW CAUSE

Upon reading the plaintiff's sworn-to verified complaint, sworn to on September 22, 011, the Affirmation of Emergency of Thomas J. Chaves, Esq., dated September 22, 2011, and e exhibits annexed thereto,

Let the defendants Slaney O'Hanlon and Susan McCarthy show cause before this norable Court at IAS Part 32 of the Supreme Court, Kings County to be held at 360 Adams :et, Brooklyn, New York on the 30TH day of September, 2011 at 9:30 a.m., or as soon :after as counsel can be heard, why an Order should not be entered

1. Restraining them and their relatives, agents and/or representatives from contacting iff, or her husband Walter Healy, by any means whatsoever in person, via telephone, email, letter;

2. Restraining them from going within to 1000 yards of plaintiff and her husband's :e 135 Willow Street, Brooklyn New York;

KINGS COUNTY CLERK
FEE PD $ 45.00

3. Restraining them from harassing, threatening or intimidating plaintiff or her husband;

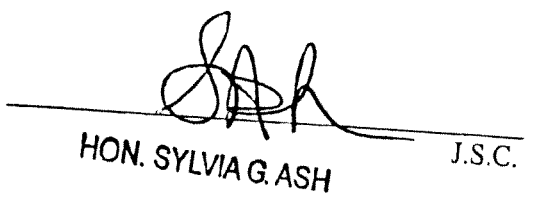
4. Restraining them from taking any further action to obtain possession of plaintiff's dog, Lucy, during the pendency of this action;

5. And such other and further relief as the Court deems just and proper under the circumstances.

PENDING THE HEARING ~~AND DETERMINATION~~ OF THIS APPLICATION, THE DEFENDANTS ARE ENJOINED AND RESTRAINED FROM ENGAGING IN ANY OF THE ACTIVITIES ENUMERATED IN THE FOREGOING NUMBERS # 1 TO 4.

Sufficient reason therefore, let service of a copy of this Order to Show Cause, and the SUMMONS AND Verified Complaint, Affirmation of Emergency and exhibits on which it is granted by personal service ~~by hand~~ upon the defendants Slaney O'Hanlon and Susan McCarthy on or before September 26TH, 2011, be deemed good and sufficient service.

ENTER:



HON. SYLVIA G. ASH J.S.C.

ranscription of Voice Mail Message left by Susan McCarthy O'Hanlon (516-507-4211) on 9-16-2011 at about 1:05 PM on home telephone of Margaret and Walter Healy at 718-625-6631

ah, this is Susan McCarthy. And I've just been informed that my dog [Lady] died s morning - my daughter's dog. And I want to know why the two of you did not us know that this dog was sick. You have no fucking heart. My daughter has seen her dog since you took her. How you can sleep at night is beyond me. I want Lucy [the dog still living] back immediately. How could you fucking do to us? You Bitch!

NCIDENT INFORMATION SLIP
D 301-164 (Rev. 1-97)

ACCIDENT REPORTS GIVEN OUT MON-FRI 10am-2pm
EXCEPT HOLIDAYS MONEY ORDER OR CHECK ONLY $10 FEE

to 34 Pct (Command) 301 Gold Street (Address) Date: 09/18/11

(718) 875-6231 (Telephone No.)

at your business with us was handled satisfactorily. Your particular matter has been assigned the following numbe

Report No.: 5013 Accident Report No.: Aided Report No.:

: P.O. Simier 29374 (Rank) (Name) (Shield No.) Date of Occurrence: 09/16/11 Time: 2000

Occurrence: 84/10 135 William Ave Hammelsman

this report should you have to refer to this matter in the future. If you need any further assisstance feel free to

telephone number 718 875-6231 . Please let us know if you have any suggestions on how we c

u As you may already know, we will provide you with a crime prevention survey of your residence or business.

more information on this and other crime prevention initiatives. Our goal is to make you and your property safe.

COURTESY — PROFESSIONALISM — RESPECT

REMEMBER: CALL "911" FOR EMERGENCIES ONLY!!!!

NEW YORK STATE
DOMESTIC INCIDENT REPORT

Day	Year	Time (24 hrs)	Address of Occurrence	APT #	Sprint # (NYC)	Incident #
11		[illegible]	135 William St. Bklyn NY 11201	3rd	Precinct NYC CTY [illegible]	Aided # (NYC) / Complaint #
11		1630				

O Officer-Initiated O Radio Run ☒ Walk-In

(F.I.) (include aliases)
[illegible] MALDONADO P.

DOB Month 06 Day 04 Year 1973 Age ___ O Male ☒ Female

O Yes

Removed to Hospital? ☒ No O Yes If yes, what hospital? ___

☒ White O Black O Asian O Native American O Other:

O Hispanic ☒ Non-Hispanic O Unknown

If non-English, language: O Spanish O Chinese O Other: ___

(L.) (include aliases)
[illegible]

Phone 516 507-4811

DOB Month 06 Day 16 Year 1973 Age [illegible] O Male ☒ Female

213th St. Bayside NY

APT # ___ Zip 11361

☒ Yes

Removed to Hospital? ☒ No O Yes If yes, what hospital? ___

☒ White O Black O Asian O Native American O Other:

O Hispanic ☒ Non-Hispanic O Unknown

If non-English, language: O Spanish O Chinese O Other: ___

LIVING SITUATION

Do parties *currently* live together? O Yes ☒ No

If NO, have they lived together *in the past*? O Yes ☒ No

Do the parties have a *child-in-common*? O Yes ☒ No

RELATIONSHIP: (SUSPECT / P2 to VICTIM / P1)

O Married
O Intimate Partner/Dating
O Child of victim/party 1
☒ Relative: IN LAW
O Formerly Married
O Former Intimate/Dating
O Parent of victim/party 1
O Other: ___

Prior DV History? O Yes ☒ No
Prior DV police report? O Yes ☒ No
Victim fearful? ☒ Yes O No
Access to weapons? O Yes ☒ No
Suspect: Drug/Alc History? O Yes ☒ No
Suspect: Hx suicide threat? O Yes ☒ No
Suspect: Probation/Parole? O Yes ☒ No

O Impaired Alcohol/Drugs
O Injury to Child
O Injury to Other Persons
O Injury to Pet/Animal
O Interference with Phone
☒ Intimidation/Coercion
O Kicking
O Punching
O Pushing
O Sexual Assault
O Shooting
O Slapping
O Slamming Body
O Stabbing
O Strangulation/"Choking"
O Suicide or Attempt
O Throw Items
☒ Unwanted Contact
☒ Verbal Abuse
O Violated Visitation/ Custody Conditions
O OTHER Suspect Actions: ___

O Threats: (specify)
O Injure/Kill Persons
O Injure/Kill Self
O Injure/Kill Pet/Animal
O Take Child
O Destroy/Take Property
☒ Other: TAKE EPT

O Threat with weapon
O Weapons used: (specify)
O Blunt Object
O Gun
O Motor Vehicle
O Sharp Instrument
O Other: ___

Reasons arrest not made on-scene: O No Offense Committed O No Probable Cause ☒ Suspect Off-Scene
O Warrant/Criminal Summons to be requested O Violation level: not in police presence (no citizen's arrest) O Other: ___

Offenses	Law (e.g. PL)	Section (Sub)	Charges Filed
[illegible]	240		O
			O
			O

Offenses Involved: (check all that apply) ☒ Misdemeanor O Violation O Felony O Other (Specify) ___

Registry Checked? O Yes ☒ No
Order of Protection? O Yes ☒ No
Stay Away Order? O Yes ☒ No
Order Violated? O Yes ☒ No
Any PRIOR orders? O Yes ☒ No

OP Court Name: ___
O Family O Criminal O Supreme
☒ Out of State O Tribal

Expiration Date: Month ___ Day ___ Year ___

COMPLETE STATEMENT ON PAGE [illegible]

photos taken of: O Victim Injuries O Suspect Injuries O Damaged Property O Other: ___

Other evidence collected? O Yes ☒ No
IF YES, describe:

is of action taken. (Were excited utterances, spontaneous admissions or spontaneous statements made?) O Yes ☒ No (Complete 710.30 or other form when

[illegible] STATES THAT PARTY #2 HAS A MARITAL [illegible] ON THE [illegible]
[illegible] #2 THEN [illegible] AT C/V RESIDENCE WITH [illegible] AND [illegible]
[illegible] C/V DOB [illegible] C/V STATES PARTY #2 [illegible] DOOR [illegible] INTO
[illegible] THE VCR AND MANUALLY HARASSING C/V BY
[illegible] POLICE [illegible] PARTY #2 THEN FLED [illegible] C/V EMERGENCY
[illegible] ALARM ON 10/16/11 C/V STATES THAT THERE ARE NO LIVING
[illegible] PARTY #2 [illegible]

th the parties or incident
n):

a child may be the victim of abuse,
nent? O Yes O No (IF YES, officer must contact
TLINE REGISTRY # 1-800-635-1522

O Guns in House O Guns Seized O Has Permit O Permit Seized Issuing County: ___
Permit #(s): ___ Name on Permit(s): ___

POLICE: O Adult Protective Services O Child Protective Services (or ACS) O Domestic Violence Services O Firearms Licensing

[redacted] | Sprint # (NYC) | Incident # | Precinct (NYC/CTV) | Aided # (NYC) | Complaint #

Page 2 of the NYS Domestic Incident Report:
STATEMENT OF ALLEGATIONS / SUPPORTING DEPOSITION

ect Name (Last, First, M.I.)

'GARET HEALY (victim/deponent name), _____ (nombre de victima/deponente), state that on 9/16/11 (date) at 5pm

of incident), in the County/City/Town/Village of Brooklyn, of the state of New York, the following did occur:
l incidente ocurrio), el condado/ciudad/aldea/pueblo de _____, del estado de Nueva York, lo siguiente occurio:

sister-in-law Susan McCarthy O'Harlon left a dreadful
mail message on my phone demanding the return of
that my brother gave me 2 years ago, after she +
ughter abandoned it in the house with my brother.
ched the dog and gave it to me in late 2009.
e Friday evening Oct 14/11 she and her daughter arrived
y Bobby demanding that the doorman let them in
he didn't, saying that they came for the dog according
ngement - untrue! When I thought she was gone
out in car to find my husband + dog to drive
She appeared in SUV + followed me around the block.
stopped again at front door she flew out of car
up to me, shouting "bitch" etc + I drove away
ved close all the way to police station + parked
me, but did not follow me in. I was sure she
to hit my car as she was always erratic. There is a
n Irp divorce and I was never so frightened in my life

(Use additional paper as needed)

ts made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.
sas hechas aqui son castigables como una clase de delito menor, de acuerdo con la seccion 210.45 de la

gnature
ponente

Date
Fecha

Date

Notes
Whether or not this form is signed, this DIR form will be filed with law enforcement.

Nota:
Si esta forma esta firmada, o no, esta DIR forma sera registrada con la policia.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

MARGARET HEALY,

plaintiff,

- against -

SCANDY O'HANLON AND SUSAN McCARTHY,

defendants.

INDEX NO. 21646/11

AFFIDAVIT IN SUPPORT

MARGARET HEALY, of full age, being duly sworn deposes and says:

I am the plaintiff in the above matter. As such, I am fully familiar with all matters stated herein based on personal knowledge.

I submit this affidavit in support of the within order to show cause seeking emergent relief for a temporary restraining without notice to defendants.

2. Plaintiff could not give notice of this order to show cause seeking the temporary restraining order to both defendants because she does not know how to get in contact with them and in addition contact them would put my safety in jeopardy.

3. The reasons I am concerned for my physical safety is because defendants have acted unlawfully in stalking me and harassing me.

4. Specifically, on Friday September 16, 2011, both defendants come to my apartment building and told our doorman that they had an appointment with me. I had not been a friend from either defendant in two years. Defendant McCarthy threatened the doorman

and he called the police. Defendant Ms. McCarthy lied to the police and tried to get them to take my dog Lucy.

5. That very same night of September 16, 2011, Ms. McCarthy followed me in her car to the police department and she tried forcably stop my car. I felt my threatened and afraid.

6. On September 21, 2011, Ms. McCarthy appeared again with two different police officers and again tried

to get them to give her my dog Lucy. I was afraid, threatened and intimidated.

7. On September 16, 2011, defendant Ms. McCarthy left me a vile, profane phone message in which she cursed at me and notified me that Lucy was not our dog. (The transcript of the phone message is annexed to the Verified Complaint as Exhibit).

8. I fear for my safety and have defendants are restrained

from coming near me, I believe they will continue to stalk and harass me.

WHEREFORE, I respectfully request that Your Honor grant this order to Show Cause seeking temporary restraints.

Margaret Healy
MARGARET HEALY

Sworn to Before me this 23RD day of September 2014

Notary Public

KAMAL P. SONI
Notary Public, State of New York
No. 01SO6089949

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

MARGARET HEALY,

plaintiff,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

Index No.:

VERIFIED COMPLAINT

MARGARET HEALY, by and through her attorneys, Devereaux, Baumgarten, with offices at 39 Broadway, Suite 910, New York, New York 10006, hereby avers as follows:

THE PARTIES

1. Plaintiff Margaret Healy ("Margaret Healy"), is a resident of the State of New York, City of New York, County of Kings.

2. Defendant Slaney O'Hanlon ("Ms. O'Hanlon"), is an individual residing in Queens County, New York at 39-23 213th Street, #2F, Bayside, New York 11361-2054.

3. Defendant Susan McCarthy ("Ms. McCarthy"), is an individual residing in Queens County, New York at 39-23 213th Street, #2F, Bayside, New York 11361-2054.

NATURE OF THIS ACTION

4. Margaret Healy is and has been the rightful owner of a dog named Lucy (hereinafter "Lucy"), for most of Lucy's life living in Kings County, New York.

5. On about September 13, 2011, Ms. O'Hanlon wrongfully demanded that Margaret Healy turn over Lucy because she wrongfully claimed that she was the rightful owner of Lucy.

6. Because Lucy was not turned over to Ms. O'Hanlon, both Ms. O'Hanlon and Ms. McCarthy began an aggressive and illegal campaign of aggravated harassment against Margaret Healy in an effort to intimidate her into giving Margaret Healy's dog Lucy to Ms. O'Hanlon.

7. This complaint seeks a declaratory judgment that Margaret Healy is the rightful owner of Lucy, a temporary restraining order and an order of protection preventing Ms. McCarthy and Ms. O'Hanlon or their agents and/or representatives from communicating with Margaret Healy or her husband in any way, except through counsel, preventing them from going to Margaret Healy's residence and taking any further actions to obtain Lucy during the pendency of this lawsuit.

8. This action also seeks monetary damages for Margaret Healy's mental anguish and pain and suffering resulting from Ms. McCarthy's unlawful assault and harassment.

9. The relief herein sought has not been made before nor ever made to any other Court or Judge.

FACTS COMMON TO
ALL CAUSES OF ACTION

10. Margaret Healy is and has been a resident of Kings County, New York for over twenty (20) years.

11. Lucy was purchased by Margaret Healy's brother.

12. Margaret Healy's brother, at all relevant times, owned Lucy until Margaret Healy's brother gave Lucy to his sister Margaret Healy.

13. Margaret Healy's brother gave Lucy to Margaret Healy because Margaret Healy would afford and has afforded Lucy a great loving, caring, and stable life for most of Lucy's life.

14. Margaret Healy licensed Lucy, with license number 3070403. A true and accurate copy of the license is attached as Exhibit 1.

15. Margaret Healy vaccinated Lucy. A true and accurate copy of the Certificate of Vaccination is attached as Exhibit 2.

16. Margaret Healy is and has been acting in the best interests of Lucy most of Lucy's entire life.

17. Lucy has spent most of her life with Margaret Healy.

18. Lucy has lived with Margaret Healy in Kings County, New York for most of Lucy's life.

19. Lucy has been cared most of her life by Margaret Healy.

20. Margaret Healy is caring for Lucy.

21. Margaret Healy has been caring for Lucy for most of Lucy's life.

22. Margaret Healy has licensed Lucy and purchased the licenses for Lucy for most, if not all, of Lucy's life.

23. Margaret Healy holds the license for Lucy.

24. Lucy's license is in Margaret Healy's name as her owner.

25. Lucy is Margaret Healy's daily companion.

26. Lucy is Margaret Healy's morning companion.

27. Lucy is Margaret Healy's noon time and afternoon companion.

28. Lucy is Margaret Healy's evening companion.

29. Lucy is Margaret Healy's night time companion.

30. Lucy has been Margaret Healy's daily companion for most of Lucy's life.

31. Lucy has been Margaret Healy's morning companion for most of Lucy's life.

32. Lucy has been Margaret Healy's noon time and afternoon companion for most of Lucy's life.

33. Lucy has been Margaret Healy's evening companion for most of Lucy's life.

34. Lucy has been Margaret Healy's night-time companion for most of Lucy's life.

35. Lucy and Margaret Healy are generally together 24 hours a day, seven days a week.

36. Lucy and Margaret Healy are generally together 24 hours a day, seven days a week for most of Lucy's life.

37. Margaret Healy provides excellent care for Lucy.

38. Lucy has prospered living with and being in Margaret Healy's loving care and home.

39. Margaret Healy has provided excellent care to Lucy for most of Lucy's life.

40. Lucy is known in and around the community to be Margaret Healy's companion.

41. Lucy looks to Margaret Healy for direction, as her companion, owner and/or master.

42. Margaret Healy feeds Lucy all her meals.

43. Margaret Healy has always fed Lucy all her meals throughout most of Lucy's life.

44. Margaret Healy keeps Lucy clean and in excellent health.

45. Margaret Healy has kept Lucy clean and in excellent health for most of Lucy's life.

46. Nobody has cared for Lucy other than Margaret Healy for most of Lucy's life.

47. Nobody has fed Lucy other than Margaret Healy for most of Lucy's life.

48. Margaret Healy has afforded veterinary care for most of Lucy's life.

49. Nobody other than Margaret Healy has provided veterinary care for most of Lucy's life.

50. Nobody other than Margaret Healy has seen to Lucy's needs, including Lucy's recreational needs and walking needs, for most of Lucy's life.

51. Margaret Healy and Lucy have emotionally bonded.

52. Margaret Healy and Lucy have socially bonded.

53. Margaret Healy has emotional and social attachments and bonds with Lucy.

54. Margaret Healy has seen after all of Lucy's needs for most of Lucy's life.

55. Lucy accepts Margaret Healy as her companion, owner and master for most of Lucy's life.

56. Margaret Healy has looked after and ensured Lucy's health throughout most of Lucy's life.

57. Margaret Healy never abandoned Lucy.

58. Margaret Healy never lost Lucy.

59. Margaret Healy never abused Lucy.

60. Lucy is in Margaret Healy's custody.

61. Lucy has been in Margaret Healy's custody for most of Lucy's life.

62. Margaret Healy owns Lucy.

63. Lucy is Margaret Healy's companion.

64. Margaret Healy is Lucy's companion.

65. Margaret Healy has trained Lucy over most of Lucy's life.

66. Lucy has been trained and/or educated by Margaret Healy.

67. Lucy obeys Margaret Healy.

68. Margaret Healy provides a stable environment for Lucy.

69. Margaret Healy has provided Lucy with a stable environment for most of Lucy's life.

70. Margaret Healy is and has been an excellent companion, owner and/or master to Lucy.

71. Margaret Healy has and, at all relevant times, will always provide a stable environment for Lucy.

72. Margaret Healy has and, at all relevant times, will have the financial means to care for and provide a stable environment for Lucy.

73. On Friday, September 16, 2011, Ms. McCarthy called Margaret Healy.

74. On Friday, September 16, 2011, Ms. McCarthy called Margaret Healy and left a voice mail message on Margaret Healy's home telephone answering machine.

75. On Friday, September 16, 2011, Ms. McCarthy left a voice mail message for Margaret Healy on Margaret Healy's home answering machine that was threatening, foul, abusive, replete with curses, hatred and intimidation.

76. Complaint Report No. 5013 was taken by the Police Department at the 54th Precinct, 301 Gold Street, by Police Officer Simlet, Shield # 29374. A true and accurate copy of the complaint is attached as Exhibit 3.

77. The crime charged is aggravated harassment.

78. A true and accurate copy of the transcription of the threatening and intimidating voice mail message left by defendants is attached as Exhibit 4.

79. Ms. O'Hanlon and Ms. McCarthy then escalated their campaign of threats and intimidation against Margaret Healy.

80. On Friday, September 16, 2011, Ms. McCarthy and Ms. O'Hanlon physically and personally accosted, threatened and intimidated Margaret Healy at Margaret Healy's home.

81. Ms. McCarthy and Ms. O'Hanlon misrepresented and lied to Margaret Healy's doorman telling him that they had an "appointment" with Margaret Healy.

82. Ms. McCarthy and Ms. O'Hanlon never had an appointment to meet with Margaret Healy on Friday, September 16, 2011.

83. Ms. McCarthy and Ms. O'Hanlon called the Police on Friday, September 16, 2011.

84. The Police came to Margaret Healy's residence on Friday, September 16, 2011.

85. The Police refused to force Margaret Healy to allow or permit defendants entrance or access to Margaret Healy's residence.

86. Ms. McCarthy and Ms. O'Hanlon then escalated their campaign of threats and intimidation against Margaret Healy.

87. On Friday, September 16, 2011, Ms. McCarthy deliberately and recklessly drove after Margaret Healy in "road rage," against Margaret Healy.

88. Ms. McCarthy drove perilously close to Margaret Healy threatening and intimidating her with Ms. McCarthy's huge SUV.

89. Margaret Healy was, at all relevant times, threatened and intimidated, and drove to the Police Precinct whereupon Ms. McCarthy drove off.

90. A temporary restraining order and Court-Order of protection is necessary to protect Margaret Healy, and her husband and her dog Lucy against the defendants during the pendency of this lawsuit.

AS AND FOR A FIRST CAUSE OF
ACTION A TEMPORARY
RESTRAINING ORDER

91. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "90," with the same force and effect as if actually and fully set forth herein.

92. That the Court is, respectfully, requested to grant plaintiff a temporary restraining order against the defendants enjoining or restraining them from further taking any action to take custody and/or possession of Margaret Healy's dog Lucy and threatening and/or intimidating

Margaret Healy and/or her husband, and from being in and around plaintiff's residence and neighborhood of Brooklyn Heights, New York.

AS AND FOR A SECOND CAUSE OF
ACTION FOR AN ORDER OF
PROTECTION

93. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "92," with the same force and effect as if actually and fully set forth herein.

94. That the Court is, respectfully, requested to grant plaintiff an order of protection against the defendants enjoining or restraining them from further taking any action to take custody and/or possession of Margaret Healy's dog Lucy and threatening and/or intimidating Margaret Healy and/or her husband, and from being in and around plaintiff's residence and neighborhood of Brooklyn Heights, New York.

AS AND FOR A THRID CAUSE OF
ACTION FOR DECLARATORY
JUDGMENT

95. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "94," with the same force and effect as if actually and fully set forth herein.

96. That the plaintiff be granted a declaration that plaintiff is the rightful sole owner of her dog Lucy and that defendants have no rights.

AS AND FOR A FOURTH CAUSE OF
ACTION FOR MONETARY DAMAGES

97. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "96," with the same force and effect as if actually and fully set forth herein.

98. That defendants committed repeated aggravated harassment, threats and intimidation against the plaintiff.

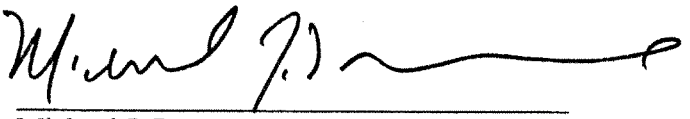
99. The defendants put plaintiff in fear for her safety; the safety of her husband and; the safety of her dog, Lucy.

100. The defendants proximately caused plaintiff monetary damages, including punitive damages, of no less than $500,000.00.

101. The relief herein requested has not been previously made to the Court and/or any other Court or Judge.

WHEREFORE, the Court is respectfully requested to grant plaintiff judgment, together with such and other and further relief as is just and proper in the Court.

Dated: September 22, 2011
New York, New York



Michael J. Devereaux, Esq.
DEVEREAUX BAUMGARTEN
Attorneys for Plaintiff MARGARET HEALY
39 Broadway, Suite 910
New York NY 10006

TO: SUSAN McCARTHY O'HANLON
39-23 213th Street, #2F
Bayside, New York 11361-2054

SLANEY O'HANLON
39-23 213th Street, #2F
Bayside, New York 11361-2054

CLIENT VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Margaret Healy being duly sworn, deposes and says:

I have read and know the contents of the foregoing complaint. The same is true to my knowledge, except as to those matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

Margaret Healy

Sworn to before me this
22 day of September 2011

Notary Public

MICHAEL J. DEVEREAUX
Notary Public, State of New York
No 4949064
Qualified in Nassau County
Commission Expires March 6, 2015

EXHIBIT 3

Healy 1017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS- CIVIL TERM-PART 32

MARGARET HEALY, Petitioner, -against- SLANEY O'HANLON and SUSAN MC CARTHY, Respondents.	INDEX NO. 21646/11

H E A R I N G
360 Adams Street
Brooklyn, N.Y. 11201
February 23, 2012

B E F O R E:

HONORABLE YVONNE LEWIS
Judge.

A P P E A R A N C E S:

MICHAEL J. DEVEREAUX and ASSOCIATES, PC
39 Broadway Suite 910
New York, New York 10006
BY: MICHAEL J. DEVEREAUX, ESQ.
BY: THOMAS J. CHAVES, ESQ.
For the Petitioners

STANLEY ALTER, ESQ.
300 East 42nd Street 10th Floor
New York, New York 10017
For the Respondents

LISA L. DIMINO, RPR
SENIOR COURT REPORTER

THE CLERK: Okay. In the matter of Healy versus O'Hanlon, Index Number 21646 of '11. State your appearance for the record. Start with the plaintiff.

MR. DEVEREAUX: Michael J. Devereaux, attorney for plaintiff.

MR. ALTER: Stanley Alter, attorney for the defendant. Good afternoon.

MR. DEVEREAUX: Good afternoon.

THE COURT: Good to see you, I think. I need to talk to counsel first at the bench.

MR. DEVEREAUX: Sure.

(Bench conference held off the record.)

THE COURT: You are before the Court on a request for preliminary injunction, and I'm ready to proceed on a hearing to determine whether or not preliminary injunction is warranted in this case. Are you ready to proceed?

MR. ALTER: If your Honor please, I got back to my office, I left the court yesterday, and didn't get to my office until about twelve o'clock. And sitting on my desk was an urgent letter addressed to me saying that the plaintiff is going to withdraw their motion. And I think, if my recollection is the basis for the withdrawals, the fact that my clients

have not gone near the premises or spoken to the plaintiff since the institution of this proceeding and that they understand that I'm going to go forward or want to go forward with the aspect of my client having some sort of custody or-- pardon me for using the word "custody", some sort of time with her pet, with her dog.

Now, they also graciously tell me that the day after we're in court and spent the morning, that they would consent to the letter of Mr. Scharoff going into evidence without the need of Mr. Scharoff being present. And I take that, I take their withdrawals fine, that saves everybody time.

But, I tell you, very frankly, your Honor, it also goes to another level, it shows the sad nature of this motion, the waste of everybody's time yesterday and today, judge.

THE COURT: People make determinations based upon circumstances and happenings. It seems to me that they may have decided after yesterday's proceedings to do what they did as opposed to that having been a waste of time. It may have been the use of time that got them to that position.

MR. DEVEREAUX: May I be heard, judge?

THE COURT: Absolutely.

MR. DEVEREAUX: I think he's referring, I'm not sure, to the motion to quash. Again, we never received-- statutory notice requires 203(a), with all due respect, you don't have to notify your adversary of a trial subpoena. Since 2003, you have to notify your adversary of a trial subpoena. He never provided any notice to us. The only way we found out about it, I found out about it through my client, through the non-party-- strike that. I never found out from my client.

I found out, Mr. Walter Healy who called me up and said, are you aware of a subpoena having been served, a trial subpoena having been served on a non-party. I said, no, we haven't received any such notice, I imagine I will get notice. So, we have no offer of proof. It doesn't comply with the statute mandated. It's non-waiveable, it's not something that's only allowed-- that I have to comply with and Mr. Scharoff doesn't have to comply with it, we have to comply with it. It's non-waiveable. That's one reason we made the motion to quash.

Also, it appears that the letter or whatever he's trying to do with Mr. Scharoff is absolutely irrelevant to any visitation or custody-- visitation issue. Certainly, custody is not an issue right now.

It can't be at this preliminarily stage. We cannot pull a My Cousin Vinny and accelerate through the trial and forget about discovery and everything else. You have to do it in an orderly progressive fashion.

I received a non-party trial subpoena, judicial subpoena, not signed by the Court. We don't know what he wants Mr. Scharoff for. Now he's saying that I must have known we want Mr. Scharoff for a letter.

THE COURT: I thought it was just consented to, the entry of a letter.

MR. DEVEREAUX: We made that speculation on our own. We decided, you know what, we don't know what he wants Mr. Scharoff for, it can't be any issue related to visitation. Maybe he wants it for this letter that has nothing to do with visitation, let's cut to the quit, we'll admit it in.

THE COURT: Well, if we're there --

MR. ALTER: I --

THE COURT: Stop. I started talking. You need to stop. Thank you. What I need from you all is to proceed forward and we're proceeding. If we're not proceeding and we don't need Mr. Scharoff, perhaps he might like to leave.

MR. DEVEREAUX: It's his subpoena, judge. I

didn't subpoena --

MR. ALTER: Your Honor, we're already arguing a subpoena issue.

THE COURT: We're not rearguing the subpoena issue.

MR. ALTER: Because very frankly, Mr. Devereaux sent me a letter outlining the terms of the subpoena, had it in his possession and asked me to respond, if I would withdraw the subpoena.

MR. DEVEREAUX: Yes. I am required to do that.

MR. ALTER: So, the claim --

THE COURT: You need to talk one at a time.

MR. ALTER: So, the claim he didn't know anything about the subpoena, judge, is a little ludicrous; however, I have in my hand the letter that I was referring to dated February 22nd withdrawing their motion.

THE COURT: Let me do this again. Start all over. I need to know whether or not you're ready to proceed. I heard your recitation about the subpoena. You did not answer the question if you're ready to proceed and to what extent you want to proceed or don't. That's all I want to hear from you after he's done.

MR. DEVEREAUX: Yes, your Honor.

MR. ALTER: Your Honor, I'm ready to proceed on the issue of visitation with the dog.

THE COURT: Only on that issue?

MR. DEVEREAUX: Yes. They're withdrawing, according to them.

THE COURT: Go ahead.

MR. DEVEREAUX: Your Honor, I would let my counsel who I will speak for now-- we're withdrawing the order to show cause. I have an affidavit from my client consenting.

THE COURT: Order to show cause in its entirety?

MR. DEVEREAUX: In its entirety. And therefore, we believe and I think there's no predicate for a visitation issue which was never made, I believe he may have brought it up orally, but there's certainly no papers on it and there's no application before this Court or notice of motion or cross-notice of motion made downstairs.

So, there's no jurisdictional predicate for the consideration of a visitation issue, which goes beyond the scope of the order to show cause and we believe goes beyond the scope of any hearing right now. If he wants to address a visitation issue, he

should do it on papers, and we'll have a hearing before the Court on the papers.

I don't believe there's a predicate right now for him to be asking for visitation when the order to show cause was withdrawn.

THE COURT: You may want to address a possible determination of the Court that withdrawal of this motion is purely for the reason to escape the jurisdiction of the court on issues that you do not wish to address. And if it's only to that end, then the Court might not determine that you can withdraw.

MR. DEVEREAUX: I agree.

THE COURT: Determine that you cannot withdraw.

MR. DEVEREAUX: Certainly I have the affidavit and that's one of the things I thought your Honor may be concerned with. It's the cost-effective-- that's here, your Honor, the cost-effectiveness of it and also the reality of it is since the incidents occurred and since we received from Judge Ash the temporary restraining order, there have been no further incidents.

We cannot believe that any other incidents will be occurring, but if they do, we certainly will, without prejudice, of course, do another order to

show cause for restraint. We cannot imagine, we hope reasonably that these-- that people are reasonable and incidents won't occur again.

So, cost-effectiveness is, let's proceed, let's get on with the issues in the case, and let's get this going in an orderly fashion. We still don't have an answer. I believe we don't have any discovery yet. That's what we're looking for. It's not done just for that purpose.

However, truth be told, judge, I didn't make-- the scope of the order to show cause is the scope and they're bringing up something outside that scope and it's inappropriate to that extent. So, there is-- we would have that issue regardless, and it's preserved for appeal. I believe Mr. Chaves told me it's preserved for appellate review. It goes way beyond any scope right now, there's no basis for a visitation issue when he hasn't made a written notice of motion for that issue, for that relief. I don't believe it's in the complaint, in his answering papers. In the counterclaim, he asked for custody, not visitation.

MR. ALTER: May I be heard, judge?

THE COURT: I think you are fine. Historically, visitation is an item under custody.

Custody at issue, visitation is at issue.

MR. DEVEREAUX: And I agree with you, visitation, custody is at issue, but not at this point in time; however, if your Honor deems it to be an issue at this point in time, we're ready to proceed on that visitation issue, but we have our objections respectfully preserved.

THE COURT: Absolutely.

MR. DEVEREAUX: One of the things, whatever you want to do, your Honor, I don't want to jump the gun.

THE COURT: I'm listening. You're done?

MR. DEVEREAUX: I think I answered your questions; is that correct?

THE COURT: All right. To the extent that the issue of the visitation has come before this Court on this order to show cause, the Court will hear that issue. All other aspects of the order to show cause can be withdrawn.

MR. DEVEREAUX: Okay. Just to clarify for the record, I'm sorry, judge, it's our order to show cause did not deal with visitation, did not bring up or request or have anything to do with visitation, so I've just got to make that clear for the record.

THE COURT: You think the record's not clear?

MR. DEVEREAUX: Can Mr. Scharoff be released?

THE COURT: Absolutely.

MR. ALTER: No.

MR. DEVEREAUX: I'm sorry?

MR. ALTER: I have some questions to ask Mr. Scharoff.

THE COURT: With respect to visitation?

MR. ALTER: That's correct, your Honor.

THE COURT: I need an offer of proof. Counsel, outside, outside in the hallway.

(The following takes place out of the courtroom.)

THE COURT: I want an offer of proof as to why Mr. Scharoff has to stay.

MR. ALTER: Fine. Your Honor, the question involved --

THE COURT: Scharoff.

MR. ALTER: The question is a matter-- is ownership and abandonment of the dog. The Nassau County divorce action occurred or commenced in August of 2009. I, after getting custody and slating permission to go down to Baltimore to the school, made a demand upon Mr. Scharoff for the return of the dogs. Mr. Scharoff in writing wrote a letter to me acknowledging that Slaney is the owner, she got the

dog as a gift from her father, and then recites a whole history of how this dog is going to be cared for in her absence.

And then there's one paragraph that says that when Slaney is capable of taking care of the dogs, Mr. O'Hanlon and her father will make arrangements to have the dogs returned to her. That's Mr. Scharoff, Mr. Healy's co-counsel. So, he can't-- they can't claim that they --

THE COURT: What are the questions you need to ask him?

MR. ALTER: I want to ask him if he, in fact, this letter was in response to my inquiry to get the dogs back. I want to ask him if he had any conversations with Ms. Healy, who's not his client, as to what was the nature of her getting the dogs, and whether he had a conversation with Mr. Healy concerning --

THE COURT: All that goes to the ultimate issue, not to visitation?

MR. ALTER: It goes to the issue, judge, that she has an interest in these dogs. She, in fact, owns these dogs and she has a right to be with these dogs until the ultimate issue is determined.

THE COURT: All that is clear from --

MR. ALTER: It's --

THE COURT: --from the letter?

MR. ALTER: If it's clear from the letter, your Honor?

THE COURT: Not that she has a right to visitation, that's the ultimate issue right here.

MR. ALTER: That's the issue before you, right.

THE COURT: But that she has an interest, based on what you just said-- I didn't read the letter, if it says what you said, it says it's clear she has an interest in the dogs and I don't see at this point a reason to ask the questions that you indicate you want to ask of him.

MR. ALTER: I just want to make sure that this letter was written in response to my request for the return of the dogs because this --

THE COURT: There's nothing that will prove that in that letter.

MR. ALTER: That's right.

MR. CHAVES: Thomas Chaves on behalf of plaintiff. Just, very briefly, 'cause we don't want to go through an endless rehash that's already been spoken about, the concern that I have at this point in time, given the procedural history of the case, is

that first we can stipulate that a dog under New York law is property. Now we veered into this idea of visitation of the property. And your Honor indicated yesterday a willingness to consider making new law in the area because I think we can all agree there isn't any precedent now which would even allow for that consideration.

Now, moving from that as the baseline, in terms of what the issues are with respect to whether the person should have visitation or not have visitation, it's been spoken about in this context in this courtroom as visitation and custody. And that's more akin to what happens with matrimonial actions where there are minor children involved.

So, if that's really what we're going to be involved with, the real issue is whether she's entitled to visitation, and considering whether she is or not, her disputed ownership one way or the other is not, in my view, relevant. No one's disputing in this case that she claims that she's the owner of the dog. She says, I'm the owner of the dog. No one's disputing that.

THE COURT: So, that is not the issue, you're saying claims as opposed to--

MR. CHAVES: Right.

THE COURT: Excuse me.

MR. CHAVES: I'm sorry.

THE COURT: Are you saying that no one's contesting the fact that she owns the dog?

MR. CHAVES: No. The opposite, no one's disputing that she claims she owns the dog.

THE COURT: Right. That's not sufficient. In other words, my position is on behalf of plaintiff, that if visitation is even going to be allowed, which was strenuously objected to, that the real standard should be what's in the best interest of the dog and that has nothing to do with who the owner of the dog is at this particular moment moving forward.

In other words, ultimately, if a jury determines that Slaney, the defendant, is the owner of the dog, then the ownership gets transferred and she gets possession of the dog. My understanding of what this application is-- see, we don't have any papers, so it's very difficult to kind of surmise what's even being suggested. It's very vague. You need to be direct and to the point, all that extra stuff.

MR. CHAVES: Direct and to the point is if we're even going to deal with the issue of visitation, anything this lawyer says in a divorce

context a year ago has nothing to do with what's going on today in 2012. It's wholly irrelevant.

THE COURT: You can ask that question. You may have to wait for others, but at this point, I don't hear that. I'll only hear that when I hear the answer. So, we'll call Mr. Scharoff for that.

MR. DEVEREAUX: We reserve our objections, of course.

THE COURT: Of course.

MR. DEVEREAUX: Thank you, judge. May I be dismissed?

THE COURT: May you be excused? No, we need to talk again at the end of the hearing about whether or not there are any sanctions.

(Resume in open courtroom.)

THE COURT: You want to call your first witness?

MR. ALTER: Mr. Scharoff.

J E R O M E S C H A R O F F, called as a witness, having been sworn by the court officer, took the stand and testified as follows:

THE COURT OFFICER: State your name and business address for the record, spell your last name.

THE WITNESS:Jerome Scharoff, S-C-H-A-R-O-F-F,

100 Garden City Plaza, Garden City, New York 11530.

THE COURT OFFICER: Be seated.

MR. ALTER: Your Honor, may I stand on the other side?

DIRECT EXAMINATION

BY MR. ALTER:

Q. Good afternoon, Mr. Scharoff.

A. Good afternoon, Mr. Alter.

Q. How are you today?

A. Fantastic.

Q. Mr. Scharoff, tell the Court your occupation?

A. I'm a lawyer.

Q. And practicing where?

A. Garden City.

Q. And sir, are you representing a James O'Hanlon in a divorce action against the named defendant in this action, Susan O'Hanlon?

A. Yes.

Q. And did there come a point in time when-- did you know that there were several dogs living in the marital residence?

THE COURT: I'm sorry, I didn't hear that.

Q. Did you know in 2009, September 2009, that there were several dogs living in the marital residence?

MR. CHAVES: Objection.

THE COURT: Sustained. You have a very limited scope, until we get beyond that scope.

MR. ALTER: May we mark this, your Honor?

THE COURT: Yes, we can mark it on the consent indicated earlier in evidence.

MR. CHAVES: Yes, judge, this is the October 15, 2009 letter from Mr. Scharoff.

THE COURT: He is marking it.

MR. CHAVES: Judge, I don't mean to interrupt, I just thought I wanted to bring to the Court's attention, if Mr. Alter's going to question Mr. Scharoff with respect to a letter that was sent to him, does he not then become a witness, himself, in connection with the case?

THE COURT: He's not going to question him in connection with the substance of the letter, but the premise of the letter.

MR. CHAVES: Well, if it goes beyond anything outside of the letter --

THE COURT: We're going to try to make sure it doesn't go beyond, that's the only scope he had to ask questions.

Q. Mr. Scharoff --

MR. ALTER: Was this marked?

THE COURT OFFICER: Yes, on the bottom.

Q. Mr. Scharoff, I show you what's been marked as Defendant's Exhibit A?

THE COURT OFFICER: A.

Q. You were the author of that letter; is that correct?

A. Excuse me?

Q. You were the author of that letter; is that correct?

A. Looks that way, yes.

Q. Mr. Scharoff, was that letter written in response to a request to return the dogs to Slaney O'Hanlon and Susan O'Hanlon?

A. I don't remember. It was from 2009.

Q. Have you read this letter recently?

A. I can read the letter over.

Q. Please read it.

THE COURT: I think we got the answer to that already.

A. What's the question?

Q. Was that letter written in response to a request for the return of the dogs?

A. It appears as though there was an issue with who was going to have possession over the dogs, according to this letter.

Q. And that letter is cc'd, Mr. Healy?

A. It says on the second page.

Q. Who's Mr. Healy?

A. Mr. Healy is my co-counsel on the divorce case.

Q. And is he sitting in this courtroom?

A. Yes.

Q. No further questions.

MR. CHAVES: I don't have anything for cross-examination. Thank you.

THE COURT: I'm sorry?

MR. CHAVES: I don't have anything for cross-examination.

THE COURT: There being no cross-examination, I think that concludes our request for testimony from you, Mr. Scharoff. You may step down.

(Witness excused.)

THE COURT: I'd like to see the letter.

MR. SCHAROFF: Am I free to go, your Honor?

THE COURT: Yes, you are free to go.

MR. ALTER: Your Honor, may I have one moment with Mr. Scharoff in the hall?

THE COURT: We'll take a two-minute break, five minutes if you need to. We'll take an official five-minute break.

(Break taken.)

MR. CHAVES: Judge, before the visitation

1 part of this hearing proceeds, I have here documents
2 which I want the Court to take judicial notice of and
3 which I don't want to surprise my adversary during
4 his visitation hearing. This is a certification that
5 the dog, Lucy, is a service dog for the plaintiff,
6 Margaret Healy.
7 There's an elaborate process requiring proof
8 of a medical condition, which necessitates the use of
9 a service dog. There's a training program for the
10 dog to become a service dog and I have the letter and
11 the license of certification with me. I have a copy
12 for Mr. Alter, and also, a copy for the Court that I
13 intend to use and mark into evidence. I did not
14 want, however, to spring it in the middle of the
15 proceeding at the point in time when we call Margaret
16 Healy.
17 THE COURT: Okay. Are we ready to proceed?
18 MR. ALTER: Yes, your Honor. Ms. O'Hanlon.
19 S L A N E Y O ' H A N L O N, called as a witness,
20 having been sworn by the clerk, took the stand and
21 testified as follows:
22 THE CLERK: State your name and address.
23 THE WITNESS: Slaney O'Hanlon, 135 Wolver
24 Hollow Road, Upper Brookfield, New York 11071.
25 MR. ALTER: May I, your Honor?
26

THE COURT: Yes, you may inquire.

MR. ALTER: Thank you.

DIRECT EXAMINATION

BY MR. ALTER:

Q. Slaney, I take you back to August of 2009, where were you living at that time?

A. I was living in Manhasset.

THE COURT: It's going to be necessary for you to yell at your counsel.

A. I was living in Manhasset, New York with my two parents.

THE COURT: With my?

THE WITNESS: Parents.

Q. Did you have any pets living with you at the time?

A. I had two dogs.

Q. And can you give me the names of the dogs?

A. Lady and Lucy.

Q. And when did you get Lucy?

A. Christmas of 2008.

Q. And how did you get Lucy?

A. My parents got her for me as a Christmas gift.

Q. Do you recall where did you get Lucy from? Do you know where Lucy came from?

A. Virginia.

Q. What breed is Lucy?

A. A Golden Doodle.

Q. Is there any particular reason why a Golden Doodle was obtained for you?

A. Because I am allergic to dogs and she's hypoallergenic, so I am not allergic to her.

Q. Do you recall when Lucy came into the household?

A. Yes.

Q. And who cared for Lucy-- you got her in December of 2008?

A. Yes.

Q. Who cared for Lucy between December of 2008 and, let's say, the end of August 2009?

A. I did.

Q. When you say, cared for her, what did you do?

A. I fed her, I walked her, I groomed her, took care of her.

Q. Did you have a yard at your home?

A. Yes.

Q. Did Lucy go out in the yard?

A. Yes, I would take her out to play with her.

Q. Where you're living now, can you tell the Court how big a living area you have?

A. I live in a three-bedroom house, and I'm not sure actually how many acres, a few acres of land, and it's away from any main streets.

Q. Is that acres of land wooded or is it fields? What is it?

A. It's fields and a little bit of trees.

Q. Did there come a time that you left New York State in around sometime in 2009?

A. Yes, I left in September of 2009 for school.

Q. Where did you go?

A. Baltimore, Maryland.

Q. And do you recall?

THE COURT: I'm sorry, when was that?

THE WITNESS: September 2009.

Q. And where was that?

A. In Maryland.

Q. And why did you go there?

A. For school, I went to a boarding school there.

Q. And did you need Court permission to go to school in Baltimore?

A. Yes, yes.

Q. And the Court gave you permission?

A. Yes.

Q. Do you remember the name of the judge?

A. Judge Diamond.

Q. In what court? Do you recall?

A. Nassau County.

Q. And that was after a hearing?

A. Yes.

Q. Did your father want you to go to court?

MR. CHAVES: Objection.

THE COURT: Sustained, unless you want to be heard.

MR. ALTER: I will withdraw, judge.

Q. When you left to go to school in Baltimore, what was your understanding as to who was to take care of the dogs?

A. My understanding was that my brothers and my father would take care of my two dogs.

Q. And how many brothers did you have in the residence?

A. Two.

Q. Could you give their names?

A. Emmitt and James O'Hanlon.

Q. Did you have any conversations with them concerning their care of the dog while you were gone?

A. I had a conversation with my older brother, James, and he told me --

Q. Not what he told you. I just want to know if you had a conversation?

A. Yes.

Q. Did there come a time that you requested that your dogs be turned over to you?

A. Yes.

Q. And how was that request made?

A. I asked my mother to ask you to take whatever you had to do, I don't know.

Q. Did there come a time that you learned that your aunt, Margaret Healy?

A. Yes.

Q. Was caring for your dogs?

A. Yes.

Q. Were you concerned about your aunt caring for the dogs?

A. No. She had cared for my dogs in the past, so I didn't think it would be a problem.

Q. When did you finish up school in Baltimore?

A. In May of 2011.

Q. And when did you move into or your mother acquire the right to move into the home that you presently occupy?

A. We moved in December of 2011.

Q. Did you request your dogs?

A. Yes.

Q. And was that request denied?

A. Yes.

Q. Now, do you want to see your dog?

A. Yes.

Q. Care for your dog?

A. Yes.

Q. You like animals, don't you?

A. Yes.

Q. Are you involved with animals?

A. Yes, I play polo, which is horses.

Q. Any other animals?

A. I have been around animals my whole life.

Q. Have you had pets your whole life?

A. Yes.

Q. How many dogs have you had in the household while you were growing up there?

A. In total, we've had three, but at one time, we've had two.

Q. And the other dog was Lady?

A. Yes.

Q. And was that dog given to you?

A. Yes, by my grandfather.

Q. Grandfather who lives where?

A. In Ireland.

Q. He gave you that dog?

A. Yes.

Q. That dog recently died; is that correct?

MR. CHAVES: Objection.

MR. ALTER: I will rephrase.

MR. CHAVES: It's not an issue of form, it's an

issue of scope. There's no issue with respect --

MR. CHAVES: I'll withdraw the question, judge, I'll withdraw the question.

THE COURT: As you wish.

Q. Do you have time now to care for Lucy?

A. Yes.

Q. Have you made arrangements with regard to your further education?

A. Yes, I hope to attend Nassau Community College, which is down the block from where I live.

Q. So that you will be available to care for your dog?

A. Yes.

Q. Did your dog relate to you while you were rearing it?

MR. CHAVES: Objection.

THE COURT: I would ask you to rephrase it.

Q. Were you able to train your dog?

A. When I was with her, yes.

THE COURT: I need you, for the record, to be clear which dog.

MR. ALTER: Lucy, your Honor, yes, Lucy, the dog.

THE COURT: The record needs to say-- have the name in it, not so much that I need to hear it.

Q. The Golden Doodle, what did you train the dog to

do?

A. I trained her to sit, to lay down, I mean, she was young when I left, so I didn't have much time.

Q. She was with you how many months?

A. From December to September.

Q. Would you want to be with your dog now?

A. Yes.

Q. How much time can you spare, your time, to care for your dog?

A. I would spend every day with it.

MR. ALTER: Judge, no further questions.

MR. CHAVES: Judge, before I begin my cross-examination, it's obvious, that defendant is emotionally upset, maybe we can take a five-minute break, so she could compose--

THE COURT: Do you need a break?

THE WITNESS: No.

THE COURT: You do not need a break?

THE WITNESS: No.

MR. CHAVES: Should I wait for the tissue, judge?

THE COURT: No. She said she didn't need a break.

MR. CHAVES: All right, judge, thank you.

CROSS EXAMINATION

BY MR. CHAVES:

Q. Ms. O'Hanlon, how old are you?

A. Nineteen.

Q. Now, let's go back in time a little bit to the point in time when Lucy, the dog at issue here, came to your house in Manhasset. Do you remember that time?

A. Yes.

Q. At that time, what grade were you in?

A. I was about to go into my junior year of high school -- oh, no, I was in my sophomore year of high school.

Q. At that time, you were at Manhasset High School; is that correct?

A. Yes.

Q. Was your intention to go to Manhassat High School for your junior year?

A. At the time I got her, yes.

Q. So, the dog lived with you for a while. And then there came a point in time where you and your mother abruptly left that house in Manhasset; is that not correct?

MR. ALTER: Objection.

THE COURT: Rephrase.

Q. There came a point in time when you and your mother, together, left that house as your residence; isn't that correct?

A. Yes.

Q. And before you left that house, you didn't do anything to make any arrangements for the care of Lucy, did you?

A. I had spoken to my brother and he said he would take care of her.

Q. You did nothing other than that, correct?

A. Yes.

Q. Now, with respect to your leaving that home, had you told your father that you were going to leave?

A. No.

Q. So, you just took off, correct?

A. Correct. I had to get out of the house.

Q. Right. I understand.

THE COURT: I'm sorry, I didn't hear what you said.

MR. CHAVES: She said she had to get out.

THE COURT: I didn't ask you.

MR. CHAVES: Sorry.

THE WITNESS: I said I had to get out of my house.

Q. So, you and your mother left together, correct?

A. Yes.

Q. And you didn't take the dog with you, did you?

A. No.

Q. When you left the house, where did you go to live?

A. We were in between places. We were living with my mom's sister for a while. We lived with friends.

Q. Your mother's sister?

A. Yes.

Q. Where does she live?

A. In Brooklyn.

Q. So, she's your aunt, correct?

A. Yes.

Q. And does she live in an apartment or a house?

A. An apartment.

Q. How big is that apartment?

A. It's not very big, one bedroom.

Q. How long did you stay there for?

A. A few weeks. I don't remember exactly how long.

Q. After you stayed in that apartment for a few weeks, where did you go?

A. We stayed at a friend's house for a few days and then in September I left for school.

Q. The friend's house, who was the friend?

A. It's a family friend from Manhasset.

Q. This person has a house in Manhasset?

A. Yes.

Q. So, just so we're all clear on the sequence of events, you and your mother leave the Manhasset house with no notice to your father. You take off. You go to this one

1 apartment and then after staying there a week or two, then
2 you go to this house in Manhassat, correct?
3 A. Yes.
4 Q. Who's the owner of the house in Manhasset?
5 A. Beth Shelton.
6 THE COURT: I'm sorry, I could not hear you.
7 THE WITNESS: Beth Shelton.
8 Q. And you say she's a friend?
9 A. She's my mother's friend.
10 Q. Friend of your mother?
11 A. Yes.
12 Q. And had you been in that house prior to going there
13 to live?
14 A. In the past, yes.
15 Q. Can you describe for the Court something about that
16 house, its size and who lives there?
17 THE COURT: Relevance?
18 MR. CHAVES: In terms of taking care of the
19 dog.
20 MR. ALTER: Objection, your Honor.
21 THE COURT: Sustained.
22 Q. All right. Now, when you went to stay in this
23 particular house, how many bedrooms did the house have?
24 MR. ALTER: Objection, your Honor.
25 THE COURT: Sustained, unless, of course, you
26

1 want to be heard.

2 MR. CHAVES: I'll move on.

3 Q. Was there any reason that Ms. Shelton-- is that her name?

4 A. Shelton.

5 Q. Shelton or Sholten?

6 A. Shelton.

7 Q. That Ms. Shelton had indicated to you in any way that Lucy could not come to stay there?

8 MR. ALTER: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. As far as you know, was there any reason why Lucy was not brought to that house?

11 A. We couldn't take care of her. I left her in the Manhasset house because I thought she'd be better off there.

12 Q. So, you-- now between the time you left that house in Manhasset, the primary house, and then moved to the house, the other house in Manhasset, how far away from your original house is the other house of Ms. Shelton, approximately?

13 A. Ten, fifteen minutes.

14 Q. Ten or-- that's a ten or fifteen-minute drive?

15 A. I'd say ten. I don't know.

16 Q. Approximately?

17 A. About ten minutes.

Q. And during the point in time that you were living in that house of Ms. Shelton ten or fifteen minutes away from your original house, did you make any efforts to try to see Lucy?

A. I had asked my mom if we might never be able to get her back. She said yes, but I was too scared to go back to the other house.

Q. Well, at that time, you had indicated that you had your two brothers, were they living in the house in Manhassat at that time?

A. Yes.

Q. And how old are your brothers?

A. Now they are twenty-one and twenty-three.

Q. Now, after you moved out and you were going to the apartment and then living with Ms. Shelton, were you in communication with your two brothers?

A. Yes.

Q. Did you request of your two brothers that you be allowed to see Lucy?

A. I don't remember-- yeah, probably, but they didn't want to get involved.

Q. All right. Now then, in September of that year, you went to this school, correct?

A. Yes.

Q. Now, let's talk for a minute about this particular

1 school. This school is a prep school, is it not?
2 A. Yes.
3 THE COURT: This school is what?
4 MR. CHAVES: A prep school.
5 Q. And this is a boarding school, is it not?
6 A. Yes.
7 Q. And you have testified it's in Baltimore?
8 A. Yes.
9 Q. Is it in Baltimore county or Baltimore city?
10 A. County.
11 MR. ALTER: Objection, your Honor.
12 THE COURT: Sustained.
13 Q. This particular boarding school?
14 THE COURT: This particular?
15 Q. Boarding school, how long is the school year? When
16 does it start and when does it end?
17 A. It starts in September and ends in June.
18 Q. And during the course of the school year, are there
19 breaks, such as for Thanksgiving, Christmas, probably
20 winter, spring?
21 A. Yes.
22 Q. Those types of breaks?
23 A. Yes.
24 Q. Now, in that first year when you were a student
25 there, when these breaks occurred, what, if anything, did
26

you do?

A. I went home.

Q. Now, home is defined at that point--

A. I'm sorry, I went back to New York with my mother in Bayside.

THE COURT: With my mother?

THE WITNESS: I went to see my mom. We were living in Bayside.

Q. Right. You were living in Bayside?

A. Yes.

Q. What were the living conditions or circumstances there? I mean, was it an apartment? A house?

A. It was a very small apartment.

Q. A very small apartment?

A. Yes.

Q. When you define "very small"?

A. It had two small bedrooms, one small living room, small kitchen. That's it.

Q. And who was living there besides your mother, if anyone?

MR. ALTER: Objection.

THE COURT: You need to rephrase it.

Q. Let me ask you this, when you had these various breaks at this prep school, you testified you had come back to New York City and you would go to stay with your mother,

correct?

A. Yes.

Q. Is there any reason you can think of why Lucy could not come to live with you at that point in time?

A. Because there was a small apartment. Lucy's a big dog. She would have been better off in Manhassat. I didn't want to bring her into a small environment when she had a five-bedroom house in Manhasset.

Q. Well, let me ask you this: After you went to the boarding school, were you in communication with your brothers?

A. Yes.

Q. Did they not discuss with you what Lucy's living conditions were?

A. When she was living with my aunt?

Q. No.

A. When she was in Manhasset?

Q. Yes.

A. That she was in Manhasset and she was fine.

Q. Now, but at no time when you came back during these vacations did you make any attempt to actually see Lucy; isn't that he correct?

A. Yes because I was too afraid to see my father.

Q. But, I mean, your brothers had access to cars, is that not correct?

THE COURT: I'm sorry, had access to what?

Q. Cars, is that not correct?

A. Yes.

Q. So, as far as you know, there's nothing that would have prevented them from putting Lucy in a car and driving Lucy to see you; isn't that correct?

MR. ALTER: Objection.

THE COURT: Sustained. You may, though, rephrase.

Q. Did you ever request to see Lucy?

A. Yes.

Q. And who did you make that request to?

A. I would make it to my mother to ask a lawyer to go through the lawyers.

Q. Forgetting all the lawyers. Did you ever say to your brother, can you please drive Lucy, my dog, to see me?

A. Yes, but unfortunately, they did not want to get involved because it was in between my parents, they didn't want to be involved in the divorce. That's how they saw it. My father would give them a hard time about it if they tried.

Q. Okay. So, you requested to see the dog, and they said, we can't bring the dog to you even for five minutes for you to spend time with?

A. Correct.

Q. And this continued over a course of time, correct?

A. Yes.

Q. So, did you do anything, other than what you've just testified to, during the school year when you were in this prep school in Baltimore to try to see the dog, anything else?

A. Besides requesting for the return of my dogs and being told that I wouldn't get them until I was able to take care of them by myself, no.

Q. So, all this was a communication with you and your mother; isn't that correct?

A. Yes.

Q. And isn't it true that you came to learn at a certain point in time that your aunt, Margaret Healy, had possession of Lucy?

A. Yes.

Q. And how did you learn about that?

A. I was told by my mother.

Q. You rely on your mother for a lot of things, do you not?

MR. ALTER: Objection.

THE COURT: Sustained.

Q. Other than your mother advising you about this, did you learn from your brothers --

MR. ALTER: Objection as to "advising," your

Honor.

Q. All right. Let me rephrase. Did your brothers communicate to you where Lucy was?

A. Not that I recall. I might have talked to them about it. It was a long time ago.

Q. So, you came to learn that Lucy was living with your Aunt Margaret, correct?

A. Yes.

Q. And at the point in time when you learned of this, were you concerned in any way about that?

A. I had asked that my mother be given the dogs for safe-keeping, but when I was told that I would get them back after I graduated, I wasn't concerned because my aunt has taken care of my dogs in the past. I didn't think it would be a problem.

Q. Isn't it fair to say that, from your knowledge of your aunt, that she's an animal lover?

A. Yes.

Q. And as far as you knew, before her taking Lucy in, she'd always taken great care of whatever pets and animals she had, correct?

A. Correct.

Q. So, the fact that she had the dog, in and of itself, was not a concern to you with respect to the care and upkeep of the dog, isn't that correct?

A. Correct.

Q. Now, you testified that your mother was living in this two-bedroom apartment in Queens, correct?

A. Correct.

Q. And you also testified that wasn't a suitable place for Lucy. So, how could she have taken the dog back?

A. I was --

THE COURT: Sustained.

Q. Well, let me ask you this: So, you're going to school and you come back at the end of the first year there, that was your junior year, correct?

A. Yes.

Q. After you came back, the school year ends in June, where did you go?

A. Went to Bayside to live with my mother.

Q. To live with your mother. And by that point in time, Lucy was living with the plaintiff, Margaret Healy, correct?

A. Correct.

Q. And she's your aunt, correct?

A. Correct.

Q. After you came back in June, did you call her to say, I want to see Lucy?

A. No because I didn't think I was allowed.

Q. Who was stopping you?

THE COURT: Sustained. Rephrase if you want.

Q. Did anyone indicate to you that you could not call your own aunt?

A. No.

Q. Was it important to you to see Lucy at that time?

A. Yes.

Q. Did you do anything to try to see the dog?

A. I did not think I was allowed to.

Q. Okay. That particular summer, what did you do? Did you work? Did you go to school? Did you do something else?

A. I worked at my parent's restaurant.

Q. Your parent's restaurant?

A. Yes.

Q. What is the name of that restaurant?

A. Mojave.

Q. And what do you do there?

A. I was a hostess.

Q. And generally, what hours did you have?

A. I would work maybe two or three nights a week.

Q. So, let's assume you worked three nights a week there, that would leave you four days free; is that correct or incorrect?

A. Correct.

Q. So that if you wanted to, if you were quote,

"allowed" to, you could have seen the dog in those other four days, correct?

A. Correct.

MR. ALTER: Objection.

Q. Now, isn't it also true --

THE COURT: Wait. There's an objection. You want me to respond or you're taking back the question?

Q. I'll rephrase. I'll ask a new question. Now, isn't it true that your mother also works in that same restaurant?

MR. ALTER: Objection to relevance, judge.

THE COURT: Relevance.

MR. ALTER: It goes to this whole idea of the propriety of visitation and the history of the whole course of dealings.

THE COURT: Sustained.

Q. So, you do this job over the summer, and then it's senior year, correct?

A. Correct.

Q. And you go back to the school in Baltimore, correct?

A. Correct.

Q. And you go through the same procedure again, you have the same vacations and so forth, correct?

A. Correct.

Q. By that point in time, was your mother still living in that apartment in Queens or she had gone somewhere else?

A. We were still in Queens.

Q. And your brothers did not live there, it was just your mother and you, correct?

A. Correct.

Q. So that you would have one bedroom and she would have one bedroom, correct?

A. Correct.

Q. So, when you came back on these various vacations, did you do anything to try to see Lucy?

A. No because I didn't think I was allowed. I thought I had to graduate school first, which is what I was told.

Q. Who told you that?

A. When I requested my dogs, the response which I believe is the letter was that I would get Lucy back when I graduated when I could take care of her on my own.

Q. But, did you have any discussion with your brothers about the issues of seeing the dog?

A. No.

Q. No discussion about it?

A. No. They did not want to be involved.

Q. Are there any other relatives who could have been quote, "been involved," unquote?

A. No.

Q. How about friends?

A. No.

Q. How about Mrs. Shelton?

A. No.

MR. ALTER: Objection, your Honor.

Q. No one?

THE COURT: Sustained.

Q. Okay. So, another year passes, and during that point in time, you never contacted Margaret Healy; is that fair to say?

A. Yes.

Q. And you have sworn affidavits, is that not correct, in connection with this case?

A. Yes.

Q. And in that affidavit, didn't you say that you love Margaret Healy dearly; isn't that in the affidavit somewhere?

A. Yes.

Q. So, if you love her dearly, was there anything preventing you from calling her?

THE COURT: Sustained. Asked and answered.

Q. All right. So, another year goes by and now we're finished with high school, correct?

A. Yes.

Q. You graduated from the prep school and this was in June of 2011, correct?

A. Correct.

Q. So, from the time that you left the house that you had originally lived in in Manhassat up until the point in time when you graduated from high school, this prep school in Baltimore, you haven't seen Lucy at all?

A. Correct.

Q. And you had not contacted-- had any communication with Margaret Healy, correct?

A. Yes.

Q. Now, while you were at this prep school in Baltimore, did at that time you have access to the Internet?

A. Yes.

Q. Did you have e-mail?

A. Yes.

Q. Did you ever consider sending an e-mail to Margaret Healy?

A. No.

Q. Did you have a cell phone, Blackberry, I-phone or something like that?

A. Yes.

Q. Did you ever consider texting her?

A. No.

Q. Did you ever consider writing a letter to her?

A. No.

Q. None of the above?

A. No.

Q. Fine. So, you come back from school in June of 2011, correct?

A. Correct.

Q. And when you come back from school in June of 2011, what did you do?

A. I went to live with my mom in Bayside.

Q. So, that was in June of 2011. What did you do last summer?

A. I worked at my parent's restaurant.

Q. And how long did you work there?

A. I am still working there. I am taking a year off, so since then.

Q. Didn't there come a point in time when you went to somewhere outside the country?

A. Yes. I went to Argentina.

Q. When was it that you went to Argentina?

A. About --

MR. ALTER: Objection, judge, as to relevancy.

THE COURT: I'm sorry.

MR. ALTER: Objection as to relevancy, your Honor, as to her going to Argentina or taking a trip to Florida, what's the relevance?

1 THE COURT: Well, that part's already in
2 evidence. The question is is it relevant when she
3 went over -- when she was away from the home. It
4 seems to me if you rephrase, I will probably be able
5 to find some relevance.
6 Q. Let me ask: Did you go to Argentina?
7 A. Yes.
8 Q. How long were you there?
9 A. Three weeks.
10 Q. And when you came back, did you go to Bayside
11 again?
12 A. No. At that time we were living in upper
13 Brookville, New York.
14 THE COURT: I'm sorry, I didn't hear.
15 THE WITNESS: We were living in upper
16 Brookville, New York.
17 THE COURT: Upper Brookville.
18 Q. That house where your mother currently lives?
19 A. Yes.
20 Q. And after you were in that house, again, did you
21 make any attempt to try to contact Margaret Healy?
22 A. Yes.
23 Q. You did?
24 A. When-- well, the reason why we're here.
25 Q. You're talking about those incidents in September.
26

I mean, before that.

A. I'm confused.

Q. All right?

THE COURT: I did not hear you.

THE WITNESS: Sorry. I'm just confused at what he's asking.

Q. It was a bad question. Before the incidents in September, had you made any effort to contact Margaret Healy?

A. No.

Q. At any point in time, did you ask anyone between the time you left the home in 2009 about up until summer of 2011 to even have a picture of Lucy?

A. No, I have pictures of Lucy.

Q. Old pictures?

A. Yes.

Q. Now, isn't it true that you have some serious interest in polo?

A. Yes.

Q. And you're actually an avid polo player, is that not correct?

A. That's correct.

Q. And in order to do that, do you not have to travel?

MR. ALTER: Objection, your Honor, relevancy.

THE COURT: Sustained.

Q. Do you have any current plans at this time to continue your travels to further your polo playing career?

MR. ALTER: Objection. Relevancy.

THE COURT: Sustained, but you could-- you need some background.

Q. Let's take the background. You went to Argentina, you came back, and then you left to go to Florida, is that not correct?

A. To visit a friend.

THE COURT: Well, a background foundation is what I mean, not --

Q. Wasn't there something else that you did after you came back from your trip to Argentina that was in connection with polo?

A. No.

Q. Did you not go to Florida?

A. To visit a friend. Friends play polo there, but I was not playing.

Q. So, in other words, it was to watch someone else play polo?

MR. ALTER: Objection, your Honor.

THE COURT: Sustained.

Q. How long were you in Florida?

A. For a week.

Q. Have you gone anywhere else?

A. No.

Q. And your intention, you say, is to go to Nassau Community College; is that correct?

A. Yes.

Q. Now, with respect to the care of Lucy, it would be fair to say that even though you hadn't had contact with Lucy, you would believe, based on your prior experience, that Margaret Healy took excellent care of Lucy, is that not correct?

A. Yes.

MR. CHAVES: I don't have anything further. Thank you.

REDIRECT EXAMINATION

BY MR. ALTER:

Q. You were asked some questions about going to the house where you left with your mother. Did you ever go back to the house to obtain any of your property?

A. Once, but I didn't get much.

Q. What happened? Did your father bring a proceeding against you and your mother for doing so?

A. Yes.

Q. A contempt proceeding?

A. Yes.

Q. And you were there to remove your property?

A. Yes.

1 Q. Did you know that Mr. Healy was representing your
2 father?
3 A. Yes.
4 MR. CHAVES: Objection.
5 THE COURT: I'm going to allow the area of
6 questioning. You need to back up a little bit,
7 though, so that the record is clear.
8 MR. ALTER: I will, your Honor.
9 Q. Do you recall the day that you were in court
10 asking-- where your mother was asking for your permission to
11 go to school in Baltimore?
12 A. Yes.
13 Q. Was your father represented by counsel opposing
14 that motion?
15 A. Yes.
16 Q. And is that attorney present in this courtroom?
17 A. Yes.
18 Q. Is that Mr. Healy?
19 A. Yes.
20 Q. No further questions.
21 MR. CHAVES: I don't have anything else.
22 Thank you.
23 THE COURT: You have nothing else. I believe
24 that means then, Ms. Hanlon, that counsel have
25 completed their request of information testimony from
26

you. You may step down.

THE WITNESS: Thank you.

(Witness excused from witness stand.)

THE COURT: Another witness?

MR. ALTER: No, your Honor. The defendant rests.

MR. CHAVES: I call Margaret Healy, please.

THE COURT: Okay. I take it that's a rest.

MR. ALTER: That's a rest, your Honor.

M A R G A R E T H E A L Y, called as a witness, having been sworn by the clerk, took the stand and testified as follows:

THE CLERK: In a loud voice, state your name for the record.

THE WITNESS: Margaret Healy.

MR. CHAVES: May I proceed, judge?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. CHAVES:

Q. Good afternoon, Ms. Healy. We've already heard about all the family relationships. Just very briefly, tell the Court your history of care of animals and dogs, in general, just very briefly.

A. Well, I have--

THE COURT: You're going to have to speak up,

1 also.
2 A. I have always had dogs, and --
3 MR. ALTER: Your Honor, may I sit in the
4 chair?
5 THE COURT: Absolutely.
6 A. And then in addition to dogs, then I went and
7 sought and purchased whatever. I have had several rescue
8 dogs from groups that rescued them and I took care of those
9 and some of those were senior when I got them.
10 Q. Is it fair to say that you're an animal lover?
11 A. Yes.
12 Q. Is it fair to say you're a dog lover?
13 A. Yes.
14 Q. Now, let's focus in on Lucy.
15 A. Uh huh.
16 Q. When was the first time that you had any
17 substantial contact with this dog, Lucy?
18 A. The first time was when I went to the house to get
19 her.
20 Q. The house you're referring to is the one in
21 Manhasset?
22 A. Yes.
23 Q. That's the one that Ms. O'Hanlon just testified
24 about that she was living in?
25 A. Yes, and I went to take the two dogs.
26

Q. That were residing there at that time?

A. Yes.

Q. All right. I want to focus in on Lucy 'cause that's what we're here for today. Now, how did it come about that you even went there at that time to take those dogs?

A. Well, I didn't see the situation coming down the pike as early as everybody else did about the family breaking up. So, after my sister-in-law and my niece left the home, a month or two months passed and all that was there taking care of the dogs was my brother and he worked about fourteen hours every day and would leave early in the morning and not return until about seven in the evening. And the two boys were away at school, starting in that September.

So, the dogs were alone all day long in a tiny area off the kitchen, a little hallway, with a door at the end of it. And when I got there that night, the large dog was caged in a cage that was too small.

Q. All right. With respect to the two brothers?

A. Yes.

Q. Do you know where they were? You said they were away at school, but where were they?

A. School.

Q. What schools were they attending?

THE COURT: Who "they" are, brothers, she has brothers?

MR. CHAVES: The brothers is Ms. O'Hanlon's two brothers.

A. Yes, Emmitt and James.

Q. Where was Emmitt at that time?

A. In Cincinnati. I think I get confused with the conservatories, and I believe James was still in Cincinnati and after that went to Indiana.

Q. So, each of these two brothers were outside of the tri-state area?

A. Yes.

Q. So, at that time, it was your brother whose name is James; is that correct?

A. Yes.

Q. James O'Hanlon, who's Slaney O'Hanlon's father?

A. Yes.

Q. And Susan McCarthy O'Hanlon's husband?

A. Yes.

Q. So, it was him and two dogs, including Lucy?

A. Yes.

Q. And you came there to take Lucy and the other doing, correct?

A. On a Thursday night.

Q. You took the dogs. And when you took the dogs,

where did you take the dogs to?

A. To my home in my car.

Q. And your home is in Brooklyn Heights?

A. Yes.

Q. Can you describe what living arrangements are that you have in Brooklyn Heights?

A. I have four apartments at the end of a long corridor and --

THE COURT: You had what?

THE WITNESS: Four apartments.

THE COURT: Four apartments?

THE WITNESS: Yes.

A. For our own use at the end of the corridor. And so, no one comes down there, and there's a lots of room and the dogs both were free, roam free, which they did not in their large house.

Q. The one in Manhassat?

A. Uh huh.

Q. Now, when you brought Lucy and the other dog into your apartment and apartments in Brooklyn Heights, did you have your own dog separate and apart from those two dogs, another dog?

A. Yes, a small dog.

Q. What kind of dog is that?

A. Pomeranian.

Q. How long have you had that dog?

A. He will be thirteen soon.

Q. At the point in time when Lucy came to live with you and your husband, were either of you working at that time?

A. I was not working.

Q. Was your husband, Mr. Healy, working at that time?

A. No, I think he was not working.

Q. So, would you focus most of your time on the pets?

A. Yes.

Q. And with respect to taking care of Lucy, we don't need to go through a day in the life, but if you can just briefly tell the Court what you did to take care of Lucy on an average day, just very briefly?

A. Feed her, grooming, she walks over three miles every day since she arrived.

THE COURT: What? She what?

THE WITNESS: Walks over three miles.

A. And when she came, she had no training, so there was a lot of hard work. She could not even walk on a leash, she was fifty pounds with no training at all and eight months.

Q. So, the dog came and you started to train the dog. And would you say that the care you gave the dog was-- how would you describe it as being?

A. It took most of my time, but the dog is a wonderful dog and it was enjoyable.

Q. Now, when you received the dog, what was your understanding with respect to what your role was concerning the dog?

A. I took the dog because there had been damage in that small area and Ms. McCarthy was complaining about that, and Jimmy, my brother, James, could not take care of them properly and the big dog was caged all day long. So, I took the dogs until they said they were going to sell the house. And I took the dogs until that got straightened out and I assumed that Ms. McCarthy and Slaney would return in a couple of weeks to take the dogs back.

Q. All right. Now, after you took Lucy in --

A. Yes.

Q. --did you hear from Ms. McCarthy?

A. No.

Q. Did you hear from Ms. O'Hanlon?

A. No.

Q. So, a couple of weeks passed, a couple of weeks turned into months?

A. Yes. And then there was a letter from their attorney asking to have the dogs returned to the same Manhasset house to the same conditions that I took them out of.

Q. Did you feel that was appropriate or inappropriate for the dogs?

A. I thought it would be cruel to put them back to what they had gotten out of.

Q. At that point in time, that was, I believe, in October of 2009, Ms. McCarthy, we'll call her Ms. McCarthy for purpose of today, she was not residing in that home; isn't that true?

A. No.

Q. And --

A. It still was just my brother, but the boys would come home from school periodically.

Q. I see. And if the boys, you refer to your nephews, wanted to see the dogs, would you do anything to prevent them from doing that?

A. No, no.

Q. At any time during this process, did you hear from your niece, Ms. O'Hanlon, asking to see the dogs?

A. No.

Q. Did you get any kind of contact from her either by phone call, e-mail, letter, anything?

A. No.

Q. All right. And what was going on with the dog? A few weeks passed, a couple of months passed, how was the dog doing?

A. The dog was doing fine and I kept working on her training and it took months and months for her to learn to walk outside without pulling and tugging, but she did really well.

Q. You did all this training yourself?

A. At the beginning, yes, at the beginning I did myself.

Q. These weeks turned into months?

A. Yes.

Q. And the months turned into a year?

A. Yes. And then I thought that was it.

Q. And then a year turned into another year?

A. Yes.

Q. Now, during this whole entire time of, approximately, two years, more or less, did you ever hear from your niece saying, I want to know about the dog, let alone, see the dog?

A. No.

Q. Nothing?

A. No, and nothing from Susan.

Q. Susan, the mother?

A. Yes.

Q. What about the two brothers, the nephews, did they say anything to you with respect to Ms. O'Hanlon wanting to see her supposed dog?

A. No, no.

Q. Nothing?

A. No. I never saw them again.

Q. The next time you saw them was when they showed up in September; isn't that correct?

A. After Lady died, yes.

Q. The incident in September?

A. Yes.

Q. So, for over a period of how long would you say, tell the Court to the best of your memory, between the time that you actually took Lucy to your apartment in Brooklyn Heights to September of 2011 when they showed up, how long a period of time was that?

A. Over two years.

Q. Over two years. And during that two-year time, as far as you're aware, you had continuous custody, so to speak?

A. Yes.

Q. Of Lucy?

A. Uh huh.

Q. Now, during that point in time over those two years, did you do any affirmative steps to become the owner of Lucy?

A. Well, after I thought they were never returning, I licensed her.

Q. Did there come a point in time when you came to conclude that they had abandoned the dog?

A. Yes.

MR. ALTER: Objection, your Honor, calling for a legal conclusion on this witness' part.

THE COURT: Assuming the normal meaning of the word, rather than a legal disposition, I will let you answer that question.

A. Yes, after one year.

Q. And it was only after that point in time that you took the affirmative step of getting the license, so that you became the owner, yes?

A. Yes.

Q. Now, did there also come a point in time when you started a process to train Lucy to become a service dog?

A. Yes, I started that myself.

Q. All right. And if you can tell the Court what led you to believe that it would be appropriate to have Lucy become your service dog?

A. Well, several years ago, I had an attack of Vertigo and I was in the hospital for several days, so there's always the possibility that that can come back. So, I started with her doing different things like bring me a phone or she can help me get up, which she does. She's very easy to train. And she was doing a lot of that stuff. But,

then, people said and my doctor said that it would be good--

MR. ALTER: Objection, your Honor as to what people said and what her doctor said.

THE COURT: Just as to what people said. Okay. Sustained. You need to answer it without saying what other people said.

THE WITNESS: Okay.

Q. Let me just interrupt you, if I can, and we'll start with a new question, if we can. So, this idea came up of being a service dog. Now, did you go to a doctor in connection with that?

A. Yes.

Q. And who was that doctor?

A. My Dr. Underberg.

Q. What kind of doctor is he? Do you know?

A. Internist.

Q. And he's your family doctor, so to speak?

A. My primary doctor.

Q. And ultimately, describe the process of what Lucy had to do in order to be certified to actually be a service dog?

A. Well then, we had the trainer come. And first she got her canine good citizen certificate, which is based on obedience, but that was-- had come a long way. And then we had the trainer train her specifically to do things to make

her a service dog where she could help me in my situation, if that should arise, and there's a test.

So, we sent in film and the application and the documentation from my doctor and the trainer's input to the Department of Health, and --

Q. You indicated there was some type of test. What type of test are you referring to?

A. Well, just that she can do these things and we said to take a disc, showing this stuff that she can do.

Q. Right. Now, in order to obtain this certification or license, did you have to present any medical evidence to the city?

A. I-- yes, it was from my doctor.

Q. Dr. Underberg?

A. Yes.

Q. Did there come a point in time when Lucy did become a service dog?

A. Yes.

Q. All right.

MR. CHAVES: Can I have this marked, please, judge?

THE COURT: You may have it marked.

MR. CHAVES: I guess this will be Plaintiff's 1.

THE COURT: It will be Plaintiff's 1. What's

1 the date on that letter?

2 MR. ALTER: The letter's dated January 3, 2012.

3 THE COURT: January 3rd?

4 MR. ALTER: 3/2012.

5 THE COURT: Thank you.

6 MR. CHAVES: May I approach the witness? Judge, may I approach the witness?

7 THE COURT: You may. Sorry. I didn't hear you.

8 Q. I'd like you to take a look at that. Ms. Healy, what is that letter, do you know?

9 A. Yes, it's the letter from the Department of Health saying that Lucy's been registered as a service dog.

10 Q. And that was a letter that you received from a woman named Tamika Depitte, D-E-P-I-T-T-E?

11 A. Yes.

12 Q. From the New York City Department of Health and Mental Hygiene?

13 A. Yes.

14 Q. And on the second page, what is contained, attached to the letter?

15 A. The special, the special license for a service dog, and it also comes with a special medal that they wear.

16 Q. All right. Now, with respect to having Lucy as

1 your service dog --
2 A. Uh huh.
3 Q. --does that give you and the dog any particular
4 special privileges with respect to where you can go, how you
5 can go places and so forth?
6 A. Yes.
7 Q. Can you tell the Court briefly what that is in your
8 understanding?
9 A. Well, when I'm out, I can take her into the stores,
10 wherever I go, I can take her.
11 Q. Have you come to depend on Lucy with respect to
12 those types of issues?
13 MR. ALTER: Objection.
14 THE COURT: I will allow it. You may answer.
15 A. Yes.
16 Q. Now, once Lucy has been certified as your service
17 dog, is that something that --
18 THE COURT: Counsel, approach.
19 (Bench conference held off the record.)
20 THE COURT: The record should indicate that
21 the Court registered an objection, but is allowing
22 Mr. Chaves to rephrase and continue.
23 Q. All right. Thank you, judge. Let me backtrack
24 for a moment, Ms. Healy. Lucy became registered and listed
25 as a service dog. Through this process, from your
26

1 understanding, did she become your service dog?
2 A. Yes.
3 Q. Is that part of the application process, in other
4 words, there has to be a person for whom the dog is trained
5 to be --
6 A. Yes, yes.
7 Q. --the service dog?
8 MR. ALTER: Objection as to leading, your
9 Honor.
10 THE COURT: It is a little leading. So, I'm
11 going to strike the last question and answer and let
12 you rephrase.
13 Q. All right. Let me ask a new question. When you
14 made the application to start the process, was it your
15 intention for Lucy to become your service dog?
16 A. Yes.
17 Q. And as you went through the process, ultimately, as
18 far as you were concerned and what the City notified you, is
19 your understanding that she's your service dog?
20 A. Yes, she is.
21 Q. In your understanding of what a service dog does,
22 once the service dog license is given, that service dog is
23 attached to the person, so to speak, so the owner of the
24 dog --
25 THE COURT: Sustained.
26

Q. Let me ask a new question: Is that-- Lucy could not serve as anyone else's service dog, as far as you know; is that correct?

MR. ALTER: Objection.

THE COURT: I'm going to sustain that for the moment, allowing you, maybe, to be able to ask it later.

MR. CHAVES: All right. Thank you, judge.

Q. So, now that Lucy is a service dog and you use her as a service dog, is that something that she does every day in terms of what you do every day? In other words, do you use her every day as a service dog?

A. Pretty much, yes.

Q. Can you tell the Court, specifically, not every day, but in general, on an average day, what does Lucy do as your service dog?

A. First of all, because she's my service dog, and the whole process, she's with me all of the time, and no matter how far she can go, she's always where I am, even if there's other people in the house. So, if she's-- if anything happens to me or even if I were to stumble, she just comes and she stands there.

Q. Now, would it be, in your view, detrimental to you if you were not able to have Lucy with you to the same extent that you have her now?

A. Well --

MR. ALTER: Objection.

THE COURT: Rephrase.

Q. All right. Would it cause you a problem if Lucy was not with you the same amount of time that she is now?

A. Yes.

MR. ALTER: Objection.

THE COURT: You may answer.

A. Yes.

Q. Can you describe for the Court how that would cause a problem for you?

A. Well, I would not have the security that I have now when she's there. And if I need something, she-- for instance, if I fell or whatever and I could not get to the phone, she will go, no matter where the phone is, and she will pick it up and bring it to me, so I know that, for instance, she's there were I to have another attack or whatever of Vertigo.

Q. Of Vertigo, you're referring to?

A. Yes.

Q. Now, with respect to your niece, Ms. O'Hanlon, who currently resides with the mother somewhere in Long Island?

THE COURT: Oh, no, no, no, we're going to redo that question.

MR. CHAVES: I forget where they live. They

live somewhere. In any case, wherever they live --

THE COURT: I want to strike that too. Stop, stop, stop. Rethink.

Q. They live in a house, some sort of quasi-farm on the end of Long Island, do you have any concerns for Lucy if she were to go to that house or area?

A. If she were running free like that in the fields all the time, I might have some concern. But, when she lives with me, there's no concern there either. If you're going to bring up fields as opposed to the city because she has plenty of room at home and is not confined to a small area, and then she's out every single day and she truly walks over three miles a day, as well as running free in the dog park, so --

Q. Now, with respect to Ms. McCarthy, at any point in time, were you ever aware of her taking care of Lucy?

A. No, no, I did not know whether she did or not.

Q. So, you don't know one way or the other?

A. No.

Q. At no time has she directly contacted you to do anything with respect to Lucy up until September of 2011, just Ms. McCarthy?

A. No.

MR. CHAVES: I don't have anything further. Thank you, judge.

THE COURT: I thank you. I assume cross?

MR. ALTER: Thank you, judge.

THE COURT: I forgot you were over there. We have, I guess I better do this real quick, under our austerity measures in the courthouse, we have to be out of the courtroom by 4:30. I don't think you'll take that long, but in case there's other stuff, it occurred to me that I had not indicated that to either side and I need you to know that. Whenever you're ready. Thank you.

CROSS EXAMINATION

BY MR. ALTER:

Q. Ms. Hanley, you testified that your husband's not working; is that correct?

A. Right.

Q. He is an attorney; is that correct?

A. Yes.

Q. Is he performing services, legal services for your brother in the divorce action?

A. Yes.

Q. As a matter of fact, he goes to court every time your brother goes to court, right?

A. Yes, yes.

Q. And he writes letters, to your knowledge?

A. Yes.

Q. And attends meetings?

A. Yes. When I said not working-- okay.

Q. And tell me, you have Lucy as a service animal; is that correct?

A. Yes.

Q. How long a process did it take to have Lucy become a licensed service dog?

A. Well, I had worked with her first, but if you're talking about the formal training and the application, it probably was about three to four months.

Q. Three to four months. And you got the license in January 2012?

A. Yes, but she was --

Q. Please. And when did you start this lawsuit?

A. September or October.

Q. Of?

A. Of 2009.

Q. 2-- I think it was 2011?

A. 2011, sorry.

Q. The fall; is that correct?

A. Pardon? 2011.

THE COURT: Is your question when the lawsuit started?

MR. ALTER: Yes.

THE COURT: The papers speak for it, clearly,

1 the index number indicates it was started in 2011.
2 Do you need the date?
3 MR. ALTER: No.
4 THE COURT: You do.
5 Q. Was it in September of 2011, Mrs. Healy?
6 A. It may have been October. I'm not sure.
7 Q. And Mrs. Healy, did you mention in any of your
8 papers that your dog was being trained as a service animal?
9 A. No.
10 Q. Isn't it a fact that you decided to train your dog
11 as a service animal after you started this lawsuit?
12 A. No.
13 Q. Well, tell me, you had vertigo?
14 A. Yes.
15 Q. Did you have it before you started this lawsuit?
16 A. Yes.
17 Q. And for how long a period of time did you suffer
18 from that malady?
19 A. Five years, about.
20 Q. And how many dogs have you had during that
21 five-year period?
22 A. Four.
23 Q. Did you ever seek to train any of your other four
24 dogs?
25 A. No.
26

Q. To be service dogs?

A. I did not have large --

Q. Yes or no?

A. No.

Q. Tell me, Ms. Healy, you went to your brother's house on a Thursday, I believe, to pick up the two dogs?

A. Uh huh.

Q. Is that correct?

A. Yes.

Q. Did you have any conversations with anyone prior to your going to pick up the two dogs?

A. Yes, my brother.

Q. You had a conversation with your brother. And your understanding that you were going to care for these dogs or bore them for a short period of time; is that right?

A. Pretty much, yes.

Q. Well, that was how long? How long a period of time did you think you were going to keep these dogs?

A. A couple of months, at tops.

Q. Now, tell me, when did you get the dogs?

A. September.

Q. September?

A. I think so. The end of September.

Q. And if I told you that Mrs. O'Hanlon started her lawsuit in mid-August of that year?

A. Uh huh.

MR. CHAVES: Objection.

Q. Do you know when she moved out of the house?

THE COURT: I'm sorry, there's an objection.

MR. CHAVES: The objection is "her lawsuit," it's a divorce action, it's not a lawsuit.

MR. ALTER: Pardon me. I'll rephrase, judge, if you want.

THE COURT: Go ahead, and calm down.

Q. Do you know that Ms. O'Hanlon started her divorce action in August of 2009?

A. Yes.

Q. And do you know that Slaney was granted her permission to go to Baltimore in late August of 2009?

A. Yes.

Q. And do you know that she had left the house because she was afraid to live there?

A. That's what I heard.

Q. Did her father tell you that?

A. Yes.

Q. And did you learn that Slaney had demanded to have her dogs back?

A. Not until your letter, I believe.

Q. Do you have a copy of my letter?

A. No.

Q. Who gave you a copy of my letter?

A. I do not have a copy of your --

Q. Did you ever see my letter?

A. I have seen your letter, yes.

Q. And who showed it to you?

A. Probably my husband.

Q. Did you see the letter written back to me about my demands for the --

A. Yes.

MR. ALTER: May I see Exhibit A, your Honor?

THE COURT: You may.

THE CLERK: That was the first thing that was marked.

MR. ALTER: I have a copy of it, judge.

THE COURT: We need to make sure we've got the exhibit. You mean the letter?

MR. ALTER: I have a copy, if I can show it to the witness.

THE COURT: I want to wait and make sure we've got--

MR. ALTER: I'm talking about the Scharoff letter.

THE COURT: Let me see the letter. Yes, that's good. Okay.

MR. ALTER: Can I show it to her?

THE COURT: Yes.

Q. You saw that letter, did you not, Ms. Healy?

A. Yes.

Q. And you read it, did you not?

A. Yes.

Q. And when did you see that letter?

A. After it came, I believe.

Q. Was it before or after you obtained Lucy?

A. After.

THE COURT: I'm sorry?

THE WITNESS: After.

THE COURT: One second. Before we continue, I need to just--the Court needs a copy of the letter. Anybody have an extra copy of the letter? I just want to look at it for a second. I can wait. Do you have another copy?

MR. ALTER: I think so.

THE COURT: If you don't, you can take this one back.

Q. Mrs. Healy?

A. Uh huh.

Q. Can you turn to the second page of the letter and go up to the third paragraph from the last one, which starts, Mr. O'Hanlon?

A. Yes.

Q. It's --

A. Yes.

Q. Did you read that paragraph?

A. I did read that, yes, I did read that.

Q. Did you understand it when you read it?

A. I understood it to mean --

Q. I'm asking you if you understood it?

A. I understood it.

MR. CHAVES: Judge, I'm going to object. He's badgering the witness. I don't understand why.

THE COURT: Let me just ask him to be a little calmer. I don't see badgering yet, but you're getting there.

MR. ALTER: I'll stop, judge.

Q. Ms. Healy, in the third paragraph that you are reading?

A. Uh huh.

Q. Is there any time limit set forth when Slaney was to pick up her dogs?

MR. CHAVES: Objection. The document speaks for itself.

THE COURT: You can answer that.

THE WITNESS: Answer?

THE COURT: Yes, ma'am.

A. No.

Q. She was to pick up her dogs or her father was to make arrangements when it was determined that she could care for the dogs; is that right?

A. Two years later?

Q. I'm not asking you the time frame, ma'am, I'm asking you if that's what the paragraph says?

A. That's what the paragraph says.

MR. CHAVES: I'm going to object. Again, it speaks for itself. I don't understand why we're arguing over what the words of the document are.

MR. ALTER: Your Honor, we have this testimony.

THE COURT: I don't think we're arguing over that. I think it's over her understanding of it.

MR. CHAVES: That's not what the questions have been.

THE COURT: I must have missed that somehow.

MR. ALTER: Yeah, I think so.

Q. Ms. Healy, when you picked up the dogs, the dogs were-- one was in a cage?

A. The large one.

Q. That was Lucy?

A. Yes.

Q. In a cage?

A. Yes.

Q. And your brother was caring for these dogs; is that right?

A. Fifteen minutes in the --

Q. Please. Your brother was caring for these dogs?

A. Yes, he was.

Q. And not your nephews?

A. No.

Q. Doesn't your nephew work at Mojave?

A. Now.

Q. Well, when did he start working in Mojave?

A. Possibly, a year ago, when he left school.

Q. Tell me, do you know how to contact Slaney?

A. Yes.

Q. Did you ever pick up the phone to try and reach out to Slaney?

A. No.

Q. Did you ever write Slaney and tell her she could have her dogs back?

A. No.

Q. Did you have a close relationship with Slaney?

A. No.

Q. You were her Godmother?

A. Yes.

Q. Tell me how often did you see Slaney before she left her father's house?

A. I think it had been a couple of years since I saw Slaney before she left her father's house.

Q. Did you ever watch the dogs --

A. Yes, at Susan's request. Slaney --

MR. CHAVES: Can I interrupt?

MR. ALTER: I didn't finish the question.

MR. CHAVES: There's no question, no answer. I want the witness to let him finish. There seems to be a running-- this running over each other and not --

THE COURT: Strike the record as to the crossovers.

MR. ALTER: I will rephrase.

THE COURT: And start back.

MR. ALTER: Thank you.

Q. Ms. Healy, before you picked up Lucy that Thursday night, there were times where you watched the dogs owned by your-- owned by Slaney or --

A. Yes.

Q. Is that correct?

A. Yes.

Q. And you took care of them for a week or two at a time?

A. Yes.

Q. On prior occasions when they were on vacation; is

that correct?

A. Yes.

Q. Now, tell me, when you say the dogs have plenty of room to run, that's within your five apartments residence, they run within the area of the five apartments?

A. No, I said they were free.

Q. They were free. They walk within that area?

A. Yes. Not in a cage.

Q. And you walk three miles and is it you who walks?

A. Yes.

Q. With your vertigo?

A. Yes. I do not have vertigo on a daily basis.

Q. Pardon me?

A. I do not have vertigo on a daily basis.

Q. You really don't know how and in what manner Slaney cared for her dog when the dog was with her?

A. I do, if you judge on the condition of the two dogs I picked up that night.

Q. Well, didn't your brother have the two dogs for over a month and a half before you picked them up?

A. Yes.

Q. Isn't it a fact that your brother put the dog in a large cage?

A. Ms. McCarthy wanted that because of the damage.

Q. Please. Please. Isn't it a fact that your brother

1 put the dog in a large cage; is that right?
2 A. Yes.
3 Q. Because he was leaving the house; is that correct?
4 A. No, because he was told to.
5 Q. Were you told that Slaney was the owner of the dog?
6 A. When they initiated-- when they responded to the
7 lawsuit, that's the first I heard that Slaney was the owner
8 of the two dogs. I knew she was the owner of Lucy.
9 Q. You knew she was the owner of Lucy. When did you
10 learn that she was the owner of Lucy?
11 A. When she came to our apartment saying so and my
12 brother told me that he and Slaney had gone to Virginia to
13 get the dog.
14 Q. That's the first time in 2000 --
15 A. That's the only --
16 Q. 2011, you learned that it was Slaney's dog?
17 A. Yes. I didn't know.
18 Q. Isn't it in the letter?
19 A. Yes.
20 MR. CHAVES: I'm going to object. He's
21 interrupting.
22 MR. ALTER: You're right. Your Honor, I stand
23 corrected. I'll keep my mouth closed until the
24 witness is finished.
25 THE COURT: Sir, what question do you want
26

1 answered?

2 Q. I want answered the question: Didn't you learn it

3 was Slaney's dog in the letter of October 2011?

4 A. Yes. Yes.

5 Q. Pardon me?

6 THE COURT: I think you indicated the date on

7 the letter, your wrong date, 2009. You want to

8 rephrase the question?

9 MR. ALTER: That's correct.

10 Q. Isn't it a fact that you learned that Slaney was

11 the-- isn't it a fact you learned that Slaney was the owner

12 when you read the letter of 2009?

13 A. Yes.

14 Q. And it was a gift to Slaney?

15 A. Yes.

16 Q. Was it your impression that her father could give

17 away Slaney's property to you?

18 A. That was my impression.

19 Q. Thank you.

20 MR. ALTER: No further questions, judge.

21 MR. CHAVES: Judge, the only thing I would add

22 is I would move into evidence Plaintiff's 1 at this

23 time.

24 THE COURT: I'm sorry? You had said you had

25 no further questions?

26

MR. ALTER: No further questions.

THE COURT: You have no redirect? You need a minute, counsel?

MR. CHAVES: Not really. What I want to do at this time is --

THE COURT: I need to know whether or not you have any questions of this witness.

MR. CHAVES: No, I do not have any questions at this time.

THE COURT: Let her step down, then you can continue. Thank you very much.

(Witness excused from the witness stand.)

MR. CHAVES: Judge, I would just move Plaintiff's 1 into evidence for purpose of this hearing.

THE COURT: Objections?

MR. ALTER: Is that the license, judge?

THE COURT: It is the letter indicating-- well, that's--

MR. ALTER: I'll object to it.

THE CLERK: The letter 1 through 12.

THE COURT: Well, you got some basis for your objection?

MR. ALTER: Hearsay.

THE COURT: Under the strict rules of

evidence, that would be-- this item would be objectionable. We are, however, in a realm of law that does not look to the strict rules of evidence on the questions of custody and/or visitation as we are and so the Court will admit and allow to be marked this item in evidence as Defense Number 1.

MR. ALTER: I believe it's plaintiff.

THE COURT: I'm sorry, Plaintiff's Number 1, I didn't realize I said that.

THE CLERK: Marked in evidence Plaintiff's Number 1 marked in evidence. So marked.

THE COURT: Anything else, counselor?

MR. CHAVES: No, I don't have anything else at this time, judge.

THE COURT: I take it that means you are resting?

MR. CHAVES: Yes, judge.

THE COURT: Oh, dear me, dear me, counsel, we have five minutes for closing arguments. Do you want to make them now or should we --

MR. CHAVES: I prefer to come back, judge.

THE COURT: Okay. When is the soonest they can come back? The soonest date we have available?

MR. ALTER: Judge, respectfully, can we have a bench conference?

THE COURT: Yes, absolutely.

(Bench conference held off the record.)

THE CLERK: March 6th in the morning.

MR. CHAVES: I have an appearance in JCP in the morning. That's the only thing I have.

THE CLERK: We'll work it out with them. Check in with them and tell them you're upstairs and we'll work it out.

MR. CHAVES: Otherwise, that date is okay.

MR. ALTER: Tuesday, March 6th, judge.

THE CLERK: 9:30.

MR. CHAVES: Thank you.

MR. ALTER: Just counsel?

THE COURT: Parties, if they want, you don't have to be here. There's no requirement for them to be here. Okay. Thank you all. Why don't you all come back up.

(Bench conference held off the record.)

THE COURT: The record should reflect the Court has determined not to sanction.

(Matter adjourned to March 6, 2012.)

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate copy of the stenographic proceedings of the hearing held in the above matter.

LISA L. DIMINO, R.P.R.
OFFICIAL COURT REPORTER

EXHIBIT 4

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Thomas A. Farley, M.D., M.P.H.
Commissioner

January 3, 2012

Margaret Healy
135 Willow Street #309
Brooklyn NY 11201

License No: 3070403
Dog Name: Lucy
Service Tag Number: 3215

Dear Ms. Healy

Your dog has been registered and listed as a service dog in New York City Department of Health & Mental Hygiene (NYC DOHMH) database. NYC DOHMH issues a unique numbered brass tag to help identify registered service dogs. Enclosed please find the gold colored service dog tag which should be place on your dog's collar. You will be receiving the regular red colored tag New York dog tag separately.

This Service Dog Tag should be used for life of the animal and does not require renewal.
Although the service tag is fee-exempt for dog assisting persons with a documented disability, you are still required to pay to renew the dog license annually.

If you have any questions, please contact the Dog License Unit at (212) 676-2120. Please remember that the law requires your dog be currently vaccinated against rabies, leashed while out in public, and that both tags be attached to your dog's collar.

Sincerely,

T Depitte

Tameka Depitte
Assistant Public Health Advisor
Veterinary Public Health Services

THE CITY OF NEW YORK
DEPT. OF HEALTH AND MENTAL HYGIENE
VETERINARY PUBLIC HEALTH SERVICES
125 WORTH STREET, BOX 61
NEW YORK, NEW YORK 10013

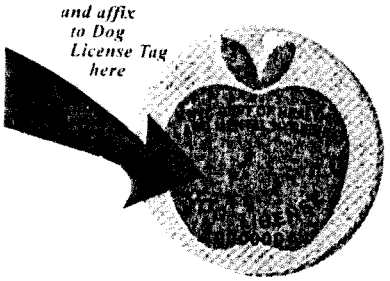
NEW ONLINE AT WWW.NYC.GOV/DOGLICENSE

Your Renewal Decal Instructions

e that the year imprinted upon your renewal decal matches the year in which s license expires. Thank you for licensing your dog with the NYC DOHMH. ually. To renewal your dog's license online, visit us at: www.nyc.gov/doglicense

SEPT 2012

and affix to Dog License Tag here



-34 (REV. 3/09)

Be a responsible pet owner

License your dog and renew annually. NYC Health Code § 161.04 requires a dog in public to have a dog license tag attached to its collar.

NYC Health Code § 11.29 requires all dogs and cats 4 months of age and older to receive a primary vaccination against rabies and to receive re-vaccinations or booster vaccinations.

NYC Health Code § 161.05 requires dogs in public to be restrained by a leash not more than 6 feet long.

YOUR CERTIFICATE OF LICENSE

DETACH AT PERFORATION

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

DOG LICENSE
NO 3070403

MARGARET HEALY
135 WILLOW STREET #309
BROOKLYN NY 11201

"LUCY" FEMALE SPAYED

11/2008 LABRADOODLE

09/20/2012 SERVICE DOG

EXPIRATION DATE

Commissioner of Health & Mental Hygiene

PET IDENTIFICATION

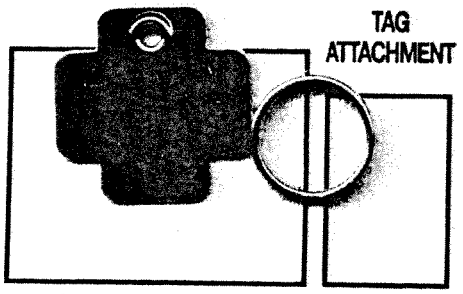


EXHIBIT 5

Healy 10173

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CIVIL TERM : PART 32

3 ----------X
MARGARET HEALY,

4

5 Defendants.
----------X
Index No. 21646/11

6 360 Adams Street Street
7 Brooklyn, New York
March 6, 2012

8 B E F O R E : HONORABLE YVONNE LEWIS,
9 Justice of the Supreme Court

10 A P P E A R A N C E S:

11 MICHAEL J. DEVEREAUX & ASSOCIATES, P.C.
Attorneys for the Plaintiff
12 39 Broadway
New York, New York 10006

13

14 BY: THOMAS J. CHAVES, ESQ.

15 ALTER & ALTER, P.C.
Attorneys for the Defendant
16 300 East 42nd Street
New York, New York 10017

17

18 BY: STANLEY ALTER, ESQ.

19

20

21

22 Dell Ashby
Official Court Reporter

23

24

25

1 THE COURT CLERK: In the matter of Healey versus
2 O'Hanlon, index number 21646 of 2011.
3 State your appearances for the record. Start
4 with plaintiff.
5 MR. CHAVES: Thomas Chaves for the plaintiff.
6 MR. ALTER: Stanley Alter, Alter & Alter, 300
7 East 42nd Street, for the defendant.
8 THE COURT: Again, good morning to both of you.
9 MR. CHAVES: Good morning.
10 MR. ALTER: Good morning.
11 THE COURT: We are scheduled this morning for
12 closing arguments and determination, if the Court can
13 do so, at the close of arguments.
14 I am assuming -- and you'll correct me if I'm
15 wrong -- that you do not wish to submit any writings
16 to the court?
17 MR. ALTER: Not I.
18 MR. CHAVES: Judge, I have to request permission
19 to consult with my client with respect to that issue.
20 THE COURT: Well, that wasn't exactly my
21 question. I didn't make clear exactly what I meant.
22 What I meant was do you have any prepared
23 writings that you want to hand up.
24 MR. CHAVES: No, Judge.
25 THE COURT: I was not offering for you to do a

1 written submission. We're ready to proceed.

2 MR. CHAVES: Yes, your Honor.

3 THE COURT: You are ready to proceed? I need a

4 moment; I have something I need to make a [illegible]

5 on in the computer before we start which should only

6 take a moment.

7 (Whereupon, there was a pause in the

8 proceedings.)

9 THE COURT: Okay, I'm ready.

10 MR. CHAVES: Judge, before we start, can I say

11 something off the record?

12 THE COURT: Come up.

13 (Whereupon, an off-the-record discussion was

14 held.)

15 THE COURT: You may proceed whenever you are

16 ready.

17 MR. ALTER: Thank you, your Honor.

18 This is the point in this matter which the Court

19 has called upon us to give closing arguments. I wish

20 to remind the Court that the plaintiff came into this

21 proceeding by an Order to Show Cause seeking

22 injunctive relief at the last moment in their

23 application. However, at a conference at the bench,

24 I indicated I would seek visitation of the dog, Lucy,

25 during the pendency of the remaining aspects of this

1 lawsuit.

2 An evidentiary hearing was conducted with regard
3 to that issue. I do not feel that it is a very
4 complicated matter, Judge. There is no dispute that
5 this dog involved was given to Slaney as a gift in
6 December of 2008. It is a mammal that does not cause
7 Slaney to have an allergic reaction. Slaney is
8 otherwise allergic to dogs.

9 Slaney maintained the dog, fed the dog, et
10 cetera, from the time she received it as a gift,
11 until August of 2009. Unfortunately, in August of
12 2009, Slaney's mother instituted a lawsuit against
13 her father for divorce. Slaney and her mother fled
14 the marital home. Slaney testified that she was
15 afraid of her father.

16 In September of 2009, Slaney testified before a
17 justice of the Supreme Court in Nassau county on a
18 request that Slaney be permitted to go to Baltimore
19 to attend a school that has a polo team. Slaney is
20 an accomplished polo player. Her father contested
21 that application and was represented by Mr. Neary,
22 the husband of the plaintiff in this case, seeking to
23 bar Slaney from leaving New York and going to school.

24 Justice Diamond in Nassau county after hearing
25 Slaney in camera came out and directed that Slaney be

1 permitted to go to school in Baltimore. That was
2 September of two -- or late August, early September,
3 2009.
4 Slaney left Lucy, and Lady, another dog she had
5 gotten as a gift from her maternal grandfather, at
6 the marital residence believing that her brothers and
7 father would take care of that dog.
8 One month later, as testified by Mr. Scharoff, a
9 request was made for the return of the dogs to
10 Slaney. In response to that request, Mr. Scharoff,
11 co-counsel of Mr. Healy, wrote a letter. It's in
12 evidence. That letter indicated and acknowledged
13 that Slaney owns Lucy. But, the father says, you
14 know what, you can't get Lucy back until Slaney has
15 shown to Mr. O'Hanlon's satisfaction that Slaney can
16 care for the dog.
17 Certainly, Slaney could not care for the dog
18 while away at boarding school. And, certainly,
19 Slaney could not care for the dog living in a small
20 apartment with the mother when she returned from
21 school.
22 There was no contact with Mr. O'Hanlon, her
23 father, for almost a year and a half. She certainly
24 was not going to contact Mr. Healy, who was her
25 adversary in the Supreme Court representing her

1 father seeking to prevent her from going to
2 Baltimore, and an adversary of her mother. It should
3 be noted that her mother got custody of Slaney by
4 Justice Diamond.
5 We now have a situation where Slaney graduates
6 from the school in Baltimore and learns that the
7 other dog, Lady, died. She then requests the return
8 of the dog. There is no claim, as there couldn't be,
9 that Mrs. Healy was given the dog or entitled to the
10 dog by Mr. O'Hanlon. He had no power of transferring
11 title of the dog to his sister; it was Slaney's dog.
12 So, now what we have is a claim that Slaney abandoned
13 Lucy.
14 The facts show otherwise. As I just indicated,
15 Slaney, as based upon the letter from her father's
16 lawyer, would not be given Lucy until she was capable
17 of showing that Lucy could be cared for by her.
18 Slaney now lives with her mother, out on the island,
19 in a home that has a large area where the dog is free
20 to run, grow, play and be with Slaney. Slaney is not
21 in school this year. She is planning to go to a
22 college, I believe she testified, almost within
23 walking distance of where she lives.
24 To defeat the claim of Slaney's right to be with
25 that dog, we now have Mrs. O'Hanlon -- Mrs. Healy

1 take the stand and say, well, now this dog is a
2 service dog. I trained this dog to be a service dog
3 and I need the dog.
4 Well, you know, it's very coincidental that she
5 started to train the dog at or about the time she
6 made the claim to exclude Slaney from receiving her
7 dog. She testified that, I believe, it took four to
8 six weeks to train the dog and she got the
9 certificate in January of 2012. This proceeding was
10 started, I believe, in September. That is not an
11 excuse.
12 If your Honor pleases, this court, I believe,
13 has the jurisdiction and power to direct that Slaney
14 have, at the very least, time with the dog,
15 significant time while this action is pending. And
16 why do I say significant time? Because the plaintiff
17 in this case has sought to delay the prosecution of
18 this case with the understanding or with the thought
19 that by exclusive possession, the longer I have the
20 dog, the better off I will be.
21 They ran to the Appellate Division seeking a
22 stay of this proceeding, seeking a stay of this
23 hearing, until the appeal was perfected, knowing they
24 would have approximately nine months to perfect an
25 appeal. Depositions, they don't want to go to

1 depositions even though in a preliminary conference
2 order they were scheduled.
3 Your Honor, I respectfully submit that the Court
4 exercise it's power and grant Slaney the right to
5 have Lucy at least two weeks out of every month,
6 exclusively, with some arrangements whereby she picks
7 up the dog or the dog is delivered to her. But, she
8 should not be excluded from having her dog which she
9 owns, which was given to her, which she loves, which
10 she trained, and which she cares for.
11 Thank you very much, Judge.
12 MR. CHAVES: Thank you, Judge. I'm going to try
13 to respond to all the points that have been made.
14 As a preliminary matter, jurisdictionally, there
15 is no application pending before the Court that would
16 govern in any fashion properly or which was
17 jurisdictionally made by the defendant --
18 THE COURT: You might want to rephrase that. I
19 know it's your argument, but there is an application
20 before the Court. There is no written application
21 proffered by the defendant.
22 MR. CHAVES: Let me rephrase, Judge. There is
23 no motion -- there is no written motion, no written
24 cross-motion, no written Order to Show Cause, there
25 is nothing in writing for this unique and unusual

1 request that's been made. It severely prejudices
2 plaintiff the way this has come about because the
3 plaintiff had absolutely no idea until two minutes
4 ago specifically what was being sought. Initially
5 and throughout the term of this proceeding, it was a
6 vague, undescribed, unspecified visitation. We had
7 no way to counter what specifically was being
8 requested because we were never notified what
9 specifically was being requested.
10 Now, even if the insurmountable, jurisdictional
11 problems can somehow be overcome, which we contend is
12 not possible and not conceded, but solely for the
13 sake of argument, if the insurmountable jurisdic-
14 tional problems can be overcome, any award of
15 visitation would be violative or a violation of
16 plaintiff's civil rights not only under the federal
17 law, the Americans for Civil Disabilities Act, but
18 also under the New York Civil Rights Law, Section 40,
19 and New York Executive Law, Section 296. The
20 plaintiff cannot be deprived of her service dog. And
21 her right to the service dog is absolute and perempts
22 any notion of visitation that might apply in
23 connection with this case. There is no such thing in
24 the law as visitation with respect to a person's
25 service dog, because a disabled person cannot be

1 deprived of their service dog.

2 Now, defendant's counsel has suggested that it's
3 "coincidental" that the application and the process
4 that led to the certification of Lucy as plaintiff's
5 service dog occurred after the institution of this
6 action. That doesn't change anything. But, there is
7 a long process involved and a doctor being involved,
8 a medical doctor that we heard testimony about from
9 the plaintiff, Dr. Underberg, who had to submit an
10 affidavit swearing under penalty of perjury that
11 there was a real and immediate need for Lucy to
12 become Ms. Healy's service dog due to her medical
13 condition related to vertigo.

14 And specifically, if one looks at the brochure
15 that was produced -- and this is a matter of public
16 record -- by the New York State Attorney General,
17 Eric Schneiderman, concerning service animals and
18 public accommodations in the workplace, he
19 specifically makes reference to what is a service
20 animal. And in part it states that a service animal
21 can pull wheelchairs or carry and pick up things for
22 individuals with mobility impairments and assist
23 persons with mobility-bound impairments.

24 We have already heard evidence in this case from
25 the plaintiff that she has a mobility impairment with

1 respect to vertigo and that is what caused the chain
2 of events leading to Lucy being a service dog. In
3 addition to which, she also testified that Lucy is
4 able to assist her with respect to picking up certain
5 items which may be difficult at times for her to pick
6 up.
7 Respectfully, Judge, our position is that under
8 the federal law that I have already cited, the
9 Americans with Disabilities Act, and the New York
10 State law, it would be a violation of plaintiff's
11 civil rights under these circumstances to be deprived
12 for any amount of time of her service dog.
13 Obviously, in another case where there is a contest
14 with respect to ownership of the service dog and the
15 other side is claiming they are the owner of the
16 service dog, during the pendency of the action it
17 would be highly inappropriate, and unfair, and
18 discriminatory to deprive the person who has the
19 service dog and has been recognized as a disabled
20 person of the use of the service dog.
21 Now, ultimately if the case is decided by a
22 trier of the fact that the plaintiff is not the owner
23 of the dog, that's for another day and that's to be
24 dealt with at another time. Meanwhile, during the
25 pendency, she should not be deprived of this.

1 Now, moving forward, there is no such thing and
2 there is no legal rationale or authority for
3 visitation of personal property. And as we all know,
4 under New York law, a dog is personal property.
5 Thus, there is absolutely no case law, no authority
6 of any kind, which states that that is even
7 considered allowable.
8 Now, your Honor had indicated that you might
9 consider in connection with this case making what you
10 describe as new law holding that a dog is not just
11 personal property and that it has an elevated status
12 above personal property, and that would necessarily
13 entail an analysis if the dog is not personal
14 property with respect to what the best interests of
15 the dog might be in connection with this. And if
16 that standard is applied, the evidence is
17 overwhelming that there should be no visitation at
18 this time. It goes beyond, way beyond the
19 circumstances that defendant's counsel has described
20 with respect to what actually occurred. We're not
21 here to try a divorce action. That has nothing to do
22 with what we're here to do in this court. And in
23 fact, defendant's counsel had signed a stipulation
24 indicating that matters related to the divorce should
25 be kept in the divorce court, which is where they

1 belong.

2 We've heard evidence in this case that

3 Ms. O'Hanlon, who at the time I believe was sixteen

4 or seventeen years of age, left in the dead of night

5 with her mother for whatever reason she felt she

6 needed to do so. The dog was left there. Now her

7 position seems to be she cared for the dog before she

8 left in the middle of the night. However, her

9 concept, it seems to me from what I recall of her

10 testimony, is that her two brothers who were older

11 than her and of college age would take care of the

12 dog after she left with the mother, which was at the

13 end of the summer. The problem with that whole

14 argument or statement is that her two older brothers

15 were in college, and they were in college in

16 Cincinnati. So, obviously the idea they could take

17 care of this dog makes no sense.

18 Now, she went to Baltimore to a boarding school.

19 And like every other school, they have vacations,

20 they have breaks, all kinds of time free. During the

21 entire time she was a student at this high school or

22 boarding school for two years, she made no effort

23 whatsoever to have any contact with the dog. None.

24 So, therefore, if one applies the standard of

25 best interests of the dog, there is no way that

1 anybody rationally could consider it would be in the
2 dog's best interests to be foisted into an
3 environment with people that the dog probably doesn't
4 even remember at this point.
5 The dog was essentially a puppy, eight months of
6 age, when the plaintiff and her mother left for
7 whatever reason. The testimony in this case from the
8 plaintiff is that the dog was not trained in any way,
9 shape or form. Anyone who knows anything about dogs,
10 and I think it's a matter of public record, Judge,
11 knows that a puppy needs to be trained; that a puppy
12 needs to be housebroken; that a puppy needs to be
13 cared for in a hundred different ways.
14 There is no evidence whatsoever that
15 Ms. O'Hanlon ever did any of that because when
16 Ms. Healy was given the dog to care for the dog as a
17 temporary measure, the dog was not housebroken, the
18 dog was not trained, and so forth. Ms. Healy took it
19 upon herself to do the appropriate steps necessary to
20 take care of the dog that Ms. o'Hanlon should have
21 done earlier. And she's not an infant, Judge,
22 respectfully, she's an adult now. And she was very
23 close to being an adult at the time when this whole
24 thing happened. There is no argument that can be
25 made rationally she was not in a position where she

1 could have trained the dog. Clearly, she could have.
2 And notably absent from any testimony anywhere
3 is the role of the mother in this. Where is the
4 mother? We have heard no testimony about her
5 involvement, lack of involvement, and so forth. She
6 supposedly went to a two-bedroom apartment, then to a
7 very large, probably, McMansion in Manhasset. There
8 is no evidence whatsoever that either of these places
9 is inappropriate for a dog to at least come and
10 visit.
11 At no time other than something through a
12 divorce letter -- a letter that the divorce lawyer
13 wrote that he doesn't even remember writing, there
14 was no contact with respect to the dog.
15 Now, anyone who knows anything about dogs knows
16 that an owner, in general, is very attached to the
17 dog and has a way to be in contact with the dog
18 either through trying to arrange to see the dog,
19 trying to have the dog brought to them for a little
20 visit, things along those lines; it's a very close
21 relationship. In this case, nothing occurred for
22 years. This is not a situation where it was a couple
23 of weeks.
24 We heard testimony from the plaintiff that she
25 took the dog with the understanding she would take

1 care of the dog for a while and that she would return
2 the dog at the point in time when it was appropriate
3 to do so. She never foresaw and nobody foresaw that
4 there would be a complete abandonment of this
5 property. But, we're not getting to the ultimate
6 issue here, the purpose of today is a limited hearing
7 with respect to visitation. And there is some
8 serious issues with respect to that.
9 Now, once the court, if it does decide that it
10 wants to order some type of visitation, makes the
11 giant step beyond what the law allows, and the giant
12 step beyond what the best interests of the dog are,
13 there is absolutely no evidence that foisting the
14 dog, literally, taking the dog away from it's only
15 known owner that has cared, loved and taken care of
16 this dog for the last two and a half years, in some
17 unspecified location on the eastern inlet of Long
18 Island that is allegedly an appropriate place for the
19 dog but which there is really not much evidence about
20 other than supposedly it's a big area. There is no
21 testimony whatsoever. And Ms. O'Hanlon certainly had
22 an opportunity to do that, to testify before the
23 court and say to the court this is going to be my
24 schedule day to day; this is when I'm going to get
25 up; this is what time I'm going to walk the dog; this

1 is what time I'm going to feed the dog; I'm going to
2 feed the dog twice a day; walk the dog two, three
3 times a day; I'm going to take the dog at night
4 before I go bed and will put the dog in a crate or
5 the dog is going to be loose in the house. None of
6 that testimony that, in general, any rational dog
7 owner would testify about seeking to have the dog
8 come into their house. None of that was heard.
9 Zero. So, respectfully, Judge, there is absolutely
10 no basis under any theory to have that occur.
11 Now, just a few more minutes. And I sincerely
12 thank the court for allowing me the latitude to go
13 into all the points that I have, and I apologize to
14 the extent that I'm being repetitive.
15 I've already covered the fact there is no
16 recognized right under New York law. I'm going to
17 move forward from that.
18 With respect to the equitable powers of the
19 court, I guess in theory that could occur.
20 With respect to ordering some type of
21 visitation, but as stated, again, that would be a
22 violation of Ms. Healy's civil rights under the
23 Americans with Disabilities Act and corresponding New
24 York law. Moreover, it would not be in the best
25 interests of Lucy.

1 Now, balancing the equitable considerations
2 concerning visitation, as I've just explained at
3 length, there really isn't any rational basis to
4 think that the dog would somehow be helped in any
5 way, shape or form to be dragged to some unspecified
6 location on the eastern inlet of Long Island. There
7 is absolutely no evidence with respect to that.
8 Now, moving forward, another point that the
9 Court should consider aside from everything else that
10 I've already covered is the fact that Ms. Healy has
11 devoted herself almost one hundred percent to the
12 care, maintenance, upkeep and love of this dog for
13 the past two and a half years. Ms. Healy does not
14 work at this time. She has not worked since the dog
15 came into her life, so to speak.
16 Moreover, her husband, Mr. Healy, is a retired
17 lawyer. And he seems to be criticized constantly in
18 connection with this case, and I'm not sure exactly
19 why, because of whatever he did in the divorce action
20 or didn't do as the "attorney of record," even though
21 I believe defense counsel is aware that he is not a
22 divorce lawyer; that before he retired as a lawyer he
23 worked for a corporate law firm for thirty or forty
24 years. He was not involved with divorce. I think
25 his role in the other case (A) is irrelevant; and (B)

1 is minimal. So, I think that's a complete
2 non-starter with respect to anything, Judge.
3 Now, another aspect that should be considered in
4 connection with this is that there is no indication
5 whatsoever with respect to what specifically
6 Ms. O'Hanlon is going to do or not do. Now, she went
7 to a very prestigious, private boarding school which
8 focuses on people who are interested in horses. I
9 don't know a lot about this school. It's not a
10 famous school like Phillips Exeter or Choate,
11 Lawrenceville; I don't know a lot about this school.
12 It's fair to say that most of the people that go to
13 this school, though, then do go to college; it's a
14 college preparatory school.
15 She has not explained in any way, shape or form
16 what her plan is. I don't think that Nassau County
17 College is within walking distance of her house. It
18 may be close, but I don't think it's walking
19 distance.
20 Moreover, I believe this location she is living
21 in, supposedly, is in the eastern end of Long Island,
22 in Suffolk County. But, be that as it may, it would
23 be very unfair and prejudicial to Lucy to have to
24 kind of be thrown into something, and very
25 prejudicial and harmful to the plaintiff because she

1 wouldn't even know exactly how this thing is going to
2 work.
3 If, in fact, Ms. O'Hanlon really sincerely
4 wanted to have this dog, she would have done things
5 over the past two and a half years to at least stay
6 in touch with this dog.
7 There is dog sentient. Being so, although the
8 law considers it property, it's not the kind of
9 property that someone can rent a storage locker for,
10 put it in the storage locker and then come back
11 sometime later and pick up the property. This
12 property needs to be cared for. This property needs
13 to be loved. And actually even though the law
14 doesn't consider a dog more than property, at least
15 with respect to the criminal law it's a crime to kill
16 a dog and it has a special consideration with respect
17 to that that is beyond property. It's also a crime
18 to commit cruelty to any animal.
19 So, the law does recognize in some respects that
20 an animal, a dog, is more than property, per se,
21 because obviously you can't be cruel to property,
22 that I'm aware of.
23 Now, with respect to Lucy's specific needs with
24 respect to her diet and what her current situation
25 is, when she's fed, when she's walked and so forth,

1 there is no testimony whatsoever from Ms. O'Hanlon
2 with respect to what she would do. Contrast that
3 with Ms. Healy who explained at length what she does
4 everyday with the dog, how her living situation
5 accomodates the dog, because she has an unusual
6 situation of an open, contiguous apartment in a
7 building here in Brooklyn, in addition which she
8 makes it a point everyday to take the dog out on long
9 walks. She was very clear and specific with respect
10 to what she has done.
11 Now, the other and final point, Judge, is that
12 we did hear evidence in this case that Ms. O'Hanlon
13 went to visit a friend, she testified, in Florida who
14 was involved in polo of some kind of other. I don't
15 want to go into a long-standing thing about what polo
16 is or isn't; it's not a sport I know a lot about.
17 However, I do know unlike certain other sports, it's
18 not widely played, it has very specific restrictions
19 in terms of the need of a horse, training of a horse,
20 location to play and so forth. And in order to
21 accommodate her interests in that, it may be
22 necessary for her to travel. And therefore, there is
23 no evidence with respect to who would take care of
24 the dog in her absence.
25 Again, going back to the issue and the notable

1 absence of testimony of the other defendant,
2 Ms. McCarthy, Ms. O'Hanlon -- the wife of the
3 brother, whatever title you want to give her or name;
4 We've called her Ms. McCarthy for purposes of this
5 case -- we have no idea what she does, what she
6 doesn't do. We have no idea about her schedule.
7 Nothing.
8 So, Judge, if you factor in all the different
9 factors that I have given, equitable and legal, we
10 respectfully request that your Honor deny the
11 application in all respects. Thank you.
12 THE COURT: In keeping with our sidebar
13 conference, you may respond.
14 MR. ALTER: Thank you, Judge. I'll try to be
15 brief.
16 I would like to address one thing before I get
17 into the merits and that's the constant statement
18 that there is a stipulation that none of the divorce
19 proceedings between Mrs. O'Hanlon and Mr. O'Hanlon
20 would be part of this proceeding. I have never
21 signed a stipulation to that effect and I look
22 forward to seeing a copy, sir.
23 Now, moving on, Judge, we now have a claim that
24 there will be a civil rights violation. But, in that
25 statement made by counsel, it might be different if

1 it were a question of title.

2 If the Court remembers, Ms. Healy went on the
3 stand acknowledging the receipt of the letter of
4 October 15th, which she read, understood, and agreed
5 with. In effect, it was sent or a copy was sent to
6 her husband as co-counsel. And the attempt to
7 minimize Mr. Healy's role as co-counsel is misplaced
8 because Mr. Healy has attended every proceeding in
9 that divorce action, every deposition in that divorce
10 action, issued subpoenas in that divorce action,
11 Judge, is so steep in that matter it is unbelievable.
12 So, the claim that he doesn't know why Mr. Healy is
13 being mentioned, he's being mentioned because
14 Mr. Healy knew that Lucy was owned by Slaney.
15 Mr. Healy knew that Lucy was going to be given to his
16 wife to care for and that title would not pass to
17 her. And in the letter that she acknowledged and
18 agreed to, there is no time limitation placed in that
19 letter for which Mrs. Healy would be caring for the
20 dog.

21 We talk about title. Title hasn't shifted.
22 Title has not shifted in this case. What we have is
23 a claim that I have a service dog, which that service
24 dog, we have to understand Ms. Healy testified that
25 for five years she had this condition. She has had

1 four other dogs. She has never trained any of the
2 four other dogs to be a service dog but now that this
3 proceeding started, what a wonderful way to throw a
4 roadblock up to prevent Slaney from seeing her dog.
5 It's a sham.
6 If your Honor please, we heard from counsel
7 there is no indication as to how Slaney would care
8 for her dog. The testimony was she cared for her dog
9 for eight months before she left the house. Are they
10 suggesting that Slaney is going to be cruel to this
11 dog? That Slaney is in some way going to mistreat
12 this dog? If she had no interest in this dog, she
13 would not be here fighting for visitation to be with
14 her dog. She would have not requested the return of
15 her dog.
16 The letter by her father, on behalf of her
17 father by her father's lawyer or lawyers, makes it
18 very clear that the only time Slaney is getting this
19 dog back is when her father, her father, deems it
20 that she will be able to care for her dog. That was
21 their plan. Her father who has not spoken to her for
22 two years. And when she requested the dog back from
23 her father, this proceeding was instituted.
24 Your Honor, my counsel, adversary counsel, said
25 some nondescript place in eastern Long Island where

1 Slaney is going to live. She gave the address. It's
2 on the record.
3 She described the household. She described the
4 area where this dog can go out and play, and not walk
5 around five contiguous apartments within the
6 apartment. I think it's a shame that the godmother
7 of Slaney would take it upon herself to attempt to
8 deprive this young lady of her dog. And I think it's
9 a shame that they resist at this late stage that
10 Slaney have some contact with her dog.
11 And the reason that we bring up the issue of
12 title to the dog is to give the Court a basis to
13 understand that her claim or rights to visitation has
14 merit and that she sought to get this dog back within
15 one month of leaving the household, and her father
16 and lawyers came up with the scheme of depriving her
17 of the dog, the letter of October, I believe, 13,
18 2009.
19 Judge, there is no impediment for this court to
20 grant Slaney the right to be with her dog. This dog
21 is not going to be abused. This dog will be cared
22 for. Slaney has indicated on the stand that she
23 loves animals. And all the roadblocks attempted to
24 be put in the path, I think is just shameless.
25 Thank you, Judge.

1 THE COURT: The parties have put a significant
2 amount of evidence before the court. I would like to
3 give an opportunity to counsel and request that I
4 meant to ask, frankly, before I pose rebuttal from --
5 well, rebuttal would be the wrong word, reply
6 comments from the defense given our sidebar
7 conversation. I need to know before I make a final
8 determination -- I would like to have or give counsel
9 the benefit of informing the court of what evidence
10 you believe is in this record that indicates the
11 disability of Mrs. Healy.
12 MR. CHAVES: Can I answer that, Judge? Can I
13 answer that?
14 THE COURT: That's my question.
15 MR. CHAVES: I can try to answer it, Judge.
16 It's a matter of public record --
17 THE COURT: The evidence in the record of her
18 disability.
19 MR. CHAVES: The evidence in the record is that
20 Lucy is qualified as her service dog. So, in other
21 words, that would not have occurred without Dr.
22 Underberg, again, her treating physician, swearing an
23 affidavit submitted to the New York City Department
24 of Health indicating she needed a service dog.
25 Without that medical evidence, someone cannot obtain

1 a service dog.

2 Now, we didn't bring Dr. Underberg to testify

3 for purposes of this hearing, but inferentially we

4 know what the process is. It's sort of like saying

5 someone is a lawyer and we know they are a lawyer

6 because they took the bar exam, passed it and were

7 admitted. So, it's the same kind of analogy.

8 In order to become a service dog, you have to

9 have medical evidence supporting there is a need to

10 have a service dog in the first place. There is a

11 long process that occurs with respect to becoming a

12 service dog, for the dog itself. But, before you

13 even get to that, there has to be a need for the dog

14 to become a service dog of a particular person.

15 So, Judge, respectfully, the evidence is the

16 certificate, the letter from the New York Department

17 of Health with respect to Lucy becoming a service dog

18 for the plaintiff, and the license attached thereto.

19 THE COURT: I didn't overlook an affidavit from

20 the doctor?

21 MR. CHAVES: No. There was no affidavit.

22 THE COURT: I misunderstood. I thought I heard

23 you say that.

24 MR. CHAVES: If this were a full-blown trial

25 where there was a need for that type of evidence,

1 obviously, we would have called the doctor. But, for
2 this limited purpose, we felt it was not necessary.
3 THE COURT: I understand. No, I understand.
4 Although this proceeding has been characterized
5 as unusual, on the rights of personal property it
6 seems to this Court that is au contraire. I think
7 you would find steep in case law to the extent that
8 it verges on the consideration of a dog, that a dog
9 is considered man's best friend in the United States
10 of America, and that in many ways a dog is not
11 considered -- or, is considered more than personal
12 property inasmuch as there are laws with respect to
13 how this "personal" property can be treated.
14 In this case and as a result of this hearing, it
15 seems to this court several things: That there are
16 probably very strong feelings of love and care both
17 on the part of the defendant and on the part of the
18 plaintiff with respect to Lucy. The Court considered
19 some of the -- well, considered the standard for a
20 preliminary injunction perhaps in reverse in trying
21 to determine whether or not it made sense to have
22 visitation in this case. So, notwithstanding the
23 withdrawal of the motion for preliminary injunction,
24 in order to determine that visitation will be
25 appropriate or inappropriate, the Court needed to

1 look at things like what is the likelihood of success
2 on either side in this case.
3 The Court also did look at the testimony of both
4 sides with respect to their feelings about the dog,
5 the opportunity, and the argument made by counsel
6 that this Court has no jurisdiction, one, because
7 there is no written application and, secondly, though
8 arguably slightly different, that the Court cannot
9 remove the dog because this is a service dog.
10 First, I determine that the Court does have
11 jurisdiction because in it's attempt to withdraw the
12 motion for preliminary injunction, the parties are
13 not in control of any oral application that may have
14 been made during the course of this action, and the
15 Court does have oral application and a subsequent
16 hearing with evidence on the question from which to
17 make a determination.
18 As to the best interests of the dog, I don't
19 think there is such a standard yet made. I do not
20 think that we can automatically analogize in the best
21 interests of a child to in the best interests of a
22 dog. And so to the extent that it has not existed
23 prior, I guess this court is making it up.
24 Before I indicate if at all I indicate what that
25 is, I think I quickly need to talk about whether or

1 not there is -- whether or not we go to such a
2 standard, and whether or not there is a preliminary
3 consideration before we try and figure out the best
4 interests of the dog, and whether or not it's a
5 standard I'm going to use.
6 This case thus far and on the basis of the
7 hearings just recently had appears to suggest that
8 the court -- well, counsel is suggesting that the
9 court could not have the ability to take this dog
10 from -- or the visitation rights for this dog because
11 Lucy is a service animal. It seems apparent to this
12 court that if Lucy is a service animal in the way
13 that counsel would have this court perceive, that is,
14 an animal that is absolutely necessary to the
15 well-being of Mrs. Healy, there would need to be a
16 show of evidence of her disability.
17 The court takes to -- the court credits the
18 testimony that there have been many dogs in
19 Ms. Healy's life since she became aware of her
20 vertigo, and that as far back as 2005, she was aware
21 of it. There is little or no testimony of any
22 attacks since then. There is no medical evidence of
23 the disability from any medical professional. So,
24 the Court does not believe that the designation by
25 plaintiff and plaintiff's counsel of Lucy as a

1 service dog is such that the court must accept it.
2 In light of the ability and the existence of the
3 disease long before Lucy came into the household, in
4 light of the fact there has been no greater need
5 shown for a service dog until such time as this
6 proceeding, this action, was brought forth, the Court
7 does not feel that it must treat Lucy as a service
8 dog.
9 I don't think it is best for this Court to
10 determine what would be the standard for
11 consideration and entitlement in the best interest of
12 the dog because, you see, I, unlike the two parties
13 before me, am not an avid dog lover. I do care about
14 animals, I do, and am very much aware of the
15 attachment that persons and families have made to
16 their dogs and other pets. And as I started with, it
17 seems to me that both parties here are -- have shown,
18 rather, a great deal of attachment and desire to be
19 with a pet that each of them call their own. I see
20 no deterrent in the way of suspected harm either to
21 Ms. Healy or to Lucy in ordering visitation.
22 On the issue of likelihood of success with
23 respect to the final outcome in this action, which I
24 think this court has to make in order to determine
25 that visitation might be the wrong thing, it seems to

1 me that there is at least a sufficient likelihood of
2 success to warrant the Order of visitation in this
3 case. I believe, also, that the distance between the
4 plaintiff and defendant in this case warrants the
5 consideration of the requested visitation, that is,
6 be significant enough so that attachments in both
7 areas can be maintained and/or developed, and that it
8 would be less of a hardship, if you will, [illegible]
9 we did a few days a week as opposed to a significant
10 period of time at once.
11 Counsel asked for two weeks out of the month
12 without any specification as to whether or not that
13 be solid or every other week. I would entertain from
14 counsel, prior to the drafting of the Order and at
15 sidebar in a moment, what you desire because I got no
16 request for limitation from the plaintiff. But, this
17 Court does hereby order visitation to be determined
18 after this sidebar I'm about to have with counsel.
19 Come up, please.
20 MR. CHAVES: Would I have an opportunity to
21 consult with my client before the sidebar?
22 THE COURT: Yes.
23 MR. CHAVES: May I do that outside?
24 THE COURT: You may.
25 MR. CHAVES: Thank you, Judge.

1 (Whereupon, a recess was taken.)

2 THE COURT: You want to come up here or --

3 MR. CHAVES: No. Judge, I would like to be heard

4 on the record.

5 THE COURT: Make your record.

6 MR. CHAVES: Judge, thank you for giving us the

7 opportunity --

8 THE COURT: Well, the record should reflect

9 because I don't think it does reflect we took a break

10 allowing counsel to consult -- specifically allowing

11 plaintiffs' counsel to consult with his clients,

12 probably, about ten minutes.

13 MR. CHAVES: Thank you, Judge. I just wanted to

14 thank the Court for allowing me the opportunity to

15 consult with my client. And after consultation with

16 the client, I would like to make the following

17 statement: First, I respectfully request that any

18 Order of visitation only start in two weeks, that it

19 not be started before two weeks from whatever date

20 your Honor decides to enter an Order ordering

21 visitation.

22 And we also seek a stay of whatever Order your

23 Honor signs and enters so that we can go to the

24 Appellate Division and make an application for a

25 motion for leave to appeal with respect to that

1 issue, which at this point will not be an interim
2 Order, I believe it would be a final Order with
3 respect to visitation and therefore, possibly, would
4 be appealable as a right we would seek. If it's not
5 appealable as a right, we would make a motion in the
6 Appellate Division to have the Appellate Division
7 consider than on an expedited basis.
8 So, those are the two requests that I make
9 initially, Judge, and I would respectfully request
10 for purposes of the record when you do rule, that you
11 rule on those specific requests.
12 Now, with respect to the visitation itself, the
13 plaintiff requests respectfully that she be present
14 and supervise the entire visit by Ms. O'Hanlon. Lucy
15 has bonded closely to Ms. Healy because of the daily
16 contact over the last two and a half years. Lucy is
17 trained and certified as Ms. Healy's service dog. If
18 Ms. Healy is not present, Lucy may try to escape and
19 find her creating the risk that Lucy may escape from
20 Ms. O'Hanlon to find Ms. Healy and become lost,
21 injured or killed on the streets.
22 We respectfully request that visitation must be
23 during normal daylight hours, up to one hour, once
24 per month, and a mutually agreed upon time.
25 THE COURT: One hour, one time a month? I just

1 want to understand.

2 MR. CHAVES: One hour, once a month. One hour a

3 month. Up to one hour a month.

4 We respectfully request that the only persons

5 allowed to be present during the visitation with Lucy

6 are Ms. Healy and Ms. O'Hanlon, no other relatives,

7 friends, lawyers or other persons may be present.

8 We also respectfully request that the visitation

9 should be one in the many parks near Ms. Healy, the

10 plaintiff's home. Lucy becomes easily carsick even

11 on short rides.

12 Visitation should not be in Ms. Healy's home.

13 She has a safety and security concern that

14 Ms. O'Hanlon will become familiar with several of the

15 entrances, doormen, security systems and other

16 features in her co-op building. We already had a

17 situation back in September where Ms. o'Hanlon and

18 her mother appeared and that led to this whole

19 confrontation which led to the Order to Show Cause

20 and the recent Order granted by Judge Ash and then

21 withdrawn here.

22 There is also a concern that it be very clear in

23 the Order that whatever visitation is granted, that

24 when the visitation period is over, that the dog go

25 back to Ms. Healy. There is a concern that the

1 plaintiff has that either Ms. O'Hanlon or her mother,
2 Ms. McCarthy, will abscond with the dog. And
3 obviously, we object strongly to that even being a
4 consideration or a possibility, that the dog -- not
5 only that they take the dog somewhere but they ship
6 the dog. There has already been some testimony in
7 this case that Ms. McCarthy is originally from the
8 country of the Republic of Ireland where many of her
9 family members live, and there is a concern since
10 there has been frequent contact, she travels there
11 frequently and has many relatives there that the dog
12 not be transported to the Republic of Ireland or
13 anywhere else outside of the very strict confines of
14 whatever visitation Order your Honor enters.
15 Thank you.
16 THE COURT: I don't think your request is on the
17 record.
18 MR. ALTER: My request is a two-week consecutive
19 period, alternating weeks. Can I just briefly
20 comment on what was requested by counsel?
21 THE COURT: Uhmm --
22 MR. ALTER: Both as to the stay and --
23 THE COURT: Well, as to the stay because that's
24 a different thing, not as to the --
25 MR. ALTER: No, I'm not going into limitations

1 and restrictions, that's no visitation.

2 Judge, in regards to the stay to enable counsel
3 to go to the Appellate Division, this is just
4 another -- it was anticipated. It's anticipated that
5 there would be an attempted delay by whatever means
6 will be employed.

7 I request that the Court when it issues an
8 Order, issues that the defendant, Slaney, has
9 immediate visitation with her dog. And if in fact
10 counsel wants to go to the Appellate Division, then
11 he will work and get his appeal up to go to the
12 Appellate Division. This Court should not aid any
13 further delay of this issue.

14 Thank you.

15 THE COURT: The court does not see the request
16 for the stay as a delaying tactic. Perhaps, as a
17 notice tactic to the court. I would expect that an
18 appeal of this court's Order would be taken by one
19 party or the other, notwithstanding which way the
20 Court went.

21 I do not believe that this Order is a final
22 Order of the court and very much like visitation
23 rights in most proceedings I determine during the
24 course, because the dog is not a child. But, it may
25 be.

1 I will stay the implementation for two weeks,
2 but I will not stay this proceeding pending the
3 application and determination of appeal -- or,
4 determination of appeal.
5 I want a Short Form Order. It will be entered
6 forthwith, which means that it will be probably
7 effective tomorrow. So, two weeks from tomorrow --
8 yes, two weeks from tomorrow, this court will have
9 ordered -- effective two weeks from tomorrow,
10 visitation for two weeks on, two weeks off.
11 The visitation does not have to be supervised.
12 The parties should meet in a place mutually
13 determined by counsel right now, such that it can
14 appear in the Order, to exchange possession of Lucy.
15 You need to write that up, but the two of you
16 need to determine, which may mean you need to go back
17 to your client and you to your clients, where they
18 should meet. You have about three minutes to do that
19 so --
20 MR. CHAVES: Thank you, Judge.
21 THE COURT: You need to think in terms of trying
22 to be equidistant. I'm not talking about one going
23 out to Long Island and I'm not talking about them
24 coming all the way into Brooklyn.
25 (Whereupon, a recess was taken.)

1 THE COURT: Do you have an agreement as to a
2 place?
3 MR. CHAVES: Yes and no. I would just like to
4 state for the record, my client, given the reasons
5 already stated, service dog, close relationship and
6 those other issues, respectfully requests that
7 defendant, Slaney O'Hanlon, and the mother, both who
8 are young and able, come in from Brookville, wherever
9 that is in eastern Long Island, to their apartment at
10 Brooklyn Heights and that's where the transfer take
11 place. That's our first request.
12 THE COURT: The last thing I said to all of you
13 is that is not acceptable.
14 MR. CHAVES: I will move on then, Judge. I have
15 confirmed with my clients and conferred with
16 defendant's counsel, and it appears to be a consensus
17 that it can occur at a restaurant known as Mojave
18 Restaurant in Astoria, Queens, which the defendant,
19 Ms. McCarthy, has some type of ownership interest in.
20 And her counsel has indicated that would be amenable.
21 The only thing that hasn't been worked out is
22 when that would take place. In other words, we
23 prefer it take place during the day. We don't want
24 to be inconvenienced of having to go there at night,
25 at a certain date, and a certain time that is

1 mutually agreed upon.

2 MR. ALTER: Your Honor, there is no problem with
3 regard to having it in the daytime. The visitation
4 can start on a Saturday morning, carry over the
5 two-weeks period and be returned on a Saturday
6 morning.

7 THE COURT: Well, if it's two weeks, then it
8 would have to be two weeks from Saturday coming, I
9 suppose.

10 MR. ALTER: This is the Order that I prepared as
11 the first visit on whatever agreed date it would take
12 place --

13 THE COURT: It should also indicate time of day
14 that reflects a daylight time that is as close as
15 possible agreeable to both sides. Write that please
16 and thank you.

17 MR. CHAVES: I think we have come up with an
18 Order that is mutually agreeable.

19 (CONTINUED ON NEXT PAGE TO BE WITH
20 CERTIFICATION)

21

22

23

24

25

1 THE COURT: Let me wish you all the best on
2 this.
3 MR. ALTER: Thank you, your Honor.
4 MR. CHAVES: Thank you, Judge. Thank you for
5 your courtesy.
6
7 REPORTER'S CERTIFICATION
8
9 I hereby certify that the foregoing is a true and
10 accurate transcript of the within proceedings.
11
12
13 DELL ASHBY
Official Court Reporter
14
15
16
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22
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25

EXHIBIT 6

December 13, 2011

James A. Underberg MD
317 E 34th Street
7th Floor
New York NY 10016
(212)726-7430

NYC Dept. of Health and Mental Hygiene
Veterinary Public Health Services
Dog License Department
PO Box 4768, Church Street Station
New York, NY 10261-4768

Re: Dog License No. 3070403
Name of Dog – Lucy
Name of Owner – Margaret Healy
Service Dog Tag Request

To Whom It May Concern:

I have been the primary care physician for Margaret Healy of 135 Willow St., Brooklyn, NY 11201 for more than 15 years. I am therefore fully familiar with Ms. Healy's medical history, including the serious risks, dangers and functional limitations stemming from her vertigo disability described below.

Ms. Healy suffers from unexpected attacks of vertigo. Ms. Healy's first attack was an unexpected sudden, very severe episode of vertigo and her husband called my emergency number. She exhibited loss of balance, head-spinning dizziness, nausea, vomiting, unsteadiness, and other symptoms characteristic of vertigo. Ms. Healy was hospitalized for several days and received medications, intravenous fluids, and other treatment and therapy appropriate to improve her condition.

I continue to monitor Ms. Healy's overall health. Ms. Healy reports having experienced continuing but milder symptoms of vertigo since that first sudden, severe attack. Fortunately, she has not been traumatically hurt. It is not possible to predict if or when she will have another severe, sudden attack. Ms. Healy's vertigo poses a grave risk and danger affecting Ms. Healy's health and quality of life and substantially limits one or more of her major life activities. In view of these factors, Ms. Healy meets the definition of disability under the Americans with Disabilities Act.

Ms. Healy needs to have the ability to call 911 or her husband or daughter for help if she is alone and suffers attacks of vertigo. Ms. Healy needs to be able to locate or reach her cell phone and notify others of her attacks of vertigo.

To help alleviate this serious risk, danger and limitations, and to enhance Ms. Healy's ability to live normally, I recommend that Ms. Healy have a service dog to mitigate her disability and improve her quality of life. I recommend that Ms. Healy's present dog, named Lucy, who has been her constant companion for years and stated to have already helped Ms. Healy to cope with her disability, be trained as her service dog to locate and bring Ms. Healy's cell phone to her so she can call for help in an emergency and otherwise to assist Ms. Healy. I understand that Lucy responds well and quickly to training methods and has already received from the American Kennel Club her Certificate as Canine Good Citizen. I understand that Ms. Healy and Lucy trained and worked together to accomplish this, and that Lucy and Ms. Healy work well together.

Please contact me as shown above if you have any questions or need more information.

Sincerely yours,

James A. Underberg, M.D.

EXHIBIT 7

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

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MARGARET HEALY,

Plaintiff-appellant,

- against –

SLANEY O'HANLON and SUSAN McCARTHY,

Defendants-respondents,

----------X

Index No.: 21646/11

AFFIDAVIT OF VETERINARIAN MARC SIEBERT, VMD, CVA

Appellate Division Docket No.:

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

MARC SIEBERT, VMD, CVA, hereby duly sworn, deposes and says:

1. I am a doctor of veterinary medicine, and the owner and medical director of the Heart of Chelsea Animal Hospital located in Chelsea, New York. I have been practicing veterinary medicine for approximately nineteen (19) years.

2. I know Margaret Healy as her dog Lucy has been my patient most of Lucy's life for about two (2) years.

3. Lucy would suffer great stress and harm as a result of being taken away from Ms. Healy for two (2) week visitations with strangers she has not seen in over two (2) years in a new, strange environment. Since Lucy is a registered service dog by the New York City Department of Health and Mental Hygiene for Ms. Healy, meaning that Lucy has been specially trained to be servicing Ms. Healy and, as such, continually with Ms. Healy, Lucy would suffer unusually greater stress and harm and so would Ms. Healy.

4. I am and will be ready, willing and able to testify to the contents of my herein

affidavit, including, if necessary, explaining my herein sworn-to statements.

MARC SIEBERT, VMD, CVA

ORIGINAL

Sworn to before me this
15th day of March 2011

Notary Public

SOOMNAUTH DEYGOO
Notary Public, State of New York
Qualified in New York County
No. 01DE6218975
My Commission Expires 03/15/2014

EXHIBIT 8

UPREME COURT OF THE STATE OF NEW YORK
'OUNTY OF KINGS

----------X

IARGARET HEALY,

plaintiff,

- against -

LANEY O'HANLON and SUSAN McCARTHY,

defendants,

----------X

Index No.:

VERIFIED COMPLAINT

MARGARET HEALY, by and through her attorneys, Devereaux, Baumgarten, with ffices at 39 Broadway, Suite 910, New York, New York 10006, hereby avers as follows:

THE PARTIES

1. Plaintiff Margaret Healy ("Margaret Healy"), is a resident of the State of New 'ork, City of New York, County of Kings.

2. Defendant Slaney O'Hanlon ("Ms. O'Hanlon"), is an individual residing in ueens County, New York at 39-23 213th Street, #2F, Bayside, New York 11361-2054.

3. Defendant Susan McCarthy ("Ms. McCarthy"), is an individual residing in ueens County, New York at 39-23 213th Street, #2F, Bayside, New York 11361-2054.

NATURE OF THIS ACTION

4. Margaret Healy is and has been the rightful owner of a dog named Lucy ereinafter "Lucy"), for most of Lucy's life living in Kings County, New York.

5. On about September 13, 2011, Ms. O'Hanlon wrongfully demanded that Margaret aly turn over Lucy because she wrongfully claimed that she was the rightful owner of Lucy.

6. Because Lucy was not turned over to Ms. O'Hanlon, both Ms. O'Hanlon and Ms. :Carthy began an aggressive and illegal campaign of aggravated harassment against Margaret aly in an effort to intimidate her into giving Margaret Healy's dog Lucy to Ms. O'Hanlon.

7. This complaint seeks a declaratory judgment that Margaret Healy is the rightful owner of Lucy, a temporary restraining order and an order of protection preventing Ms. McCarthy and Ms. O'Hanlon or their agents and/or representatives from communicating with Margaret Healy or her husband in any way, except through counsel, preventing them from going to Margaret Healy's residence and taking any further actions to obtain Lucy during the pendency of this lawsuit.

8. This action also seeks monetary damages for Margaret Healy's mental anguish and pain and suffering resulting from Ms. McCarthy's unlawful assault and harassment.

9. The relief herein sought has not been made before nor ever made to any other court or Judge.

FACTS COMMON TO
ALL CAUSES OF ACTION

10. Margaret Healy is and has been a resident of Kings County, New York for over twenty (20) years.

11. Lucy was purchased by Margaret Healy's brother.

12. Margaret Healy's brother, at all relevant times, owned Lucy until Margaret Healy's brother gave Lucy to his sister Margaret Healy.

13. Margaret Healy's brother gave Lucy to Margaret Healy because Margaret Healy could afford and has afforded Lucy a great loving, caring, and stable life for most of Lucy's life.

14. Margaret Healy licensed Lucy, with license number 3070403. A true and accurate copy of the license is attached as Exhibit 1.

15. Margaret Healy vaccinated Lucy. A true and accurate copy of the Certificate of vaccination is attached as Exhibit 2.

16. Margaret Healy is and has been acting in the best interests of Lucy most of Lucy's entire life.

17. Lucy has spent most of her life with Margaret Healy.

18. Lucy has lived with Margaret Healy in Kings County, New York for most of Lucy's life.

19. Lucy has been cared most of her life by Margaret Healy.

20. Margaret Healy is caring for Lucy.

21. Margaret Healy has been caring for Lucy for most of Lucy's life.

22. Margaret Healy has licensed Lucy and purchased the licenses for Lucy for most, if not all, of Lucy's life.

23. Margaret Healy holds the license for Lucy.

24. Lucy's license is in Margaret Healy's name as her owner.

25. Lucy is Margaret Healy's daily companion.

26. Lucy is Margaret Healy's morning companion.

27. Lucy is Margaret Healy's noon time and afternoon companion.

28. Lucy is Margaret Healy's evening companion.

29. Lucy is Margaret Healy's night time companion.

30. Lucy has been Margaret Healy's daily companion for most of Lucy's life.

31. Lucy has been Margaret Healy's morning companion for most of Lucy's life.

32. Lucy has been Margaret Healy's noon time and afternoon companion for most of ucy's life.

33. Lucy has been Margaret Healy's evening companion for most of Lucy's life.

34. Lucy has been Margaret Healy's night-time companion for most of Lucy's life.

35. Lucy and Margaret Healy are generally together 24 hours a day, seven days a week.

36. Lucy and Margaret Healy are generally together 24 hours a day, seven days a week for most of Lucy's life.

37. Margaret Healy provides excellent care for Lucy.

38. Lucy has prospered living with and being in Margaret Healy's loving care and home.

39. Margaret Healy has provided excellent care to Lucy for most of Lucy's life.

40. Lucy is known in and around the community to be Margaret Healy's companion.

41. Lucy looks to Margaret Healy for direction, as her companion, owner and/or master.

42. Margaret Healy feeds Lucy all her meals.

43. Margaret Healy has always fed Lucy all her meals throughout most of Lucy's life.

44. Margaret Healy keeps Lucy clean and in excellent health.

45. Margaret Healy has kept Lucy clean and in excellent health for most of Lucy's life.

46. Nobody has cared for Lucy other than Margaret Healy for most of Lucy's life.

47. Nobody has fed Lucy other than Margaret Healy for most of Lucy's life.

48. Margaret Healy has afforded veterinary care for most of Lucy's life.

49. Nobody other than Margaret Healy has provided veterinary care for most of Lucy's life.

50. Nobody other than Margaret Healy has seen to Lucy's needs, including Lucy's recreational needs and walking needs, for most of Lucy's life.

51. Margaret Healy and Lucy have emotionally bonded.

52. Margaret Healy and Lucy have socially bonded.

53. Margaret Healy has emotional and social attachments and bonds with Lucy.

54. Margaret Healy has seen after all of Lucy's needs for most of Lucy's life.

55. Lucy accepts Margaret Healy as her companion, owner and master for most of Lucy's life.

56. Margaret Healy has looked after and ensured Lucy's health throughout most of Lucy's life.

57. Margaret Healy never abandoned Lucy.

58. Margaret Healy never lost Lucy.

59. Margaret Healy never abused Lucy.

60. Lucy is in Margaret Healy's custody.

61. Lucy has been in Margaret Healy's custody for most of Lucy's life.

62. Margaret Healy owns Lucy.

63. Lucy is Margaret Healy's companion.

64. Margaret Healy is Lucy's companion.

65. Margaret Healy has trained Lucy over most of Lucy's life.

66. Lucy has been trained and/or educated by Margaret Healy.

67. Lucy obeys Margaret Healy.

68. Margaret Healy provides a stable environment for Lucy.

69. Margaret Healy has provided Lucy with a stable environment for most of Lucy's life.

70. Margaret Healy is and has been an excellent companion, owner and/or master to Lucy.

71. Margaret Healy has and, at all relevant times, will always provide a stable environment for Lucy.

72. Margaret Healy has and, at all relevant times, will have the financial means to care for and provide a stable environment for Lucy.

73. On Friday, September 16, 2011, Ms. McCarthy called Margaret Healy.

74. On Friday, September 16, 2011, Ms. McCarthy called Margaret Healy and left a voice mail message on Margaret Healy's home telephone answering machine.

75. On Friday, September 16, 2011, Ms. McCarthy left a voice mail message for Margaret Healy on Margaret Healy's home answering machine that was threatening, foul, abusive, replete with curses, hatred and intimidation.

76. Complaint Report No. 5013 was taken by the Police Department at the 54th Precinct, 301 Gold Street, by Police Officer Simlet, Shield # 29374. A true and accurate copy of the complaint is attached as Exhibit 3.

77. The crime charged is aggravated harassment.

78. A true and accurate copy of the transcription of the threatening and intimidating voice mail message left by defendants is attached as Exhibit 4.

79. Ms. O'Hanlon and Ms. McCarthy then escalated their campaign of threats and intimidation against Margaret Healy.

80. On Friday, September 16, 2011, Ms. McCarthy and Ms. O'Hanlon physically and personally accosted, threatened and intimidated Margaret Healy at Margaret Healy's home.

81. Ms. McCarthy and Ms. O'Hanlon misrepresented and lied to Margaret Healy's doorman telling him that they had an "appointment" with Margaret Healy.

82. Ms. McCarthy and Ms. O'Hanlon never had an appointment to meet with Margaret Healy on Friday, September 16, 2011.

83. Ms. McCarthy and Ms. O'Hanlon called the Police on Friday, September 16, 2011.

84. The Police came to Margaret Healy's residence on Friday, September 16, 2011.

85. The Police refused to force Margaret Healy to allow or permit defendants entrance or access to Margaret Healy's residence.

86. Ms. McCarthy and Ms. O'Hanlon then escalated their campaign of threats and intimidation against Margaret Healy.

87. On Friday, September 16, 2011, Ms. McCarthy deliberately and recklessly drove after Margaret Healy in "road rage," against Margaret Healy.

88. Ms. McCarthy drove perilously close to Margaret Healy threatening and intimidating her with Ms. McCarthy's huge SUV.

89. Margaret Healy was, at all relevant times, threatened and intimidated, and drove to the Police Precinct whereupon Ms. McCarthy drove off.

90. A temporary restraining order and Court-Order of protection is necessary to protect Margaret Healy, and her husband and her dog Lucy against the defendants during the pendency of this lawsuit.

AS AND FOR A FIRST CAUSE OF
ACTION FOR A TEMPORARY
RESTRAINING ORDER

91. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "90," with the same force and effect as if actually and fully set forth herein.

92. That the Court is, respectfully, requested to grant plaintiff a temporary restraining order against the defendants enjoining or restraining them from further taking any action to take custody and/or possession of Margaret Healy's dog Lucy and threatening and/or intimidating

Margaret Healy and/or her husband, and from being in and around plaintiff's residence and neighborhood of Brooklyn Heights, New York.

AS AND FOR A SECOND CAUSE OF
ACTION FOR AN ORDER OF
PROTECTION

93. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "92," with the same force and effect as if actually and fully set forth herein.

94. That the Court is, respectfully, requested to grant plaintiff an order of protection against the defendants enjoining or restraining them from further taking any action to take custody and/or possession of Margaret Healy's dog Lucy and threatening and/or intimidating Margaret Healy and/or her husband, and from being in and around plaintiff's residence and neighborhood of Brooklyn Heights, New York.

AS AND FOR A THRID CAUSE OF
ACTION FOR DECLARATORY
JUDGMENT

95. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "94," with the same force and effect as if actually and fully set forth herein.

96. That the plaintiff be granted a declaration that plaintiff is the rightful sole owner of her dog Lucy and that defendants have no rights.

AS AND FOR A FOURTH CAUSE OF
ACTION FOR MONETARY DAMAGES

97. Plaintiff repeats, reiterates, realleges and incorporates-by-reference each and every averment contained in ¶¶ "1" through "96," with the same force and effect as if actually and fully set forth herein.

98. That defendants committed repeated aggravated harassment, threats and ıtimidation against the plaintiff.

99. The defendants put plaintiff in fear for her safety; the safety of her husband and; e safety of her dog, Lucy.

100. The defendants proximately caused plaintiff monetary damages, including ınitive damages, of no less than $500,000.00.

101. The relief herein requested has not been previously made to the Court and/or any ıer Court or Judge.

WHEREFORE, the Court is respectfully requested to grant plaintiff judgment, together th such and other and further relief as is just and proper in the Court.

ted: September 22, 2011
New York, New York

Michael J. Devereaux, Esq.
DEVEREAUX BAUMGARTEN
Attorneys for Plaintiff MARGARET HEALY
39 Broadway, Suite 910
New York NY 10006

: SUSAN McCARTHY O'HANLON
39-23 213th Street, #2F
Bayside, New York 11361-2054

SLANEY O'HANLON
39-23 213th Street, #2F
Bayside, New York 11361-2054

(P) Healy 10174

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------x

MARGARET HEALY,

Plaintiff,

Index No. 21646/11

-against-

VERIFIED ANSWER
AND COUNTERCLAIM

SLANEY O'HANLON and SUSAN McCARTHY,

Defendants.

----------x

The defendants Slaney O'Hanlon and Susan McCarthy as and for their verified answer to the verified complaint respectfully alleges:

1. The defendants deny each and every allegation contained in paragraphs "4" "5" "6" "11" "12" "13" "17" "18" "41" "46" "47" "49" "51" "52" "55" "62" "65" "66" "69" "70" "75" "78" "79" "80" "81" "86" "87" "88" "89" "90" of the complaint.

2. The defendants deny knowledge or information sufficient to from a belief as to the allegations contained in paragraphs "15" "16" "19" "20" "21" "22" "23" "24" "25" "26" "27" "28" "29" "30" "31" "32" "33" "34" "35" "36" "37" "38" "39" "40" "42" "43" "44" "45" "48" "49" "50" "51" "52" "53" "54" "56" "57" "58" "59" "60" "63" "64" "65" "67" "68" "69" "70" "71" "72" "76" of the complaint.

10/27/11

IN ANSWER TO THE FIRST CAUSE OF ACTION

3. Defendants admit or deny the allegations contained in paragraph 91 of the complaint as his heretofore been admitted or denied as if set forth at length herein.

IN ANSER TO THE SECOND CAUSE OF ACTION

4. The defendants admit or deny each and every allegation contained in paragraph "93" of the complaint as has been previously been admitted or denied as if fully set forth at length herein.

IN ANSWER TO THE THIRD CAUSE OF ACTION

5. The defendants admit or deny each and every allegation contained in paragraph "95" of the complaint as has heretofore been admitted or denied as if fully set forth at length herein.

IN ANSWER TO THE FOURTH CAUSE OF ACTION

6. The defendants admit or deny each and every allegation contained in paragraph "97" of the complaint as has been previously denied admitted as if fully set forth at length herein.

7. Defendants deny each and every allegation contained in paragraph "98" "99" and "100" of the complaint.

AS AND FOR A COMPLETE
DEFENSE TO ALL CAUSES OF ACTION

8. The plaintiff fails to state a cause of action in her complaint that entitles her to any relief.

AS AND FOR A COUNTERCLAIM
ON BHALF OF THE DEFENDANT
SLANEY O'HANLON

9. That the defendant Slaney O'Hanlon is a resident of the State of New York, and the niece of the plaintiff.

10. That the plaintiff is a resident of the State of new York.

11. That in or about December 2008 the defendant Slaney O'Hanlon was given a Christmas gift of a Golden doodle dog, named Lucy, by her parents. Thereafter a chip was inserted into Lucy which chip designated the defendant, Slaney O'Hanlon as the owner of said dog.

12. That in or about August 2009, a divorce action was instituted by the defendant Susan O'Hanlon (McCarthy) against her husband, James O'Hanlon, based upon her husband's cruelty toward her. The plaintiff is the sister of James O'Hanlon. Plaintiff's husband, Walter Healy, represents James O'Hanlon in the divorce action instituted by Susan O'Hanlon (McCarthy).

13. At the time the divorce action was instituted the defendant, Slaney O'Hanlon, who justifiably feared her father, desired to go to a high

school in Baltimore, Maryland, where she had been accepted. Her mother sought custody of Slaney and permission for Slaney to attend High School in Maryland. The Court awarded the defendant Susan O'Hanlon custody of Slaney O'Hanlon, and permitted Slaney O'Hanlon to attend school in Baltimore.

14. In early September 2009, the defendant Slaney O'Hanlon, left for school in Baltimore, Maryland, leaving her dogs in the care and custody of her brothers and father.

15. That in or about January 2010 the defendant learned that her father, James O'Hanlon without her knowledge or consent, delivered her two dogs, Lady and Lucy, to her Aunt and Uncle (the plaintiff and Walter Healy) for safekeeping.

16. That the defendant Slaney O'Hanlon through her mother's counsel requested that her dogs (now in possession of the plaintiff and her husband) be given to her mother for her to care for her dogs and was advised that the dogs (Lady and Lucy) would be returned to her when she finished school and she was able to care for them.

17. The defendant, Slaney O'Hanlon, graduated from High School in Baltimore in June 2011, returned to New York, and by September 2011 was capable of caring for her dogs.

18. On or about September 16, 2011 the defendant Slaney O'Hanlon learned that one of her two dogs had died (Lady) and she demanded that the plaintiff return her dog, Lucy to her.

19. The plaintiff, upon information and belief acting, on the direction of the defendant's father; James O'Hanlon and her husband Walter Healy, did out of spite, malice and ill will, and solely to cause emotional stress and anxiety upon the defendants wrongfully failed and refused to return Lucy, defendant's dog, to the defendant, Slaney O'Hanlon.

20. That the plaintiff has wrongfully converted Lucy to the damage of the defendant, Slaney O'Hanlon, and in furtherance of her improper conduct to intentionally inflict injury upon Slaney O'Hanlon, the plaintiff has filed a false complaint with the Police Department.

21. As a result of the wrongful conduct of the plaintiff, the defendant Slaney O'Hanlon should be granted judgment directing the return of her dog Lucy to her, together with appropriate monetary damages for the intentional infliction of emotional harm. The amount of said damages to be determined at trial.

Wherefore, defendants demand judgment dismissing plaintiff's complaint, and judgment on the counterclaim in further of the defendant Slaney O'Hanlon against the plaintiff.

Alter & Alter LLP.
Attorney for Defendants
300 East 42nd Street
New York, NY 10017
(212) 867-7777

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

SUSAN O'HANLON, being duly sworn, says: I am a codefendant in the above-captioned action; I have read the annexed Answer and Counterclaim, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matter I believe them to be true.

STANLEY ALTER
Notary Public, State Of New York
No. ~~31-0053095~~ 02AL0053695
Qualified In New York County
Commission Expires October 30, 2013

SUSAN O'HANLON

Sworn to before me this
14 day of October , 2011