

**EXHIBIT 10**

**NY State Supreme Court  
Appellate Division First Department  
Dismisses Danger v Combier**

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

PRESENT: Hon. SEATRICE SHAINSWIT PART 10  
Justice

Douglas, Julia

INDEX NO. 606259/98

MOTION DATE 6/28/99

MOTION SEQ. NO. 001

MOTION CAL. NO. 6

Combler, Elizabeth

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

PAPERS NUMBERED

**FILED**  
JUL 23 1999  
COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE  
DATED: \_\_\_\_\_ J.S.C.

to dismiss the complaint is granted. The complaint alleges a derivative claim on behalf of Bankers Trust Company as trustee, but fails to acknowledge that the damages which plaintiff seeks to recover are for the benefit of an entity other than the plaintiff. Further, the complaint fails to name Bankers Trust Company as a nominal defendant. Finally, the complaint fails to allege that plaintiff has made a demand on Bankers Trust Company to pursue the claim directly and that such demand has been refused.

The cross motion to amend the complaint to meet these pleading deficits is denied. Plaintiff concedes that the claims asserted in the present action may be interposed in an accounting proceeding pending in the Surrogate's Court. Plaintiff's cross motion, interposed after defendant filed its reply papers, is denied, as it appears to be intended to prolong this litigation.

Defendant's application for attorney's fees, pursuant to 22 NYCRR § 130-1.1(c)(2) is granted to the limited extent that counsel is awarded \$250 as reasonable fees in connection with time spent responding to the cross motion.

Accordingly, it is

Dated: 9/14/99

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

ORDERED that the motion to dismiss the complaint is granted, and it is further

ORDERED that the cross motion to amend the complaint is denied, and it is further

ORDERED that defendant is awarded costs in the amount of \$250, as well as statutory costs and disbursements, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated:

7/19/99

*[Signature]*

J.S.C.

**FILED**  
JUL 23 1999  
COUNTY CLERK'S OFFICE  
NEW YORK

Tom, J.P., Andrias, Nardelli, DeGrasse, Freedman, JJ.

1086 Julia Danger,  
Plaintiff-Appellant,

Index 606259/98

-against-

Elizabeth Combier,  
Defendant-Respondent.

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Kenneth T. Wasserman, New York, for appellant.

Elizabeth Combier, respondent pro se.

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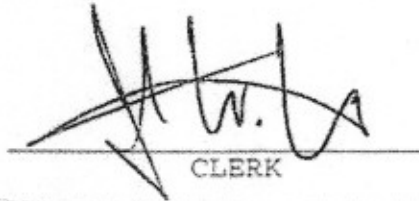
Order, Supreme Court, New York County (Karla Moskowitz, J.), entered January 2, 2008, which, insofar as appealed from in this action for, inter alia, the conversion of monies from a trust, granted defendant's motion to dismiss the complaint, unanimously affirmed, with costs.

The complaint was properly dismissed since the action is barred by reason of the release that plaintiff executed in favor of both the trustee and defendant (her sister) that was contained in the instrument that settled the account of the subject trust, which had been established by the parties' maternal grandfather for the benefit of the parties' mother, with the remainder of the trust to be divided equally between the parties upon their mother's death (see *D'Amico v First Union Natl. Bank*, 285 AD2d 166, 173 [2001], lv denied 99 NY2d 501 [2002]). Furthermore,

defendant neither controlled the trust nor determined how its assets were to be distributed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 1, 2009



CLERK