The Courts

Jerusalem Magistrates Court			C 008047/99
Before Honorable Justice Refael Yacobi			
			January 7, 2007

In the matter of: **Badawi ___**

Represented by counsel Adv. W. Zahalka **Plaintiff**

v.

State of Israel

Represented by counsel Adv. A. Ararat **Defendant**
(Tel Aviv District Attorney's Office)

Judgment

A. The Claim and Subsequent Proceedings

1. The matter herein is a claim for damages due to bodily harm, in which the Plaintiff, a resident of Nablus, born February 3, 1979, claims that in 1991 she was injured in the left leg as a result of gunshots fired towards her by the Defendant's soldiers.

2. The claim was filed almost eight years after the alleged incident, and if this were not enough, the Plaintiff filed an Amended Statement of Claim two years after the original Statement of Claim was filed, in which she amended the date of the alleged incident (from September 7, 1991 to September 4, 1991).

3. In the Amended Statement of Claim (paragraph 4), the circumstances of the injury were described as follows:

A. On September 4, 1991, at approximately 12:00, or sometime around then, the Plaintiff left her home in the al-Manara district of Nablus in order to purchase medicine for her mother.

   In those circumstances, as she walked down the Jews' Steps in the area, the Plaintiff was shot by IDF soldiers who were present in the area.

B. In these circumstances and following the injury she sustained from the bullet, the soldiers added insult to injury by attacking the Plaintiff, hitting her with the butts of their rifles.

C. Subsequent to the aforesaid, the soldiers delayed providing medical treatment to the Plaintiff.

4. The Defendant does not deny that the Plaintiff was shot by IDF soldiers, but, it claims that the circumstances under which the shooting took place were entirely different from those presented by the Plaintiff and are such that render the Defendant exempt from civil liability. The Defendant claims that the shots were fired in the Plaintiff's direction after she was identified as a dominant instigator among a group of rioters, who attacked soldiers on a foot patrol with bottles and stones, putting them at risk.

5. The Defendant's account of the events was presented in detail in the affidavit of Y., the patrol soldier who shot the Plaintiff (paragraphs 7-9 of his affidavit, D/1):

   7. We went out on a routine patrol of the Kasbah after a briefing which included open fire instructions. During the patrol, in one of the Kasbah alleys that are close to the Cardo and lead to it, we were attacked with a large amount of stones and bottles.

   8. We could not advance into the Cardo without risking injury to one of the soldiers. The Cardo had been blocked off in order to prevent us from going in and locating wanted persons and terrorists. I recognized a dominant figure in the group of attackers. It had the masculine body build of an older boy. This boy (as I thought at the time) did not only incite all of the rioters, but he also threw bottles at us. We were attacked from the top of the stairs leading to the Cardo while we were in an inferior position.

   9. There was no choice but to shoot at that lead instigator. Our lives were clearly at risk… We could not make out what was in the bottles the boy was throwing at us. I assumed they were acid bottles which could result in serious injury. Though I could shoot to hit, I followed the full apprehension protocol: I shouted "Waqef! Jeish!" ("Stop! Army!" in Arabic), fired three warning shots in the air (making sure to aim at the sky and not one of the houses). After my call went unanswered and the warning shots did not stop the attack from continuing, I knelt, despite the short distance from the attackers, in order to make sure that I hit the lower part of the leg only and caused minimal damage.

6. To support her allegations regarding the Defendant's liability, the Plaintiff filed her own Affidavit of Evidence in Chief (P/1). She also submitted (with the consent of Defendant's counsel), relevant Ministry of Defense logs and an excerpt from a document concerning the open fire regulations (P/2). At a certain point, the Plaintiff submitted notice that her sister would also give testimony (see

detailed notice filed by Plaintiff on November 21, 2005). However, ultimately the sister did not testify and the Plaintiff relied solely on her own testimony.

7. The Defendant submitted an Affidavit of Evidence in Chief by Y., the patrol soldier who shot the Plaintiff (D/1) and by D., Y's company commander (hereinafter: Y. and D.). The Defendant also submitted the transcripts of an investigation conducted by Ibn Shehadeh Bari, an investigator working on its behalf, who interviewed the Plaintiff herself and others. The transcripts were accompanied by the investigator's affidavit (D/2). In addition, and pursuant to a decision made on December 14, 2005 (hearing transcripts, p. 20), the Defendant submitted a document dated August 21, 1991, which briefs IDF forces operating in the Judea and Samaria Area and Gaza Strip on open fire regulations.

8. Regarding the Plaintiff's medical condition, both parties initially submitted expert opinions. In view of the great discrepancy between the Plaintiff's expert, who found a significant orthopedic handicap and the Defendant's expert, who found that all that was left was a scar, the Court appointed an expert (Dr. M. Amit-Cohen). This expert reported that the Plaintiff suffered from permanent disability at the rate of 5% according to Section 46(2)A of the tests listed in the addendum to the National Insurance Institute Regulations, due to "a minor angular dislocation of the tibia", as well as a 10% disability pursuant to Section 75 of these tests due to scarring.

9. In two evidence sessions (held on November 28, 2005 and December 14, 2005), the Plaintiff, the witness Y. and the investigator were examined. At the end of the session held on December 14, 2005, the parties agreed that D.'s examination would be waived "without adding or detracting from the rights of the parties" (hearing transcripts, p. 24, lines 12-14).

10. In order to complete the picture, it is noted that the Defendant was initially agreeable to a settlement and accepted the Court's suggestion that it provide the interim funding for the court appointed expert's fee. According to the Defendant, its approach changed after inquiries it had made led it to the conclusion that it bore no liability vis-à-vis the Plaintiff. Subsequently, the Defendant also strongly petitioned for an Order of Inspection with respect to a document mentioned in the medical opinion provided by the Plaintiff and which the Defendant believed might serve its interest. This motion by the Defendant was rejected (see decision dated September 26, 2009). It is further noted that following the Defendant's motion to instruct the Plaintiff to deposit a guarantee, the Plaintiff was given a choice between depositing a guarantee of ILS 5,000 and depositing a guarantee by a guarantor who is an Israeli resident (see decision dated November 19, 2002 in CivApp 8938/01). The Plaintiff opted to deposit ILS 5,000 in cash.

11. Subsequent to the events as described above, written summations were submitted and the time has now come to deliver a judgment in the matter.

B. Final Result in a Nutshell

12. Having considered parties' arguments, in view of the overall evidence, I have reached the conclusion that the claim must be dismissed.

13. I shall hereinafter explain how I reached this result.

C. Substantiating the Result

14. With respect to the circumstances under which the Plaintiff was injured, I have reached the conclusion that her account of the events, which contained many inconsistencies and deficiencies, must be entirely rejected and that the account given by the Defendant, which was supported by strong evidence, is to be preferred.

15. I shall first specify why I have reached the conclusion that the Plaintiff's account must be entirely rejected. Despite the fact that this is most likely sufficient to lead to the dismissal of the claim, I shall nonetheless address arguments made by her counsel against the Defendant's account and explain why these are insufficient to undermine the Defendant's account. Then, after substantiating the holding that, factually, the incident occurred as the Defendant claims, I shall explain why, in these factual circumstances, the Defendant bears no civil liability towards the Plaintiff.

16. The Statement of Claim contains a brief description of the incident in which the Plaintiff was injured without specifics. However, the Plaintiff went to the trouble of adding more allegations to the shooting story, regarding assault and ill-treatment by the soldiers and deliberate delays in providing her with medical treatment. The Plaintiff devoted much of her affidavit to these events.

17. It is difficult to avoid the impression that the Plaintiff fabricated the description of the events that took place after she was shot and that she did so in order to malign the Defendant, gain sympathy and compassion and cover up her actions prior to the shooting and which led to it. Either way, the Plaintiff did not substantiate these claims and she even abandoned them over the course of the proceedings. Therefore, and in general, it appears that it is not just the description of the latter part of the incident that does not reflect reality. As detailed below, it is not difficult to see that the Plaintiff tailored her account of the first part of the incident, that is, the shooting itself, to suit her interests.

18. Beginning with the date of the incident – the Plaintiff provided two different dates. In the original Statement of Claim the date of the incident was listed as September 7, 1991, but once it became clear that this date did not conform to the medical records, the Plaintiff sought to amend the Statement of Claim such that the incident was said to have taken place on September 4, 1991.

19. A more significant matter is that the Plaintiff attempted to conceal the fact that she was injured in the left leg in a car accident which took place a number of years prior to the shooting incident. In response to question number 8 in the questionnaire of September 8, 1999 (hereinafter: **the questionnaire**), the Plaintiff claimed that she was in good medical condition prior to the incident and even when she was asked directly about accidents or injuries other than the accident [*sic*] which is the subject of the Statement of Claim, she denied there had been any (see, question 14 and the response thereto). Only in her answers to a supplementary questionnaire dated February 5, 2002 (hereinafter: **the supplementary questionnaire**), did the Plaintiff admit that such a car accident had taken place (see response 2(25) to the Supplementary Affidavit of Response). It appears that this occurred because the Plaintiff realized the Defendant had found out about the car accident. Her response to the supplementary questionnaire indicates that the Plaintiff continued to try to minimize the importance of said accident and provide incorrect information about it ("when I was an infant, I suffered a minor injury to the right leg"). It was only when the investigator asked her about the accident time and again that she was left with no choice but to admit that the leg that was injured in the shooting (the left leg) was the same one injured in the prior car accident (see pp. 3 and 5 of the investigation transcripts).

20. With respect to the alleged incident, the Plaintiff attempted to create the impression that on the day she "innocently" went to buy medicine for her sick mother, the area was calm and quiet and denied any possibility that there were any public disturbances prior to her injury (see answer 25 to the questionnaire; section 5 of her affidavit; her testimony on record: p. 7, lines 11-17; p. 10, lines 1-3).

The Plaintiff contradicted this account in the statement she gave to the investigator, according to which there were public disturbances in the area at least in the half-hour preceding the incident (see p. 12 of the investigation transcripts). It is also clearly contradicted by the express and clear statements made by Y. in his testimony and compounded by statements given to the investigator by eyewitnesses (see statements of Saleh Ahmad al-Taqtuq, p. 27 f the investigation transcripts and Shehadeh al-Taqtuq, p. 28 of the investigation transcripts). The statements given to the investigator by eyewitnesses must be given considerable weight as these are witnesses who have no interest in helping the Defendant (and one might say quite the opposite) and who, the investigator noted, gave testimony spontaneously (hearing transcripts, p. 22, lines 19-22). It is noted that not only does the Plaintiff make no claim against the use of the testimonies collected by the investigator, but she used them in her summations and expressly asked the Court to consider them (see, e.g., p. 27 of her summations).

21. The Plaintiff chose to overstate the nature of the injury as well. She claimed she had been hit by two bullets (p. 12 of the investigation transcripts; hearing transcripts, p. 8, lines 14-15). Yet, medical records and the court ordered medical opinion indicate that she was hit by only one bullet.

22. The Plaintiff's lack of credibility was discernible even in the clothes she chose to wear on the day of her testimony in court. In contrast to her usual boyish appearance (see, e.g., the statement of the investigator in the hearing transcripts, p. 23, lines 19-22), which is a matter of significance in this case (as explained below), the Plaintiff wore clothes normally worn by devout Muslim women.

23. Another significant flaw in the Plaintiff's account was her attempt to create the impression that there were no real eyewitnesses to the incident. It appeared that in reality, there were more than a few such eyewitnesses, whom the Plaintiff knows. As such, and since the Plaintiff refrained from calling them to give testimony without any explanation, this too, is to her detriment.

    In response 27 to the questionnaire, the Plaintiff is recorded as saying that during the time of the incident, the only people in the area other than her were pedestrians she did not know. In court, she testified that aside from an old woman, the stairway she descended was empty (hearing transcripts, p. 10, lines 24-29). The Plaintiff contradicted these statements in her conversation with the investigator, whom she told there had been many eyewitnesses to the incident and was even able to name them (see investigation transcripts, pp. 6-7).

    None of the potential (six!) witnesses to the incident was called to testify by the Plaintiff and it was not claimed that an attempt had been made to call them, despite the fact that these are individuals whom the Plaintiff knows.

    With respect to what happened after the incident, the Plaintiff testified that her brother and sister were with her at the clinic and were also beaten by the soldiers (see paragraph 10 of her affidavit). Though, for her own reasons, she chose not to call them to testify either (despite the fact that her sister accompanied her to the courtroom when she gave her testimony).

    In a case such as this, with a Plaintiff who feigns innocence, presenting an account according to which she was shot for no reason, deliberately attacked by the soldiers and denied medical treatment for a time, her choice not to call witnesses is highly significant. In a case such as this, the rule that a litigant's refraining from calling witnesses should be held against her must be strictly applied to the Plaintiff (see , e.g. CivA 548/78 **A. et al. v. B.**, IsrSC 35(6) 736, 760; CivA 2275/90 **Lima Israeli Industrial Company LTD. v. Rosenberg**, IsrSC 47(2) 605, 615; CivA 465/88 **Finance Bank v. Salima Matityahu**, IsrSC 45(4) 651, 658; Y. Kedmi, **On Evidence** (5764), beginning at 1648).

Moreover, in these circumstances, the Plaintiff's testimony remains a single litigant's testimony and the court must provide grounds for a decision to accept it (Section 54 of the Evidence Ordinance [New Version] 5731-1971). In view of all the aforesaid with respect to the lack of consistency and reliability of the Plaintiff's account, it is clear that in the case at hand, her evidence may not be relied upon.

24. In fact, all of the above, with respect to the Plaintiff's lack of reliability, is sufficient to lead to the result of dismissing the claim, since, generally, once a plaintiff's account of the events is ruled out, she cannot expect the court to rule in her favor based on a factual infrastructure that is different from the one she described (see on this issue the many judgments cited in and attached to the written summations of the Defendant).

However, and beyond necessity, I shall continue the outline described in paragraph 15 above, and I shall first address the arguments Plaintiff presented against Defendant's account and explain why they are insubstantial.

25. As stated, the Defendant's account was presented in detail in the affidavit of Y. and in his testimony in court. The Plaintiff made two arguments against relying on Y.'s testimony. According to the first, in view of the many years that had passed from the date of the incident until the proceedings, Y.'s memory was unreliable. According to the other argument, Y.'s testimony was contradicted by entries made in various Ministry of Defense logs of the incident. The logs mentioned only "a local" and not a group of rioters. The logs also only referred to bottle throwing in this incident and did not mention bottles and stones being thrown. With respect to these discrepancies, according to the Plaintiff, the log entries are to be preferred over Y.'s testimony.

26. Two things may be said of the argument regarding the alleged inadvisability of relying on Y.'s memory due to the passage of time: First, in this regard, the Plaintiff has only herself to blame. It was she who delayed submitting the claim for such a long time and in so doing caused the Defendant evidentiary damage. The Plaintiff submitted her claim close to the end of the limitations period without providing any explanation. She cannot have it both ways - on the one hand delaying filing the claim for no reason and on the other, claiming that in view of the passage of time, the memory of the Defendant's witnesses is unreliable. Second, even if one ignores the "accusation" made by the Plaintiff; in the matter at hand, it is, in fact, reasonable to presume that Y.'s memory is intact. Y. explained that he clearly remembered the circumstances of the incident because it was so unusual – an incident in which he shot a boy, who later turned out to be a girl. It is entirely reasonable to accept his statement that this unique incident was so deeply etched in his memory that he did not need any aids to remember what had occurred (hearing transcripts, p. 13, lines 12-19).

27. With respect to the entries in the relevant logs: It is noted that a comparison between same and Y.'s testimony reveals that not only is there no significant contradiction between the two, but Y.'s testimony is supported by the log entries which describe the incident in a manner similar to his own description. For example, the logs contain a record of the fact that the Plaintiff attacked the patrol with bottles and that a suspect apprehension protocol was carried out before the patrol shot in her direction. So, for example, the incident is described in Daily List Routine Security Report dated September 4, 1991, p. 5:

> Re: Public Disturbances Samaria Regional Brigade
> 11:57 Bottles thrown at foot patrol in the Cardo in the Kasbah. Male local identified throwing; suspect apprehension procedure carried out; live fire shot in air and then at local; leg injury identified; patrol treated local, which turned out to be female; female local transferred for treatment at Anglican

> Hospital. Female local particulars: 'Ula Hamdi al-Badawi, resident of the Nablus Kasbah. Bullet in left leg, minor.

Similar descriptions were entered in the running log for September 4, 1991 (at 11:57, 12:40 and 13:25), as well as in that day's operations log (at 11:53 and 13:10).

The log entries do focus on a male/female local who was throwing bottles, but this focus can be explained by the fact that special actions were taken only with respect to the Plaintiff (shooting, identification, medical care, etc.). It can in no way be said that the reports indicate the army did not believe the patrol had been attacked by a group of youths. The vague phrase "bottles thrown" may certainly refer to bottle throwing by a number of rioters.

The fact that the logs mention only bottles rather than bottles as well as stones is insignificant in the overall circumstances. Y.'s explanation that discrepancies between real time reporting and subsequent reporting sometimes occur is acceptable, as is his explanation that in view of the circumstances in which the report was made, some inaccuracies were possible (see his statements in the hearing transcripts, pp. 14, 17-19).

28. Once we have ruled that factually, the shooting incident took place under the circumstances described by the Defendant, all that is left is to show why, in these circumstances, the Defendant bears no civil liability for the injury caused to the Plaintiff. On this issue, the Defendant may rely on the defenses of "assumed risk" and "wartime action". Furthermore, even if the Defendant could not rely on these defenses, it would still be exempt from liability as the soldiers who acted on behalf of the Defendant did not commit a tortious act against the Plaintiff, but rather acted in a proportionate and appropriate manner in the circumstances. In fact, the matters relating to these defenses and the manner in which the Defendant acted are interconnected, in that each of them separately and all jointly support the dismissal of the claim, in addition to the other matters addressed herein.

29. As stated, the Plaintiff's account that she innocently passed by in the area was wholly rejected and it has been made clear that she was a dominant figure in a group of youths who had attacked the patrol. In view of the accepted account of the incident, the "assumed risk" defense holds.

30. Section 5 of the Civil Wrongs (Liability of the State) 5712-1952 (hereinafter: **the Law**) stipulates that the State shall not be held liable for damage caused by an IDF wartime action.

Unlike the manner in which the Plaintiff attempted to present the incident, the patrol cannot be said to have been a routine patrol, which would constitute a common policing action, but rather a military mission involving danger to life and limb with clear military objectives – to locate terrorists. Y. testified to this purpose in his affidavit (see, paragraph 8). In court, he also emphasized that the purpose of the patrol was to "come across [*sic*] wanted persons" (hearing transcripts, p. 18, lines 16-24).

A case such as this falls under the terms of wartime action, not just according the amendment to the Law (dated July 24, 2002), but also as determined in many judgments given prior thereto, including those cited in the Defendant's summations and the matter is known. Of these, we shall quote only from CA 6051/92 **Bani Odeh v. State of Israel**, IsrSC 56(4)1, a judgment on which the Plaintiff relied and which was delivered by a panel of nine justices in order to establish the legal situation prior to the aforementioned amendment.

In that judgment, Honorable President Barak wrote the following (paragraph 10):

> This would not be the case if a military patrol in a village or a city finds itself in danger involving risk of death or severe bodily harm due to shots fired at it and stone and Molotov cocktail throwing, and in order to rescue itself it fires and injures someone. The act of shooting is a "wartime action", since the risk entailed in this action is a special risk. Intermediate situations, between these two extremes, may occur. For example, consider the case of a military unit patrolling an area in order to maintain order. As long as it carries out ordinary policing activities, within the scope of ordinary police action risk, its activities cannot be seen as "wartime actions". Not so if there should be a stage of rioting, stone throwing or shooting, which pose a risk to the unit's soldiers. In this state of affairs, the action ceases to be a policing activity with its ordinary risks and becomes a wartime action entailing special dangers.

The Defendant is correct that the entire incident and the manner in which Y. acted must be understood in the context of the volatile security situation that existed in the Nablus area in those days and which led to the type of activity in which the patrol soldiers were involved.

Y. testified about this situation (paragraph 4 of D/1):

> I would like to note that at the time, Nablus in general and the Kasbah in particular were very dangerous areas for IDF soldiers. Our forces were a focus and target for terrorist activities and recurring attacks. The attacks included gunfire, shots from homemade weapons, throwing of explosive devices on our forces, Molotov cocktails, steel posts, cinderblocks thrown from rooftops and, of course, stone throwing on a daily basis. In addition, at that time, we had many acid bottles thrown at our troops. It should be noted that an acid bottle can cause severe bodily damage and even death. Due to severe injuries from acid bottles…"

A similar state of affairs was described in the affidavit of D. (paragraph 4):

> In those days, Nablus, and particularly the Kasbah, was a focal point for hostile terrorist activity in no small scale, to say the least. The area was not only a focal point for large scale rioting, which included throwing acid bottles, Molotov cocktails, stones, steel posts, cinderblocks and anything else they could find (which caused soldier injuries as detailed below). The area was also a focal point for frequent use of guns and explosive devices by hostile elements…

The description of the volatile security situation in the area at the time is supported by the statements included in the Open Fire Regulations of August 21, 1991, which explicitly state: "Incidents of shooting and attacks on IDF soldiers and civilians in the Judea and Samaria Area and Gaza Strip using firearms and stabbing weapons have recently increased …" (see, paragraph 1)

It is held that the defense of "wartime action" holds and for this reason too, the claim must be dismissed.

31. Given the aforementioned state of affairs, it must be noted that Y.'s fear that the incident was putting the lives of the patrolmen at risk was sufficiently founded. He testified that according to his experience as a soldier at the time, incidents such as the one in which the Plaintiff was shot, could

sometimes simply a smokescreen for an ambush or a much more serious attack and could persist for a long time if not stopped early.

His (real time) fear that the bottles contained acid was not detached from reality. Contrary to the Plaintiff's vague claim that no acid bottles were used at the time, but rather empty bottles and stones only, both Y. and D. testified that this was not the case, and explained that being hit by an acid bottle could cause severe bodily harm (see paragraph 4 of D/1 and paragraph 8 of D.'s affidavit). The Open Fire Regulations of August 21, 1991 support Y.'s and D.'s testimony on this issue. The regulations indicate that at the time, Molotov cocktails and firearms were most certainly being used against IDF soldiers. Further support may be found in the GOC Assessment Report (see, e.g. 21 therein).

The assumption that the rioter was a boy rather than a girl was also reasonable. Y. explained that the Plaintiff had a masculine appearance (hearing protocol, p. 17, line 17-20; p. 20, lines 15-20). The investigator was also under the impression that the Plaintiff dresses and acts like a boy and that she is known in the neighborhood as a girl who looks like a boy (hearing protocol, p. 23, lines 19-22). It seems that the Plaintiff herself was aware of the fact that she could be mistaken for a boy because of her appearance (see statements she made to the investigator, p. 4 of the investigation transcripts and statements made by Saleh Ahmad al-Taqtuq to the investigator, pp. 26-27 of the investigation transcripts; see also her testimony in court, hearing transcripts, p. 6, lines 1-26 and p. 11, lines 8-10).

As elucidated in the Learner case, this founded, reasonable concern sufficiently justifies action against the Plaintiff on Y.'s part in the circumstances of the incident (see. CivA 3889/00 **Learner v. State of Israel**, IsrSC 56(4) 304, 312-314). It should be noted that the discretion Y. exercised in real time and the manner in which he acted were suitable and appropriate for the circumstances (see Learner, *Ibid.*)

The shots that were fired, were fired after a suspect apprehension protocol was used (as indicated in Y.'s testimony and the operations logs), in the direction of a person who appeared to be a male youth (who later turned out to be a girl), who was a dominant, instigating member of a group of rioters who attacked the patrol with bottles (the contents of which and whether they were empty or not could be determined only in hindsight) which impeded the soldiers from advancing and put them at risk.

Y. testified that the open fire regulations relayed to the soldiers prior to the operation specifically mentioned acid bottles and stipulated that they constituted a danger to life and allowed shooting on target (hearing protocol, p. 19, lines 1-2, according to the decision to amend the protocol dated February 2, 2006). The Open Fire Regulations issued two weeks before the incident (on August 21, 1991) allowed me, if I foun myself in a situation (of danger to life or limb) to shoot at the Plaintiff (the assailant) immediately without following the suspect apprehension protocol (see, section 3b of the Regulations). Despite this, Y. chose to employ the full suspect apprehension protocol before he fired. We find that the Defendant has not committed a tortious act against the Plaintiff and for this reason too, the claim must be dismissed.

D. Conclusion

32. All the aforesaid indicates that any path chosen leads to the dismissal of the claim. Each path by its own right and particularly when put together. The full rejection of the Plaintiff's account must lead to the dismissal of the claim, as do the defenses at the disposal of the Defendant (assumed risk and

wartime action) and as does the fact that in any event, considering the specifics of the incident, the Defendant did not commit a tortious act against the Plaintiff.

33. **The bottom line is that the claim is dismissed.**

34. **The Plaintiff shall pay the Defendant's legal fees plus VAT and trial costs (including the opinion submitted by the Defendant and the opinion submitted by the court appointed expert, which the Defendant agreed to fund in the interim) – a total sum of ILS 20,000. The ILS 5,000 guarantee deposited by the Plaintiff (as stated in paragraph 10 above) shall be transferred to the Defendant as part of the discharge of the Plaintiff's above debit.**

Given in the absence of the parties, today, 11 Tevet 5767 (January 1, 2007). The secretariat shall send the judgment to parties' counsel.

Refael Yacobi, 54678313-8047/99

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Refael Yacobi, Judge

L.A.
This document is subject to editorial and textual changes.