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

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ALEXANDER M. FRAME,

Plaintiff,

-against-

KENNETH L. MAYNARD, 5008 BROADWAY
ASSOCIATES, LLC, ALAN F. BLANCHARD,
R.H. GUTHRIE, PAUL HINES, CAROLINE
PAULSON, BARRY J. SMALL and
ROBERT G. WEPPLER,

Defendants.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
June 4, 2004

MORLEY AND TRAGER
Attorneys for Plaintiff
230 Park Avenue
New York, NY 10169
(212) 684-2210

Index No. **04601736**

Date Purchased:

Plaintiffs designate
New York County as
the place of trial.

The basis of venue is
based upon property
located at 5008 Broad-
way, New York, New York

FILED
JUN 08 2004
NEW YORK
COUNTY CLERK'S OFFICE

Defendants addresses:

Kenneth L. Maynard
Charlestown, Rhode Island

5008 Broadway Associates, LLC
5008 Broadway
New York, New York

Barry J. Small
587 Highland Avenue
Upper Montclair, NJ 07043

Robert Wepler
31 Woodland Way
Manhasset, NY 11030

Alan F. Blanchard
1088 Park Avenue
New York, NY 10028

Caroline Paulson
279 Springtown Road
P.O. Box 218
New Paltz, NY 12561

Paul Hines
12 Flying Cloud Road
Stamford, CT

R.H. Guthrie
15 East 74th Street
New York, NY 10021

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

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ALEXANDER M. FRAME,

Index No.

Plaintiff,

COMPLAINT 04601736

-against-

KENNETH L. MAYNARD, 5008 BROADWAY
ASSOCIATES, LLC, ALAN F. BLANCHARD,
R.H. GUTHRIE, PAUL HINES, CAROLINE
PAULSON, BARRY J. SMALL and
ROBERT G. WEPPLER,

Defendants.

FILED
JUN 08 2004
NEW YORK
COUNTY CLERKS OFFICE

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Plaintiff, ALEXANDER M. FRAME, by his attorneys, Morley and Trager, for his complaint, alleges as follows:

1. On or around May 31, 1985, plaintiff Alexander M. Frame, pursuant to a settlement of certain litigation, withdrew as a general partner from the partnership of 5008 Broadway Associates, a limited partnership, leaving defendant Kenneth L. Maynard ("Maynard") as the sole remaining general partner of said 5008 Broadway Associates, L.P. (hereinafter referred to as "5008 Broadway Associates").

2. 5008 Broadway Associates owned and operated property located at 5008 Broadway, New York, New York.

3. Pursuant to said settlement agreement, the terms of the limited partnership agreement were amended so that Section 9.03 of said agreement provided in subparagraph b:

"[A]ny net gains remaining to be allocated after each Partner's negative account balance has been adjusted to zero shall be allocated,

first, to Frame in an amount equal to any proceeds payable to him pursuant to provisions of Section 9.04(g) hereof, as amended, and, thereafter, all remaining net gains shall be allocated 25% to the General Partner and 75% to the Limited Partners."

Section 9.04 of the 5008 Broadway Associates partnership agreement was amended so that paragraph g of that paragraph read:

"Seventh, 20% of the balance to Frame."

4. The introduction to Section 9.03 of the partnership agreement provided:

"All net gains and net losses of the partnership from the refinancing, sale, exchange or other disposition of all or any part of the real property in the project shall be allocated as set forth below."

5. Plaintiff recently learned as a result of a title search made at his request, that on February 7, 2002 Kenneth Maynard caused the interest of 5008 Broadway Associates in the aforesaid real property to be transferred to an entity known as 5008 Broadway Associates, LLC (hereinafter "LLC").

6. Although plaintiff clearly had an interest in any profits from refinancing, sale or exchange of the property in the partnership, plaintiff was never notified of this transfer of the property.

7. The title inspection also revealed that on that same date, February 7, 2002, a new mortgage in the amount of \$1,485,000 was placed on the property and made by LLC.

8. Upon information and belief, the mortgages existing immediately prior to February 7, 2002, amounted to approximately

\$400,000, and thus there would have been cash available of approximately \$1,000,000 for distribution to those entitled to it.

9. Upon information and belief, Kenneth Maynard and the limited partners received all of the distributions resulting from the aforesaid refinancing.

10. All of the individual defendants other than Maynard were limited partners of 5008 Broadway Associates and all of them, and Maynard, signed the amendment to the limited partnership agreement quoted above under which plaintiff was given a 20% interest in any net gains and under which plaintiff was entitled to be paid prior to any of the individual defendants receiving any payments.

11. Thus, all of the individual defendants knowingly violated the partnership agreement of 5008 Broadway Associates by allowing the property of 5008 Broadway Associates to be conveyed to another entity in derogation of plaintiff's rights and said defendants have defrauded plaintiff and converted funds which belonged to plaintiff.

12. As a result of the foregoing, defendant Maynard has violated his fiduciary duties to plaintiff in that as general partner of 5008 Broadway Associates, he was obligated to insure that said partnership agreement was followed and payments made in accordance with said agreement.

13. The LLC has no right to hold property which was conveyed to it in derogation of plaintiff's rights and interests.

14. The conveyance to LLC was improper in that plaintiff's interest in the property was cut out and plaintiff is therefore

entitled to have the property reconveyed to 5008 Broadway Associates so that plaintiff's interest in it is maintained as provided by the partnership agreement.

15. Defendant Maynard has in the past been found to have defrauded partners for in Niehoff v. Maynard the United States Court of Appeals for the First Circuit stated:

"Maynard had engaged in fraudulent concealment by misdirecting attention away from the internal state of affairs of the Partnership to external forces that were causing the delays in the Project. The court also found that Maynard had engaged in wrongful self-dealing...." 299 F.3d 41, 47.

In Gan v. Hillside Avenue Associates, 2003 U.S. Dist. Lexis 11667 (S.D.N.Y. 2003), Maynard, as the general partner of Hillside Avenue Associates, was alleged to have "improperly sought to sell Hillside's sole asset to himself."

FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

16. Based upon the foregoing facts defendants have breached the agreement with plaintiff in that they have transferred property in which he had an interest without plaintiff's approval and have taken funds to which plaintiff was entitled.

SECOND CAUSE OF ACTION FOR CONVERSION

17. The individual defendants have taken and received money belonging to plaintiff.

THIRD CAUSE OF ACTION AGAINST LLC

18. LLC has received property which was improperly transferred to it in derogation of plaintiff's rights in such property and therefore should be required to transfer the property

back to 5008 Broadway Associates.

FOURTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

19. Maynard in performing the above acts violated his fiduciary duties to plaintiff.

WHEREFORE, plaintiff demands judgment as follows:

1. Judgment against all defendants, jointly and severally, for the amount which plaintiff should have received from the refinancing amounting to approximately \$200,000, together with interest at the legal rate from February 7, 2002 to the date of the entry of judgment.

2. Punitive damages against all defendants, jointly and severally, in the amount of \$2,000,000 or such other amount as the Court shall find just and equitable.

3. Judgment directing the reconveyance of the property from 5008 Broadway Associates, LLC to 5008 Broadway Associates, L.P.

4. The costs and disbursements in this action.

5. Such other and further relief as to this Court shall seem just and proper.

Dated: New York, New York
June 4, 2004

MORLEY AND TRAGER

By: 

Leslie Trager


Attorneys for Plaintiff
230 Park Avenue
New York, New York 10169
(212) 684-2210

VERIFICATION

LESLIE TRAGER, under penalty of perjury, affirms as follows:

I am an attorney duly admitted to the practice of law, and have read the attached Complaint. Upon information and belief, the matters set forth in that complaint are true. Said information and belief is based upon records and information contained in the office of the undersigned. The reason that this verification is made by the undersigned and not by a party to the action, is that the party to the action does not maintain a residence within the county in which the undersigned has his office.

Dated: New York, New York
June 4, 2004



LESLIE TRAGER

Index No.

Year 20

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

ALEXANDER M. FRAME,

Plaintiff,

-against-

KENNETH L. MAYNARD, 5008 BROADWAY ASSOCIATES, LLC,
ALAN F. BLANCHARD, R.H. GUTHRIE, PAUL HINES, CAROLINE
PAULSON, BARRY J. SMALL and ROBERT WEPPLER,

Defendants.

SUMMONS AND COMPLAINT

MORLEY AND TRAGER

Attorneys for Plaintiff

230 PARK AVENUE
10TH FLOOR
NEW YORK, NEW YORK 10169
(212) 684-2210

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

Dated: Signature.....

Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a 20
entered in the office of the clerk of the within named Court on

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at 20, at M.
on

Dated:

MORLEY AND TRAGER

Attorneys for