

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

-----X
ALF NAMAN REAL ESTATE ADVISORS, LLC,

Plaintiff,

-against-

CAPE SAG DEVELOPERS, LLC, and CAPSAG
HARBOR MANAGEMENT, LLC,

Defendants.

-----X

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 attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (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.

Index No.: 12100867

Plaintiff designates
New York County as
the place of trial

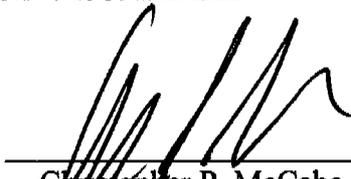
The basis of venue is
the residence of Plaintiff
in New York, New York

SUMMONS

FILED
JAN 26 2012
COUNTY CLERK'S OFFICE
NEW YORK

Dated: New York, New York
January 26, 2012

QUINN McCABE LLP

By: 

Christopher P. McCabe, Esq.
274 Madison Avenue, Penthouse
New York, New York 10016
(212) 447-5500

Attorneys for Plaintiff

TO:

CAPE SAG DEVELOPERS, LLC
c/o Cape Advisors, Inc.
483 Broadway, 5th Floor
New York, New York 10013

CAPSAG HARBOR MANAGEMENT, LLC
c/o Cape Advisors, Inc.
483 Broadway, 5th Floor
New York, New York 10013

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

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ALF NAMAN REAL ESTATE ADVISORS, LLC,

Plaintiff,

-against-

Index No.:

COMPLAINT

CAPE SAG DEVELOPERS, LLC, and CAPSAG
HARBOR MANAGEMENT, LLC,

Defendants.
----- X

Plaintiff Alf Naman Real Estate Advisors, LLC (“Plaintiff”), by and through its attorneys, Quinn McCabe LLP, alleges as follows:

Nature of the Proceeding

1. This is an action primarily seeking declaratory and injunctive relief to unwind/rescind all transactions effecting the merger of Defendant Capsag Harbor Management, LLC, with and into Capnam Sag Management, LLC (the “Company”), with Defendant Capsag Harbor Management, LLC being the surviving company in the merger (the “Merger”). The actions of Defendants Capsag Harbor Management, LLC and Cape Sag Developers, LLC, the managing member and holder of a majority of the voting interests of the Company, in effecting the Merger, were unlawful as to Plaintiff.

Parties

2. At all times material herein, Plaintiff Alf Naman Real Estate Advisors, LLC was and is a limited liability company organized and existing pursuant to the laws of the State of New York with its principal place of business located at 551 West 21st Street, Suite 306A, New York, New York 10011.

3. At all times material herein, upon information and belief, Defendant Cape Sag Developers, LLC (“Cape Sag Developers”) was and is a limited liability company organized and existing pursuant to the laws of the State of New York with its principal place of business located c/o Cape Advisors, Inc., at 483 Broadway, 5th Floor, New York, New York 10013.

4. At all times material herein, upon information and belief, Defendant Capsag Harbor Management, LLC (“Capsag Harbor”) was and is a limited liability company organized and existing pursuant to the laws of the State of New York with its principal place of business located c/o Cape Advisors, Inc., at 483 Broadway, 5th Floor, New York, New York 10013.

Factual Background

5. At all times material herein, Plaintiff and Cape Sag Developers were the two members of the Company. Cape Sag Developers was the managing member (and holder of a majority of the voting interests) of the Company.

6. Upon information and belief, prior to the purported effective date of the Merger, the Company was the managing member of Cape Sag Group, LLC, a limited liability company organized and existing pursuant to the laws of the State of New York.

7. Upon information and belief, prior to the purported effective date of the Merger, Cape Sag Group, LLC was the sole member of Sag Development Partners, LLC, a limited liability company organized and existing pursuant to the laws of the State of New York. Sag Development Partners, LLC is the owner of the real property located at 15 Church Street, Sag Harbor, New York (the “Property”).

8. Upon information and belief, the Company, Cape Sag Group, LLC, and Sag Development Partners, LLC were created in connection with the acquisition and development of the Property (the "Project").

9. Prior to the purported effective date of the Merger, Plaintiff, individually, made a significant investment in the Project by purchasing a membership interest in Cape Sag Group, LLC.

10. Plaintiff protected Plaintiff's significant investment in the Project by participating in the management of the Project by virtue of Plaintiff's membership interest in the Company, which was the managing member of Cape Sag Group, LLC, which in turn was the sole member of Sag Development Partners, LLC, the Property owner.

The Merger

11. In July, 2011, Cape Sag Developers, on behalf of the Company, provided Plaintiff a "Notice of Action in Lieu of Meeting / Notice of Merger / Notice of Dissenter's Rights" (the "Merger Notice"), which stated, among other things, that Cape Sag adopted certain resolutions by written consent in lieu of a meeting, whereby it approved the Merger. The Merger Notice further stated that Cape Sag Developers, the managing member of the Company, was also the sole member of Capsag Harbor.

12. In response to the Merger Notice, Plaintiff filed with the Company a written "Notice of Dissent" from the proposed merger.

13. Thereafter, Capsag Harbor informed Plaintiff in writing that the Merger became effective as of July 18, 2011.

Plaintiff's Rights to Receive Significant Fees From the Project

14. Pursuant to the terms of the operative Operating Agreements of Cape Sag Group, LLC and of its managing member, the Company, Cape Sag Group, LLC is obligated to pay significant fees to the Company in connection with the Project.

15. Specifically, the Operating Agreement of Cape Sag Group, LLC calls for the payment by Cape Sag Group, LLC to the Company of, among other payments, a developer's fee in connection with the Project, a property management fee, a market rate leasing commission with respect to commercial leases entered into at the Property, a financing fee with respect to a refinancing of the Property, and a project management fee.

16. Consistent with the foregoing terms of the Operating Agreement of Cape Sag Group, LLC, the Amended and Restated Operating Agreement of the Company (the "Operating Agreement") contemplates the Company's receipt of the fees from Cape Sag Group, LLC as set forth above, and provides for an allocation of those fees between the members of the Company, with Plaintiff receiving forty eight percent (48%) and Cape Sag Developers receiving fifty two percent (52%).

17. In fact, upon information and belief, Cape Sag Group, LLC, or an affiliate, is planning to pay over \$1.6 million in "Developer Fees" to an unidentified affiliate of Cape Sag Group, LLC at some point during or after the construction of the Project.

18. As a result of the Company's rights to receive the fees from Cape Sag Group, LLC as set forth above, among other rights, and Plaintiff's right to share in the fees from Cape Sag Group, LLC as set forth above, Plaintiff's membership interest in the Company has significant value.

The Unlawful Merger

19. Pursuant to the terms of the Operating Agreement, the Company was prohibited from entering into the Merger.

20. Moreover, even if the terms of the Operating Agreement could be read to permit the Company to enter into the Merger, in entering into the Operating Agreement, the members of the Company intended that the Company would not engage in any merger (or other activity) that would effectively deprive Plaintiff of Plaintiff's right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC, all as set forth in the Operating Agreement.

FIRST CAUSE OF ACTION (Breach of Operating Agreement)

21. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

22. Pursuant to the terms of the Operating Agreement, the Company was prohibited from entering into the Merger.

23. Over Plaintiff's objection, Defendants caused the Company to enter into the Merger.

24. Defendants materially breached the Operating Agreement by causing the Company to enter into the Merger. Defendants' material breach is so substantial that it defeats the purpose of the Operating Agreement.

25. Defendants' material breach of the Operating Agreement has caused substantial damages to Plaintiff by, among other things, depriving Plaintiff of the rights

associated with Plaintiff's membership interest in the Company, including, without limitation, the right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and the right to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC.

26. By reason of the foregoing, Plaintiff also is entitled to the declaratory and equitable relief sought in this Complaint.

**SECOND CAUSE OF ACTION
(Declaratory Judgment)**

27. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

28. Pursuant to the terms of the Operating Agreement, the Company was prohibited from entering into the Merger.

29. Alternatively, the members of the Company intended that the Company would not engage in any merger (or other activity) that would effectively deprive Plaintiff of Plaintiff's right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC, all as set forth in the Operating Agreement, such that the Merger is unlawful as to Plaintiff.

30. Over Plaintiff's objection, Defendants caused the Company to enter into the Merger.

31. By reason of the foregoing, Plaintiff is entitled to a declaratory judgment determining that the Company was prohibited from entering into the Merger or, alternatively, that the members of the Company intended that the Company would not engage in any merger (or other activity) that would effectively deprive Plaintiff of

Plaintiff's right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC, all as set forth in the Operating Agreement, such that the Merger is unlawful as to Plaintiff.

**THIRD CAUSE OF ACTION
(Injunctive Relief – Unwinding/Rescission of Merger)**

32. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

33. As a result of the Merger, Defendants have deprived Plaintiff of the rights associated with Plaintiff's membership interest in the Company, including, without limitation, the right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and the right to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC.

34. Plaintiff has no adequate remedy at law because, without an unwinding/rescission of the Merger, Plaintiff cannot, among other things, continue to protect Plaintiff's significant investment in the Project by participating in the management of the Project.

35. There is a likelihood of success on the merits because the terms of the Operating Agreement prohibit the Company from entering into the Merger or, alternatively, the members of the Company intended that the Company would not engage in any merger (or other activity) that would effectively deprive Plaintiff of Plaintiff's right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and to receive a portion of the substantial future fees the

Company was entitled to receive from Cape Sag Group, LLC, all as set forth in the Operating Agreement, such that the Merger is unlawful as to Plaintiff.

36. The balance of equities is in Plaintiff's favor because Defendants engaged in unlawful conduct as to Plaintiff by causing the Company to enter into the Merger.

37. Serious and irreparable injury will result if injunctive relief is not granted because Plaintiff will no longer be able to exercise Plaintiff's rights associated with Plaintiff's membership interest in the Company, including, without limitation, the right to protect Plaintiff's significant investment in the Project by participating in the management of the Project.

38. By reason of the foregoing, Defendants should be compelled to unwind/rescind the Merger and to take all necessary and appropriate action to place Plaintiff in the same position with respect to Plaintiff's membership interest in, and rights with respect to, the Company as Plaintiff was in prior to the purported effective date of the Merger, including, without limitation, a dissolution of the merger and/or rescission of any and all agreements effecting the Merger.

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests that an Order be issued granting judgment against the Defendants as follows:

(i) Granting the First Cause of Action for Breach of the Operating Agreement in its entirety in an amount to be determined by this Court not less than the jurisdictional amount, together with attorney's fees, interest, costs and expenses;

(ii) With respect to the Second Cause of Action for Declaratory Judgment, determining that the Company was prohibited from entering into the Merger or, alternatively, that the members of the Company intended that the Company would not

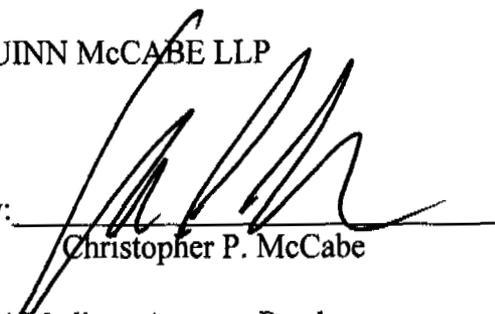
engage in any merger (or other activity) that would effectively deprive Plaintiff of Plaintiff's right to protect Plaintiff's significant investment in the Project by participating in the management of the Project, and to receive a portion of the substantial future fees the Company was entitled to receive from Cape Sag Group, LLC, all as set forth in the Operating Agreement, such that the Merger is unlawful as to Plaintiff;

(iii) With respect to the Third Cause of Action for Injunctive Relief, compelling Defendants to unwind/rescind the Merger and to take all necessary and appropriate action to place Plaintiff in the same position with respect to Plaintiff's membership interest in, and rights with respect to, the Company as Plaintiff was in prior to the purported effective date of the Merger, including, without limitation, a dissolution of the merger and/or rescission of any and all agreements effecting the Merger; and

(iv) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 26, 2012

QUINN McCABE LLP

By: 

Christopher P. McCabe

274 Madison Avenue, Penthouse
New York, New York 11016
Telephone: (212) 447-5500

Attorneys for Plaintiff

SUPREME COURT
STATE OF NEW YORK, COUNTY OF NEW YORK

Index No.

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- against -

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Defendants.

SUMMONS and COMPLAINT

Quinn McCabe LLP

Attorney(s) for Plaintiff,

ALF NAMAN REAL ESTATE ADVISORS, LLC
Office and Post Office Address, Telephone

274 Madison Avenue, Penthouse Suite

New York, NY 10016

(212) 447-5500

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: _____

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at

of which the within is a true copy
one of the judges of the

on _____ at _____ M.
Supreme Court Records OnLine Library - page 12 of 12

Dated,