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

KIMBERLY SLAYTON,	:	Index No.
Petitioner,	:	
	:	**VERIFIED PETITION**
-against-	:	
HIGHLINE STAGES, LLC and HS MERGER PARTNER, LLC,	:	
Respondents.	:	

The Verified Petition of petitioner Kimberly Slayton ("Petitioner" or "Slayton"), respectfully alleges as follows:

The Parties

1. Petitioner is a resident of Syosset, County of Nassau, and State of New York, and is the owner of a 13.33 percent membership interest in Respondent Highline Stages, LLC ("Highline Stages").

2. Upon information and belief, Respondent Highline Stages is a New York limited liability company that was duly organized under the laws of the State of New York on June 22, 2010, with its principal place of business located at 440 West 15th Street, New York, New York 10011.

3. Upon information and belief, Respondent HS Merger Partner, LLC ("HS Merger Partner") purports to be a New York limited liability company organized under the laws of the State of New York on August 2, 2013, with its principal place of business located at 440 West 15th Street, New York, New York 10011. Petitioner owns no membership interest in HS Merger Partner.

The Merger

4. Upon information and belief, the holders of an 86.67 percent membership interest in Highline Stages, and the holders of a 100 percent interest in HS Merger Partner, purported to adopt certain resolutions by written consent dated August 7, 2013, approving the merger of Highline Stages with and into HS Merger Partner, with HS Merger Partner being the surviving entity in the merger (hereinafter the "Purported Merger").

5. On August 7, 2013, Highline Stages sent Petitioner written notice of the Purported Merger, a copy of which is annexed hereto as Exhibit A.

6. In purporting to effectuate the Purported Merger, Highline Stages failed to comply with New York Limited Liability Company Law § 1002(c), which requires that "[t]he agreement of merger or consolidation shall be submitted to the members of each domestic limited liability company who are entitled to vote with respect to a merger or consolidation at a meeting called on twenty days' notice or such greater notice as the operating agreement may provide." (emphasis added). Because Highline Stages does not have an executed operating agreement, the Purported Merger was ineffective and void because it failed to provide Ms. Slayton the requisite 20 days' notice under the operative law.

7. Highline Stages also failed to comply with New York Limited Liability Company Law § 1002(e), which provides that "[a]ny member that is a party to a proposed merger or consolidation who is entitled to vote with respect to such merger or consolidation may, prior to that time of the meeting at which such merger or consolidation is to be voted on, file with the domestic limited liability company written notice of dissent from the proposed merger or consolidation." (emphasis added). By giving Petitioner notice of the Purported Merger only after it had been purportedly effectuated, Highline Stages deprived Ms. Slayton of her statutory

right to dissent from the Merger as provided by the operative law.

AS AND FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

8. Petitioner hereby repeats and realleges the allegations contained in paragraphs 1 through 7 above as though fully set forth herein.

9. Upon information and belief, Respondents Highline Stages and HS Merger Partner contend that the Purported Merger was effective.

10. Petitioner asserts that the Purported Merger was ineffective and void, and should be set aside or rescinded.

11. A judicial declaration is required so as to determine the respective parties' rights and obligations, and because the Purported Merger was ineffective and void under the New York Limited Liability Company Law, this Court should issue a judgment declaring that the Purported Merger be set aside or rescinded pursuant to New York Limited Liability Company Law § 1002(g).

12. Petitioner lacks an adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
(MONETARY DAMAGES)

13. Petitioner hereby repeats and realleges the allegations contained in paragraphs 1 through 12 above as though fully set forth herein.

14. The ineffective and void Purported Merger has caused Petitioner to suffer damages.

15. Petitioner is entitled to recover from respondents damages (in an amount to be proved at trial) that she has suffered as a result of the ineffective and void Purported Merger, including but not limited to the profits that Highline Stages has made since the date of the

Purported Merger.

AS AND FOR A THIRD AND ALTERNATIVE CAUSE OF ACTION (DETERMINATION OF FAIR VALUE)

16. Petitioner hereby repeats and realleges the allegations contained in paragraphs 1 through 15 above as though fully set forth herein.

17. To protect all of her rights in connection with the Purported Merger, on August 23, 2013, Petitioner sent to Highline Stages by certified mail and hand delivery a notice of election to dissent from the Purported Merger (the "Notice of Election to Dissent"). The Notice of Election to Dissent stated that Petitioner had elected to dissent from the Purported Merger, and demanded the payment of the fair value of her membership interest in Highline Stages. A copy of the Notice of Election to Dissent, along with an accompanying affirmation of service, is annexed hereto as Exhibit B.

The Offer

18. Petitioner received a letter dated August 28, 2013, addressed to her from Highline Stages offering to pay Petitioner $50,000 for her 13.33 percent membership interest in Highline Stages (the "Offer"). The Offer was entitled "Offer of Fair Value of Membership Interests" and was signed by Gary Kline, a member of Highline Stages. A copy of the Offer is annexed hereto as Exhibit C.

19. The $50,000 amount that Highline Stages offered to purchase Petitioner's membership interest did not and does not represent the fair value of such membership interest as of August 6, 2013, which is the day prior to the effective date of the Purported Merger and the operative date for such valuation under New York Limited Liability Company Law § 1002(f). Petitioner is informed and believes that the fair value of her membership interest in Highline

Stages as of August 6, 2013 is greatly in excess of $50,000, and in fact is in excess of $750,000.[1]

20. By letter dated September 6, 2013, Petitioner rejected the Offer. A copy of this letter is annexed hereto as Exhibit D.

21. During the statutory 90 day negotiation period following the August 28, 2013 Offer, from August 28, 2013 through November 26, 2013, Petitioner and Highline Stages failed to reach an agreement upon the price to be paid for Petitioner's membership interest in Highline Stages.

22. Highline Stages did not within 20 days of the November 26, 2013 termination of this negotiation period (i.e. by December 16, 2013) commence a special proceeding in this Court to determine the rights of Petitioner and to fix the fair value of her membership interest in Highline Stages. Upon information and belief, Highline Stages has not instituted the requisite proceeding in any other court of competent jurisdiction for a determination of the fair value of Petitioner's membership interest in Highline Stages.

23. Accordingly, Petitioner is timely exercising her rights under New York Limited Liability Company Law § 1005(b) and New York Business Corporation Law § 623(h) to commence this special proceeding within 30 days from December 16, 2013 to determine the fair value of her membership interest in Highline Stages as of August 7, 2013, the date of the Purported Merger.

24. If the Court determines that the Purported Merger was effective, it should determine the fair value of Petitioner's membership interest in Highline Stages as of the date prior to the effective date of the Purported Merger.

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[1] Petitioner expressly reserves her right to seek leave of court to conduct discovery, including depositions of the other members of Highline Stages, in this special proceeding pursuant to CPLR 408 at the appropriate time. Because much of the documentation and information are in the exclusive control of Highline Stages, Petitioner believes that the disclosure and examination of such materials will establish a substantially higher valuation than the $50,000 offered by Highline Stages for Petitioner's membership interest.

AS AND FOR A FOURTH CAUSE OF ACTION
(PAYMENT OF ATTORNEYS' FEES AND COSTS)

25. Petitioner hereby repeats and realleges the allegations contained in paragraphs 1 through 24 above as though fully set forth herein.

26. New York Business Corporation Law § 623(h)(7), which applies to this proceeding pursuant to New York Limited Liability Company Law § 1005(b), provides that the Court may assess the costs, expenses and fees incurred by a dissenting shareholder if the Court finds any of the following: "(A) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay . . . [or] (D) that the action of the corporation in complying with its obligations as provided in this section was arbitrary, vexatious, or otherwise not in good faith."

27. The fair market value of Petitioner's membership interest in Highline Stages materially exceeds the amount of the Offer.

28. At all times material herein, Respondent Highline Stages is and was aware that the fair market value of Petitioner's membership interest in Highline Stages materially exceeded the amount of the Offer. In presenting the Offer to Petitioner, Respondent Highline Stages did not comply with its legal obligations as provided in New York Business Corporation Law § 623(h).

29. The Court should award Petitioner her costs and expenses, including attorneys' fees, incurred in connection with this proceeding pursuant to New York Business Corporation Law § 623(h)(7).

WHEREFORE, Petitioner respectfully requests:

(a) on the first cause of action that the Court declare the Purported Merger to be

ineffective and void and issue a judgment declaring that the Purported Merger be set aside or rescinded;

(b) on the second cause of action, that if the Court determines that the Purported Merger was ineffective and void and declares that it be set aside or rescinded, Ms. Slayton is entitled to recover from respondents damages that she has suffered as a result of the ineffective and void Purported Merger, including but not limited to the profits that Highline Stages has made since the date of the Purported Merger;

(c) alternatively, on the third cause of action, that if the Court determines the Purported Merger to have been effective, the Court determine the fair value of Petitioner's membership interest in Highline Stages as of the date prior to the effective date of the Purported Merger;

(d) on the fourth cause of action, that if it is determined that the fair value of Petitioner's membership interest exceeds the amount which Highline Stages has offered to pay her, the Court direct that the cost and expenses of this proceeding, including the fees and expenses of counsel, be assessed against Highline Stages, and

(e) such other and further relief that this Court deems just and proper.

Dated: New York, New York
January 13, 2014

STERN TANNENBAUM & BELL LLP

By: _____

David S. Tannenbaum
Brian J. Damiano
380 Lexington Avenue
New York, New York 10168
(212) 792-8484
Attorneys for Petitioner

VERIFICATION

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

KIMBERLY SLAYTON, being duly sworn, deposes and says:

1. I am the petitioner named in the within proceeding.

2. I have read the annexed petition, and the contents of the petition are true to my own personal knowledge, except as to those matters which are alleged upon information and belief, and as to such matters I believe them to be true. The source of my information and belief are the books and records maintained by respondent Highline Stages, LLC, and conversations with agents and/or employees of Highline Stages, LLC.

KIMBERLY SLAYTON

Sworn to before me this
13th day of January, 2014

MEENA BATRA
Notary Public - State of New York
NO. 01BA6244718
Qualified in Nassau County
My Commission Expires 7/14/15

Notary Public

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