

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

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MALI FUKS, individually and on behalf :  
of R&L REALTY ASSOCIATES, a New York :  
partnership, :

Plaintiff, :

Index No. 122768/96

-against- :

RAKIA ASSOCIATES, 2701 BROADWAY :  
ASSOCIATES, LANCASTER STUDIO :  
ASSOCIATES, UPWEST COMPANY, 27 EAST :  
21 STREET COMPANY, 504 WEST 111 OWNERS :  
CORP., RUTH SHOMRON, ALFRED SZALA, :  
GOLDSTICK, WEINBERGER, FELDMAN & :  
GROSSMAN, P.C., HOWARD SIMON, LARRY :  
GOLDSTEIN, and LINDA GOLDSTEIN, :

ANSWER WITH  
COUNTERCLAIMS

Defendants.  
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Defendants (except defendant Goldstick, Weinberger, Feldman & Grossman, P.C.), as and  
for their answer to the complaint, allege as follows:

1. Deny the allegations in paragraphs 4, 10, 11, 16, 19-21, 27-31, 34-39, 42-50, 54-58,  
60, 64, 66-70, 72, 73, 75-83, 85, 87, 89-91, 93-97, 99, 102-109, 111-115, 118-127, 130-133, 135-  
138, 141-145, 147-150, 152-154, 156-162 and 164-167.

2. Deny knowledge or information sufficient to form a belief as to the allegation in  
paragraphs 24-26, 41, 62, 63, 88, 100, 101, 117, 128, 146, 151 and 155.

3. Deny knowledge or information sufficient to form a belief as to the allegation in  
paragraph 5 except admit that defendant Goldstick, Weinberger, Feldman & Grossman, P.C.  
("GWFG") represented plaintiff R&L Realty Associates ("R&L").

4. Deny knowledge or information sufficient to form a belief as to allegation in paragraph 6 with respect to the residence of defendant Alfred Szala and otherwise deny the allegations in paragraph 6.

5. Deny the allegation in paragraph 7 except admit that defendant Howard Simon was a partner of R&L.

6. Deny the allegation in paragraph 8 except admit that defendant Larry Goldstein was a partner of R&L.

7. Admit the allegation in paragraph 9 but aver that the sole cause of action in the complaint as against defendant Linda Goldstein, namely, the third cause of action, was dismissed by this Court in an order entered herein on November 12, 1997.

8. Deny the allegations in paragraph 14 except admit that R&L was the sponsor of an offering plan to convert the building located at 205-209 West 103<sup>rd</sup> Street, New York, New York (the "Building") to cooperative ownership and that the Building was acquired by the apartment corporation known as 205 West 103 Owners Corp. (the "Co-op").

9. Deny the allegation in paragraph 15 except admit that the Building was converted to cooperative ownership in or around February 1992 and that R&L was the sponsor of said conversion.

10. Deny the allegation in paragraph 18 except admit that in or around May 1987 defendant Howard Simon was admitted as a partner of R&L and that he and defendants Ruth Shomron and Larry Goldstein entered into a partnership agreement.

11. Deny the allegation in paragraph 22 except admit that in or about May 1990 Larry Goldstein withdrew from the R&L partnership.

12. Deny the allegation in paragraph 23 except admit that in or about March 1991 defendant Simon withdrew from the R&L partnership as a result of which plaintiff Mali Fuks and defendant Shomron were left as the sole partners in R&L in equal shares (50%-50%).

13. Deny knowledge or information sufficient to form a belief as to the allegation in paragraph 40 except admit that since 1987 R&L has received the proceeds of loans, sales, mortgages and other sources.

14. Deny the allegation in paragraph 52 except admit that in August 1985 R&L granted a mortgage in the amount of \$300,000 to BRT Realty Trust.

15. Deny the allegation in paragraph 53 except admit that in November 1989 R&L granted a mortgage to The Greater New York Savings Bank to secure a loan in the amount of \$1,075,000 to refinance other loans procured by R&L.

16. Deny the allegation in paragraph 61 and respectfully refer the Court to the terms of the R&L partnership agreement.

17. Deny the allegation in paragraph 92 and respectfully refer the Court to the offering plan.

18. Deny the allegation in paragraph 110 except admit that in November 1989 R&L granted a mortgage to The Greater New York Savings Bank to secure a loan in the amount of \$1,075,000 to refinance other loans procured by R&L.

19. Deny knowledge or information sufficient to form a belief as to the allegation in paragraph 140 but admit that R&L retained defendant GWFG.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

20. In two separate orders entered in this action on November 12, 1997, this Court (Braun, J.) dismissed the third cause of action as to defendant Linda Goldstein, the seventh cause of action as to defendants Larry Goldstein and Howard Simon and the eighth cause of action as against all defendants.

21. The adjudications set forth in the aforesaid orders entered herein on November 12, 1997 are the law of the case.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. A defense is founded upon documentary evidence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. The R&L partnership agreement provides, in pertinent part, at paragraph 7.01 that "[t]he Partnership shall act only after a determination of Partners holding in the aggregate at least 66 2/3 percent interest in the Partnership ... ."

24. Defendant Shomron has not given her consent to the commencement of any action on behalf of R&L against defendants Alfred Szala, Goldstick Weinberger, Feldman & Grossman P.C., 27 East 21<sup>st</sup> Street Company, Lancaster Studio Associates, Upwest Company or 504 West 111 Owners Corp.

25. In the absence of defendant Shomron's consent as aforesaid, plaintiff does not have legal capacity to sue defendants Alfred Szala, Goldstick Weinberger, Feldman & Grossman P.C., 27 East 21<sup>st</sup> Street Company, Lancaster Studio Associates, Upwest Company or 504 West 111 Owners Corp. on behalf of R&L Realty Associates .

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

27. Plaintiff Fuks repudiated the R&L partnership agreement by repeatedly failing and refusing to contribute her pro rata share of the capital that R&L required to carry on its business and is not entitled to an accounting.

28. Plaintiff Fuks' repudiation of the partnership, as aforesaid, resulted in the dissolution of R&L.

COUNTERCLAIMS ON BEHALF OF DEFENDANT SHOMRON

29. Plaintiff Mali Fuks is a resident of the City, County and State of New York.

30. Defendant Shomron is a resident of the City, County and State of New York.

31. At all times herein, plaintiff Fuks and defendant Shomron were carrying on business at 205-209 West 103<sup>rd</sup> Street, New York, New York as partners and were and still are the sole equal co-partners under the firm name of plaintiff R&L Realty Associates ("R&L"), a New York partnership.

The Cooperative Conversion

32. R&L was the sponsor of an offering plan dated April 18, 1990 (the "Plan") to convert to cooperative ownership the building located at 205-209 West 103<sup>rd</sup> Street, New York, New York (the "Building").

33. The closing under the terms of the Plan occurred on February 11, 1992 at which time title to the Building was acquired by 205 West 103 Owners, Corp. (the "Co-op").

34. Upon the closing of the Plan on February 11, 1992, plaintiff R&L was the owner and holder of unsold shares of the Co-op allocated to 22 apartments in the Building.

The Partnership Between Ruth Shomron and Mali Fuks

35. On or about May 28, 1985 defendants Shomron and Larry Goldstein ("Goldstein"), as copartners, formed the plaintiff R&L.

36. The primary purpose of the formation of plaintiff R&L was to acquire, improve, maintain and thereafter convert the Building to cooperative ownership.

37. On or about May 5, 1987, Shomron and Goldstein agreed to admit defendant Howard Simon ("Simon") as a partner of plaintiff R&L and, in connection therewith, Shomron, Goldstein and Simon entered into a Partnership Agreement dated as of May 5, 1987 (the "R&L Partnership Agreement").

38. Pursuant to the R&L Partnership Agreement, Shomron, Goldstein and Simon each owned a one-third interest in R&L.

39. In or about May 1990, defendant Goldstein informed his partners Shomron and Simon that he could no longer afford to remain a member of R&L and, accordingly, that he intended to withdraw therefrom.

40. Thereafter, pursuant to an amendment to the R&L Partnership Agreement between defendants Shomron, Goldstein and Simon dated as of May 17, 1990, Goldstein withdrew as a partner from R&L and transferred his one-third interest therein to Shomron and Simon resulting in Shomron owning a 51% interest in R&L and Simon owning a 49% interest in R&L.

41. Thereafter, in a second amendment to the R&L Partnership Agreement dated as of May 17, 1990, defendants Shomron and Simon admitted plaintiff Mali Fuks as a partner in R&L and Shomron transferred to plaintiff Mali Fuks one half of her 51% interest in R&L resulting in Simon owning a 49% interest in R&L and Shomron and Mali Fuks each owning a 25.5% interest in R&L.

42. In or about September 1990, defendant Simon advised defendant Shomron and plaintiff Mali Fuks that he intended to withdraw from the R&L partnership.

43. Pursuant to a third amendment to the R&L Partnership Agreement dated as of March 7, 1991, defendant Simon withdrew as a partner of R&L and transferred his 49% interest in R&L equally to Shomron and Mali Fuks resulting in Shomron and Mali Fuks each owning a 50% interest in R&L.

44. Since defendant Simon's withdrawal from the partnership, defendant Shomron and plaintiff Mali Fuks have been the sole equal partners in plaintiff R&L.

The Mounting Financial Pressures Upon R&L and Plaintiff Fuks' Repeated Failure to Contribute Her Share of the Capital Required by R&L to Pay its Debts, Operate and Manage the Building and Successfully Convert it to Cooperative Ownership.

45. The financial obligations of plaintiff R&L in connection with the operation and management of the Building and the successful and profitable conversion of the Building to cooperative ownership required the expenditure by R&L of hundreds of thousands of dollars to pay for such expenses as mortgage payments, real estate taxes, repairs and improvements, the renovation of apartments, vacancy allowances, fuel, insurance, water and sewage, management fees, legal fees and accountants' fees.

46. For a substantial period of time relevant to this action, R&L's income was insufficient to pay its debts as they became due because of the fact that approximately 12 to 14 apartments in the Building were intentionally kept vacant by R&L for the purpose of substantially renovating them so that they would be more valuable and marketable for sale or rent.

47. In order for R&L to meet its financial obligations and to successfully and profitably convert the Building to cooperative ownership, defendant Shomron and plaintiff Fuks were required to make additional capital contributions to R&L.

48. After plaintiff Fuks' admission into the partnership, defendant Shomron had numerous conversations with plaintiff Fuks' and her husband Yoram Fuks (the "Fukses") in which she informed them of R&L's financial requirements and repeatedly urged and demanded that plaintiff Fuks contribute her share of the capital that R&L required in order for it to pay its debts, operate and manage the Building and successfully and profitably convert it to cooperative ownership.

49. Notwithstanding Shomron's repeated urging and demands as aforesaid, plaintiff Mali Fuks failed and refused to contribute her share of the requisite capital that R&L required.

50. Plaintiff Fuks and her husband Yoram Fuks represented to Shomron that they were financially incapable of making required capital contributions or loans to R&L.

51. Plaintiff Fuks' failure to contribute her pro rata share of the capital that was required in order for R&L to pay its debts, operate and manage the Building and successfully and profitably convert it to cooperative ownership placed Shomron's entire investment in R&L at risk and compelled Shomron, individually and through entities in which she had an interest, to loan R&L hundreds of thousands of dollars over and above that which was contributed by Fuks in order to stave off R&L's bankruptcy and the loss of her entire investment in R&L.

52. Plaintiff Fuks' repeated failure and refusal to contribute her share of the capital that R&L required (i) caused R&L to be unable to pay its debts, (ii) delayed the conversion of the Building to cooperative ownership to R&L's financial detriment, and (iii) thwarted a successful and profitable conversion of the Building to cooperative ownership.

53. As a result of plaintiff Fuks' repeated failure and refusal to contribute her share of the capital required by R&L, R&L was forced to procure loans from third parties at unfavorable interest rates and to sell apartments at below market prices to the Fukses' friends, acquaintances and, unbeknownst to Shomron, to the Fukses themselves.

Mali Fuks' Undisclosed Self-Dealing in Connivance With Her Husband Yoram Fuks  
in the Purchase of Four Apartments From R&L

The Sale of Apartments 1D and 5E to Gadi Hill, as Trustee

54. Commencing in or about February 1992, plaintiff Fuks and her husband Yoram Fuks (hereinafter, the "Fukses") proceeded to unlawfully enrich themselves at the expense of R&L and defendant Shomron by secretly engaging in self-dealing by purchasing four apartments from R&L through entities owned and/or controlled by them.

55. In or about February 1992, the Fukses falsely represented to defendant Shomron that they did not have sufficient funds to contribute to R&L but that they were friendly with certain individuals in Israel who wanted to invest in real estate in the United States and were willing to purchase two apartments from R&L in a quick all cash transaction.

56. The Fukses further represented to Shomron that their friends and investors in Israel were only willing to purchase apartments that R&L had substantially renovated.

57. Upon information and belief, Gadi Hill, an attorney, was named and appointed as a trustee under a trust agreement dated February 20, 1992 (hereinafter referred to either as the "Trust" or the "Trustee").

58. The Fukses represented to Shomron that the individuals who had a financial interest in the Trust were friends of theirs from Israel.

59. In reliance upon the aforesaid representations by the Fukses, Shomron, in her capacity as a partner of plaintiff R&L, consented to the sale of apartments 1D and 5E at prices which were less than fair market value and which had been substantially renovated by R&L.

60. Based on the aforesaid representations made by the Fukses, a closing was held on February 26, 1992 at which time apartments 1D and 5E were sold by plaintiff R&L and acquired by the defendant Trust purportedly on behalf of the Fukses' friends from Israel.

61. The purchase prices paid by the Trust for apartments 1D (a two bedroom apartment) and 5E (a two bedroom apartment) were \$40,000.00 and \$82,000.00, respectively.

62. Upon information and belief Yoram Fuks had a financial interest in the Trust at the time the Trust acquired apartments 1D and 5E from R&L.

63. Upon information and belief, Yoram Fuks presently has a financial interest in the Trust.

64. Upon information and belief, plaintiff Mali Fuks had a financial interest in the Trust at the time the Trust acquired apartments 1D and 5E from plaintiff R&L.

65. Upon information and belief, plaintiff Mali Fuks presently has a financial interest in the Trust.

66. At the time the Trust acquired apartments 1D and 5E, neither plaintiff Fuks nor her husband Yoram disclosed to Shomron that either of them had a financial interest in the Trust.

67. Since the acquisition by the defendant Trust of apartments 1D and 5E, said apartments have been leased to third parties and have earned the Fukses substantial profits.

68. Shomron did not discover the interests of Yoram Fuks and/or Mali Fuks in the Trust until February 10, 2000 when Mali Fuks testified under oath on cross-examination in a prior arbitration proceeding before the American Arbitration Association entitled Fuks v. Shomron et al

(AAA Case No. 13 180 01162 97) (the "Arbitration Proceeding") at which time she admitted for the first time that her husband had a financial interest in the Trust .

The Sale of Apartments 1C and 6B to Greenland Holding Co., Ltd.

69. In or about January 1993, defendant Mali Fuks continued to fail and refuse to contribute her share of the capital that R&L required.

70. In or about January 1993, the Fukses continued to represent to Shomron that they did not have sufficient funds to contribute or loan to R&L.

71. In January 1993, because of his relationship with his wife, Mali Fuks, and his relationship with Shomron, defendant Yoram Fuks remained privy to R&L's financial circumstances.

72. In January 1993, Shomron reposed her trust and confidence in the Fukses.

73. In or about January 1993, in furtherance of their acts to unlawfully enrich themselves at the expense of R&L and Shomron, the Fukses represented to Shomron that they had other close friends in Israel who were also willing to purchase two apartments from plaintiff R&L in a quick "all cash" transaction.

74. The Fukses represented that their friends in Israel, doing business as Greenland Holding Co., Ltd. ("Greenland"), wanted to purchase apartments that R&L had substantially renovated.

75. Based on the Fukses' representations, in January 1993 Shomron, in her capacity as a partner of R&L, consented to the sale of apartments 1C and 6B to Greenland at prices which were less than fair market value.

76. At closings held on or about January 15, 1993 and January 29, 1993, apartments 1C and 6B were respectively sold by R&L and acquired by Greenland.

77. The purchase prices paid by Greenland for apartments 1C (a one bedroom apartment) and 6B (a three bedroom apartment) were \$30,000 and \$60,000, respectively.

78. At the time of the sale of apartments 1C and 6B, neither of the Fukses, nor anyone else on behalf of the Greenland ever disclosed to Shomron the identity of Greenland's principals.

79. Upon information and belief, Yoram Fuks had a financial interest in Greenland at the time Greenland acquired apartments 1C and 6B from R&L.

80. Upon information and belief, Yoram Fuks presently has a financial interest in Greenland.

81. Upon information and belief, plaintiff Mali Fuks had a financial interest in Greenland at the time Greenland acquired apartments 1C and 6B from R&L.

82. Upon information and belief, plaintiff Mali Fuks presently has a financial interest in Greenland.

83. Since the acquisition by the defendant Greenland of apartments 1C and 6B, said apartments have been leased to third parties and have earned Greenland, Yoram Fuks and/or Mali Fuks substantial profits never disclosed to Shomron.

84. Shomron did not discover the interests of Yoram Fuks and/or Mali Fuks in Greenland until February 10, 2000 when Mali Fuks, as previously alleged, was compelled to testify

under oath on cross-examination in the Arbitration Proceeding at which time she admitted to Shomron for the first time that her husband Yoram had a financial interest in Greenland.

AS AND FOR A FIRST COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Common Law Fraud)

85. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 84 as if fully set forth herein.

86. The representations by plaintiff Mali Fuks and her husband Yoram that apartments 1C, 1D, 5E and 6B (the "Apartments") were being acquired by their close friends and investors from Israel and that they had no financial interest in the Apartments, the Trust and Greenland were false, were known by them to be false when made, and were made with the intent of inducing R&L to sell the Apartments to the Trust and Greenland in which they had, and continue to have, a financial interest.

87. If Shomron had known that either or both of the Fukses had an interest in the Apartments, the Trust or Greenland, she never would have consented, as a partner of R&L, to the sale of the Apartments to the Trust or Greenland.

88. Defendant Shomron has no adequate remedy at law.

AS AND FOR A SECOND COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Breach of Fiduciary Duties)

89. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 88 as if fully set forth herein.

90. Plaintiff Mali Fuks, in connivance with her husband Yoram, willfully and deliberately, and in breach of the fiduciary duties she owed to Shomron and plaintiff R&L, failed to deal fairly and honestly with Shomron and R&L when she and/or her husband acquired the Apartments from R&L as aforesaid without disclosing to her their interests in the Apartments, the Trust and Greenland.

91. Defendant Shomron has no adequate remedy at law.

AS AND FOR A THIRD COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Imposition of a Constructive Trust)

92. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 91 as if fully set forth herein.

93. By reason of the above, plaintiff Mali Fuks should be deemed to hold the Apartments, and all rents and profits earned therefrom, in trust for R&L.

94. Defendant Shomron has no adequate remedy at law.

AS AND FOR A FOURTH COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Dissolution of R&L Pursuant to Partnership Law §63[c])

95. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 94 as if fully set forth herein.

96. Based on the aforesaid sale of the Apartments by R&L to the Trust and Greenland, plaintiff Fuks is guilty of such conduct as tends to affect prejudicially the carrying on the business of R&L.

AS AND FOR A FIFTH COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Dissolution of R&L Pursuant to Partnership Law §63[f])

97. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 96 as if fully set forth herein.

98. Plaintiff Fuks and defendant Shomron have been in a constant state of litigation against each other for more than eight years with respect to claims concerning their partnership R&L.

99. In December 1996, plaintiff Fuks commenced the present action against defendant Shomron and others.

100. In the present action, plaintiff Fuks challenges the validity of several loans made to R&L, many of which were made by Shomron personally and entities in which Shomron has an interest, including, but not limited to loans from defendants Rakia Associates, 2701 Broadway Associates, Lancaster Studio Associates and Upwest Company.

101. In the present action, plaintiff Fuks accuses Shomron, among other things, of the following:

- a. fraudulently inducing her to enter into the R&L partnership;
- b. fraud in connection with the allocation to plaintiff Fuks of a negative capital account on R&L's income tax returns;
- c. fraud in connection with a mortgage given by R&L to the Greater New York Saving Bank in or about November 1989 to secure a loan to R&L of \$1,075,000; and
- d. conversion and misappropriation of R&L funds.

102. In addition to the present action, plaintiff Fuks and defendant Shomron have been litigating against each other, directly or indirectly, in the following actions and proceedings:

- a. The Arbitration Proceeding;
- b. Shomron et al v. Mali Fuks and the American Arbitration Association (Sup. Ct. N.Y. County Index No. 122044/00). ("Shomron v. Mali Fuks");;
- c. Mali Fuks v. Khan (Civ. Ct. N.Y. County Index No. 026279 CVN 1996);
- d. Mali Fuks, individually and on behalf of R&L Realty v. Khan (Sup. Ct. N.Y. County Index No.116065/97);
- e. 205 West 103 Owners Corp. v. Khan (Sup. Ct. N.Y. County Index No. 125900/00);  
and
- f. 205 West 103 Owners Corp. v. Khan (Sup. Ct. N.Y. County Index No. 602334/01);

103. Plaintiff Fuks did not obtain, nor does she have, defendant Shomron's consent to commence or prosecute the present action on behalf of R&L as against defendants Alfred Szala, 504 West 111 Owners Corp., 27 East 21<sup>st</sup> Street Company, Lancaster Studio Associates, Upwest Company and Goldstick, Weinberger, Feldman & Grossman, P.C.

104. Plaintiff Fuks did not have defendant Shomron's consent to commence or prosecute the aforementioned action against Hamid Ali Khan entitled Mali Fuks, individually and on behalf of R&L Realty v. Khan (Sup. Ct. N.Y. County Index No.116065/97) on behalf of R&L.

105. Plaintiff Fuks' commencement and prosecution of the present action as against Alfred Szala, 504 West 111 Owners Corp., 27 East 21<sup>st</sup> Street Company, Lancaster Studio Associates, Upwest Company and Goldstick, Weinberger, Feldman & Grossman, P.C. and Mali Fuks, individually and on behalf of R&L Realty v. Khan (Sup. Ct. N.Y. County Index No.116065/97) on behalf of R&L was in breach of paragraph 7.01 of the R&L partnership agreement.

106. Based on the totality of the circumstances set forth herein above, including, among other things, the more than eight years of litigation between plaintiff Fuks and defendant Shomron, the nature of the allegations each has asserted against the other, the commencement of litigation by plaintiff Fuks against others without defendant Shomron's consent in breach of the R&L partnership agreement, Fuks' self-dealing in connection with the sale of the Apartments to the Trust and Greenland, and her repeated failure and refusal to contribute her pro rata share of the contributions R&L has required, renders a dissolution of R&L equitable.

AS AND FOR A SIXTH COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Dissolution of R&L Pursuant to Partnership Law §63(d))

107. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 106 as if fully set forth herein.

108. Based on the foregoing, plaintiff Fuks has wilfully and persistently committed a breach of the partnership agreement, or otherwise conducted herself in matters relating to the partnership business that is not reasonably practicable to carry on the business of R&L in partnership with her.

AS AND FOR A SEVENTH COUNTERCLAIM BY SHOMRON AGAINST MALI FUKS

(Breach of Fiduciary Duties)

109. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 108 as if fully set forth herein.

110. In contravention of the fundamental implied covenant of good faith and fair dealing governing her fiduciary duty to Shomron and R&L, plaintiff Fuks derailed the successful and profitable conversion of the Building to cooperative ownership by, among other things, failing to contribute her pro rata share of funds required by R&L, resulting in substantial monetary damages to said partnership.

AS AND FOR AN EIGHTH COUNTERCLAIM BY DEFENDANT SHOMRON  
AGAINST FUKS AND R&L

(Declaratory Judgment With Respect to Validity of Certain Loans Received by R&L)

111. Defendant Shomron repeats the allegations set forth in paragraphs 25 to 110 as if fully set forth herein.

112. In order for R&L to operate, manage and improve the Building and the Apartments it owned, and to convert the Building to cooperative ownership, R&L received loans with an interest rate of 10% per annum from Harry Salon, 2701 Broadway Associates, Yakov Helfman, Moti Zilber, Rakia Associates, Michael Kaplan, Hamid Khan and Ruth Shomron (the "Loans").

113. Plaintiff Fuks claims that the Loans are not valid and refuses to grant her consent to repay them.

114. Defendant Shomron claims that the Loans are valid and that R&L should repay them.

115. By reason of these conflicting claims, a controversy exists between plaintiff Fuks and defendant Shomron as to whether R&L is required to repay the Loans.

116. Defendant Shomron has no adequate remedy at law.

AS AND FOR A NINTH COUNTERCLAIM BY DEFENDANT RAKIA ASSOCIATES  
AGAINST R&L

117. Defendant Rakia Associates ("Rakia") is a New York partnership located in the City, County and State of New York.

118. Between May 1990 and February 1993, defendant Rakia loaned R&L \$72,592.44 at a rate of 10% per annum of which \$58,700.00 has been repaid leaving a balance due of \$13,892.44.

119. R&L has defaulted in payment of the \$13,892.44 it owes to Rakia.

120. By reason of the foregoing, R&L is indebted to Rakia in the amount of \$13,892.44 with interest.

AS AND FOR A TENTH COUNTERCLAIM BY DEFENDANT 2701 BROADWAY ASSOCIATES AGAINST R&L

121. Defendant 2701 Broadway Associates ("2701 Broadway") is a New York partnership located in the City, County and State of New York.

122. Between November 1990 and August 1995, defendant 2701 Broadway loaned R&L \$119,193.52 at a rate of 10% per annum of which \$52,000.00 has been repaid leaving a balance due of \$67,193.52.

123. R&L has defaulted in payment of the \$67,193.52 it owes to 2701 Broadway.

124. By reason of the foregoing, R&L is indebted to 2701 Broadway in the amount of \$67,193.52 with interest.

AS AND FOR A ELEVENTH COUNTERCLAIM BY DEFENDANT LARRY GOLDSTEIN AGAINST R&L

125. Defendant Larry Goldstein is an individual residing in the City, County and State of New York.

126. Defendant Goldstein is a former partner of R&L.

127. Defendant Goldstein withdrew from R&L pursuant to the terms of an Amendment to Partnership Agreement of R&L Realty Associates, dated as of May 17, 1990 (the "May 17, 1990 Amendment").

128. The May 17, 1990 Amendment provides at paragraph 4, as follows:

As of March 31, 1990, Ruth Shomron, Howard I. Simon and Larry D. Goldstein have each contributed \$165,450 to the capital of the Partnership. It is anticipated that the remaining partners shall made additional capital contributions to the Partnership. At such time that Ruth Shomron and Howard I. Simon have received distributions in an amount equal to twice their total contributions to the Partnership made after March 31, 1990, Larry D. Goldstein shall receive one-third (1/3) of any future distributions until such time that his capital contribution to the Partnership of \$165,450 is repaid in full.

129. Pursuant to the terms of paragraph 4 of the May 17, 1990 Amendment, defendant Goldstein is entitled to receive the sum of \$165,450 from R&L.

AS AND FOR A TWELFTH COUNTERCLAIM BY DEFENDANT HOWARD SIMON  
AGAINST R&L

130. Defendant Howard Simon is an individual with a residence in the State of New York.

131. Defendant Simon is a former partner of R&L.

132. Defendant Simon withdrew from R&L pursuant to the terms of an Amendment to Partnership Agreement of R&L Realty Associates, dated as of March 7, 1991 (the "March 7, 1991 Amendment").

133. The March 7, 1991 Amendment provides at paragraph 4, as follows:

It is anticipated that the Remaining Partners (Ruth Shomron and Mali Fuks) shall make additional capital contributions to the Partnership. It is agreed that the Remaining Partners shall contribute not less than \$300,000.00 to the Partnership after November 1, 1990. As of the date hereof, the Remaining Partners have

contributed at least \$150,000 since November 1, 1990. At such time that a distribution is made,

(a) if the Remaining Partners have contributed not less than \$300,000 to the Partnership after November 1, 1990 and have received distributions in an amount equal to twice their total capital contributions to the Partnership made after November 1, 1990, or

(b) if the Remaining Partners have contributed less than \$300,000 to the Partnership after November 1, 1990,

then Howard I. Simon shall receive one-half ( $\frac{1}{2}$ ) of any future distributions until such time that he receives \$230,000 and thereafter, Howard I. Simon shall receive one-third ( $\frac{1}{3}$ ) of any future distributions until such time he receives \$50,450.00 resulting in a total payment to Howard Simon of \$280,450. The Remaining Partners agree that any payments to them from the Partnership shall constitute a distribution and shall not be considered an operating expense. The Remaining Partners shall share any distributions equally.

134. Pursuant to the terms of paragraph 4 of March 7, 1991 Amendment, defendant Simon is entitled to receive the sum of \$280,450 from R&L.

AS AND FOR A THIRTEENTH COUNTERCLAIM ON BEHALF OF DEFENDANTS  
SHOMRON, SIMON AND GOLDSTEIN

(Abuse of Process)

135. During the course of the Arbitration Proceeding, plaintiff Fuks made three applications to the American Arbitration Proceeding to remove the arbitrator, William E. Spiro.

136. All three of plaintiff Fuks' aforementioned applications to remove Arbitrator Spiro were denied by the AAA.

137. In or about November 2003, after the AAA denied Fuks' third application to remove Arbitrator Spiro, Fuks commenced an action against Arbitrator Spiro by filing a summons with notice against him and others in an action in this court entitled Fuks v. Spiro et. al (Sup. Ct. N.Y. County Index No. 119341/03) (hereinafter, "Fuks v. Spiro").

138. Shortly after he was sued by plaintiff Fuks as aforesaid, Arbitrator Spiro resigned from the Arbitration Proceeding citing the lawsuit as the reason for his resignation.

139. Thereafter, the AAA appointed a new arbitrator who advised the parties that he intended to start the Arbitration Proceeding all over again.

140. The commencement by plaintiff Fuks of Fuks v. Spiro was to accomplish an improper purpose, specifically, to induce Arbitrator Spiro to resign and engage in “arbitrator-shopping” in the Arbitration Proceeding.

141. Defendants Shomron, Simon and Goldstein have been damaged in the amount of \$500,000.00.

WHEREFORE, defendants demands judgment that:

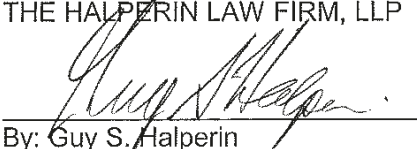
- a. That the complaint be dismissed.
- b. On the first, second and third counterclaims in favor of defendant Ruth Shomron, on behalf of R&L Realty Associates:
  - i. rescinding the sale of the Apartments;
  - ii. declaring the sale of the Apartments void and directing that plaintiff Fuks be ordered to deliver and reconvey to R&L the stock and proprietary leases appurtenant thereto; and
  - iii. directing plaintiff Fuks to account for and pay over to R&L all rents, profits, and property received by her by virtue of her ownership of the Apartments, either directly or indirectly through the Trust or Greenland.

- c. On the fourth, fifth and sixth counterclaims on behalf of defendant Shomron:
  - i. R&L be adjudged dissolved;
  - ii. all property, rights and assets of R&L be directed to be sold;
  - iii. an accounting be had of the affairs of R&L; and
  - iv. the proceeds of the partnership assets after payment of all the just debts and liabilities and the costs and expenses of this action be divided between the plaintiff Fuks and defendant Shomron according to their respective rights.
  
- d. On the seventh counterclaim, an amount to be determined at the trial of this action, but believed to be in excess of \$1,000,000.00, with interest, be paid to defendant Shomron, on behalf of R&L, by the plaintiff Fuks.
  
- e. On the eighth counterclaim, declaring each and every loan R&L received from Harry Salon, 2701 Broadway Associates, Yakov Helfman, Moti Zilber, Rakia Associates, Michael Kaplan, Hamid Khan and Ruth Shomron to be valid and directing plaintiff R&L to repay said loans with interest at a rate of 10% per annum.
  
- f. On the ninth counterclaim, \$13,892.44 with interest, be paid to defendant Rakia by plaintiff R&L.
  
- g. On the tenth counterclaim, \$67,193.52 with interest, be paid to defendant 2701 Broadway by plaintiff R&L.
  
- h. On the eleventh counterclaim, \$165,450 be paid to defendant Larry Goldstein by plaintiff R&L.

- i. On the twelfth counterclaim, \$280,450 be paid to defendant Simon by plaintiff R&L.
- j. On the thirteenth counterclaim, \$500,000 be paid to defendants Shomron, Simon and Goldstein by plaintiff Fuks.
- k. The defendants have such other relief as the court deems proper, together with the costs and disbursements of this action.

Dated: January 31, 2005  
New York, New York

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