

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
LINDA ROBIN KOBER AND BETTINA IRIS
RABINOWITZ, INDIVIDUALLY AND ON BEHALF OF
KGN ASSOCIATES, LLC,

COMPLAINT

Plaintiffs,

Index No.

-against-

RITA NESTAMPOWER, MARTHA GENDEL,
KENNETH S. FERARU, P.C., KENNETH S. FERARU,
AND JULES MARK KLEIN

Defendants.
-----X

Plaintiffs, by their attorney Nicholas J. Damadeo, P.C., herein set forth
their complaint against defendants as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff Linda Robin Kober ("Kober") is domiciled in the State of New York.
2. Plaintiff Bettina Iris Rabinowitz ("Rabinowitz") is domiciled in the State of New York.
3. Upon information and belief, defendant Rita Nestampower ("Nestampower") is domiciled in the State of New York.
4. Upon information and belief, defendant Martha Gendel ("Gendel") is domiciled in the State of New York.
5. Upon information and belief, defendant Jules Mark Klein ("Klein") is domiciled in the State of New York.

6. Upon information and belief, defendant Kenneth S. Feraru (“Feraru”) is domiciled in the State of New York.

7. Upon information and belief, defendant Kenneth S. Feraru, P.C. (“KSF”) is a professional corporation organized pursuant to the laws of the State of New York.

8. KGN Associates, LLC (“KGN”) is a limited liability company organized pursuant to the laws of the State of New York.

9. When KGN was formed in February 2003, the initial members of KGN were Nestampower, Gendel, and Bernice Klein.

10. Bernice Klein was the mother of Kober, Rabinowitz and Klein.

11. Paragraph 11 of KGN’s Operating Agreement states: “11. **Assignments:** The Members may assign or transfer in whole or in part their interest in the Company.”

12. Pursuant to said ¶11, Bernice Klein transferred her membership interest in KGN to The Bernice Klein Revocable Living Trust dated 10/9/01 (“the Trust”) on October 27, 2004.

13. Pursuant to said ¶11, on February 18, 2011, The Trust transferred its membership interest in three equal shares to Kober, Rabinowitz and Klein.

14. Paragraph 6 of KGN’s Operating Agreement states: “6. **Management and Powers:** The business and affairs of the Company shall be managed by the Members.”

15. Since the transfer of the Trust's membership interest, Nestampower and Gendel have failed and refused to permit Kober, Rabinowitz and Klein to participate in the management of KGN.

16. Upon information and belief, Nestampower and Gendel contend that they are not required to recognize Kober, Rabinowitz and Klein as members of KGN because Nestampower and Gendel never approved the aforesaid assignments.

17. Pursuant to the terms of the Operating Agreement, the aforesaid assignments did not require the approval of Nestampower and Gendel because the right to assign a membership interest pursuant to ¶11 is unconditional.

18. Nestampower and Gendel have managed the business of KGN without providing notices of meetings to Kober, Rabinowitz and Klein and without giving Kober, Rabinowitz and Klein the opportunity to vote as members.

19. Kober, Rabinowitz and Klein have no remedy at law.

20. Klein has been joined as a defendant in this action because he is a necessary party whose rights as a member will be determined and affected by this action.

AS AND FOR A SECOND CAUSE OF ACTION

21. On January 3, 2018, without the knowledge and consent of Kober, Rabinowitz and Klein, Nestampower and Gendel caused KGN to sell to one Salvatore Norberto two parcels of real property owned by KGN and located on Old Sills Road in Yaphank, New York (the "property").

22. The sale of the property was made at less than fair market value.

23. Nestampower and Gendel owed a fiduciary duty to KGN to sell the property at fair market value.

24. Nestampower and Gendel breached their fiduciary duty to KGN.

25. As a result of said breach of fiduciary duty, KGN has sustained monetary damages.

26. Kober and Rabinowitz bring this action on behalf of KGN without first making a demand upon Nestampower and Gendel to bring such action because to do so would be futile because Nestampower and Gendel cannot reasonably be expected to sue themselves.

AS AND FOR A THIRD CAUSE OF ACTION

27. Upon information and belief, Feraru is an attorney licensed to practice law in the State of New York.

28. Upon information and belief, KSF is a professional corporation engaged in the practice of law in the State of New York.

29. Upon information and belief, Feraru is a shareholder of KSF.

30. Upon information and belief, Nestampower and Gendel, on behalf of KGN, retained defendants Feraru and KSF to represent KGN in the sale of the property.

31. Upon information and belief, Feraru and KSF failed to determine that Kober, Rabinowitz and Klein were members of KGN.

32. Upon information and belief, Feraru and KSF permitted the sale of the property without advising KGN to conduct a proper meeting of the members to vote on the sale of the property.

33. Upon information and belief, Feraru and KSF permitted the sale of the property without notice to Kober, Rabinowitz and Klein.

34. Had Kober and Rabinowitz been given notice of the proposed sale, they would have acted to prevent the sale of the property at below fair market value.

35. Feraru and KSF owed a duty to KGN to determine the identity of all the members of KGN, to advise KGN's members to provide proper notice and an opportunity to vote on said proposed sale, and to ensure that the sale of the property was properly authorized by the members of KGN.

36. Feraru and KSF breached their duty to KGN.

37. Feraru and KSF failed to provide legal services consistent with the custom and standard for lawyers in their community.

38. But for the breach of duty by Feraru and KSF, the property would not have been sold at below fair market value.

39. As a result of the foregoing breach of duty, KGN has sustained monetary damages.

40. Kober and Rabinowitz bring this action on behalf of KGN without first making a demand upon Nestampower and Gendel to bring such action because to do so would be futile because Nestampower and Gendel cannot reasonably be expected to sue their attorney who assisted them in selling the property without notice to Kober, Rabinowitz and Klein.

AS AND FOR A FOURTH CAUSE OF ACTION

41. KGN is the owner of certain commercial real property located at 190 Merritts Road, Farmingdale, Nassau County, NY 11735 ("the Farmingdale property").

42. Upon information and belief, Nestampower and Gendel are in the process of selling the Farmingdale property.

43. Nestampower and Gendel have not given Kober, Rabinowitz and Klein notice of any offer to sell or of any meeting to vote on said sale.

44. Upon information and belief, Nestampower and Gendel will sell the Farmingdale property at less than fair market value just for the purpose of a quick sale and in derogation of the rights of KGN to have the property sold, if at all, at fair market value.

45. KGN has no adequate remedy at law.

46. Kober and Rabinowitz bring this action on behalf of KGN without first making a demand upon Nestampower and Gendel to bring such action because to do so would be futile because Nestampower and Gendel cannot reasonably be expected to sue themselves.

WHEREFORE, plaintiffs demand judgment against defendants Rita Nestampower and Martha Gendel as follows:

A. On the first cause of action in favor of Plaintiffs declaring that Linda Robin Kober, Bettina Iris Rabinowitz and Jules Mark Klein are members of KGN Associates, LLC, each owning an 11.11% interest and permanently enjoining Rita Nestampower and Martha Gendel from excluding Linda Robin Kober, Bettina Iris Rabinowitz and Jules Mark Klein from the management of KGN Associates, LLC;

B. On the second cause of action in favor of KGN Associates, LLC and against Rita Nestampower and Martha Gendel in an amount equal to the difference between the fair market value of the Yaphank property and the sales price of the Yaphank

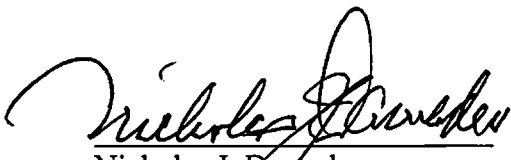
property, together with interest from the date of sale and reasonable attorneys' fees to Plaintiffs for their attorneys' fees in prosecuting this claim;

C. On the third cause of action in favor of KGN Associates, LLC and against Kenneth S. Feraru and Kenneth S. Feraru, P.C. in an amount equal to the difference between the fair market value of the Yaphank property and the sales price of the Yaphank property, together with interest from the date of sale;

D. On the fourth causes of action in favor of KGN Associates, LLC and against Rita Nestampower and Martha Gendel permanently enjoining them from selling the Farmingdale property without notice to Linda Robin Kober, Bettina Iris Rabinowitz and Jules Mark Klein and without permitting them to participate equally in the management of KGN Associates, LLC, together with reasonable attorneys' fees to Plaintiffs for their attorneys' fees in prosecuting this claim

E. Together with the costs and disbursements of this action.

Dated: February 13, 2018



Nicholas J. Damadeo
NICHOLAS J. DAMADEO, P.C.
Attorneys for Plaintiffs
27 West Neck Road
Huntington, NY 11743
(631) 271-7400