

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----
JUANA TOPOROVSKY,

: Index No. 817070/2025E

Plaintiff,

: Motion Seq. No. 002

v.

: **AFFIRMATION OF
ASHER TOPOROVSKY**ARIE TOPOROVSKY, ASHER TOPOROVSKY,
ESTHER TOPOROVSKY, ARTHUR COURT REALTY :
MGT. CORP, THE ESTATE OF RINALDO :
TOPOROVSKY, VAN COURTLANDT ASSETS LLC :
and JOHN GOJCAJ., :

Defendants.

:

:

:

X

ASHER TOPOROVSKY, under the penalties of perjury affirms:

1. I am a defendant and an executor of the Estate of Rinaldo Toporovsky (the “Estate”). Rinaldo Toporovsky (“Rinaldo”) was defendant Arie Toporovsky’s (“Arie”) and my father. Defendant Esther Toporovsky (“Esther”) is Arie’s and my mother and was Rinaldo’s wife. Arie, Esther and I are co-executors of Rinaldo’s estate. True copies of the Letter Testamentary demonstrating our appointment as executors are attached as Exhibit A. I make this affirmation, in support of Defendants Arie’s, Esther’s, Arthur Court Realty Mgt. Corp’s (“Arthur Court”), the Estate of Rinaldo Toporovsky’s (“the Estate”), Van Courtland Assets LLC’s (the “Company”) and my application, brought on by Order to Show Cause, to cancel the notice of pendency that Plaintiff has filed, pursuant to CPLR 6501, on the grounds that Plaintiff has no interest in the real property owned by the Company. (Arie, Esther, Arthur Court, the Estate, the Company, and I are referred to herein as “Defendants”). The Company has signed a contract to sell the property at a favorable price. The transaction is scheduled to close on October 21, 2025. Defendants have brought his

application by Order to Show Cause to remove the Plaintiff's notice of pendency before the closing date and so that the transaction can timely close.

Facts

2. Rinaldo passed away on January 1, 2025. While Rinaldo was alive, he owned a majority interest in the Company, which he held in a personal capacity. Rinaldo controlled a 70% interest in the Company. Plaintiff owns and controls a 30% interest in the Company. The Company is a single purpose entity. Its sole asset is the real property located at 155-165 East Moshulu Parkway North and 171 East Moshulu Parkway North, Bronx, New York (the "Property"). Until Rinaldo's passing, he was the Manager of the Company and responsible for all major decisions of the Company.

3. Plaintiff, Rinaldo's sister, commenced this action on August 13, 2025. Plaintiff's Summons and Complaint appear at NYSCEF Doc. No. 1. Plaintiff's Complaint alleges two causes of action. Plaintiff's first cause of action seeks a declaratory judgment that Defendants violated the Company's Operating Agreement, that Arie lacked authority to execute a contract to sell the Property, and that the contract Arie executed to sell the property is void. Plaintiff's second cause of action seeks a permanent injunction against Defendants enjoining them from selling the Property without complying with the Operating Agreement.

4. As Plaintiff's Complaint alleges, Rinaldo passed away in early 2025 (NYSCEF Doc. 1 ¶ 2.) Upon Rinaldo's passing, his assets passed to his Estate. Plaintiff alleges Rinaldo's interests in the Company have passed, or will pass, to Arie, Esther, and me. (NYSCEF Doc. 1 ¶ 30.) Rinaldo's Estate has not been settled. This means that as of today, Arie, Esther, and I hold no direct interest in the Company and, accordingly, cannot be liable for breach of the Company's Operating Agreement. Nevertheless, the Complaint alleges that if any interest in the Company

passes to Arie, Esther or me, we will be bound by the terms of the Operating Agreement. Section 15 of the Operating Agreement allows an interest in the Company to be devised or bequeathed by will without consent and the devisee or legatee will “thereupon become a Member in place and stead of the transferor Member which transferee shall agree to and be subject to all of the terms and provisions of [the Operating] Agreement.”

5. The Property is encumbered by a \$9.8 million mortgage (the “Mortgage”) held by New York Community Bank (the “Lender”). The outstanding principal balance of the Mortgage, not including interest, default interest, fees, and penalties, is approximately \$8.7 million. The Property is also in need of significant repairs and improvements that will require a large infusion of capital. The Property is worth less than this mortgage debt and will be foreclosed upon. In combination with the negative impacts of the Housing Stability & Tenant Protection Act of 2019 on Property performance the Company suspended distributions to its members in 2020 and has not paid distributions to its members since then. At that time these challenges were explained to the Plaintiff by Rinaldo Toporovsky. Again in 2022, Rinaldo, Arie, and I initiated extensive discussion on these challenges with the Plaintiff and members of her immediate family.

6. In 2024 with the financial condition of the Property continuing to deteriorate and the interest rate reset date quickly approaching, Rinaldo asked Arie and me to initiate workout discussions with the Lender with the goal of convincing the Lender to forebear from exercising its remedies, including foreclosing on the Mortgage while cooperatively marketing the Property for sale at the best possible price and minimizing expenses. After my father passed, to stave off foreclosure and preserve maximum residual value for all members, the co-executors negotiated forbearance agreements with the Lender to sell the Property consensually with the Lender’s approval. The contract for the sale of the Property is for a sale price of \$8,500,000. Arie, Esther,

and I, who stand to inherit Rinaldo's majority interest in the Company under his will, each approved the forbearance agreement with the Lender and the sale of the property for \$8,500,000. The Lender has agreed to release its lien for a payoff less than its outstanding principal balance before giving consideration to accruing default rate interest and fees. Moreover, section 9 of the Operating Agreement provides, "Major decisions [which includes those relating to a sale] shall be made by vote of 70 percent or more in interest of the Members." Plaintiff controls only 30% of the interest in the Company. The well-known real estate broker, Marcus & Millichap, ran a seven-month process to market the Property and broker this sale. Marcus & Millichap was fully incentivized to obtain the highest sale price. Of course, the Lender would not have agreed to a short sale had it not believed that the Property was worth less than the mortgage balance.

7. Accordingly, on July 23, 2025, Arie, on behalf of the Company signed a Contract of Sale to sell the Property at a price for less than the amount of the Mortgage, but still at a price the Lender will permit. Pursuant to the Contract of Sale, the Closing Date is set for ninety days after the execution of the Contract of Sale, *i.e.*, October 21, 2025. While a short sale will not save the equity in the building, it will create the possibility that the beneficial owners can recover some funds upon the closing of the sale. I understand that Plaintiff may suffer tax consequences, including capital gains, if the building is sold short. Nevertheless, Plaintiff will suffer similar tax consequences if the Lender forecloses, because the loan forgiveness will be income to the Company which will be reported as income to the Company's members on their Form K-1s. Plaintiff has received substantial distributions during the investment period, well in excess of her original principal investment.

Prior Application

8. No prior application has been made for the same or similar relief as set forth in this application, except that as part of motion sequence number 1, Defendants sought cancelation of the Notice of Pendency and the Court declined to sign Defendants' proposed Order to Show Cause on the grounds set forth in NYSCEF Doc. No. 12.

I affirm this 18th day of September 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

E-SIGNED by Asher Toporovsky
on 2025-09-18 17:12:38 GMT

ASHER TOPOROVSKY