

Defendants.

[illegible]

**MEMORANDUM OF LAW IN SUPPORT  
OF MOTION BY ORDER TO SHOW CAUSE TO CANCEL NOTICE OF PENDENCY**

**MEISTER SEELIG & FEIN PLLC**  
125 Park Avenue, 7<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 655-3500

*Attorneys for Defendants Arie Toporovsky,  
Asher Toporovsky, Esther Toporovsky,  
Arthur Court Realty Mgt. Corp., the Estate  
of Rinaldo Toporovsky, and Van Courtlandt  
Assets LLC*

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

SUMMARY OF FACTS ..... 1

ARGUMENT ..... 3

    I.    BECAUSE PLAINTIFF DOES NOT HAVE AN INTEREST IN REAL PROPERTY,  
          THE COURT SHOULD CANCEL THE NOTICE OF PENDENCY ..... 3

CONCLUSION..... 6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>5303 Realty Corp v. O &amp; Y Equity Corp.</i> , 64 N.Y.2d 313 (1984).....	3, 4
<i>Felsk v. Bernstein</i> , 173 A.D.2d 677 (2nd Dept. 1991).....	3
<i>Gyurek v. 103 East 10th Owner’s Corp.</i> , 128 Misc.2d 384, 490 N.Y.S.2d 415 (Sp. Term. N.Y. C’ty 1985).....	3
<i>Israelson v. Bradley</i> , 308 N.Y. 511 (1955).....	3
<i>Liffiton v. DiBlasi</i> , 170 A.D.2d 994 (4th Dep’t 1991).....	4
<i>Yonaty v. Glauber</i> , 40 A.D.3d 1193 (3d Dep’t 2007).....	4

Defendants, Arie Toporovsky (“Arie”), Asher Toporovsky (“Asher”), Esther Toporovsky (“Esther”), Arthur Court Realty Mgt. Corp, (“Arthur Court”), the Estate of Rinaldo Toporovsky (“the Estate”), and Van Courtlandt Assets LLC (the “Company,” and together with Arie, Asher, Esther, Arthur Court, and the Estate, “Defendants”) submit this Memorandum of Law in support of their 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.

### **PRELIMINARY STATEMENT**

This is a dispute among family members with interests in a company that owns real estate. The property is encumbered by a mortgage that is for an amount that is greater than the property is worth. The majority of the interests in the Company wish to sell the property and maximize the Company’s value for all members. Plaintiff, the minority member, has sued seeking a declaration that Defendants do not have the authority to cause the Company to sell the property and for related injunctive relief. Plaintiff has also filed a notice of pendency against the property. Defendants have filed this application to cancel the notice of pendency on the grounds that Plaintiff’s interest is in the Company, not the real property. A sale of the property is scheduled to close on October 21, 2025. Hence, Defendants have brought this application by Order to Show Cause so that the notice of pendency may be cancelled as of record before the closing date of the sale.

### **SUMMARY OF FACTS<sup>1</sup>**

The Company is a single purpose entity. Its sole asset is the real property located at 155-165 East Mosholu Parkway North and 171 East Mosholu Parkway North, Bronx, New York (the “Property”). Rinaldo Toporovsky (“Rinaldo”) was Arie’s, and Asher’s father. Esther is Arie’s and

---

<sup>1</sup> A complete recitation of the facts is set forth in the accompanying Affirmation of Asher Toporovsky, executed September 18, 2025.

Asher's mother and was Rinaldo's wife. While Rinaldo was alive, he owned a majority interest in the Company, which he held in a personal capacity. Plaintiff owns a 30% interest in the Company.

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.

The Property is encumbered by a \$9.8 million mortgage held by New York Community Bank (the "Lender"). 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 Lender has agreed to release its lien for a payoff substantially less than its outstanding principal balance before giving consideration to accruing default rate interest and fees. Asher, Arie, and Esther, 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. 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, brokered this sale and 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.

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 allow the beneficial owners to recover some funds upon the closing of the sale. 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.

### **ARGUMENT**

#### **I. BECAUSE PLAINTIFF DOES NOT HAVE AN INTEREST IN REAL PROPERTY, THE COURT SHOULD CANCEL THE NOTICE OF PENDENCY**

The filing of a notice of pendency is an extraordinary privilege and its use is subject to strict compliance with the authorizing statute, to wit, CPLR §6501. *Israelson v. Bradley*, 308 N.Y. 511, 516 (1955). Filing a Notice of Pendency permits a party to effectively retard the alienability of real property without any prior judicial review. *5303 Realty Corp v. O & Y Equity Corp.*, 64 N.Y.2d 313, 320 (1984) (“[T]his court has required strict compliance with the statutory procedural requirements.”); see also *Gyurek v. 103 East 10th Owner's Corp.*, 128 Misc.2d 384, 490 N.Y.S.2d 415 (Sp. Term. N.Y. C'ty 1985) (citing *Israelson*).

A notice of pendency may only be filed where the filing party has a pending cause of action that directly affects title to or possession, use or enjoyment of real property. *5303 Realty Corp.*, 64 N.Y.2d at 320; *Gyurek*, 128 Misc.2d at 385. See also *Felsk v. Bernstein*, 173 A.D.2d 677, 678 (2nd Dept. 1991) (“defendants’ interest in the joint venture (owning real property) would be an

interest in personal property, not an interest in realty”); *Liffiton v. DiBlasi*, 170 A.D.2d 994, 995 (4<sup>th</sup> Dep’t 1991) (where plaintiff’s interest was held as a partner in a partnership a notice of pendency was “not appropriate”); *Yonaty v. Glauber*, 40 A.D.3d 1193, 1195 (3d Dep’t 2007) (Membership interest in an LLC constitutes personal property and an LLC member has no interest in specific property of the LLC).

In *5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313 (1984) the Court of Appeals reversed the Appellate Division and held that “suit to specifically perform a contract for the sale of stock representing a beneficial ownership of real estate will not support the filing of a notice of pendency.” *Id.* at 316. The Court of Appeals wrote:

“Although the prayer for relief seeks a transfer of title, the court must examine the complaint in its entirety. It is apparent from the allegations that the true action is to enforce a contract to sell stock. It is well settled that the property interests of a shareholder and the corporation are distinct. “[T]he corporation in respect of corporate property and rights is entirely distinct from the stockholders who are the ultimate or equitable owners of its assets \* \* \* even complete ownership of capital stock does not operate to transfer the title to corporate property and \* \* \* ownership of capital stock is by no means identical with or equivalent to ownership of corporate property.” (Brock v Poor, 216 NY 387, 401.) To allow plaintiff here to have its notice of pendency would run counter to the *Brock* rule and muddle an otherwise clear concept. Consequently, the notice must be canceled.

*Id.* at 313.

The *5303 Realty Corp.* court noted it was “improper to use a notice of pendency as a form of attachment. But this does not necessarily leave plaintiff, and others similarly situated, with no protective devices whatsoever. The property’s conveyance may be blocked by, for example, attachment or injunction.” *Id.* at 313. Tellingly, while Plaintiff has pled a cause of action for a permanent injunction, she has not sought a preliminary injunction or temporary restraining order. In failing to seek preliminary injunctive relief, yet pleading for permanent injunctive relief, Plaintiff has done exactly what *5803 Realty Corp.* forbids, namely, filing a notice of pendency in

a matter in which Plaintiff has no interest in real property, as opposed to applying for preliminary injunctive relief.

Here, Paragraph 27 of Plaintiff's Complaint alleges that she owns a 30% membership interest in the Company. Notably, the Complaint does not allege that Plaintiff owns any interest in the Property. Given that Plaintiff does not own any interest in the Property, she is not entitled to file a notice of pendency.

Additionally, Section 6 of the Operating Agreement, upon which Plaintiff relies, provides that "Members holding a cumulative interest of at least 51 percent" may cause the sale of the property. [NYSCEF Doc. No. 8](#). The only issue is how the offering price is set. If Plaintiff contends that the sale price of the Property was improperly set, Plaintiff's remedy is an action for damages so that she can recover a purported short fall in the *pro rata* amount Plaintiff would have otherwise recovered in a sale. Thus, even if the Operating Agreement prohibited the execution of the Contract of Sale, Plaintiff's remedy is an action for damages purportedly sustained as a result of a sale, not the filing of a notice of pendency.



**CONCLUSION**

Plaintiff has no direct interest in the Property. Hence, relief sought in the Complaint does not directly affect title to or possession, use or enjoyment of real property and Plaintiff's notice of pendency should be cancelled. Thus, this Court should cancel the notice of pendency that the Plaintiff has filed, pursuant to CPLR 6501.

Dated: New York, New York  
September 19, 2025

**MEISTER SEELIG & FEIN PLLC**

By: /s/ Howard S. Koh  
Kevin Fritz, Esq.  
Howard S. Koh, Esq.  
125 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10017  
(212) 655-3500

*Attorneys for Defendants*

**RULE 202.8-b CERTIFICATION**

The total number of words in the foregoing Memorandum of Law, inclusive of headings and footnotes, and exclusive of the caption, signature block, table of contents and table of authorities is 1,623. The word count herein is based on the number generated by the word-processing system used to prepare the document. It is in compliance with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court.

Dated: New York, New York  
September 19, 2023

By: /s/ Howard S. Koh  
Howard S. Koh