

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 24th day of June 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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AKIVA REICH, individually and derivatively in
the right of and on behalf of PURSLANE LLC,

Plaintiffs/Judgment Creditors,

Index No. 506922/2025

-against-

Cal. No. MS 1

PURSLANE LLC,

Defendant/Nominal Defendant,

Decision and Order

-and-

PURSLANE BOATHOUSE LLC and HENRY RICH,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.

MS 1

1-12

Defendants’ motion seeking dismissal of plaintiff’s complaint pursuant to CPLR 3211 or summary judgment in their favor pursuant to CPLR 3212 is decided as follows:

According to the amended complaint, in 2016, plaintiff Akiva Reich (“Akiva” or plaintiff) and defendant Henry Rich (“Henry”) formed a Brooklyn-based event catering company called Purslane LLC (“Purslane”) with Akiva owning 50% of the outstanding shares and Henry owning

25% (the Operating Agreement purportedly contemplated another 20% of shares that were unassigned). In late 2019, plaintiff alleges that the business relationship between Akiva and Henry broke down. Further, that Henry invented flimsy reasons to terminate Akiva's majority membership interest in Purslane including by forming a new entity, Purslane Boathouse LLC ("Purslane Boathouse"), and supposedly merging Purslane into Purslane Boathouse.

Plaintiff also alleges that, throughout Purslane's operation, Henry continuously engaged in improper actions, including, among other things: (1) improperly drawing a personal salary which was not permitted under the operating agreement; (2) accepting \$70,000 in cash payments for which he failed to account in QuickBooks; (3) engaging in questionable accounting practices and tax evasion by reporting false expenses and making the profits of the company "disappear" to benefit himself and his other partners at plaintiff's expense; and (4) failing to provide Akiva any distribution of profits for 2019 or 2020. Further, in 2019, plaintiff alleges that Henry entered into a financing arrangement with an individual who was effectively serving as Purslane's attorney at the time, under which 240 shares of Purslane were "sold" to such attorney based on a \$2 million valuation. This deal allegedly contemplated that the attorney would enjoy 80% of the profits until he was paid a preferred dividend of \$660,000. Plaintiff asserts that this effectively means that the attorney would be fully repaid with interest while also keeping the shares, a deal that plaintiff contends no sensible businessperson would have ever agreed to, including himself. Plaintiff alleges that the attorney was granted this "sweetheart deal" because the attorney is an investor and advisor in Henry's other businesses, which constitutes a breach of fiduciary duty by Henry to plaintiff.

In addition, on or about January 15, 2020, plaintiff alleges that he learned that Henry attempted to terminate his membership in Purslane through a merger with Purslane Boathouse,

effective November 24, 2019. Plaintiff alleges that he never received any compensation for the fair market value of his interest in Purslane despite Henry claiming, in a letter dated November 21, 2019, that “the original shareholders” of Purslane would be “given fair value for their shares” in merging into Purslane Boathouse. Plaintiff alleges that every other member of Purslane received shares in Purslane Boathouse except himself.

Plaintiff further alleges that Purslane’s Operating Agreement does not authorize any members of Purslane to strip Akiva of any portion of his membership interest. Specifically, that section 6.1(f) states: “Voting. Members who are not Managers shall not be entitled to vote or otherwise control operation of the Company, to the full extent permitted by the Act and the law.” Secondly, that section 8.1(b) states: “(b) Cessation of Membership. A Member shall cease to be a Member only upon the occurrence of one of the following events: (i) the Transfer of a Member’s entire Interest back to the Company at par value, i.e., in exchange for the price the Member initially paid for the Interest; or (ii) the occurrence of an Event of Bankruptcy with respect to the Member (in which case the Member or its transferee shall become an Assignee).” Plaintiff alleges that neither of those events occurred here.

On April 4, 2025, defendants filed their instant motion to dismiss the complaint. Thereafter, plaintiff filed his amended complaint as of right on May 21, 2025. In lieu of withdrawing their motion without prejudice to remake such motion, defendants have elected to apply their motion to the amended complaint.

In their motion, defendants argue that the complaint must be dismissed because (1) Akiva lacks standing to sue because he is no longer a member of Purslane, having been voted out by the other members and Purslane having merged into Purslane Boathouse on December 8, 2020; (2) accordingly, Akiva is limited to an appraisal proceeding as the sole remedy for a removed member;

(3) plaintiff mixes direct and derivative claims in the same causes of action; (4) plaintiff's breach of contract and breach of duty of good faith and fair dealing claims are substantively without merit; (5) plaintiff's unjust enrichment claims are duplicative of his contract claims; and (6) plaintiff's remaining claims require that plaintiff be a member of Purslane, which he is not.

Defendants emphasize that the merger of Purslane into Purslane Boathouse was conducted in accordance with New York law. In support, defendants reference Limited Liability Company Law § 414, which they contend states that a manager of a limited liability company may be removed or replaced with or without cause by a vote of the members holding the majority interest. According to defendants, Purslane's Operating Agreement repeats the principle at section 6.1(a), which states that: "Purslane, LLC and the Company agree that a Manager of Purslane, LLC may be removed from such position only upon a unanimous Vote of all the Members (other than the Manager)." Defendants also contend that plaintiff took no action for a statutory fair value determination hearing or otherwise that were then available and that he did not even object to the merger or offer. As of the merger, defendants submit that Akiva ceased to be a member of Purslane and, without membership, Akiva lacks derivative standing to sue. Based on the foregoing, defendants submit that plaintiff's complaint should be dismissed as a matter of law.

Upon review of the parties' submissions, defendants' motion seeking dismissal is granted as to plaintiff's claims for unjust enrichment, imposition of a constructive trust, and injunctive relief, specifically, the second, fourth, fifth and seventh causes of action in the amended complaint. These claims are duplicative of other causes of action, precluded given the existence of an agreement, or fail to state a claim. The motion is otherwise denied. Defendants fail to establish as a matter of law that Akiva is no longer a member of Purslane given the provision in the Operating Agreement governing removal of a member, in particular section 8.1(b).

Accordingly, defendants' motion is granted to the extent that plaintiff's second, fourth, fifth and seventh causes of action are hereby dismissed. The remainder of defendants' motion is denied. The parties are directed to appear for a preliminary conference on August 12, 2025, at 2:30 PM in courtroom 956.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.