

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : COMMERCIAL DIVISION

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

Plaintiffs – Judgment Creditors,

- against -

PURSLANE LLC,

Defendant / Nominal Defendant,

- and against -

PURSLANE BOATHOUSE LLC and HENRY
RICH,

Defendants.

Index No.: _____

Date Purchased:
February 28, 2025

SUMMONS

The basis of venue is CPLR
§ 503(a).

Plaintiff designates Kings
County as the place of trial.

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to
serve a copy of your answer or, if the complaint is not served with this summons, to
serve a notice of appearance on Plaintiffs’ attorney within 20 days after the service of
this summons, exclusive of the day of service (or within 30 days after the service is
complete if this summons is not personally delivered to you within the State of New
York). In case of your failure to appear or answer, judgment will be taken against you
by default for the relief demanded in the verified complaint.

Dated: February 28, 2025

POLLOCK COHEN LLP

By: */s/ Adam Pollock*

Adam Pollock

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Attorneys for Plaintiff

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Complaint

Plaintiff AKIVA REICH, individually and derivatively in the right of and on behalf of PURSLANE LLC, through his undersigned attorneys, brings this action against Defendant / Nominal Defendant PURSLANE LLC, and Defendants PURSLANE BOATHOUSE LLC and HENRY RICH. The claims asserted herein are based on the facts and information set forth below and upon information and belief, unless otherwise stated.

1. In 2016, Plaintiff **Akiva Reich** (“Akiva”)¹ and Defendant Henry Rich (“Henry”) formed a Brooklyn-based event catering company: Purslane LLC. Akiva was the 40% owner and Henry was the 20% owner.

2. Leveraging their networks, Purslane became a true success.

3. But in late 2019, relations between Akiva and Henry broke down.

¹ Because of the similarity in spelling of Messrs. Reich and Rich’s names, we refer to them by their first names, so as to avoid any confusion.

4. Meanwhile, Purslane won the exclusive contract to provide catering at the Prospect Park Boathouse – an elegant, lakeside event space in Brooklyn’s Prosect Park.

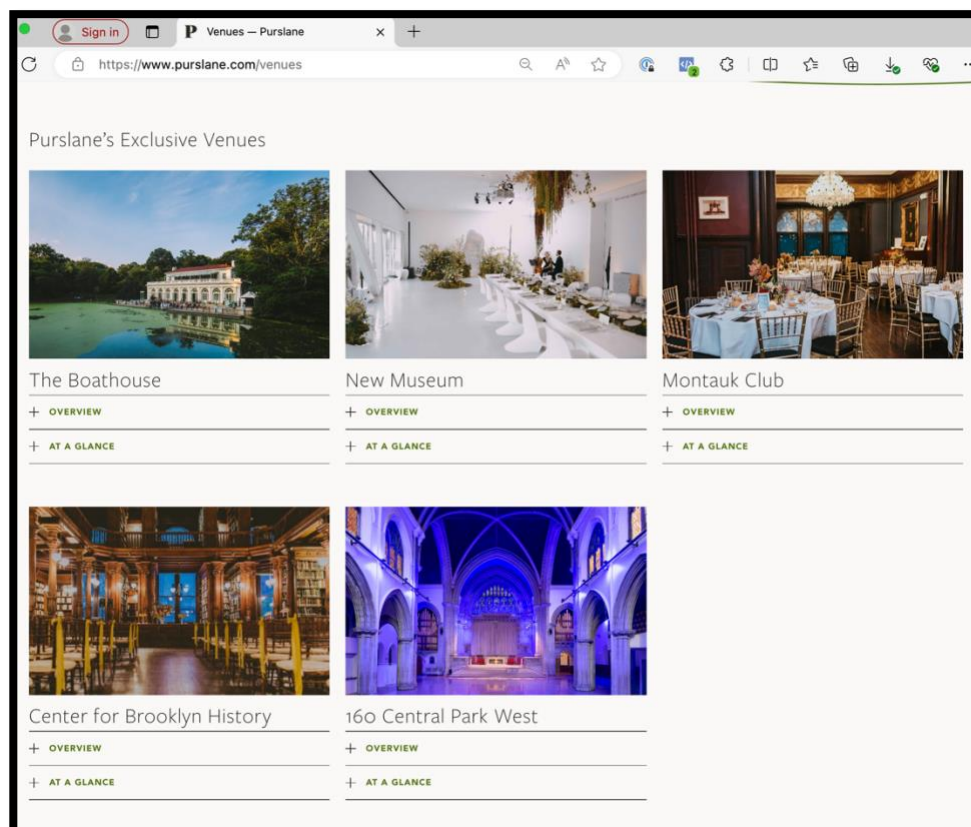
5. Henry then invented flimsy reasons to supposedly terminate Akiva’s 40% membership interest.

6. Then Henry formed a new entity (Purslane Boathouse LLC) and dissolved Purslane LLC on December 8, 2020. Henry gave ownership in Purslane Boathouse LLC to all of the owners of Purslane LLC – *except* Akiva.

7. Purslane Boathouse LLC, which should have been *pro rata* owned by Akiva, captured significant profits when events returned after the covid lockdowns.

8. Meanwhile, even after Purslane LLC was dissolved, Henry continued to operate under the Purslane LLC name. He entered into contracts, signing on behalf of Purslane LLC, and parties paid accordingly.

9. Purslane’s event catering business is lucrative, winning the exclusive contracts at four additional venues:



THE PARTIES

10. Plaintiff **Akiva Reich** is an individual residing in the State of New York.

11. Defendant / Nominal Defendant **Purslane LLC** (“Purslane”) is a New York limited liability company with its principal place of business in Kings County, New York.

12. Defendant **Purslane Boathouse LLC** (“Purslane Boathouse”) is a New York limited liability company with its principal place of business in Kings County, New York.

13. Defendant **Henry Rich** is an individual and a principal of Purslane LLC and Purslane Boathouse LLC.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to CPLR § 301 and § 302.

15. Venue is proper in this Court pursuant to CPLR § 501 as Defendants conduct business in Kings County.

FACTUAL BACKGROUND

Akiva is owed for years of back profits.

16. Akiva was a 40% owner of Purslane LLC.

17. Purslane was a special-events catering company that was formed in June 2016.

18. Purslane also formed Purslane 233, LLC. It spent more than \$600,000 to develop and build a beautiful commercial kitchen and tasting room.

19. The Company grew quickly and reported well over \$2 million in annual revenues in 2017, 2018, and 2019.

20. According to its Operating Agreement, all profits of Purslane were to be distributed equally (“pari passu”) amongst its members.

21. However, Akiva only saw a small portion of the profits that he was rightfully entitled to receive during that time period.

22. Throughout Purslane’s operation, Henry continuously engaged in countless improper actions, which included, 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 for in Quickbooks (nor did he pay appropriate taxes on this cash payment); and (3) engaging in questionable accounting practices and tax evasion by reporting false expenses.

23. Moreover, the profits of the company artificially disappeared through accounting chicanery that was designed to benefit Henry and his other partners at Akiva’s detriment and expense.

24. Indeed, Akiva did not receive *any* distribution of profits for 2019 or 2020. (And even though Akiva was designated as a manager under the operating agreement, he was not even informed whether others did receive distributions during those years.)

Henry entered into an improper financing arrangement.

25. In early 2019, Henry entered into an improper, unfair, and unreasonable financing arrangement with an individual who was effectively serving as Purslane’s attorney at the time.

26. Under the arrangement, 240 shares of Purslane were supposedly “sold” based on a \$2 million valuation. (There were originally 1,000 shares when the company was formed.) According to Henry, the deal contemplated that the attorney would enjoy

80% of the profits until the attorney was paid an exorbitant preferred dividend of \$660,000. In other words, the attorney would be fully repaid with interest *and* keep the shares—a deal that neither Akiva, nor any other sensible business person, would have ever agreed to. And Akiva did not agree to it – indeed, he did not know about it until much later.

27. Although the operating agreement provides for a capital call from its members, Henry disregarded these procedures and instead dealt directly with the attorney. And while the operating agreement plainly required Akiva’s approval for such a capital transaction, no such approval was ever sought.

28. Moreover, the attorney is also an investor in Henry’s other businesses, both where the attorney contributes his services as an attorney and receives “sweat equity.” (The attorney also actually invested money in other Henry projects.) Here, in relation to Purslane, Henry handed the attorney (or his affiliated entities) a sweetheart deal—in recognition of the attorney’s involvement in the *other* businesses—directly favoring one investor over others. This was a clear breach of Henry’s fiduciary duties.

Akiva is owed for his interest in Purslane.

29. On or about January 15, 2020, Akiva learned that his membership interest in Purslane had been purportedly terminated through a merger with Purslane Boathouse LLC, effective November 24, 2019. (Through counsel, Henry claims that Akiva was notified via certified mail, but he did not receive any such mailing.)

30. By letter dated November 21, 2019, Henry claimed that “the original shareholders” of Purslane LLC would be “given fair value for their shares” in merging into Purslane Boathouse LLC. The letter asked that the members of Purslane “Ratify

reverse merger of Purslane LLC into Purslane Boathouse LLC, and issuance of ‘fair value’ to the members of Purslane LLC.”

31. But Akiva did *not* receive any compensation for the fair market value of his interest in Purslane LLC when it was dissolved through this “merger”.

32. Meanwhile, every *other* member of Purslane LLC received shares in Purslane Boathouse LLC *except* Akiva. Clearly, those shares of Purslane LLC had obvious value. And Akiva was clearly deprived of the value of his shares when Purslane Boathouse LLC was created without him.

33. In any event, the Operating Agreement did not authorize any members of Purslane to strip Akiva of any portion of his membership interest. Yet the November 21, 2019 letter to the members of Purslane purports to seek approval of stripping Akiva of 40 of his 400 total shares.

34. The letter maintained that, supposedly, Akiva did not contribute \$20,000 to the business over a five-year period beginning in March 2017, as required by Section 11.18 of the Operating Agreement. This is false. Akiva had made a approximately \$10,000 in these contributions.

35. But Akiva could not continue making contributions because by early 2019, he had become very concerned by Henry’s mismanagement of the operation.

36. Indeed, while serving as the day-to-day manager, Henry never scheduled budget meetings, budget approvals, or provided company updates. And he entirely failed to provide updates to Akiva – the largest shareholder.

37. In January 2019, among other times, Akiva put Henry on notice of some of his concerns. But they went unresolved.

38. Consequently, Akiva would not fund the full contributions, given the active mismanagement by Henry that Akiva had discovered by that point.

39. The November 2019 letter also maintained that, in March 2019, Akiva had rejected a capital raise. But of course Akiva refused to participate in the capital raise, given this active mismanagement at the time.

Customer deposits vanished from Purslane LLC.

40. Meanwhile, Purslane LLC started calendar year 2019 holding some \$1.1 million in customer reservation deposits – for future events – accounting for it as “deferred revenue.”

41. But at the end of 2019, Purslane LLC did not have a single dollar in customer deposits and half of the “deferred revenue” had disappeared.

42. These figures raise obvious questions. How could Purslane LLC have ended the year not holding a single dollar in deposits? And what happened to the “deferred revenue”?

43. The answer is obvious: Henry had improperly moved the customer deposits and the deferred revenue to his new entity: Purslane Boathouse LLC. This is another reason that Akiva must be compensated accordingly.

DEMAND FUTILITY ALLEGATIONS

44. Akiva brings claims derivatively in the right and for the benefit of Purslane LLC to redress injuries suffered, and to be suffered, by Purslane LLC as a direct result of Henry’s conduct.

45. Akiva was a shareholder of Purslane LLC at the time of the wrongdoing alleged herein, and has been a shareholder of Purslane LLC continuously since that time.

46. Akiva will adequately and fairly represent the interests of Purslane LLC and its shareholders in enforcing and prosecuting their rights.

47. Prosecution of this action is in the best interests of Purslane LLC.

48. The wrongful acts complained of herein subject, and will continue to subject, Purslane LLC to continuing harm because the adverse consequences of the actions are still in effect and ongoing.

49. As a result of the facts set forth herein, Akiva has not made any demand upon Purslane LLC to institute the claims asserted herein, since demand would be futile.

50. Henry is, of course, is incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute the claims on behalf of Purslane LLC against himself. Henry faces a sufficiently substantial likelihood of liability and accordingly, there is no reason to believe he would be disinterested in deciding whether pursuing legal action would be in the best interest of Purslane LLC. Indeed, he participated in the wrongful acts described herein.

51. Accordingly, demand upon Purslane LLC should be excused as being futile.

FIRST CAUSE OF ACTION
(Breach of Contract against Purslane LLC)

52. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

53. The Purslane Operating Agreement constituted a valid and enforceable contract.

54. Purslane breached the agreement by failing to distribute profits owed to Plaintiff.

55. Purslane breached the agreement by purportedly terminating Akiva's ownership interest.

56. Purslane breached the agreement by engaging in unauthorized capital transactions.

57. As a result, Plaintiff suffered damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Unjust Enrichment against Henry Rich)

58. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

59. Even after dissolving Purslane LLC, Henry continued to enter into agreements for the catering business, with the contracts signed by Purslane LLC.

60. In purportedly using a dissolved LLC to conduct business, Henry loses its limited liability protections. Resultingly, Henry is personally liable.

61. Henry has been unjustly enriched by retaining profits from the catering business that should have been distributed to Akiva.

62. Retention of those profits is unjust and inequitable because Akiva was and is properly an owner of the Purslane catering business.

63. Henry must disgorge the profits he has made and pay restitution to Akiva.

64. The other partners in Purslane (including Ian McNaughton, Alonso Silva, and Kendra Thalman) are also liable, *pro rata* to their distributions.

THIRD CAUSE OF ACTION
(Breach of Good Faith and Fair Dealing against Henry Rich)

65. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

66. Even after dissolving Purslane LLC, Henry continued to use the entity to enter into agreements for the catering business.

67. In purportedly using a dissolved LLC to conduct business, Henry loses its limited liability protections. Resultingly, Henry is personally liable.

68. Inherent in every contract is a covenant of good faith and fair dealing based on each party's reasonable expectation that the other party would not act in a way that would deny the other party the benefits which that other party contracted.

69. One such reasonable expectation was the Akiva's expectation – as the largest shareholder – to not be unlawfully removed and denied his fair share of profits.

70. Yet, Henry breached the covenant of good faith and fair dealing by unlawfully removing Akiva, launching a parallel business (Purslane Boathouse) without him, and also continuing to do catering business as Purslane.

71. Henry's breaches of the covenant of good faith and fair dealing damaged Akiva.

72. The other partners in Purslane (including Ian McNaughton, Alonso Silva, and Kendra Thalman) are also liable, *pro rata* to their distributions.

FOURTH CAUSE OF ACTION
(Breach of Contract)
(Derivative Claim on Behalf of Purslane LLC
against Henry Rich)

73. Plaintiff, on behalf of Purslane LLC, repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

74. Henry breached the Purslane LLC operating agreement by engaging in self-dealing, committing financial mismanagement, and concealing material financial information, causing harm to Purslane LLC and its members.

75. This action is properly brought derivatively on behalf of Purslane LLC as its assets were improperly diverted to Henry and to Purslane Boathouse LLC.

76. As a result, Purslane LLC suffered damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Unjust Enrichment)
(Derivative Claim on Behalf of Purslane LLC
against Henry Rich and Purslane Boathouse LLC)

77. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

78. Henry improperly diverted assets and opportunities of Purslane LLC to himself and to Purslane Boathouse LLC.

79. Henry and Purslane Boathouse LLC have been unjustly enriched by retaining assets and profits from the catering business that should have been retained by Purslane LLC (and, in turn, distributed *pro rata* to Akiva).

80. Retention of those profits is unjust and inequitable because they should have been properly received by Purslane LLC.

81. Henry and Purslane Boathouse LLC must disgorge the profits they have made and pay restitution to Purslane LLC.

82. The other partners in Purslane (including Ian McNaughton, Alonso Silva, and Kendra Thalman) are also liable, *pro rata* to their distributions.

SIXTH CAUSE OF ACTION
(Breach of Contract)
(Direct claim against Purslane LLC and
derivative claim against Henry Rich)

83. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

84. The Operating Agreement of Purslane LLC requires a 100% vote of its members to dissolve.

85. Henry and the other members, *except* Akiva, purportedly dissolved Purslane LLC without a unanimous vote.

86. Defendants' actions constitute a material breach of the Operating Agreement.

87. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages, including but not limited to the loss of profits from Purslane LLC and any associated financial benefits.

SEVENTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)
(Direct claim against Purslane LLC and
derivative claim against Henry Rich)

88. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

89. Under New York law, every contract, including the Operating Agreement, contains an implied covenant of good faith and fair dealing, which requires that no party act in a way that deprives another party of the contract's intended benefits.

90. Defendants, through their conduct, breached this implied covenant by:

- a. acting in bad faith to exclude Plaintiff from Purslane Boathouse LLC while ensuring that all other members retained ownership;
- b. failing to provide Plaintiff with notice or an opportunity to participate in the merger process; and
- c. manipulating or misusing the provisions of the Operating Agreement for their own benefit and to Plaintiff's detriment.

91. Defendants' conduct was wrongful, malicious, and intended to deprive Plaintiff of his contractual rights and financial interests.

92. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages, including but not limited to the loss of profits from Purslane LLC and any associated financial benefits.

EIGHTH CAUSE OF ACTION
(Corporate Waste)
(Derivative claim against Henry Rich)

93. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

94. As a member and/or manager of Purslane LLC, Henry owed a duty to the LLC and its members, including Plaintiff, to act in the best interests of the company and not to engage in conduct that would waste or improperly dissipate company assets.

95. Henry engaged in corporate waste by:

- a. effectuating a merger that improperly deprived Plaintiff of his rightful ownership interest in Purslane LLC;
- b. transferring the assets of Purslane LLC to Purslane Boathouse LLC without fair consideration or proper authorization; and
- c. otherwise using company resources and decision-making authority to benefit himself at the expense of Plaintiff and Purslane LLC.

96. Henry's actions were self-serving, grossly negligent, and constituted a reckless disregard for the financial well-being of Purslane LLC and its members.

97. As a direct and proximate result of Henry's conduct, Plaintiff has suffered damages, including but not limited to the loss of ownership, financial benefits, and distributions to which they were entitled.

98. Plaintiff demands that the Court impose appropriate equitable and legal remedies, including monetary damages, rescission of the merger, and any other relief the Court deems just and proper.

NINTH CAUSE OF ACTION
(Accounting)
(Individual claim against Purslane LLC
and derivative claim against Purslane Boathouse LLC)

99. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

100. Plaintiff is entitled to an accounting of all financial records of Purslane LLC and Purslane Boathouse LLC.

101. Defendants have failed to provide financial transparency, despite repeated demands.

102. Plaintiff seeks a full accounting of financial records to determine his rightful share of profits.

TENTH CAUSE OF ACTION
(Wrongful Dissociation or Expulsion)
(Individual claim against Purslane LLC
and derivative claim against Henry Rich)

103. Plaintiff repeats and re-alleges all previous paragraphs with the same force and effect as if the same were set forth more fully at length herein.

104. Plaintiff was a 40% owner of Purslane LLC and a member in good standing pursuant to the Operating Agreement and applicable New York law.

105. Under New York law, a member of an LLC may not be involuntarily dissociated or expelled unless the Operating Agreement expressly provides for such removal or unless a court determines that expulsion is proper under New York Limited Liability Company Law § 702 or other applicable provisions.

106. Henry, without proper authority and in violation of the Operating Agreement, effectuated a merger of Purslane LLC into Purslane Boathouse LLC in a manner that excluded Plaintiff from continued ownership, effectively dissociating Plaintiff from the LLC without consent or due process.

107. Henry intentionally structured the merger to deprive Plaintiff of his rightful ownership interest, distributions, voting rights, and other membership privileges.

108. Henry's actions constitute an unlawful dissociation or expulsion of Plaintiff from the LLC, in direct violation of New York law and the Operating Agreement.

109. As a direct and proximate result of Henry's wrongful dissociation or expulsion of Plaintiff, Plaintiff has suffered significant harm, including but not limited to the loss of his ownership interest, financial benefits, and the ability to participate in the governance of the LLC.

110. Plaintiff seeks the following relief:

- a. declaratory judgment that the merger and resulting dissociation of Plaintiff were unlawful and void;
- b. reinstatement of Plaintiff's membership interest in Purslane LLC;
- c. *pro rata* membership interest in Purslane Boathouse LLC;
- d. an accounting of all assets, profits, and distributions of Purslane LLC and Purslane Boathouse LLC to determine Plaintiff's rightful share; and
- e. any additional compensatory, consequential, and punitive damages to be determined at trial.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a) compensatory damages in an amount to be determined at trial;
- b) punitive damages in an amount to be determined at trial;
- c) an accounting of all financial records of Purslane LLC and Purslane Boathouse LLC;
- d) a declaration that Plaintiff remains a rightful owner of Purslane LLC and owns a *pro rata* interest in Purslane Boathouse LLC;
- e) attorneys' fees and costs of suit; and
- f) such other and further relief as the Court deems just and proper.

Dated: February 28, 2025

POLLOCK COHEN LLP

By: /s/ Adam Pollock

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