SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART IAS 11
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STEPHANIE ANDRIS, as Executrix of the Estate
of ELIZABETH AYVIS, Deceased,

Petitioner,

-against-

1376 FOREST REALTY LLC. and
ASTRID SPATOLA,

Respondents.
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DECISION AND ORDER AFTER BENCH TRIAL

Index No: 150879/2019

Procedural History

Petitioner Stephanie Andris commenced the present dissolution action by the filing of a Verified Petition for Dissolution on April 15, 2019. Petitioner commenced this action as the Executrix of the estate of her deceased aunt, Elizabeth Ayvis. Petitioner seeks a decree of judicial dissolution of Respondent 1376 Forest Realty LLC, a holding company, pursuant to New York Limited Liability Corporation Law §702 and the appointment of a Receiver to wind up the LLC's affairs. In sum and substance, Petitioner alleges that it is no longer "reasonably practicable" for the LLC to carry on its business in conformity with its primary purpose, which is to "profitably own and operate" a parcel of real property located at 1376 Forest Avenue in Staten Island, New York. Petitioner further alleges that continuation of the LLC has become "financially unfeasible" because the property that it holds is being neglected by its controlling owner, Respondent Astrid Spatola. Upon dissolution, Petitioner seeks a court ordered sale of the property and assets held by the LLC and a distribution of the proceeds between the parties. Finally, Petitioner seeks an accounting of the LLC's transactions.

Respondents 1376 Forest Realty LLC. and Astrid Spatola filed a Verified Answer to the Dissolution Petition on April 30, 2019. In addition to contesting Petitioner's factual allegations, Respondents' Answer asserted several affirmative defenses including a claim that Petitioner lacks standing to maintain this action.

By Notice of Motion dated December 12, 2019 (Seq. No. 002), Respondents moved to dismiss the Petition pursuant to CPLR §§3211(a)(1) and (a)(7). By Notice of Cross Motion dated January 24, 2020 (Seq. No. 003) Petitioner opposed Respondents' dismissal motion and cross-moved for an Order granting Summary Judgment on the dissolution cause of action. Respondent's dismissal motion was granted by Short Form Order dated May 14, 2020 (Marrazzo, J). Therein, the Court dismissed Petitioner's cause of action for an accounting and opined that "the Court is convinced that the property is being properly maintained." Petitioner's cross motion for summary judgment was adjourned for the parties to engage in settlement negotiations. Shortly after the May 14th Order was issued Petitioner filed a Notice of Appeal, but that appeal was not perfected.

Petitioner's cross-motion for summary judgment was subsequently denied by Order dated July 30, 2020 (Marrazzo, J.). Therein, the Court found that the terms of a 2004 written agreement between the owners of the LLC precluded a finding of summary judgment in Petitioner's favor granting the dissolution claim. A Notice of Appeal challenging the July 30th Order was also filed by Petitioner, and that appeal *was* perfected.

By Notice of Motion dated October 21, 2020 (Seq. No. 004), Respondents moved for an Order granting them summary judgment dismissing the dissolution cause of action. Respondents' motion was granted by Order dated December 1, 2020 (Marrazzo, J.). Therein, the Court reiterated the findings that it made in its July 30th and May 14th Orders and determined that those Orders essentially resolved all the material issues of fact in the case. Summary judgment was awarded to Respondents, and the case was dismissed in its entirety. Petitioner filed a Notice of Appeal challenging the Dismissal Order on December 4, 2020, and perfected that appeal.

The Appellate Division, Second Department adjudicated the two perfected appeals in a pair of companion decisions issued on February 22, 2023. **See *Matter of Andris v. 1376 Forest Realty, LLC* 213 A.D.3d 923 (2d Dept. 2023); *Matter of Andris v. 1376 Forest Realty, LLC*, 213 A.D.3d 924 (2d Dept. 2023)**. The Appellate Division held, *inter alia*, that while Petitioner had the authority to exercise her deceased aunt's rights in the LLC, that she failed to meet her initial burden of establishing her entitlement to summary judgment on her dissolution claim as a matter of law. Accordingly, the Appellate Division affirmed the denial of summary judgment to Petitioner. However, in its companion opinion, the Appellate Division reversed the December 1st Order which granted summary judgment to Respondents and reinstated the dissolution cause of action finding that Respondents also failed to meet their initial burden to establish that it was "reasonably practicable to carry on the business in conformity with the operating agreement." The Appellate Court further found that there was a question of fact as to whether Respondent owed a fiduciary duty to Petitioner, as executor, and whether any such duty was breached. Accordingly, Petitioner's dissolution cause of action was remanded to this Court for a trial. Notably, as the appeal of the May 14th Order was never perfected, and the Appellate Division did not address Petitioner's cause of action for an accounting, that claim remains dismissed.

The present matter was referred to this Part for a bench trial on June 23, 2025. The trial was conducted over the course of four days.[1] Petitioner called herself as a witness and called the following additional witnesses, Thomas Petracca, an expert in building engineering; Jospeh

[1] September 17, 2025, September 18, 2025, September 19, 2025, and September 30, 2025.

Machaalani, the building's third floor tenant; David Egan, the LLC's certified public accountant; Yury Gershman, a mold expert; Henry Salmon, a real estate expert, and Respondent Spatola. Respondent called one additional witness of her own, Anthony Ottombrino, a mold expert. Both parties offered several documents into evidence (Pet. Ex. 1-42 & Resp. Ex. A-J). In addition, judicial notice was taken of several documents (Ct. Ex. 1-12).

Factual History

Many of the underlying facts relevant to this case were stipulated to by the parties (See NYSCEF #157). The balance of the factual history was provided by the credible testimony of Respondent Spatola. On or about October 4, 1996, Michael Ayvis (now deceased) and Respondent Astrid Spatola purchased a parcel of real property located at 1376 Forest Avenue, Staten Island, New York (hereinafter "property" or "building"). The property consists of a mixed-use commercial/residential building with a commercial space on the ground floor and two residential apartments on the second and third floor. The first-floor commercial space is occupied by a Pizzeria owned and operated by the building's third floor tenant Joseph Machaalani. The second-floor apartment is occupied by a tenant identified only as "George." The roof of the building is currently the subject of commercial leases held by Verizon and T-Mobile for the installation of cell phone antennas.

Michael Ayvis passed away in September 2002 and his 50% ownership interest passed to his wife, Elizabeth Ayvis. On June 25, 2004, Elizabeth Ayvis, Respondent Astrid Spatola and her husband Carmine Spatola entered into a written "Agreement" (Pet. Ex #1). This agreement set forth the owners' understanding of how the property would be maintained, and how rental income from the property would be distributed in the event of an owner's demise. The agreement further indicates that it was intended to be binding upon each owner's "heirs, assigns, and transfeees." In sum and substance, the owner's agreed that if one owner were to die, the remaining owner(s) would be "solely entitled to collect and retain all rental income generated from the premises during their lifetime, provided they… assume full responsibility for the payment of all expenses related to the premises, including but not limited to, real estate taxes, water and sewer charges, insurance, and ordinary maintenance and upkeep."

Approximately two years after the agreement was signed, the owners formed a holding company known as "1376 Forest Realty LLC." Elizabeth Ayvis and Astrid Spatola shared an equal 50% ownership interest as members of this newly formed LLC. No formal operating agreement or articles of organization were drafted for the LLC. Petitioner Andris credibly testified that in or around 2012 her aunt Elizabeth began suffering from dementia. Respondent Spatola credibly testified that during the last years of her life Elizabeth's share of the maintenance obligations regarding the building were handled primarily by her sister, Joyce Vlogianitis. Elizabeth Ayvis passed away on February 21, 2026. Since that date, pursuant to the terms of the 2004 agreement, Respondent Spatola has been collecting rent and paying expenses related to the property. Upon Elizabeth's death, Joyce was appointed Executrix of her estate. Sadly, Joyce passed away a few months after Elizabeth. Upon Joyce's death, her daughter, Petitioner Stephanie Andris, was appointed Successor Executrix by the Surrogates Court by Certificate of Appointment dated February 21, 2016.

Standing Issue

At the start of trial Respondents' filed a memorandum of law, requesting a ruling in limine as to whether Petitioner had standing to maintain this action. In sum and substance, Respondents argued that the Petitioner did not have standing because she was not a "member" or "assignee of a member" of 1376 Forest Realty LLC. Respondents argued that since she was not a member of the LLC, she did not have a "legal stake in the outcome of the litigation." By Order dated September 17, 2025, this Court found that Petitioner had standing to maintain this action as she was appointed by the Surrogates Court as the "Successor Executrix" of her late aunt's estate, and that she commenced this action in her role as "Successor Executrix" to settle that estate. Thus, the causes of action raised in the Verified Petition relate to the rights and obligations of Decedent Elizabeth Ayvis, and not those of Petitioner Stephanie Andris as an individual.

"Causes of action arising out of contracts made by the decedent in his or her lifetime, if they are such as survive his or her death, are a part of the personal estate in respect of which the executor represents the person of the deceased. The executor is in law the decedent's assignee. Thus, the personal representative may maintain an action in his or her representative capacity… [but] may only enforce the rights which the decedent had." **41 NY. Jur. 2d, Decedent's Estates, §1413; see also *Estate of DePeralta v. Amato*, 929 N.Y.S.2d 199 (Sup. Ct. NY Cty. 2011); *Eastern Star Acupuncture, P.C. v. Allstate Ins. Co.*, 36 Misc. 3d 41 (App. Term. 2d Dept. 2012); *Vick v. Albert*, 17 A.D.3d 255 (1st Dept. 2005).** Similarly, Limited Liability Company Law §608 authorizes the executor of a deceased member to "exercise all of the member's rights for the purpose of settling his or her estate." **See *Yew Prospect, LLC v. Szulman*, 305 A.D.2d 588 (2d Dept. 2003)**. However, while the claims set forth in the Verified Petition are asserted in the name of "Elizabeth's Estate," it is undisputed that Stephanie Andris and her non-party sister would stand to share in the proceeds of any sale of the property at issue, were a judicial dissolution to be granted.

Applicable Law

The law applicable to this case was succinctly set forth by the Appellate Division, Second Department, when it decided the appeals filed during its pendency. Limited Liability Company Law §702 permits a court to direct the judicial dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with its articles of organization or operating agreement. **See *Matter of FR Holdings, FLP v. Homapour*, 145 A.D.3d 936 (2d Dept. 2017)**. To establish her right to a dissolution of the LLC, Petitioner has the burden of proving that "it is not reasonably practicable to carry on the business in conformity with its articles of organization or operating agreement." To do so, Petitioner must establish "in the context of the terms of the operating agreement that (1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or (2) continuing the entity is financially unfeasible." **See *Matter of Andris v. 1376 Forest Realty LLC*, 213 A.D.3d 923 (2d Dept. 2023)**. To succeed on a breach of fiduciary duty claim, Petitioner must first establish that Respondent Spatola owes her a fiduciary duty, in her role as executor of her aunt's estate. Petitioner must then prove that Respondent Spatola violated that fiduciary duty. **See *Matter of Andris v. 1376 Forest Realty, LLC*, 313 A.D.3d 924 (2d Dept. 2023)**. An essential element of a breach of fiduciary duty claim is also a showing of damages directly caused by the alleged misconduct. **See *Stortini v. Pollis*, 138 A.D.3d 977 (2d Dept. 2016)**.

Decision

Limited Liability Company Law §702 authorizes a judicial dissolution of an LLC on the application of a member when it is shown that it is "not reasonably practicable to carry on the business in conformity with its articles of organization or operating agreement. **See *Matter of FR Holdings, FLP v. Homapour*, 145 A.D.3d 936 (2d Dept. 2017)**. While the statute requires this determination to be made within the context of the terms of an "operating agreement" or "articles of organization" the parties here have stipulated that no such formal agreement was drafted when the LLC was formed. In the absence of a formal written operating agreement, the LLC is governed by the numerous "default provisions" of the Limited Liability Company Law**. See Limited Liability Company Law §§401-704; see also *Matter of Eight of Swords, LLC*, 96 A.D.3d 839 (2d Dept. 2012); *Shapiro v. Ettenson*, 146 A.D.3d 650 (1st Dept. 2017)**. These statutory provisions have been construed to place the burden on the Petitioner to establish, by a preponderance of the evidence, that Respondent was unwilling or unable to achieve the "purpose" of the LLC or that the LLC was no longer financially feasible. **See *Matter of 1545 Ocean Ave. LLC*, 72 A.D.3d 121 (2d Dept. 2010).** Judicial dissolution is a "drastic remedy" that should be implemented only upon a proper showing. **See *Breiterman v. Chemical Bank*, 181 A.D.2d 675 (2d Dept. 1992)**.

The "purpose" of a holding company is generally to own, maintain and insure real property and to limit the liability of its owners. **See *Cinque v. Largo Enters.*, 212 A.D.2d 608 (2d Dept. 1995); *G.F.A. Advanced Sys., Ltd v. Local Ocean LLC*, 137 A.D.3d 479 (1st Dept. 2016); *Palterovich v. Fefer*, 2022 N.Y. Misc. Lexis 89073 (Sup. Ct. Rich. Cty. 2022)**. Petitioner argues, referencing the June 2004 agreement, that the "purpose" of Respondent 1376 Forest Realty LLC is to "keep the building known as 1376 Forest Avenue adequately maintained and insured" (Pet. Summation Pg. 1). Respondents do not suggest an alternative "purpose" for the LLC.

(1) Maintenance and Repair

At trial, Petitioners called several expert witnesses to establish that Respondent Spatola has failed to properly maintain the building. Petitioners first called Thomas Petracca, an expert in building engineering and design. Mr. Petracca inspected the building on October 21, 2024, and prepared a report which was received into evidence (Pet. No. 2). Among other issues, Mr. Petracca indicated that the buildings roof was in "poor condition" and leaking, which resulted in the formation of mold in areas of the third floor and basement. He attributed the damaged condition of the roof, in part, to the "faulty" installation of a cell phone antenna array. Mr. Petracca also observed cracks in the buildings exterior that he opined "would leave the premises vulnerable to water filtration in the future. Mr. Petracca concluded that the various leaks were at risk of weaking the structure, which could ultimately lead to a portion of the building collapsing if not repaired. However, on cross examination, Mr. Petracca admitted that the conditions he identified did not "currently" endanger the structural integrity of the building (Tr. 9/17/25, p. 60). Mr. Petracca further admitted that he had not returned to the building since October 2024 and was unaware if any of the conditions that he identified had been subsequently repaired.

Petitioner also called an expert "mold assessor," Yury Gershman, to address the mold condition in the building caused by the leaking roof. Mr. Gershman first inspected the building in September 2024 and inspected it again just before his testimony in September 2025. Mr. Gershman testified that he in 2024 observed visible mold in areas of the third floor and basement, and evidence of water damage. Mr. Gershman also conducted air monitoring and detected mold on the third-floor ceiling and in the basement. Mr. Gershman opined that the mold levels detected in 2024 required "immediate remediation" to avoid health concerns to the buildings occupants and the physical deterioration of the building. On his return inspection in 2025, Mr. Gershman observed that the mold on the third floor had been remediated, but that the basement had not. Mr. Gershman also conducted additional air monitoring on his return visit and mold was detected in the third-floor bathroom and in the basement (See Pet. No. 19). On cross examination Mr. Gershman admitted that his report indicated that the mold levels detected were "acceptable" but opined that they were still potentially dangerous and in need of remediation. Mr. Gershman further indicated that he disagreed with certain of his own report's findings because his personal expertise trumped that of a lab computer (Tr. 9/19/25 p.45).

Finally, Petitioner called a real estate expert, Mr. Henry Salmon, to discuss the value of the property and its maintenance under Respondent Spatola's care. Two real estate appraisal reports prepared by Mr. Salmon were admitted into evidence (Pet. Ex. 21 & 22). Petitioner's first report, dated April 16, 2018, found that 1376 Forest Avenue was worth **$960,000** in "as is" condition. Mr. Salmon's 2018 Report further found that the building "has been renovated within the last ten years with a new roof, windows, kitchens, baths, French drain in basement and mechanical systems." Mr. Salmon opined that the building "has been maintained in average to good condition both inside and out." Mr. Salmon's second report, dated December 8, 2023, increased the value of the property to **$1,350,000** but indicated its degraded condition. Mr. Salmon's 2023 report found that the building had been renovated within the last 15 years and had been maintained in "average" condition. Mr. Salmon's Report indicated that certain repairs had been "deferred" including the repair of plaster damage in the hallways and mold remediation in the basement (Tr. 9/19/25, p. 109). Mr. Salmon testified consistent with his reports, but on cross examination clarified his use of the term "average condition." Mr. Salmon opined that the building was in average condition as compared to similarly aged buildings in Staten Island that he appraised over the span of forty years. Mr. Salmon concluded that nothing "unique" stood out to him about this building's physical condition (Tr. 9/19/25 p.122).

In rebuttal, Respondent Astrid Spatola credibly testified in her own defense. At the time of her testimony Respondent Spatola was 84 years old. Ms. Spatola testified that while she owns 1736 Forest Avenue as a member of an LLC, she does not actively manage its day-to-day affairs. Instead, she delegates the legal affairs of the LLC to her attorney and its financial affairs to her accountant. As for the maintenance and upkeep of the property, she has delegated "management" duties to the building's third floor tenant Joseph Machaalani. In addition to being the buildings *de facto* "superintendent" and third floor tenant, Mr. Machaalani also operates a Pizzeria out of the first-floor commercial space. In return for his management services, Mr. Machaalani resides in the third-floor apartment rent free, and his Pizzeria pays rent at a lower than market rate. Respondent Spatola detailed a lengthy list of specific responsibilities delegated to Mr. Machaalani and testified that he also serves to "facilitate" contractors that she hires to maintain the building and acts as a liaison to the cell phone companies that lease space on the roof (Tr. 9/19/26 p.66). Respondent further testified that while Mr. Machaalani will often handle things himself, he calls her for guidance with "major problems."

Mr. Machaalani was called as a witness by Petitioner. Mr. Machaalani credibility testified that his Pizzeria has been a tenant of the building since 2008, and that he has resided there as an individual since 2020. The Pizzeria pays **$1,300** a month in reduced rent and he resides in the building rent free. In consideration, Mr. Machaalani acts as the building's superintendent and "takes care of whatever…has to be done" (Tr. 9.17.25 p. 70). Mr. Machaalani detailed a long list of his responsibilities including cleaning, snow removal, minor repairs, and contacting outside contractors when major work needs to be done. Mr. Machaalani indicated that he would often handle the cost of repairs himself, but that Respondent Spatola would contribute funds upon request. (Tr. 9/17/25 p.105). To facilitate payment, Respondent Spatola has provided Mr. Machaalani with a credit card associated with Respondent 1736 Forest

Ave LLC. Mr. Machaalani testified that he is also primarily responsible for providing access to and communicating with the Verizon and T-Mobile contractors that work on the roof.

Petitioner Andris testified at trial, as Executrix, in support of her late aunt's claims. Petitioner specifically identified the "roof issue" as her primary concern regarding Respondent's maintenance of the building. Petitioner went so far as to testify that if the roof were repaired, she would not have any other concerns (Tr. 9/30/25 p. 137). Both Respondent Spatola and Mr. Machaalani credibility testified that the leak in the roof has been fixed during the pendency of this action. Mr. Machaalani testified that in or around August 2025 he hired a roofing contractor at Respondent Spatola's direction. That contractor repaired the damage to the roof and replaced the skylight. While the repairs were completed by an independent contractor hired by the Respondents, a contribution of $**17,910** towards the cost of the repair was paid by T-Mobile in settlement of Respondent Spatola's claims (See Pet. Ex. 3). A similar situation occurred with Verizon who repaired damage that they caused to the stairs in the building. In any event, Mr. Machaalani credibly testified that since the repairs to the roof were completed, it no longer leaks (Tr. 9.17/25 pgs. 73-75).

The second maintenance issue raised by Petitioner in this proceeding was the presence of mold in the building resulting from leaks in the now repaired roof. To address this issue Respondents called Anthony Ottombrino, a mold expert. The reports prepared by Mr. Ottombrino were admitted into evidence at trial (See Resp. Exs. G and H). Mr. Ottombrino was retained by Respondent Spatola to conduct a mold inspection of 1736 Forest Avenue. The first inspection of the property took place in October 2024, and a follow up inspection took place in September 2025. Mr. Ottombrino conducted air monitoring in the building on both occasions and sent the samples to a lab. Mr. Ottombrino testified that the only mold he detected in the building was in the third-floor bathroom in 2024, and that by the time he returned in 2025, it had been remediated (Tr. 9/18/25 pgs. 99-100). Mr. Ottombrino testified that all other areas of the building tested within normal limits.

After considering the credible testimony offered by both Petitioner's and Respondents' witnesses, this Court finds that Petitioner has failed to meet her burden of establishing that Respondent Spatola is "unwilling or unable" to achieve the "purpose" of Respondent 1376 Forest Realty LLC to maintain and repair the property. **See *Barone v. Sowers*, 128 A.D.3d 484 (1st Dept. 2015); see also *Matter of Kassab v. Kassab*, 195 A.D.3d 830 (2d Dept. 2021)**. This court credits the testimony of Petitioner's witnesses as to the defects and conditions that they observed, many of which are undisputed. However, this Court also credits the testimony of Respondent's witnesses who established that necessary repairs have been conducted to address those conditions. It was not Petitioner's burden to establish the *presence* of defects in a more than 100-year-old building, rather it was Petitioner's burden to prove that Respondent Spatola is "unwilling or unable" to address those defects. **See *Long Is. Med. & Gastroenterology Assoc., P.C. v. Mocha Realty Assoc., LLC*, 191 A.D.3d 857 (2d Dept. 2021)**.

Respondent Spatola has established that through her own efforts, and the efforts of Mr. Machaalani, she has routinely and regularly funded and/or facilitated any repairs necessary to address the issues inherent in a building constructed in 1931. She has further established, as evidenced by the T-Mobile settlement, that she is willing to enforce the LLC's legal rights to protect the building when necessary. Respondent has also credibly testified that the building is currently insured by an umbrella policy and always has been "fully insured" (Tr. 9/30/25 p. 36). Accordingly, there is no evidence in the trial record that Respondent Spatola has unreasonably neglected her duties as a member of 1376 Forest Avenue LLC to "maintain and insure" the property located at 1376 Forest Avenue.

The allegations raised by Petitioner that she has been excluded from information concerning the property and its operation after the death of her aunt does not warrant a different result, as the maintenance of the property is solely the responsibility of Respondent Spatola "during her lifetime" pursuant to the terms of the 2004 Agreement (See Pet. Ex. 1, Para. 2). **See *Doyle v. Icon*, LLC, 103 A.D.3d 440 (1st Dept. 2013); see also *Matter of Mangan v. Second to None, LLC, 2016 NY Slip Op 32378 (Sup. Ct. Rich. Cty. 2016)***. Notably, the prior Order issued in this proceeding denying Petitioner's "right" to an accounting has become law of the case, so it is unclear what, if any, information Petitioner is entitled to regarding the current operation of the property (See Order dated 6/17/25; Colon, J.).

(2) Financial Feasibility

As an alternative ground for dissolution under Limited Liability Company Law §702, a petitioner may establish that it is no longer "financially feasible" to maintain the LLC. **See *Mizrahi v. Cohen*, 104 A.D.3d 917 (2d Dept. 2013)**. As to financial feasibility, the evidence at trial established that 1376 Forest Realty LLC has historically been and continues to be profitable. Two of the three floors of the building are rented at modest rates. The first-floor commercial tenant pays **$15,600** a year and the second-floor residential tenant pays **$19,800** a year (See Pet. Ex. 22). In addition, approximately **$76,000** of annual income is derived from the cell phone antenna leases on the building's roof. At trial, the LLC's accountant, David Egan, testified that the average net income of the LLC between 2016 to 2024 was **$76,924**, and that he had never heard of a business that was profitable being judicially dissolved (Tr. 9/18/25 pgs. 50-51). In addition, Mr. Salmon, who testified regarding the value of the property in 2023 indicated that the cell phone tower leases increased the property's value by **$280,000** (Tr. 9/19/25 p. 110). In addition, Respondent Spatola credibly testified that she has every intention of renewing these leases, which would provide reliable income for the building's foreseeable future.

To the extent that Petitioner disagrees with Respondent Spatola's decision to forego rent for Mr. Machaalani in exchange for his assistance in maintaining the property, the authority to control the day-to-day operations of the building rests solely with the Respondent as per the 2004 agreement. The standard of financial feasibility does not require the LLC to *maximize* its profitability, especially under the present circumstances where any profits inure only to the benefit of Respondent during her lifetime. Rather, "financial feasibility" relates to Respondent's ability to keep the property free of liens, judgments and other indicia of financial instability. In this regard Respondent has credibly testified that she has always timely paid all the bills and expenses related to the building (Tr. 9/30/25 p. 34). This Court finds that Petitioner has woefully failed to establish that the LLC is in financial turmoil, insolvent, or otherwise cannot meet its debts and obligations and thus has failed to prove that continuing the LLC would be "financially unfeasible." **See *TZ Vista, LLC v. Helmer*, 235 A.D.3d 691 (2d Dept. 2025); see also *Lazar v. Attena LLC*, 2020 NY Slip Op 33003(U) (Sup. Ct. NY Cty. 2020)**.

(3) **Breach of Fiduciary Duty**

The last "cause of action" raised by Petitioner alleges that Respondent Spatola breached one or more fiduciary duties owed to the estate. Notably, this claim **is not asserted** as a cause of action in her Verified Petition which only identifies two claims, a cause of action seeking an "accounting" and a cause of action for the judicial dissolution of the LLC. The accounting cause of action was dismissed by prior Orders dated May 14, 2020 (Marazzo, J.) and June 17, 2025 (Colon, J.) The dissolution cause of action has been denied for the reasons set forth herein. The first mention of a "breach of fiduciary duty" appears in Petitioner's Cross Motion for Summary Judgment dated January 24, 2020 (Seq. No. 003). Therein, Petitioner argues that Respondent Spatola owes the estate a fiduciary duty, and that her alleged breach of the same supports the dissolution and accounting claims. However, Petitioner's pre and post-trial submissions both imply that Petitioner has asserted a separate cause of action for a breach of fiduciary duty, which she has not. However, as Appellate Division, Second Department's remand specifically directed this Court to determine whether Respondent owes a fiduciary duty to Petitioner and if that duty was breached, the Court will address the same herein. **See *Matter of Andris v. 1376 Forest Realty, LLC*, 313 A.D.3d 924 (2d Dept. 2023)**

Whether asserted as a separate claim, or in support of the dissolution cause of action, the elements of a cause of action to recover damages for a breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct. **See *Golobe v. Mielnicki*, 44 N.Y.3d 86 (2025)**. A managing member of an LLC typically owes a fiduciary duty to other members of the LLC. **See *Salm v. Feldstein*, 20 A.D.3d 469 (2d Dept. 2005)**. In this context, a breach of fiduciary duty has been defined as taking an action for one's own improper personal benefit and against the best interests of the party to whom the duty is owed. **See *McKinnon Doxsee Agency, Inc. v. Gallina*, 187 A.D.3d 733 (2d Dept. 2020)**.

As explained above, Petitioner's standing to maintain this action is limited to her role as Executor. Accordingly, she can only assert causes of action that could have been asserted by her late aunt, Elizabeth Andris, for the purpose of settling her estate. **See *Crabapple Corp. v. Elberg*, 153 A.D.3d 434 (1st Dept. 2017)**. Accordingly, any alleged breach of fiduciary duty would have had to occur before Elizabeth's passing on February 21, 2016. After that date Respondent Spatola became both 100% responsible for the maintenance of the building and gained the sole right to receive all profits from the same, pursuant to the 2004 Agreement. Respondent Spatola does not owe a fiduciary duty to Stephanie Andris as an individual, as she is not an owner or member of the LLC, and has no rights under the 2004 agreement.

In summation, Petitioner attempts to establish that as soon as Elizabeth started to suffer from the effects of dementia in 2014, Respondent Spatola began "looting" the LLC for her own benefit. Petitioner alleges that she did so by building up the LLC's cash reserves by deferring necessary maintenance to the building. Through documentary evidence submitted at trial Petitioner established that the balance of the LLC's operating account increased from **$35,986** in December of 2014 to **$76,886** in December of 2015 and then decreased to **$10,000** in December of 2016, Elizabeth having passed away in February of that year (See Pet. Ex. 7). However, Petitioner's speculation as to *why* these balance fluctuations occurred is without evidentiary value as arguments made in summation are not evidence. **See *Bhim v. Platz*, 207 A.D.3d 511 (2d Dept. 2022)**. No credible evidence was offered at trial to support a claim that Respondent Spatola was intentionally delaying necessary repairs to later steal those funds after her friend and business partner's passing. In fact, Respondent Spatola credibility testified that when Elizabth "became senile" her sister, Joyce Vlogianitis (the first Executrix and Petitioner's Mother) took over her responsibilities to collect the rent and manage her share of the work related to the building (Tr. 9/30/25 p.24). Moreover, Petitioner's breach of fiduciary duty claim is belied by her own testimony, as she testified that she was aware of the 2004 agreement and that despite the allegations in her Petition, she understood that the estate is not entitled to distributions (Tr. 9/30/25, pgs. 131-133). Finally, the extensive credible testimony of the LLC's accountant, David Egan, explains many of the financial "discrepancies" identified by Petitioner and does not support any claim of wrongdoing on Respondents' part (Tr. 9/18/25).

Petitioner's remaining allegations in support of her breach of fiduciary claim relate to the alleged difficulties that she encountered when attempting to obtain financial information about the LLC. Petitioner alleges that Respondent "stonewalled" her when she requested information regarding the building's maintenance and financial matters. However, these claims were also unsubstantiated at trial. Petitioner admitted that when she requested documents from Respondent Spatola, she received documents in response (Tr. 9/30/25 p.81). Each of Petitioner's expert witnesses also testified that they were not obstructed when they sought access to the building as Mr. Machaalani allowed them to look wherever they wanted. While Petitioner credibility testified that she did not receive a response to her requests for information from Goldenthal & Suss, the LLC's accountants, a non-party's failure to comply with discovery demands is an insufficient basis for a breach of fiduciary claim against Respondents. There is no evidence in the record to support a claim that Respondents unreasonably withheld information that was requested. Moreover, the extent of Petitioner's right to financial documentation is limited by the dismissal of her cause of action for accounting. This dismissal has become law of the case and thus cannot be revisited. **See *Matter of Koegel*, 184 A.D.3d 764 (2d Dept. 2020)**. However, given the extent of the financial documentation offered by Petitioner at trial, she has clearly obtained substantial compliance with her document demands.

Conclusion

For the detailed reasons set forth herein, and for the additional reasons set forth in Respondent's Summation, this Court finds that Petitioner has failed me meet her burden to establish that it is no longer "reasonably practicable" to carry on the business or that maintaining the LLC is no longer financially feasible. Rather the trial record supports a finding that Respondent Spatola has consistently taken reasonable steps to preserve and maintain the building, despite its age, has insured the same, and that the building remains profitable. Finally, Petitioner failed to establish that Respondent Spatola breached a fiduciary duty owned to the Estate of Elizabeth Andris, or her heirs. Accordingly, the Petition is denied with prejudice.

This constitutes the Decision and Order of the Court after trial. In the event that an application was made, or claim asserted, before or during trial, and that claim has not been specifically addressed herein, it is hereby denied.

Dated: March 20, 2026

Catherine M. DiDomenico

Hon. Catherine M. DiDomenico
Acting Justice Supreme Court