

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

09602832

----- X
KEITH DOYLE,

Plaintiff,

- against -

ICON, LLC d/b/a "R BAR," DAVID FINNEGAN, :
and SEAN CUNNINGHAM,

Defendants.
----- X

Index No.

SUMMONS

Plaintiff Designates New York
County as the Place of Trial

The Basis of Venue is the
Residence of Defendants

Summons Filed on

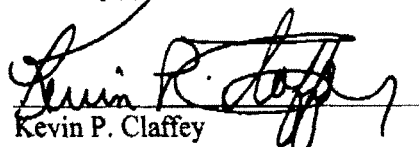
TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your verified answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the date 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); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: August 26, 2009

Law Office of Kevin P. Claffey, P.C.
Attorney(s) for Plaintiff

By:


Kevin P. Claffey
19 Fulton Street - Suite 402
New York, NY 10038
(212) 233-4200

FILED
SEP 14 2009
COUNTY CLERK'S OFFICE
NEW YORK

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VERIFIED

COMPLAINT

09602832

Plaintiff, Keith Doyle ("Doyle" or the "Plaintiff"), by his undersigned attorneys, for his
complaint in the captioned action, on information and belief, states:

JURISDICTION AND VENUE

1. Doyle is a resident of the state and county of New York.
2. Defendant ICON, LLC ("ICON" or the "Company"), is a limited liability company organized and existing under the laws of the State of New York and maintains a principal place of business at 218-220 Bowery, New York, New York 10013.
3. ICON does business under the name R Bar, and was f/k/a Pioneer Bar.
4. Doyle is a member of ICON and owns a 1/3 interest thereof.
5. Defendant David Finnegan ("Finnegan") is a member of ICON and owns a 1/3 interest thereof.
6. Finnegan resides at 747 9th Avenue, New York, New York 10194.
7. Defendant Sean Cunningham ("Cunningham") is a member of ICON and owns a 1/3 interest thereof.
8. Cunningham resides at 39 Jane Street, New York, New York 10014.

FILED
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BACKGROUND

9. Plaintiff is the Secretary of ICON and has been since its formation on February 6, 2001.
10. Finnegan is the President of ICON and has been since its formation in February 6, 2001.
11. The members of ICON failed to enter into an operating agreement as required by § 417 of the Limited Liability Company Law ("LLC Law") of the State of New York.
12. Consequently, ICON is governed by the terms of the default statutory operating agreement of the LLC Law.
13. Since January 2007 Plaintiff has been systematically excluded from the operation and affairs of the Company by Finnegan and Cunningham.
14. Finnegan and Cunningham have failed and refused to account to the Plaintiff in regard to the Company's assets and affairs.
15. Finnegan and Cunningham have failed and refused to account to the Plaintiff as to the profits and losses of the Company.
16. Finnegan and Cunningham have excluded Plaintiff from participating in decisions relating to the management and/or disposition of property of the Company.
17. Finnegan and Cunningham have failed to hold annual and/or regular meetings of the members of the Company.
18. Finnegan and Cunningham have disposed of Company assets without Plaintiff's knowledge or consent.

19. Finnegan and Cunningham have failed and refused to pay Plaintiff his share of the profits of the Company and/or award distributions to Plaintiff.

20. Finnegan and Cunningham have converted Plaintiff's share of Company distributions to their own use and benefit.

AS AND FOR A FIRST CAUSE OF ACTION
(Judicial Dissolution)

21. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

22. Because ICON lacks a written operating agreement, its operations are governed by the default provisions of the New York LLC Law.

23. The relevant issue in an application for dissolution herein is the withdrawal or removal of a member of ICON.

24. The relevant section of the LLC Law states that "a member may not withdraw ... prior to the dissolution and winding up of the limited liability company."

25. Under the facts and circumstances set forth herein, ICON must be dissolved and the business wound-up prior to the expulsion of Plaintiff from the Company.

AS AND FOR A SECOND CAUSE OF ACTION
(Appointment of Receiver)

26. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

27. Under the applicable provisions of the LLC Law, the Court, in its discretion, may appoint a receiver or liquidating trustee to wind up the business of the Company.

28. Given that Finnegan and Cunningham have totally excluded Plaintiff from the operation of the Company; have refused to provide an accounting of profits and losses and have converted Company assets to there own benefit, Plaintiff requests that the Court appoint a receiver to wind up ICON's business.

AS AND FOR A THIRD CAUSE OF ACTION
(Demand for Accounting)

29. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

30. Notwithstanding Plaintiff's 1/3 ownership interest in the Company, Finnegan and Cunningham have assumed total control and management of the Company.

31. The de facto control of the Company by Finnegan and Cunningham is without proper authority.

32. Plaintiff has on numerous occasions requested from Finnegan and Cunningham information concerning the Company's business and affairs.

33. Petitioner has also demanded of Finnegan and Cunningham that he be allowed to inspect and examine the books and records of the Company pursuant to the LLC Law.

34. All such demands made have either been refused or ignored.

35. Upon information and belief, the Company's assets are being converted by Finnegan and Cunningham for their own use and benefit to the exclusion of the Plaintiff.

36. Upon information and belief, the Company is being operated by Finnegan and Cunningham for the sole purpose of benefiting them at the expense of the Plaintiff.

37. Plaintiff is entitled to an accounting and an inspection of the books and records of the Company from January 2007 to the present.

AS AND FOR A FOURTH CAUSE OF ACTION
(Conversion)

38. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

39. Plaintiff has not received a distribution from the Company since December 2006.

40. On information and belief Finnegan and Cunningham have converted Plaintiff's share of Company distributions to their own use and benefit.

41. By virtue of the foregoing Plaintiff has been damaged in an amount to be determined at trial.

42. Because of the conversion of Plaintiff's distributions by Finnegan and Cunningham, Plaintiff is entitled to punitive damages in the amount of ten times the amounts that were converted.

43. Also because of the conversion of Plaintiff's distributions by Finnegan and Cunningham, Plaintiff is entitled to recover reasonable attorneys' fees.

AS AND FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment)

44. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

45. Plaintiff is entitled to distributions from the Company on a par with those received by Finnegan and Cunningham.

46. By retaining Plaintiff's distributions, Finnegan and Doyle and the company have been unjustly enriched.

AS AND FOR A SIXTH CAUSE OF ACTION
(Breach of Contract)

47. Plaintiff repeats each of the foregoing paragraphs as if fully set forth herein, and further states:

48. Pursuant to the agreement with Finnegan and Cunningham, Plaintiff is entitled to a pro rata amount of any Company distributions.

49. Despite due demand Finnegan and Cunningham have failed and refused to give Plaintiff his pro rata share of distributions.

50. By virtue of the foregoing Plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment in his favor and against the defendants, jointly and severally, as follows:

(a) On the first cause of action a judgment dissolving ICON, LLC, pursuant the Limited Liability Company Law of the State of New York;

(b) On the second cause of action judgment appointing a receiver or trustee to wind up the business of ICON, LLC;

(c) On the third cause of action judgment ordering the Defendants to provide Plaintiff with an accounting of the affairs and actions of the ICON, LLC for the period January 1, 2007 to the present, together with an injunction preventing defendants from dissipating any assets of the

Company for the duration of this action, except in the ordinary course of business or until further order of the Court;

(d) On the fourth cause of action judgment for damages in an amount to be determined at trial, together with pre-judgment interest and punitive damages in an amount equal to ten times the amounts determined to be converted;

(e) On the fifth cause of action judgment for damages in an amount equal to the individual distributions paid to Defendants Finnegan and Cunningham for the period January 1, 2007 to the present, together with prejudgment interest and the costs of suit;

(f) On the sixth cause of action judgment for damages in an amount equal to the individual distributions paid to Defendants Finnegan and Cunningham for the period January 1, 2007 to the present, together with prejudgment interest and the costs of suit;

(g) Judgment including the costs and expenses of suit, including reasonable attorneys fees; and

(h) Any further relief that may be just and proper.

Dated: August 26, 2009

Law Office of Kevin P. Claffey, P.C.
Attorneys for Plaintiff

By: 

Kevin P. Claffey

19 Fulton Street - Suite 402
New York, New York 10038
212-233-4200

Dated: August 26, 2009

Law Office of Kevin P. Claffey, P.C.
Attorneys for Plaintiff

By: 

Kevin P. Claffey
19 Fulton Street - Suite 402
New York, New York 10038
212-233-4200

VERIFICATION

Keith Doyle hereby certifies under penalty of perjury:

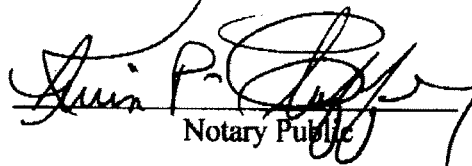
The facts set forth above in the attached complaint are true based on my own personal knowledge, except those facts stated on information and belief, and as to those facts we believe them to be true based on records and files in my possession.



Keith Doyle

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 26th day of August, 2009, before me, the undersigned, personally appeared Keith Doyle, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and by his signatures on the instrument the individual, or the person(s) upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

Kevin P. Claffey
Notary Public State of New York
No. 24-44873148
Qualified in Kings County
Commission Expires 01/31/2012

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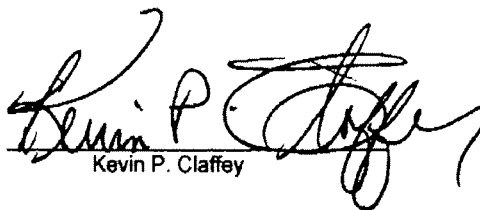
Defendants,

SUMMONS
AND
VERIFIED COMPLAINT

Rule 130 Statement:

The undersigned attorney of record for Plaintiff, hereby certifies under penalty of perjury that I have no knowledge that any of the statements set forth in the attached documents are false.

Dated: August 26, 2009


Kevin P. Claffey

LAW OFFICES OF KEVIN P. CLAFFEY, PC
19 FULTON STREET - SUITE 402
NEW YORK, NY 10036