

SCANNED ON 9/27/2011

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

-----X
THE NAJJAR GROUP, LLC,
a Florida limited liability company,
derivatively on behalf of
BDC 56, LLC, a New York limited
liability company,

Plaintiff,

v.

WEST 56th HOTEL, LLC, a New York
limited liability company, d/b/a
CHAMBERS HOTEL,
IRA DRUKIER, an individual,
RICHARD BORN, an individual,
STEVEN J. CASPI, an individual,
WEST 57 HOTEL, L.P., a New York
limited partnership, BBCD HOTEL, LLC,
a New York limited liability company,
BD 57 GENPAR CORP., a
corporation, HI 57, LLC, a Delaware limited
liability company, LVII HOTEL, LLC,
a New York limited liability company,
BD III 57 MANAGER CORP., a
corporation, and BDC 56, LLC, a New York limited
liability company, as a nominal defendant,

Defendants.
-----X

Index No.:

Filed: 11111004

SUMMONS

Plaintiff designates
New York County as
the place of trial

The basis of venue
is CPLR 509

FILED

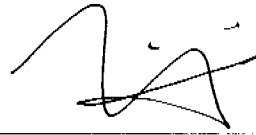
SEP 27 2011

COUNTY CLERK'S OFFICE
NEW YORK

To the above named Defendant:

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 the plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (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: New York, New York
September 22, 2011



By: ROBERT N. MIZRAHI, ESQ.
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Defendants' Addresses:

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BDC 56, LLC
15 West 56th Street
New York, NY 10019

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

-----X Index No.:

THE NAJJAR GROUP, LLC,
a Florida limited liability company,
derivatively on behalf of
BDC 56, LLC, a New York limited
liability company,

Plaintiff,

**VERIFIED
DERIVATIVE
COMPLAINT**

v.

WEST 56th HOTEL, LLC, a New York
limited liability company, d/b/a
CHAMBERS HOTEL,
IRA DRUKIER, an individual,
RICHARD BORN, an individual,
STEVEN J. CASPI, an individual,
WEST 57 HOTEL, L.P., a New York
limited partnership, BBCD HOTEL, LLC,
a New York limited liability company,
BD 57 GENPAR CORP., a
corporation, HI 57, LLC, a Delaware limited
liability company, LVII HOTEL, LLC,
a New York limited liability company,
BD HI 57 MANAGER CORP., a
corporation, and BDC 56, LLC, a New York limited
liability company, as a nominal defendant,

Defendants.

-----X

Plaintiff, THE NAJJAR GROUP, LLC, a Florida limited liability company,
derivatively on behalf of BDC 56, LLC, a New York limited liability company
(collectively, "Najjar"), by and through the undersigned counsel, sues Defendants,
WEST 56th HOTEL, LLC, a New York limited liability company ("Manager West"), IRA
DRUKIER, an individual ("Drukier"), RICHARD BORN, an individual ("Born"),

STEVEN J. CASPI, an individual ("Caspi") (collectively and in context, "Chambers Defendants"), WEST 57 HOTEL, L.P., a New York limited partnership ("West 57"), BBCD HOTEL, LLC, a New York limited liability company ("BBCD"), BD 57 GENPAR CORP., a corporation ("BD 57"), HI 57, LLC, a Delaware limited liability company ("HI 57"), LVII HOTEL, LLC, a New York limited liability company ("LVII"), BD HI 57 MANAGER CORP., a corporation ("BD HI") (collectively and in context, "Holiday Inn Defendants"), and BDC 56, LLC, a New York limited liability company (the "LLC" or "Nominal Defendant"), as a nominal defendant, and alleges the following upon information and belief:

NATURE OF THE ACTION

1. This is a derivative suit brought on behalf of the LLC to seek the judicial appointment of a receiver to run the affairs and preserve the assets of the LLC *pendente lite*, to obtain a judicial dissolution of the LLC, and to recover damages caused by the Defendants' actions in breaching their fiduciary duties, engaging in acts of self-dealing, committing conversion, and/or otherwise failing to act in the best interests of the LLC.

2. Such relief is warranted because, among other more specific items set forth below, the Defendants (i) caused the LLC to make impermissible disbursements to the Defendants or to third parties with whom the Defendants had unauthorized agreements; (ii) commingled the LLC's funds to pay for expenses for the Defendants' other hotel or real estate projects which they owned or managed thereby depriving the LLC of the benefit of those funds; and/or, (iii) overpaid for the expenses of the LLC in

an amount which far exceeds expenses incurred for comparable hotels in the midtown, New York market.

PARTIES

3. Plaintiff Najjar is and was, at all material times hereto, a Florida limited liability company, which does business in New York, New York.

4. Defendant Manager West is and was, at all material times hereto, a New York limited liability company which does business in New York, New York.

5. Defendant Drukier is and was, at all material times hereto, a resident of the State of New York who does business in New York, New York.

6. Defendant Born is and was, at all material times hereto, a resident of the State of New York who does business in New York, New York.

7. Defendant Caspi is and was, at all material times hereto, a resident of the State of New York who does business in New York, New York.

8. Defendant West 57 is and was at all material times a New York limited partnership and its principal place of business is located in New York, New York.

9. Defendant BBCD is and was at all material times a New York limited liability company and its principal place of business is located in New York, New York. Defendant BBCD is a General Partner of Defendant West 57, and Defendant Born is a Manager of Defendant BBCD. Defendant Born, acting individually and/or through Defendants BBCD and West 57, engaged in the misconduct set forth below.

10. Defendant BD 57 is and was at all material times a corporation and its principal place of business is located in New York, New York. Defendant BD 57 is a

General Partner of Defendant West 57, and Defendant Born is a President of Defendant BD 57. Defendant Born, acting individually and/or through Defendants BD 57 and West 57, engaged in the misconduct set forth below.

11. Defendant HI 57 is and was at all material times a Delaware limited liability company and its principal place of business is located in New York, New York.

12. Defendant LVII is and was at all material times a New York limited liability company and its principal place of business is located in New York, New York. Defendant LVII is a Managing Member of Defendant HI 57, and Defendant Born is a Manager of Defendant LVII. Defendant Born, acting individually and/or through Defendants LVII and HI 57, engaged in the misconduct set forth below.

13. Defendant BD HI is and was at all material times a corporation and its principal place of business is located in New York, New York. Defendant BD HI is a Managing Member of Defendant HI 57, and Defendant Born is a President of Defendant BD HI. Defendant Born, acting individually and/or through Defendants BD HI and HI 57, engaged in the misconduct set forth below.

14. Defendants West 57 and HI 57 own and operate the "Holiday Inn Midtown" and/or the property upon which said hotel is located, to wit: 440 West 57th Street, New York, New York, 10019.

15. Nominal defendant LLC is and was at all material times a New York limited liability company. The LLC's principal place of business is located in New York, New York.

16. Najjar has standing to bring this derivative action on behalf of the nominal defendant LLC because Najjar was a member of the LLC at the time that the Defendants committed the acts complained of herein, as well as at the time that this suit was brought. Najjar will adequately and fairly represent the interests of the LLC and its members in enforcing and prosecuting its rights in this suit.

GENERAL ALLEGATIONS

17. In the late 90's, Najjar acquired the right to purchase a parcel of property known as 15 West 56th Street, New York, New York 10019. Najjar sold that right based on the agreement that Defendants Born, Drukier and Caspi would employ their professed expertise to construct and operate a condominium and/or hotel on said parcel.

18. In specific, on December 15, 1997, Najjar and Manager West entered into a certain operating agreement with respect to the LLC (the "Operating Agreement").

19. At some point, the New York lodging facility that the parties agreed to develop, construct, operate and maintain, in accordance with the Operating Agreement, was known as the Chambers Hotel (the "Hotel").

20. Pursuant to the Operating Agreement, Manager West is the Manager of the member-managed LLC, Manager West is also a member who owns an eighty percent (80%) interest of the LLC, and Najjar is a member who owns a twenty percent (20%) interest of the LLC. *See Operating Agreement § 4.2*

21. Manager West and Najjar are the only members of the LLC and thus disbursements can only be made to them pursuant to the strict terms and restrictions of the Operating Agreement. *See* Operating Agreement §§ 3.1, 7.1, 7.2 & 7.3.

22. Manager West is owned and controlled by Defendants Drukier, Born and Caspi. Said Defendants own and/or control other hotel or real estate projects in midtown New York, among other places.

UNAUTHORIZED AND IMPROPER DISBURSEMENTS

23. Pursuant to § 6.2 of the Operating Agreement, the “Start Up Expenses” for the Hotel would be approximately \$4,000,000.00 and, under no circumstances, could Najjar’s interest in the LLC be diluted in order for the LLC to pay such expenses.

24. Pursuant to the § 7.1.1 of the Operating Agreement, the “Capital Contributions” of the authorized members of the LLC are to receive a return on investment of eight (8%) to ten (10%) percent per annum, compounded annually, from the “Net Cash Flow” from Operations before any other distributions are made under the Operating Agreement.

25. Although the \$4,000,000.00 for “Start Up Expenses” was sufficient to construct and develop the Hotel, Manager West was inexperienced, incompetent and/or negligent in its development and construction of same. And then after costly litigation ensued relating to the construction, Manager West refused to hire an experienced construction manager.

26. As a result, Manager West claims to have incurred to the LLC unanticipated and inconceivably large expenses, in the way of costs associated with

negligent construction and consequential legal and consulting fees. This purportedly required Manager West to raise an additional \$11,000,000.00, approximately, in "Capital Contributions" in order to secure the necessary third party financing to pay for the "Start Up Expenses" of the Hotel.

27. The aforementioned \$11,000,000.00 was raised without notice to Najjar, adversely affected Najjar's interest, was not discovered by Najjar until recently due to the active concealment of Defendants Manager West, Born, Drukier and Caspi, and was therefore done in direct breach of the terms of the Operating Agreement. *See, e.g.,* Operating Agreement § 11.7 ("This Agreements may be modified by the Manager, provided that if such amendment would adversely affect the Interest of any Member other than the Manager, the consent of such Member shall be required").

28. As the result of the additional \$11,000,000.00 in "Capital Contributions," Manager West claims that Najjar's interests are now subordinated to the LLC's purported obligation to pay 8% to 10% per annum on approximately \$15,000,000.00 in "Capital Contributions" instead of on the \$4,000,000.00 agreed to by the parties.

29. This \$11,000,000.00 was infused into the LLC by Manager West through the unauthorized addition of what are effectively members of the LLC (the "Unauthorized Members"). Numerous disbursements have been made directly from the LLC's accounts to these Unauthorized Members instead of the Najjar in breach of the Operating Agreement.

30. As a consequence of Manager West's self dealing, Najjar is now effectively frozen-out of ever receiving distributions from the Hotel's substantial net operating

profits. Manager West has attempted to structure the LLC's capital and financing in accordance with the interests of Manager West's individual members and the Unauthorized Members - and against the interests of Najjar and the LLC.

31. Finally, these distributions were made on behalf of LLC by Manager West to Manager West and the Unauthorized Members as a "Return on Capital," as evidenced by the applicable tax returns. However, return of capital is not permitted pursuant to the Operating Agreement under these circumstances. *See* Operating Agreement §7.2 and the Article I definitions of "Capital Transaction" and "Net Proceeds of a Capital Transaction."

32. As alleged above, only distributions of interest, in 8% to 10% amounts, are permitted. *See* Operating Agreement § 7.1.1. Therefore, the Chamber Defendants paid themselves a return on capital in direct defiance of the Operating Agreement. Although this appears to present severe tax consequences to the Chamber Defendants as they reported interest income as capital reimbursements, more importantly, this also presents serious tax and valuation problems for the LLC which is and has been subject to substantial litigation costs arising out of same and other liabilities, including funds paid from the LLC for the defense in the case of *The Najjar Group, LLC v. West 56th Hotel, LLC, et al.*, index number 603657/06 in the Supreme Court of the State of New York, County of New York.

33. Based on the foregoing, the aforementioned disbursements for the purported "Capital Contributions" of Manager West and the Unauthorized Members were and are being disbursed from the LLC improperly, without authorization, and in

breach of the Operating Agreement and Manager West's fiduciary duties to the LLC. The LLC has suffered substantial damages as a result.

OVERPAYING EXPENSES AND COMMINGLING EXPENSES FROM OTHER PROJECTS

34. The Hotel's per-room expenses on an annual basis far exceed those of comparable hotels in the mid-town New York market. This is because Manager West is incompetently running the affairs of the LLC and/or because Manager West is paying for the expenses of its principals' other hotel or real estate projects, or both.

35. For instance, under the management of Manager West, the LLC is improperly paying for numerous invoices which state that they are for "Holiday Inn Midtown," yet the account name on each invoice states "CHAMBERS . . ."

36. Furthermore, upon review of the limited documentation Manager West has made available, it appears that the Defendants have been paying Aetna benefits for employees of Holiday Inn Midtown from the LLC's accounts.

37. Although Defendant Born is a principal of Manager West and is a equity holder in the Holiday Inn Midtown, Najjar and the principals of Najjar own no part of Holiday Inn Midtown.

38. The comingling of funds works to the detriment of the LLC and Najjar, and to the benefit of the Defendants, in a number of ways, including:

- a. The expenses of the Chambers Defendants' other hotels or projects are being diminished and decreased, which increases the Chambers Defendants' profits obtained from those other hotels or projects;

- b. The Holiday Inn Defendants expenses are diminished and decreased, which increases the Holiday Inn Defendants profits;
- c. The LLC loses the benefit of the funds which the Defendants fraudulently converted for the benefit of unrelated hotels and projects;
- d. The books and records of the LLC become muddled to the extent that a proper audit cannot occur and, thus, financing and investment options to grow the LLC's business are severely frustrated; and
- e. The LLC incurs potential alter-ego liability arising from the liabilities incurred by the other hotels or projects.

39. Moreover, because the Chambers Defendants are entitled to 80% of the income produced from Hotel, and Najjar is entitled to 20%, each dollar that is being paid from the Hotel, as opposed from the other hotels and projects, will net the Chambers Defendants 20 cents.

40. Accordingly, the Defendants have further wronged and/or breached their duties to the LLC by self-dealing, committing conversion, and/or failing to act in good faith and in the best interests of the LLC and its other members.

FUTILITY OF DEMANDING CORRECTIVE MEASURES BE TAKEN

41. Plaintiff is excused from making demand upon the Chambers Defendants to take corrective measures because such demand would be futile. As set forth in detail above, the crux of this derivative complaint is that Manager West has unilaterally usurped the authority to make decisions as to disbursements from the LLC contrary to the terms of the Operating Agreement, and has used that authority to engage in self-

dealing and to benefit itself, its principals, the other Defendants, and the Unauthorized Members - to the detriment of the LLC and Najjar.

42. Given that Manager West has the authority to take action on behalf of the LLC, including filing a derivative suit, and given Manager West is one of the central wrongdoers giving rise to the instant derivative suit, it would be futile to make demand on Manager West in these circumstances. Manager West could not reasonably be expected to evaluate in a disinterested manner whether to pursue the LLC's claims against itself, its principals or its related entities.

43. All the Defendants participated in, approved, or were the beneficiaries of the wrongful acts and conduct alleged in this derivative complaint. Moreover, the Defendants for a considerable time has been fully aware of the wrongful acts and conduct alleged and have nevertheless failed to take action regarding those acts and conduct; but, on the contrary, they have actively conspired to conceal and suppress and have concealed and suppressed any knowledge of the wrongs complained of.

44. The individual Defendants Drukier, Born and Caspi who were beneficiaries of the wrongful acts and conduct alleged have dominated and controlled the LLC and have exercised and exerted such domination and control prior to and up to the date of the commencement of this action. Any action that might have been instituted by the LLC against these individual Defendants or their related entities to redress the wrongs complained of would, therefore, have been the responsibility of the Defendants and could not have been diligently and properly prosecuted by reason of the domination, control and influence exercised and exerted by them.

45. Accordingly, demand upon the LLC to bring action to redress these wrongs would in effect have required the Defendants to institute suit against themselves and would have been futile.

WHEREFORE, Plaintiff asserts the following claims against the defendants listed in the caption to this action:

COUNT I
BREACH OF CONTRACT
(as to Manager West)

46. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45, as if fully set forth herein.

47. The Operating Agreement constitutes a binding contract between Najjar, Manager West and the LLC, whereby the parties owe each other duties and obligations.

48. With respect to Manager West, these duties include an obligation to operate, run and manage the LLC in a manner consistent with its fiduciary duties of loyalty and care to the LLC and its members.

49. Although the fiduciary duties of Manager West do not, *per se*, prevent it from personally benefiting from actions taken on behalf of the LLC, they are nevertheless required to be absolutely fair and candid regarding personal benefits and interests arising from their decisions that result in company action or inaction.

50. Manager West is required to disclose any interest or benefit it may receive as a result the LLC's actions and to act vigilantly in ensuring that their own interests do not take any precedence over the best interests of the LLC.

51. Manager West materially breach these contractual duties and obligations by engaging in misconduct, including, without limitation, the following:

a. Causing the LLC to make impermissible disbursements to the Defendants or third parties with whom the Defendants had unauthorized agreements;

b. Commingling the LLC's funds to pay for expenses for the Defendants' other hotel or real estate projects which they owned or managed thereby depriving the LLC of the benefit of those funds; and,

c. Overpaying for the expenses of the LLC in an amount which far exceeds expenses incurred for comparable hotels in the midtown, New York market.

52. As a direct and proximate result of the aforementioned breaches, the LLC has incurred substantial damages, as set forth above.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Manager West, for money damages, consequential damages, pre- and post-judgment interest, and court costs, and for such other and further relief as this Court deems just and proper.

COUNT II
COMMON LAW AND STATUTORY
BREACH OF FIDUCIARY DUTY
(As to Manager West)

53. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45, as if fully set forth herein.

54. Pursuant to New York common law and N.Y. Ltd. Liab. Co. Law § 409, Manager West has a duty to perform his duties in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

55. Manager West materially breach these duties and obligations by engaging in misconduct, including, without limitation, the following:

a. Causing the LLC to make impermissible disbursements to the Defendants or third parties with whom the Defendants had unauthorized agreements;

b. Commingling the LLC's funds to pay for expenses for the Defendants' other hotel or real estate projects which they owned or managed thereby depriving the LLC of the benefit of those funds; and,

c. Overpaying for the expenses of the LLC in an amount which far exceeds expenses incurred for comparable hotels in the midtown, New York market.

56. As a direct and proximate result of the aforementioned breaches, the LLC has incurred substantial damages, as set forth above.

57. Manager West acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, and outrageous aggravation towards the LLC and Najjar. If Manager West's misconduct were permitted without rebuke, it would encourage others to engage in such reprehensible misconduct.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Manager West, for monetary damages, consequential damages, punitive damages upon an evidentiary showing, pre- and post-judgment interest, costs, and such other or further relief as this Honorable Court deems just and proper.

COUNT IV

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

(As to Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI)

58. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45 and 54 through 57, as if fully set forth herein.

59. Manager West owes and owed a fiduciary duty to the LLC. Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI were aware of the fiduciary duty owed by Manager West to the LLC.

60. Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI knowingly and substantially assisted Manager West in its breaches of fiduciary duty by:

a. Causing the LLC to make impermissible disbursements to the Chambers Defendants or third parties with whom the Chambers Defendants had unauthorized agreements;

b. Commingling the LLC's funds to pay for expenses for the other hotel or real estate projects which they owned or managed thereby depriving the LLC of the benefit of those funds; and/or,

c. Overpaying for the expenses of the LLC in an amount which far exceeds expenses incurred for comparable hotels in the midtown, New York market.

61. Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI substantially assisted Manager West in taking the above-noted action and helped conceal same from the LLC and its other members in order to further their own interests, to the detriment of the interests of the LLC.

62. As a direct and proximate result of the aforementioned misconduct, the LLC has suffered substantial damages, as set forth above.

63. Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, and outrageous aggravation towards the LLC. If said Defendants' misconduct were permitted without rebuke, it would encourage others to engage in such reprehensible misconduct.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI for monetary damages, consequential damages, punitive damages upon an evidentiary showing, pre- and post-judgment interest, costs, and such other or further relief as this Honorable Court deems just and proper.

COUNT IV
COMMON LAW BREACH OF FIDUCIARY DUTY
(As to Drukier, Caspi and Born)

64. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45, as if fully set forth herein.

65. Defendants Drukier, Caspi and Born invited the utmost trust and loyalty of the LLC as their fiduciary and, as a result, the LLC reposed the utmost of trust and loyalty in said Defendants.

66. Defendants Drukier, Caspi and Born actively operate, control and/or own numerous hotels and other real estate projects in New York, among other places. Said Defendants are the principals of Manager West and they assured the LLC through member Najjar that they would use their expertise and acumen to operate and manage the Hotel, and that they would do so in good faith dedicating as much time, effort and resource that were needed despite their commitments to their other real estate projects.

67. Defendants Drukier, Caspi and Born violated the trust and confidence of the LLC, and thereby materially breached their fiduciary duties to the LLC, by:

a. Causing the LLC to make impermissible disbursements to the Defendants or third parties with whom the Defendants had unauthorized agreements;

b. Commingling the LLC's funds to pay for expenses for the Defendants' other hotel or real estate projects which they owned or managed thereby depriving the LLC of the benefit of those funds; and,

c. Overpaying for the expenses of the LLC in an amount which far exceeds expenses incurred for comparable hotels in the midtown, New York market.

68. As a direct and proximate result of the aforementioned material breaches, the LLC has suffered substantial damages, as set forth above.

69. Defendants Drukier, Caspi and Born acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, and outrageous aggravation towards the LLC. If said Defendants' misconduct were permitted without rebuke, it would encourage others fiduciaries to engage in such reprehensible misconduct.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Defendants Drukier, Caspi and Born, for monetary damages, consequential damages, punitive damages upon an evidentiary showing, pre- and post-judgment interest, costs, and such other or further relief as this Honorable Court deems just and proper.

COUNT V
CONVERSION
(As to all Defendants)

70. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45, as if fully set forth herein.

71. Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI have wrongfully and intentionally asserted dominion and control over the property of the LLC, inconsistent with the LLC's ownership thereof, and have permanently deprived the LLC of its property and right to possession, dominion, use, and control thereof.

72. Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI have intentionally engaged in this misconduct by commingling expenses of the LLC with expenses for the other hotel or real estate projects which they owned or managed, thereby, for their own benefit, depriving the LLC of the benefit of those funds.

73. As a direct and proximate result of the aforementioned conversion of the LLC's property, the LLC has suffered monetary damages.

74. Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, and outrageous aggravation towards the LLC. If said Defendants' misconduct were permitted without rebuke, it would encourage others to engage in such reprehensible misconduct.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI for monetary damages, consequential damages, punitive damages upon an evidentiary showing, pre- and post-judgment interest, costs, and such other or further relief as this Honorable Court deems just and proper.

COUNT VI
AIDING AND ABETTING CONVERSION
(As to all Defendants)

75. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45 and 71 through 74, as if fully set forth herein.

76. The LLC has an ownership interest in the funds it generates from the operation of the Hotel. Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI had knowledge and were aware of the LLC's ownership interest in said funds.

77. Defendants Drukier, Caspi, Born, West 57, BBCD, BD 57, HI 57, LVII, and BD HI knowingly and substantially assisted with the wrongful and intentional assertion of dominion and control over said property of the LLC, inconsistent with the LLC's ownership thereof, and the permanent deprivation from the LLC of its property and right to possession, dominion, use, and control thereof.

78. As a direct and proximate result of the aforementioned conversion of the LLC's property, the LLC has suffered monetary damages.

79. Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI acted with malice, moral turpitude, gross negligence, reckless indifference to the rights of others, wantonness, oppression, and outrageous aggravation towards the LLC. If said Defendants' misconduct were permitted without rebuke, it would encourage others to engage in such reprehensible misconduct.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, demands judgment against Defendants Drukier, Caspi, Born, Manager West, West 57, BBCD, BD 57, HI 57, LVII, and BD HI for monetary damages, consequential damages, punitive damages upon an evidentiary showing, pre- and post-judgment interest, costs, and such other or further relief as this Honorable Court deems just and proper.

COUNT VII

JUDICIAL DISSOLUTION AND RECEIVERSHIP

80. Plaintiff Najjar, derivatively on behalf of the LLC, realleges and incorporates paragraphs 1 through 45, as if fully set forth herein.

81. This is an action for a judicial dissolution and other relief pursuant to New York common law and N.Y. Ltd. Liab. Co. Law §§ 702 and 703.

82. Defendants Drukier, Caspi, Born and Manager West have misapplied or wasted company assets and continue to misapply or waste company assets, causing irreparable injury to the LLC.

83. Based on the waste and self-dealing by Manager West and the other Defendants, and the inherent conflicts of interest between the Defendants' other projects and their resulting inability to abide by their fiduciary duties to the LLC, it is not reasonably practicable to carry on the business of the LLC in conformity with the Operating Agreement.

84. Moreover, upon the cause shown above by the Chambers Defendants' misconduct, the Court must wind up the LLC's affairs upon application of Najjar, and in connection therewith may appoint a receiver or liquidating trustee.

85. Prior to and upon dissolution of the LLC, the receiver or liquidating trustee will have the power to, in the name of and for and on behalf of the LLC, prosecute and defend suits, whether civil, criminal or administrative, settle and close the LLC's business, dispose of and convey the LLC's property, discharge the LLC's liabilities and distribute to the members any remaining assets of the LLC, all without

affecting the liability of members including members participating in the winding up of the LLC's affairs.

86. Without a receiver *pendente lite*, the Chambers Defendants will continue to and likely accelerate their efforts to engage in self-dealing or to convert the LLC's property for their own benefit and to the detriment of the LLC and its other members. Thus, prior to any judgment being rendered on the dissolution sought, a receiver *pendente lite* is required to manage the business and affairs of the LLC and to preserve the LLC's property and the *status quo*.

WHEREFORE, Plaintiff Najjar, derivatively on behalf of the LLC, respectfully requests the Court to (i) enter an order appointing a receiver or liquidating trustee for the LLC, to wind up and liquidate the business and affairs of the LLC, with full power to operate its business, including, without limitation, the power to hire and fire employees, to sue for damages, to purchase goods and equipment for the operation of the business, to enter into contracts for the LLC and to collect its debts, all pending the determination of the issues presented by this lawsuit or until further order of the Court and (ii) enter a judgment of dissolution dissolving the LLC and specifying the date of the dissolution, (iii) together with such other and further relief as this Court deems necessary and just.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

(a) on the each cause of action: damages in the sum of \$25,000,000.00, together with interest thereon, and punitive damages in an amount to be determined at trial;

(b) appointing of a receiver or liquidating trustee for the LLC, to wind up and liquidate the business and affairs of the LLC, with full power to operate its business, including, without limitation, the power to hire and fire employees, to sue for damages, to purchase goods and equipment for the operation of the business, to enter into contracts for the LLC and to collect its debts, all pending the determination of the issues presented by this lawsuit or until further order of the Court;

(c) entering a judgment of dissolution dissolving the LLC and specifying the date of the dissolution;

(d) awarding Plaintiffs costs and expenses incurred in this action, including reasonable attorneys fees, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 22, 2011

Buckley Zinober & Curtis, P.A.



By: ROBERT N. MIZRAHI, ESQ.
Attorneys for Plaintiffs
225 Broadway, Suite 2600
New York, New York 10007
(212) 514-7400

ATTORNEY VERIFICATION

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

I, ROBERT N. MIZRAHI, an attorney duly admitted to practice in the Courts of the State of New York, states I am the attorney of record for Plaintiff(s) in the within action; that I have read the foregoing Complaint and know the contents thereof; that it is true to my own knowledge, except as to the matters alleged to be on information and belief; and as to those matters I believe them to be true and the grounds of my belief as to matters not stated upon my knowledge are correspondence and other writings furnished by the aforesaid Plaintiff(s); and that the reason why the Verification is made by me and not by Plaintiff(s) is because such persons do not reside within the County of New York, which is the county where your deponent maintains his office.

Dated: New York, New York
 September 22, 2011

Robert N. Mizrahi

**SUPREME COURT
STATE OF NEW YORK, COUNTY OF**

NEW YORK

Index No.

Year

THE NAJJAR GROUP, LLC.,

Plaintiff,

vs.

WEST 56th HOTEL, LLC., d/b/a CHAMBERS HOTEL, IRA DRUKIER, RICHARD BORN and
STEVEN J. CASPI, individually, WEST 57 HOTEL, LP, a NEW YORK limited partnership, et. Al.

Defendants.

SUMONS AND COMPLAINT

BUCKLEY ZINOBER & CURTIS AR GROUP, LLC.

Office and Post Office Address, Telephone

225 Broadway, Suite 2600
NEW YORK, N.Y. 10007
(212) 514-7400
Fax (212) 514-7404

To

Signature (Rule 130-Miraji, ESO.

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: _____

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at

of which the within is a true copy
one of the judges of the

on _____ at _____ M.
Supreme Court Records OnLine Library - page 28 of 28

Dated,