

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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DORINE BORIELLO, individually and derivatively :
on behalf of CATERINA REALTY, LLC, :

Plaintiff, :

- against - :

MICHAEL LOCONTE, DIANE SCHMIDT and :
MARIA PENNEY SELIGSON, :

Defendants, :

- and - :

CATERINA REALTY, LLC, :

Nominal Defendant. :

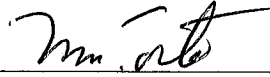
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To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's 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); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Kings County as the place of trial. The basis of the venue is the principal place of business of Caterina Realty LLC, located at 8801 Foster Avenue, Brooklyn, New York 11236.

Dated: New York, New York
June 3, 2013



THOMAS TORTO, ESQ.
Attorney for Plaintiff
419 Park Avenue South, Suite 406
New York, New York 10016
(212) 532-5881

Defendants' Addresses:

MICHAEL LOCONTE
12 Seba Avenue
Brooklyn, New York 11229

MARIA PENNEY SELIGSON
19 Bedford Place
Morganville, New Jersey 07751

DIANE SCHMIDT
3708 Oceanside Road East
Oceanside, New York 11572

CATERINA REALTY LLC
8801 Foster Avenue
Brooklyn, New York 11236

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VERIFIED COMPLAINT

Index No.

Plaintiff, by her attorney, THOMAS TORTO, ESQ., as and for her verified
complaint against defendants, respectfully alleges as follows:

1. At all times relevant hereto, plaintiff has been and still is a resident of 12 Janet Court, Nesconset, New York 111767.
2. Upon information and belief, at all times relevant hereto, plaintiff Caterina Realty, LLC (“Caterina”) has been and still is a limited liability company organized and existing under the laws of the State of New York, and maintains its principal place of business at 8801 Foster Avenue, Brooklyn, New York 11236.
3. Upon information and belief, at all times relevant hereto, Caterina has owned, managed and controlled and still owns, manages and controls the real property and

building thereon located at 8801 Foster Avenue, Brooklyn, New York 11236 (Block 7964, Lot 14) (the "Premises").

4. At all times relevant hereto, plaintiff has been and still is a member of Caterina, having a 25% ownership interest therein, and is a co-manager of Caterina together with the individual defendants herein.

5. At all times relevant hereto, defendant Michael Loconte has been and still is a resident of 12 Seba Avenue, Brooklyn, New York 11229.

6. At all times relevant hereto, defendant Loconte has been and still is a member of Caterina, having a 25% ownership interest therein, and is a co-manager of Caterina.

7. At all times relevant hereto, defendant Diane Schmidt has been and is a resident of 19 Bedford Place, Morganville, New Jersey 07751.

8. At all times relevant hereto, defendant Schmidt has been and still is a member of Caterina, having a 25% ownership interest therein, and is a co-manager of Caterina.

9. At all times relevant hereto, defendant Maria Penney Seligson has been and is a resident of 3708 Oceanside Road East, Oceanside, New York 11572.

10. At all times relevant hereto, defendant Seligson has been and still is a member of Caterina, having a 25% ownership interest therein, and is a co-manager of Caterina.

11. Upon information and belief, at all times relevant hereto, Jersey Lynne Farms, Inc. ("Jersey Lynne") has been and still is a corporation organized and existing under the laws of the State of New York, and maintains a principal place of business at 8801 Foster Avenue, Brooklyn, New York 11236.

12. At all times relevant hereto, plaintiff has been and still is an owner of 25%

of the outstanding and issued stock of Jersey Lynne.

13. Plaintiff Boriello is not an officer, director or employee of Jersey Lynne.

14. At all times relevant hereto, defendant Loconte has been and still is an owner of 35% of the outstanding and issued stock of Jersey Lynne, and is an officer and director of Jersey Lynne.

15. At all times relevant hereto, defendant Schmidt has been and still is an owner of 20% of the outstanding and issued stock of Jersey Lynne and is an officer and director of Jersey Lynne.

16. At all times relevant hereto, defendant Seligson has been and still is an owner of 20% of the outstanding and issued stock of Jersey Lynne and is an officer and director of Jersey Lynne.

17. Upon information and belief, at all times relevant hereto, defendants Loconte, Schmidt and Seligson have been and still are employees of Jersey Lynne, and receive salaries, health insurance and other employee benefits from Jersey Lynne.

18. At all times relevant hereto, plaintiff Boriello and defendants Loconte, Schmidt and Seligson, were and still are the member-managers of Caterina.

19. At all times relevant hereto, defendants Loconte, Schmidt and Seligson have acted in concert with each other and have constituted the majority member-managers of Caterina.

20. At all times relevant hereto, defendants Loconte, Schmidt and Seligson, as the majority member-managers of Caterina, have had and still have complete and exclusive

control and domination of Caterina and have been able to determine and direct the business affairs of Caterina.

21. At all times relevant hereto, defendants Loconte, Schmidt and Seligson, individually and collectively as co-member-managers of Caterina, have had and still have the fiduciary duty to administer diligently and carefully the business affairs of Caterina; to safeguard the property and assets of Caterina; to prevent the LLC's assets from being wasted or squandered; and to keep honest, accurate, and correct accounts of all affairs, business and transactions of Caterina; to make and publish true and accurate accounts and statements of the affairs of Caterina from time to time as required by law; and to perform faithfully and diligently all the duties devolving upon defendants as majority members-managers of Caterina.

22. Upon information and belief, defendants Loconte, Schmidt and Seligson, individually and collectively, in breach of their fiduciary duties as members-managers of Caterina, have wrongfully engaged in self-dealing in order to benefit their status as shareholders of Jersey Lynne in that:

- (a) On or about December 13, 2011, over plaintiff's written objection, defendants Loconte, Schmidt and Seligson, acting on behalf of Caterina, entered into a five year lease for the Premises with Jersey Lynne (the "Lease"), the terms of which grossly favor Jersey Lynne as tenant and are grossly contrary to Caterina's best interests in that, inter alia, (i) the annual rent of \$342,000 under the Lease is substantially below fair market rent of \$600,000 per year, triple net, with annual increases of at least 3%; and (ii) the Lease requires Caterina to assume responsibility for expenses which Jersey Lynne, as tenant, should assume.
- (b) On May 28, 2013 at Caterina's annual meeting, over plaintiff's written and verbal objection, defendants Loconte, Schmidt and Seligson, acting on behalf of Caterina,

approved a charge or "Bill Back" to Caterina from Jersey Lynne in the sum of \$6,779.67, for maintenance, labor and supplies allegedly provided by Jersey Lynne for work to the building in the nature of patching holes, painting and changing light bulbs, all of which are Jersey Lynne's responsibility under the Lease;

- (c) On May 28, 2013 at Caterina's annual meeting, over plaintiff's written and verbal objection, defendants Loconte, Schmidt and Seligson, acting on behalf of Caterina, approved payment by Caterina of 33% of the yearly premium for general liability and umbrella insurance policies for the Premises, despite the fact that it is Jersey Lynne's sole responsibility to pay 100% of the yearly insurance premium;
- (d) On May 28, 2013 at Caterina's annual meeting, over plaintiff's written and verbal objection, defendants Loconte, Schmidt and Seligson, acting on behalf of Caterina, approved Caterina's 2013 operating budget and a reduction in distribution to Caterina's members from \$4,500 per month to \$3,472 per month;
- (e) Defendants Loconte, Schmidt and Seligson, acting on behalf of Caterina, paid from Caterina's operating accounting legal fees and expenses incurred in the instant dispute with plaintiff, and charged plaintiff with 25% of such legal fees and expenses;
- (f) Due to below market rent and other highly unfavorable terms of the Lease, and defendants' unwarranted, baseless approval of additional charges to be paid and liabilities to be assumed by Caterina which are otherwise the responsibility of Jersey Lynne, Caterina is losing money and is unprofitable while Jersey Lynne is financially benefitting as a result thereof;
- (g) Upon information and belief, as a result of the below market rent and other highly unfavorable terms of the Lease and defendants' unwarranted, baseless approval of additional charges to be paid and liabilities to be assumed by Caterina which are otherwise the responsibility of Jersey Lynne, defendants Loconte, Schmidt and Seligson are

benefitting in their capacity as the majority shareholders and employees of Jersey Lynne at the financial expense of plaintiff and Caterina.

23. Defendants have controlled and conducted and continue to control, operate, manage and conduct the business of Caterina for their own personal benefit and gain as majority shareholders and employees of Jersey Lynne, depriving Caterina of the fair market rental income from the Premises which in turn has caused and will continue to cause plaintiff's interest in Caterina to be substantially diminished, while increasing the amount of income of Jersey Lynne to be used to pay salaries and other employment benefits for defendants Loconte, Schmidt and Seligson as employees of Jersey Lynne.

24. Upon information and belief, Caterina is losing money, unable to meet its necessary and usual business expenses and is unprofitable while at the same time the individual defendants as employees of Jersey Lynne are reaping the financial benefits of the below market rent Lease, at plaintiff's expense and loss.

25. By letter dated March 20, 2013, plaintiff made demand upon defendants to take corrective action with respect to the wrongs herein alleged since defendants constitute the majority member-managers of Caterina and are in sole control of Caterina and have participated in, authorized and approved the acts and transactions complained of herein and are liable therefor.

26. However, defendants have refused to comply with plaintiff's aforesaid demand.

27. By reason of defendants' breach of their fiduciary duties and self-dealing, Caterina has been damaged in the sum of not less than \$1,290,000 plus the amount of expenses

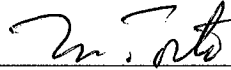
and carrying charges that Jersey Lynne should be paying under a proper lease.

WHEREFORE, plaintiff demands judgment against defendants as follows:

(1) awarding plaintiffs defendants in the sum of not less than \$1,290,000 together with the amount of expenses and carrying charges that Jersey Lynne should be paying under a proper lease for the Premises; and

(2) awarding such other and further relief as the Court deems just and proper together with reasonable attorney fees and the costs and disbursements of this action.

Dated: New York, New York
June 3, 2013



THOMAS TORTO, ESQ.
Attorney for Plaintiff
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SUMMONS; VERIFIED COMPLAINT

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