

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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PATRICIA DEERIN as Executor of the Estate of Douglas
Deerin,

Index No. _____

Plaintiff,

SUMMONS

-against-

Date Index No. Purchased:

OCEAN RICH FOODS, LLC, a/k/a OCEAN EDGE
FOODS, RICHARD MARINO, and DEAN BERMAN,

Defendants.

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To the above-named Defendants:

Ocean Rich Foods, LLC, 3 Expressway Plaza, Suite 115, Roslyn Heights, New York 11577
Richard Marino, 3 Expressway Plaza, Suite 115, Roslyn Heights, New York 11577
Dean Berman, 3 Expressway Plaza, Suite 115, Roslyn Heights, New York 11577

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 within 20 days after the services 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.

The basis of venue is the principal place of business of the defendant, Ocean Rich Foods, LLC, which is 3 Expressway Plaza, Suite 115, Roslyn Heights, New York 11577.

Dated: Forest Hills, New York
February 5, 2014

THE HABER LAW FIRM LLP
Attorneys for Plaintiff

BY:



Gregory Haber, Esq.
112-41 Queens Blvd., Suite 201
Forest Hills, New York 11375
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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PATRICIA DEERIN as Executor of the Estate of Douglas
Deerin,

Index No. _____

Plaintiff,

VERIFIED COMPLAINT

-against-

OCEAN RICH FOODS, LLC, RICHARD MARINO, and
DEAN BERMAN,

Defendants,

-----x

Patricia Deerin, by and through her attorneys, The Haber Law Firm LLP, as and for her
Verified Complaint, alleges upon information and belief as follows

PARTIES

1. Plaintiff Patricia Deerin, as executor of the Estate of Douglas Deerin, is a person residing in Livingston, New Jersey.
2. Upon information and belief, Ocean Rich Foods, LLC is a limited liability company organized under the laws of the State of New York, with its principal place of business located at 3 Expressway Plaza, Suite 115, Roslyn Heights, New York 11577.
3. Upon information and belief, Richard Marino resides at 39 Hilltop Drive, Laurel Hollow, New York 11791 and does business in Nassau County, in the State of New York.
4. Upon information and belief, Dean Berman resides in the State of New York and does business in Nassau County, in the State of New York.

JURISDICTION AND VENUE

5. This court has jurisdiction pursuant to CPRL §§301 and 302, and venue is proper pursuant to CPLR §503.

FIRST CAUSE OF ACTION

(Breach of Contract)

6. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 5 as if the same were more fully set forth herein at length.
7. Richard Marino (“Marino”), Dean Berman (“Berman”), and Douglas Deerin (“Deerin”), were all members of Ocean Rich Foods, LLC (the “Company”), Until Deerin’s death on January 28, 2013, at which time Deerin’s Estate (the “Estate”) became the owner of his interest.
8. Marino, Berman, and the Estate each currently own 1/3 of the Company.
9. In January 2009, Marino, Berman, and Deerin entered into a Cross-Purchase Agreement (the “Agreement”). The Agreement states that life insurance policies had been taken out in the amount of \$1.5 million on the lives of each of the 3 members of the Company, and that “The Company shall be the sole owner of the policies purchased by and issued to it”.
10. The Agreement specifies that the Company was the owner and beneficiary of John Hancock Policy No. 81 602 369 in the amount of \$1.5 million, insuring the life of Deerin.
11. The Agreement instructs that upon the death of a member “The Company shall pay such life insurance proceeds to the legal representative of the deceased Member as part

payment or payment in full, as the case may be, on account of the purchase price of the interest of the deceased Member.”

12. Upon the death of Deerin, Marino and Berman refused to pay, and upon this filing are still refusing to pay, the life insurance proceeds to his Estate in exchange for its membership interest in the Company, and are therefore are in breach of the Agreement.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

13. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 12 as if the same were more fully set forth herein at length.
14. By reason of the nature of members in a limited liability company, Marino and Berman owed a fiduciary duty to Deerin, and upon Deerin’s death, owe this duty to to his Estate.
15. By failing to distribute the proceeds of the life insurance proceeds to the Estate in exchange for its membership interest in the Company in accordance with the Agreement, Marino and Berman are currently in breach their fiduciary duty to the Estate.
16. As a result, the Estate has sustained substantial monetary damages.

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

17. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 16 as if the same were more fully set forth herein at length.

18. By reason of the nature of members in a limited liability company, Marino and Berman owed a duty to act in good faith to Deerin, and upon Deerin's death, owe this duty to his Estate.
19. By failing to distribute the proceeds of the life insurance proceeds to the Estate in exchange for its interest in the Company in accordance with the Agreement, Marino and Berman are currently in breach of their implied covenant of good faith and fair dealing to his Estate.
20. As a result, the Estate has sustained substantial monetary damages.

FOURTH CAUSE OF ACTION

(Tortious Interference with a Contract)

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 20 as if the same were more fully set forth herein at length.
22. Marino and Berman are parties to the Agreement, particularly paragraph 11, which obligates them to pay the life insurance proceeds to the Estate in exchange for its membership interest in the Company.
23. Marino and Berman intentionally breached, and continue to intentionally breach the Agreement by failing to distribute said proceeds to the Estate in exchange for its membership interest in the Company.
24. As a result, the Estate has sustained substantial monetary damages.

FIFTH CAUSE OF ACTION

(Distribution Upon Withdrawal)

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 24 as if the same were more fully set forth herein at length.
26. Section 509 of the New York Limited Liability Company Law (the “LLCL”) provides that “upon withdrawal as a member of the limited liability company, any withdrawing member is entitled to receive any distribution to which he or she is entitled under the operating agreement and, if not otherwise provided in the operating agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her membership interest in the limited liability company as of the date of withdrawal based upon his or her right to share in distributions from the limited liability company.”
27. Plaintiff, as representative of the Estate, is not suited to be an active member of the Company and the interest of the Estate should be purchased for the fair market value.
28. Plaintiff should receive the fair market value of 1/3 of the Company, as determined by an independent appraiser, as of the date a judgment is granted.

SIXTH CAUSE OF ACTION

(Judicial Dissolution)

29. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 28 as if the same were more fully set forth herein at length.
30. Section 702 of LLCL authorizes this Court to order dissolution of the LLC upon a plaintiff’s application “whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.”

31. In applying this standard, the Plaintiff must establish, “in the context of the terms of the operating agreement or articles of [organization], 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**” (emphasis added). See In re 1545 Ocean Ave., LLC, 72 A.D.3d 121, 131 (2d Dept. 2010).
32. Plaintiff, as the representative of the Estate, Marino, and Berman, have been unable and unwilling to reach a consensus with respect to the value of the company and the amount the Estate is owed for its interest in the Company.
33. Plaintiff, as the representative of the Estate, and with no knowledge of the seafood business, is also not suited to be an active member in the Company.
34. Defendants own the majority of the voting rights in the Company, and therefore even if Plaintiff was able to learn the seafood business, has no means of protecting the Estate’s interest.
35. As a result, it is financially unfeasible to continue the operations of the Company and it should be dissolved pursuant to §702 of the LLCL. .

WHEREFORE, plaintiff Patricia Deerin, as Executor of the Estate of Douglas Deerin demands:

- a. On the First Cause of Action, a monetary judgment for ordinary damages over and against Ocean Rich Foods, LLC, Richard Marino and Dean Berman in the amount of \$1.5 million and punitive damages over and against Richard

Marino and Dean Berman in the amount of \$1.5 million, plus interest, costs, disbursements and reasonable attorneys' fees;,,

- b. On the Second Cause of Action, monetary judgment for ordinary damages over and against Ocean Rich Foods, LLC, Richard Marino and Dean Berman in the amount of \$1.5 million and punitive damages over and against Richard Marino and Dean Berman in the amount of \$1.5 million, plus interest, costs, disbursements and reasonable attorneys' fees;
- c. On the Third Cause of Action, monetary judgment for ordinary damages over and against Ocean Rich Foods, LLC, Richard Marino and Dean Berman in the amount of \$1.5 million and punitive damages over and against Richard Marino and Dean Berman in the amount of \$1.5 million, plus interest, costs, disbursements and reasonable attorneys' fees;
- d. On the Fourth Cause of Action, monetary judgment for ordinary damages over and against Ocean Rich Foods, LLC, Richard Marino and Dean Berman in the amount of \$1.5 million and punitive damages over and against Richard Marino and Dean Berman in the amount of \$1.5 million, plus interest, costs, disbursements and reasonable attorneys' fees;
- e. On the Fifth Cause of Action, a judgment should be granted in favor of Plaintiff awarding 1/3 of the fair market value of the Company as of the date the judgment is entered based on an independent appraiser, plus interest, costs, disbursements and reasonable attorneys' fees;
- f. On the Sixth Cause of Action, a judgment should be granted in favor of Plaintiff dissolving the Company pursuant to Article 7 of the New York

Limited Liability Company Law, liquidating and distributing equally among Plaintiff and Defendants all of the LLC's assets pursuant to LLCL §504 and §704, plus interest, costs, disbursements and reasonable attorneys' fees;

g. Any further relief the Court deems just and proper under the circumstances.

Dated: Forest Hills, New York

February, 5 2014

THE HABER LAW FIRM LLP
Attorneys for Plaintiff

BY:



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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PATRICIA DEERIN as Executor of the Estate of Douglas
Deerin,

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Plaintiff,

-against-

OCEAN RICH FOODS, LLC, a/k/a OCEAN EDGE
FOODS, RICHARD MARINO, and DEAN BERMAN,

Defendants,

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ATTORNEY VERIFICATION

Gregory Haber, Esq., being sworn deposes and says that he is a member of The Haber Law Firm LLP and that he has read the contents of the foregoing and that it is true of his own knowledge, except as to the matters herein stated to be alleged on information and belief and that as to those matters deponent believes to be true.

Dated: Forest Hills, New York
February 5, 2014

THE HABER LAW FIRM LLP
Attorneys for Plaintiff

BY:



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