

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, FIRST DEPARTMENT**

**NICHOLAS J. BARONE,  
individually and derivatively on behalf of  
899 FULTON, LLC,**

**Plaintiff/Appellant,**

**-against-**

**CHRISTOPHER K. SOWERS,  
899 FULTON, LLC, as its interest may  
appear, JOHN AND JANE DOES I-V, and  
ENTITIES I-V,**

**Defendants/Respondents.**

**INDEX NO.: 651758/2013**

**CIVIL APPEAL**

**PRE-ARGUMENT STATEMENT**

Pursuant to CPLR 5531, the within is respectfully submitted together with the Notice of Appeal:

1. The Index Number of the matter in the Court below is 651758/2013.
2. The full names of the original parties are as follows:
  - a. Nicholas J. Barone, individually and derivatively on behalf of 899 Fulton, LLC;
  - b. Christopher K. Sowers; 899 Fulton, LLC, as its interest may appear;
  - c. John and Jane Does I-V; and,
  - d. Entities I-V.

There has been no change in the title of the action.

3. The action was commenced in the Supreme Court of New York, New York County.
4. The action was commenced on May 15, 2013.
  - a. Defendants' Answer was filed and served on August 8, 2013.
  - b. Defendants' Notice of Motion to Dismiss was filed and served on April 7, 2014.

- c. Plaintiff's Opposition to Defendants' Motion to Dismiss, together with Plaintiff's Cross-Motion to Compel Disclosure, were filed and served on April 29, 2014.
  - d. Defendants filed and served an Affirmation on May 5, 2014.
  - e. Defendants filed and served an additional Affirmation in Opposition to Plaintiff's Cross-Motion and in Further Support of Defendants' Motion to Dismiss on June 5, 2014.
  - f. Plaintiff's Affirmation in Further Support of its Cross-Motion was filed and served on June 6, 2014.
5. The action was commenced as result of the defendant, Christopher K. Sowers (hereinafter referred to as "Sowers"), continually failing to disclose and/or deliberately concealing material facts from Plaintiff, from inception to date, so as to preclude Plaintiff from determining the use of funds belonging to 899 Fulton, LLC, a Limited Liability Company formed on or about July 1, 2002, authorized to do business in the State of New York with Sowers being an Eighty Percent (80%) Member and Plaintiff being a Twenty Percent (20%) Member. Sowers has continually, from inception to date, failed to produce even after multiple demands by Plaintiff, an accounting with respect to the disbursements of the funds from several mortgage refinances in connection with the property owned by 899 Fulton, LLC, situated at 899-907 Fulton Street, Brooklyn, New York 11238 (hereinafter referred to as the "Premises").
- a. Upon information and belief, in response to Plaintiff's continued requests, Sowers has only provided superficial documents to date.
  - b. Upon information and belief, Sowers has acted contrary to the expressed purpose and business of 899 Fulton, LLC, by failing to realize on the value of the

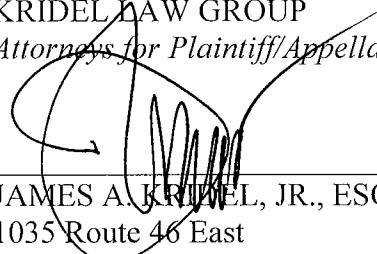
Premises by selling or disposing of the Premises and has caused the Premises to remain as a rental so as to benefit Sowers personally, as he wishes to maintain his status as tenant therein to the detriment of Plaintiff and 899 Fulton, LLC, and for the sole benefit of Sowers. Furthermore, Sowers' private law office occupies the second floor of the Premises in excess of that designated in his lease, at a rate that is less than fair market value, to the further and continuing detriment of Plaintiff and 899 Fulton, LLC. As a result of Sowers' failure to act in furtherance of the expressed purpose and business of 899 Fulton, LLC, and contrary to the Operating Agreement executed by Plaintiff and Sowers on or about September 11, 2002, Sowers' aforementioned conduct constitutes oppression of Plaintiff and is therefore inconsistent with the continued operations of 899 Fulton, LLC.

- c. Sowers has continually and willfully refused Plaintiff access to the books, records, and/or documents of 899 Fulton, LLC, in violation of the Operating Agreement.
  - d. Upon information and belief, large and divers funds have been diverted to third parties and/or entities controlled by Sowers, without explanation and without benefit to 899 Fulton, LLC.
6. The appeal is taken from an Order entered on August 15, 2014, by the Honorable Eileen A. Rakower, J.S.C., which was filed on August 19, 2014, directing that judgment be entered by the Clerk.
7. The appeal is on the full record, the transcript for which has been requested from the court stenographer as of August 27, 2014.

Dated: Clifton, New Jersey  
August 28, 2014

KRIDEL LAW GROUP  
*Attorneys for Plaintiff/Appellant*

By: \_\_\_\_\_

  
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**NICHOLAS J. BARONE,**  
individually and derivatively on behalf of 899 FULTON, LLC,

Plaintiff/Petitioner,

-against-

**CHRISTOPHER K. SOWERS, 899 FULTON LLC, as its interest may appear,**  
**JOHN AND JANE DOES I-V, and ENTITIES I-V,**

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**PRE-ARGUMENT STATEMENT**

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: August 28, 2014

Signature: \_\_\_\_\_

  
James A. Kridel, Jr., Esq.

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Service of the foregoing is hereby admitted: \_\_\_\_\_

Dated: \_\_\_\_\_