

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

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DANIEL KOCH and DEREK KOCH,

Petitioners,

Index No.

-against-

HC HOSPITALITY PARTNERS, LLC
PCG DGHP, LLC, and DUAL GROUPE
HOSPITALITY, LLC (nominally),

**VERIFIED PETITION FOR
JUDICIAL DISSOLUTION
AND APPOINTMENT OF
A RECEIVER**

Respondents.

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TO THE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners Daniel Koch and Derek Koch (together, the "Petitioners"), by and through their undersigned attorneys, as and for their Verified Petition for a judicial dissolution and the appointment of a receiver concerning the winding-up of nominal respondent Dual Groupe Hospitality, LLC (the "Company"), pursuant to Sections 702 and 703 of the Limited Liability Company Law (the "LLC Law"), respectfully represents and alleges:

PARTIES

1. The Company is a domestic limited liability company organized under the LLC Law on October 10, 2012 having its principal office at 9 West 19th Street, 2nd Floor, New York, New York.
2. Petitioner Daniel Koch is an individual resident and domiciliary of the State and County of New York.
3. Petitioner Derek Koch is an individual resident and domiciliary of the State and County of New York.

4. Respondent HC Hospitality Partners, LLC (“HC”) is a domestic limited liability company organized under the LLC Law on October 10, 2012 having its principal office at 7 Renaissance Square, White Plains, New York.

5. Respondent PCG DGHP, LLC (“PCG” and, together with “HC”, the “Respondents”) is a domestic limited liability company organized under the LLC Law on July 9, 2010 having its principal office at 9 West 19th Street, 2nd Floor, New York, New York.

6. Jurisdiction over this matter rests with this court pursuant to Section 702 of the LLC Law as the office of the Company is located within the First Judicial District.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

7. On or about October 12, 2012, Petitioners and Respondents entered into a written “Operating Agreement of Dual Groupe Hospitality LLC” (the “Operating Agreement”).

8. A true, accurate and complete copy of the Operating Agreement is attached as Exhibit “1” to the Complaint commencing the “Action” (hereinafter defined) attached hereto as *Exhibit “A”*.

9. As set forth in Exhibit “A” to the Operating Agreement, Petitioners and Respondents were, and continue as of the date hereof to be, members of the Company with the following ownership percentages:

Member	Percentage Interest	Initial Capital Contribution
PCG DGHP, LLC	30.00%	\$550,000.00
Daniel Koch	25.00%	\$225,000.00
Derek Koch	25.00%	\$225,000.00
HC Hospitality Partners LLC	20.00%	\$180,000.00
Totals:	100.00%	\$900,000.00

10. Section 2.5.1 of the Operating Agreement, states as follows:

The “**Business**” of the Company shall be the development, management, marketing, ownership and operation of certain restaurants, bars and/or nightlife venues, and/or the ownership and management of certain subsidiary companies that shall be engaged in the business of developing, managing, marketing, owning and/or operating certain restaurants, bars and/or nightlife venues, at such other location(s) as may be designated by the Managers. Without limiting the foregoing, the “Business” shall include (i) providing management services as the Management Company under that certain Management Agreement dated September 21, 2012 between Dual Group LLC and Greenwich Village Entertainment Group, LLC (as such Management Agreement was previously assigned to the Company, the “Day and Night Management Agreement”) pursuant to which the Company shall produce a brunch series named “Day and Night at Highline Ballroom”, (ii) the ownership of the trademark rights in and to “Day & Night”, Registration No. 4,164,872, (iii) the ownership of certain membership interests in and to Chateau 20th Street, LLC, a limited liability company formed for the purpose of owning and operating a restaurant located at 47 West 20th Street, New York, New York, known as Chateau, and subtenant under that certain Sublease Agreement dated as of April 15, 2012 by and between Limelight Retail, LLC, as sublandlord, Chateau 20th Street, LLC, as subtenant, and Michael Wainstein, as guarantor, for the demised premises located on certain floors of the building located at 656 6th Avenue, New York, New York (the “Chateau Lease”), (iv) the ownership of certain membership interests in and to DG Gansevoort Hotel LLC, a limited liability company formed for the purpose of providing management services to CGM-GH, LLC, operating certain restaurants and nightlife venues at the Gansevoort Hotel, located at 18 Ninth Avenue, New York, New York, under the “Toy” trademark, which may be registered by the Company in the Managers’ discretion, and owning certain membership interests in and to a limited liability company that shall be formed between CGM-GH, LLC, Pulp Group and DG Gansevoort Hotel LLC, all on terms acceptable to the Managers, (v) at such time as there shall be no legal impediment to the Company’s acquisition of the servicemark rights in and to “MPD”, Registration No. 85439019, including the full and final adjudication or settlement of that certain cause of action *Dual Group, LLC v. Gans-Mex, LLC, Ginza Project LLC, and Tatiana Brunetti*, Case No. 1:12-cv-01031 brought in the United States District Court, Southern District of New York, the acquisition and ownership of the servicemark rights in and to “MPD”, Registration No. 85439019.

11. Section 1.1 of the Operating Agreement identifies Michael Wainstein of PCG and Andreas Huber of HC as the managers of the Company.

12. Pursuant to Section 4.4 of the Operating Agreement, and with the exception of certain enumerated “Major Decisions” requiring prior approval of all of the members as provided in Section 4.5 of the Operating Agreement, the “management and control of the business and affairs of the Company shall be exclusively vested in the Managers.”

13. Contemporaneously with the execution of the Operating Agreement, each of the Petitioners, along with Worth Capital LLC and Andreas Huber, entered into separate “Consulting Agreements” (together, the “Consulting Agreements”), true, accurate and complete copies of which are attached to the Operating Agreement as Schedule A-1, Schedule A-2, Schedule A-3 and Schedule A-4, with the Company concerning the operations and affairs of the Company.

14. Among the “Major Decisions” “by or on behalf of the Company” requiring the prior approval of all of the members pursuant to Section 4.5 of the Operating Agreement is “determining to enter into, amend, modify, renew, terminate or take any other material action with respect to any of the Consulting Agreements”.

15. Notwithstanding Section 4.5 of the Operating Agreement, and without soliciting Petitioners’ approval, as members of the Company, Respondents, individually, and the Company, by Respondents, commenced an action against Petitioners (among others) on October 22, 2013 in the Supreme Court of the State of New York, County of New York, titled *Dual Groupe Hospitality, LLC, HC Hospitality Partners, LLC and PCG DGHP, LLC v. Daniel Koch, Derek Koch, and Day & Night Entertainment, LLC, Index No. 653653/2013* (the “Action”).

16. By way of the Action, and as more fully set forth in the Complaint commencing the Action, a true, accurate and complete copy of which is attached hereto as *Exhibit "A"*, Respondents and the Company assert that Petitioners breached the Operating Agreement and/or the Consulting Agreement and seek money damages, as well as a permanent injunction restraining Petitioners from engagement in business activities competing with the Company.

17. Upon information and belief, Respondents continue to operate the business of the Company without the involvement or participation of Petitioners, have used the income of the Company to pay personal obligations, have intentionally failed to pay debts owed by the Company (currently amounting to approx \$182,000.00, if not more) including to former employees, consultants and vendors of the Company on the pretext that the Company has no readily available cash. The Company's 2012 Partnership Return reflects total assets consisting of only \$8,320 in cash. The former employees and vendors of the Company have repeatedly contacted Petitioners begging for payment of their respective invoices and/or unpaid salaries/commissions.

18. Section 8.1 of the Operating Agreement provides, in pertinent part, as follows:

8.1.1. Except as set forth in this Article VIII, no Member is authorized to dissolve the Company by its express will or by withdrawal without the Approval of the Members.

8.1.2. The Company shall be dissolved upon the first to occur of any of the following:

- (a) The expiration of the term of the Company, as set forth in Section 2.4 hereof;
- (b) Approval of the Members to dissolve the Company;
- (c) The rendering of a court order of judicial dissolution;
or
- (d) The sale or other disposition of all of the Company's assets.

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

19. Section 702 of the LLC Law, titled “Judicial Dissolution”, provides, in pertinent part, as follows:

On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

20. Based upon the facts and circumstances described herein, Petitioners respectfully submit that it is no longer possible to carry on the business of the Company in conformity with the articles of organization or the Operating Agreement.

21. Consequently, Petitioners demand the entry of an Order decreeing the dissolution of the Company pursuant to Section 702 of the LLC Law.

**AS AND FOR A FIRST CAUSE OF ACTION
(Appointment of a Receiver)**

22. Section 703(a) of the LLC Law, titled “Winding up”, provides, in pertinent part, as follows:

...Upon cause shown, the supreme court in the judicial district in which the office of the limited liability company is located may wind up the limited liability company’s affairs upon application of any member, or his or her legal representative or assignee, and in connection therewith may appoint a receiver or liquidating trustee.

23. Based upon the facts and circumstances described herein, Petitioners respectfully submit that Respondents, as managers or members of the Company, cannot be trusted to wind up the Company’s affairs in good faith and in keeping with their fiduciary duties and, thus,

cause for the appointment of a receiver exists so as to protect the interest of all members of the Company.


24. Consequently, Petitioners demand the entry of an order appointing a receiver to wind up the Company's affairs pursuant to Section 703 of the LLC Law.

WHEREFORE, Petitioners respectfully requests the entry of an Order of this Court: (a) decreeing that the Company be dissolved; (b) appointing a receiver to wind up the affairs of the Company; and (c) granting such other and further relief as may be just and proper.

Dated: New York, New York
February 13, 2014

PICK & ZABICKI LLP
Counsel to Petitioners

By: _____


Douglas J. Pick, Esq.
369 Lexington Avenue, 12th Floor
New York, New York 10017
(212) 695-6000

VERIFICATION

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

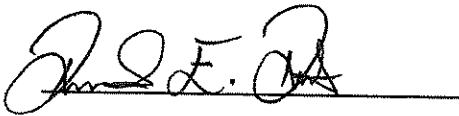
DANIEL KOCH, being duly sworn, deposes and says:

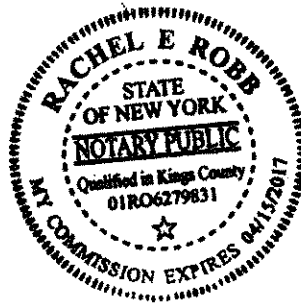
I am a Petitioner herein. I have read the annexed Verified Petition and the exhibits thereto. I know the contents thereof and that the same is true to the best of my knowledge and belief. As to those matters therein which are stated to be alleged upon information and belief, I believe them to be true.



DANIEL KOCH

Sworn to be before me this
13th day of February, 2014





VERIFICATION

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

DEREK KOCH, being duly sworn, deposes and says:

I am a Petitioner herein. I have read the annexed Verified Petition and the exhibits thereto. I know the contents thereof and that the same is true to the best of my knowledge and belief. As to those matters therein which are stated to be alleged upon information and belief, I believe them to be true.


DEREK KOCH

Sworn to be before me this
13~~th~~ day of February, 2014

