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

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Application of JEFFREY PIKUS, owner of 50% of all the outstanding Class A membership interests in TEN SHERIDAN ASSOCIATES, LLC,

Petitioner,

for the dissolution of TEN SHERIDAN ASSOCIATES, LLC, a New York Limited Liability Company, pursuant to Section 702 of the Limited Liability Company Law,

v.

STUART D. GOLDSTEIN, the other 50% owner of all the outstanding Class A membership interests in TEN SHERIDAN ASSOCIATES, LLC, and EDWARD M. FOX, DARIN GOLDSTEIN, SUSAN GOLDSTEIN, DARIN GOLDSTEIN TRUST, DANIELLE GOLDSTEIN TRUST, HANS P. UTSCH, MICHAEL ROSENBERG, DAVID FASTENBERG, PETER SCHWARTZ, GERI SCHWARTZ, JEFF SCHAKIN, ERIC SCHAKIN, DENIS CASLON, ROBERT MINESS, ALAN HOFFMAN, FREDERICK WEINER, MICHAEL WEINSTEIN, CHARLES ROSENBERG, MYRNA ROSENBERG, AARON JUNGREIS, ROBERT WILLIAMS, SUSAN PIKUS, STEVEN GELLES, RICK ASALS, JUAN CARLOS PARKER, LUIS ANDREOTTI, ERWIN GRONER, GERALD GERMAIN, MARTOM ASSOCIATES INC., LYNN BOOTH, ANDREA ANSON, JACQUELINE MARKS NON-EXEMPT TRUST, JACQUELINE MARKS EXEMPT TRUST, ARLENE REISMAN, and ANDREW L. FREY, the owners of all the outstanding Class B membership interests in TEN SHERIDAN ASSOCIATES, LLC,

Respondents.

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PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR DISSOLUTION AND RELATED RELIEF

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Petitioner Jeffrey Pikus respectfully submits this memorandum of law in support of his Verified Petition pursuant to Limited Liability Company Law ("LLC Law") § 702 for an Order affecting the judicial dissolution of Ten Sheridan Associates, LLC (the "Company") and for related relief.

PRELIMINARY STATEMENT

The Court (Ramos, J.) recommended that Petitioner bring this special proceeding for the dissolution of the Company.

The Company owns an upscale residential (rental) apartment building known as 10 Sheridan Square, which is located in Manhattan's West Village (the "Property"). The Company's assets are the Property and the revenue generated thereby, and, more significantly, the development rights associated with the Property, including the right to convert the Property to a condominium and reap the substantial financial upside related thereto. Petitioner is a co-Managing Member of, and owner of 50% of the outstanding Class A membership interests in, the Company.

Recently, co-Managing Member Stuart Goldstein embarked on a scheme to use Company assets for his family's benefit and to the Company's detriment. Specifically, without Petitioner's required consent, Stuart Goldstein caused the Company to rent not one, not two, not three, but *four apartments* to his children Darin and Danielle Goldstein (who are Class B members of the Company) for an amount significantly below market rate (the "Sweetheart Leases"). Making things worse, Stuart Goldstein further breached his fiduciary duties by covertly re-registering his children's apartments as rent-stabilized, thereby providing them with both low rent and longevity

protection. The value of the Property, and thus in turn of the Company, is significantly lessened by the Goldsteins' rent-stabilized leases.[1]

Consequently, the Goldsteins have deprived the Company of the additional rental income that would have been derived from market rents. As a further result, because the Company intends to convert the Property into a condominium, the Goldsteins have stockpiled apartments with the intent to purchase the units at insider prices instead of permitting the Company to sell those future condominium units on the open market. Stated differently, the Goldsteins have significantly reduced the Company's (sellout) value by creating these rent-stabilized units. The Goldsteins' use of Company assets for their personal benefit and to the Company's detriment has prohibited the Company from realizing or achieving its purpose – to generate as much revenue as possible from the leasing and sale of the Property.

Furthermore, there is conflict and disagreement between the Managing Members regarding the management of the Company's asset, the Property, which makes it unfeasible for the Company to carry on its business. For the last 17 years, and based upon an agreement between the Company and Petitioner, Petitioner oversaw virtually all facets of the Property's operation. When Petitioner objected to the Goldsteins' aforementioned self-dealing, Stuart Goldstein retaliated by suddenly causing the Company to stop paying Petitioner's percentage of the agreed-upon management fee and claimed (for the first time in 17 years) that Petitioner was merely an "at-will consultant." Stuart Goldstein then purported to "terminate" Petitioner, rejected Petitioner's requests for Company records, denied Petitioner access to the Property, and commenced a plenary action alleging, in essence, that Petitioner should have blessed the Goldsteins' self-dealing (the "Related Action").[2]

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[1] This is also true whether from the perspective of a sale of the Property or a conversion to condominium.
[2] The Related Action is *Goldstein et al. v. Pikus et al.* (N.Y. Co. Index No. 651209/2014).

During a hearing in the Related Action, Petitioner advised the Court that he intended to seek dissolution of the Company, to which the Court responded: "**I would recommend that by the way**." (Petition, Ex. A at 13:25 – 14:2)(emphasis added).

STATEMENT OF FACTS

Petitioner respectfully refers the Court to the accompanying Verified Petition for a recitation of the facts relevant to this proceeding.

ARGUMENT

I. The Company Should be Dissolved

A. Standard of Review

LLC Law § 702, entitled "Judicial Dissolution," provides in relevant part:

> 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.

(LLC Law § 702). For dissolution pursuant to LLC Law § 702, a petitioning member must establish 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." *Matter of 1545 Ocean Ave., LLC*, 72 A.D.3d 121, 131, 893 N.Y.S.2d 590 (2nd Dep't 2010)(emphasis added).

B. The Goldsteins' Self-Dealing Contravenes the Company's Purpose

1. The Managing Member is Hoarding Units so that his Family Can Profit at the Company's Expense

Dissolution is appropriate under LLC Law § 702 where management is contravening the LLC's stated purpose. *Schibelli v. Beacon Bldg. Group, LLC*, 991 N.Y.S.2d 726, 731 (Queen Co. 2014). "The business and purpose of the Company is to acquire, own, hold, expand, renovate, lease, manage, sell, operate the real property located at 10 Sheridan Square, New York, New York ... and such other business activities and operations that are reasonably related thereto...." (Petition, Exh. E, § 2.3). "Business" is defined by LLC Law § 102(e) as meaning "every trade, occupation, profession or commercial activity, which means "for pecuniary profit." *Matter of Youngwall Realty, LLC*, 2008 WL 827916 (Nassau County Index No. 2266-2007 Mar. 14, 2008)(citing Rich, Practice Commentary, McKinney's Cons. Law of NY, Book 32A, p. 183).

Here, over Petitioner's express objection, co-Managing Member Stuart Goldstein rented the Property's apartments to his children for below market rate and then registered such apartments as rent-stabilized so that, upon the Company's intended sale or conversion of the Property, the Goldsteins can purchase the apartments at insider prices instead of permitting the Company to sell those future condominium units on the open market. Such personal benefit and detriment to the Company contravenes the Company's stated purpose of renting and selling the Property for *the Company's* pecuniary benefit.

Respondent Darin Goldstein is: (a) the son of co-Managing Member Stuart Goldstein; (b) a Class B member; (c) the Chief Operating Officer of managing agent SDG Management; and (d) a tenant in many apartments at the Property. Notably, one below-market rate apartment at the Property was insufficient for Darin Goldstein, and two combined below market rate apartments were also insufficient for him. After his father Stuart Goldstein arranged for him to reside in the

combined units of 14D and 14E, Darin Goldstein wanted to add yet another Company asset, Unit 14F, to his residence. (Petition ¶¶ 26 – 27). Petitioner objected to this deal for numerous reasons, including that *Darin agree that he would vacate the units upon a sale or conversion of the Property to a condominium.*[3] Darin steadfastly objected to such condition, thereby confirming that he wanted to personally reap the benefits of a sale or conversion at the Company's expense. (Id. ¶ 28).

In fact, Petitioner explained to Darin something that he already knew: "As this building could potentially be marketed as a condo-conversion, vacant space would be a premium and could potentially add greater value to the building...." (Id. ¶ 29). In response, Darin acknowledged that his "vacating the premises as a condition of sale would add greater value" to the Company, but nonetheless refused to agree to vacate upon conversion. (Id. ¶ 30).

Failing to put the Company's interests above his own, despite him being a Class B member, Darin refused to accept Petitioner's decision: "I can't agree at this point to some provision forcing me to vacate if we decide to put the building on the market." Darin again admitted that he was solely concerned about his well-being, and not that of the Company: "I may want to vacate as the value created for myself could warrant that decision, but to make it now is not possible." (Id. ¶ 31).

Petitioner tried to make Darin understand his greedy behavior: not only was he asking the Company to rent to him yet a third apartment for below market value, but he wanted to compound personal benefit, and at the Company's expense, by rendering his units unmarketable upon a conversion to condominium or reducing the Company's value upon a sale: "As the partnership is willing to allow you to combine the apartments, you must be willing to vacate (if it will allow all of us to profit and/or is a condition of sale)." (Id. ¶ 32). Darin admitted that

[3] Of course, Darin's father, Stuart Goldstein (co-Managing Member) immediately blessed the improper transaction.

Petitioner properly put the Company's interests first, but still wanted Petitioner to consider Darin's personal benefits: "While I understand your desire to view this from a purely investment standpoint, I have been trying to find a middle ground which takes into account both the realities that this is my 'home' and has been for 9 years, and an investment simultaneously." (Id. ¶ 33). In sum, Darin was only concerned about how he would personally benefit from the combination and he disregarded the detriment to the Company.[4]

Stuart Goldstein's other child benefiting from the Sweetheart Leases is respondent Danielle Goldstein, who accepted tenancy and purportedly resides in Unit 14C at the Property. Stuart Goldstein rents Apartment 14C to his daughter Danielle Goldstein for a monthly rent of $2,750, which is a 40% discount when compared to the $4,547.36 legal regulated rent of Apartment 12C. Of course, Apartment 14C is a higher floor than Apartment 12C, and thus more valuable. Furthermore, Danielle Goldstein's lease reflects that the legal regulated rent for Apartment 14C is $4,589. (**Exhibit J**). Stuart Goldstein caused the Company to only charge his daughter $2,750. Making the nepotism even more inappropriate is the fact that, upon information and belief, *Danielle Goldstein does not even reside in New York*, let alone Unit 14C. According to her company's website, Danielle Goldstein owns and operates the Starwyn Farms equestrian facility *in Wellington, Florida*. Starwyn Farms "offers full board and training with show jumper Danielle Goldstain [sic]." (Id. ¶ 43).

2. The Goldsteins Admit that their End Game is Insider Prices

Stuart Goldstein arranged for his children to have steeply-discounted apartments, which are improperly rent-stabilized (as set forth below), all to the detriment of the Company (which

[4] Upon information and belief, Darin Goldstein used approximately $74,000 of the Company funds to renovate his apartment in 2008 (which was then Unit 14D and Unit 14E) and the Company has not been reimbursed for such improper expenses. (Petition ¶ 34).

should be receiving market rate) and its members whose last names are not "Goldstein." In a January 28, 2013 email, Darin Goldstein admitted that his intention is to combine Unit 14C (leased to, but not occupied by, Danielle Goldstein) with his Unit 14DEF to create what he referred to as "the Goldstein units." In that same email, Darin demanded that he "have the right to purchase *at the insider price*, apartments 14CDEF, *as well as any other units which I may subsequently rent in the future*." Absent the Goldsteins' self-dealing, those apartments would be sold to the public at the market price. Thus, the Goldsteins admit that they are improperly "reserving" apartments for themselves so that they (and not the Company) are enriched upon a sale or conversion to condominium. (Id. ¶¶ 44 – 46).

3. The Goldsteins Improperly Rent-Stabilized their Apartments

As if the aforementioned self-dealing was not enough, Stuart Goldstein also improperly registered his children's apartments with DHCR as rent-stabilized. Until recently, certain units that are the subject of the Sweetheart Leases were listed by Stuart Goldstein as "temporarily exempt" from registration as they were owner-occupied, and thus not listed on the Registration Rent Roll filed by the Company with DHCR. (Id. ¶¶ 47 – 48).

Danielle Goldstein's tenancy in Unit 14C commenced in 2009. From 2009 to 2013, Stuart Goldstein properly registered her unit as exempt, as it was owner-occupied. In 2014, Stuart Goldstein first and inexplicably registered her unit as rent-stabilized, even though it was contrary to the Rent Stabilization Code (RSC).[5] Darin Goldstein's tenancy in Units 14D and 14E commenced in 2008. Stuart Goldstein properly registered the apartments as temporarily exempt, as they were owner-occupied. In 2013, Stuart Goldstein properly registered Units 14D and 14E as temporarily exempt, however, he improperly registered Unit 14F as rent stabilized and at a

[5] Moreover, in addition to being owner-occupied, because Unit 14C is not Danielle Goldstein's primary residence (she lives in Florida, as set forth above), the unit is excluded from rent-stabilization pursuant to RSC § 2520.11(k).

rate significantly below the legal rent. In 2014, Stuart Goldstein suddenly and improperly registered all three units as rent-stabilized with a legal rent of $10,500. (Id.). Not only was this clearly not the "legal rent," but all three apartments should have been registered as temporarily exempt, as they were owner-occupied. (Id. ¶¶ 49 – 50).

In sum, Stuart Goldstein has improperly (and over Petitioner's objection) given his children (Class B members) protection under the RSC to ensure (a) below-market rents for years to come and (b) rights to purchase each of the units at insider prices, thus unduly profiting personally at the expense of the Company and its other members. Such conduct contravenes the Company's purpose.

C. The Managing Members' Deadlock Precludes the Company's Viability

In *Matter of Salata LLC*, 2010 WL 1954125 (N.Y. Co. Index No. 116405/09 Mar. 25, 2009), the Court granted the petition seeking dissolution because "[t]here is no dispute that the partners are deadlocked, cannot resolve their differences, and blame each other for [the company's] problems." The petitioner therein met his burden of establishing that it is not reasonably practical to carry on the business of the company because "there is conflict and disagreement between the partners regarding the management and viability of [the company] that makes it unfeasible for [the company] to carry on its business." *Id.*; *see also Matter of Y and Y Ditmas LLC*, 2014 WL 37887 (Queens Co. Index No. 502760/13 Jan. 2, 2014)(petitioner's testimony that two members were not on speaking terms and that decision-making has been seriously frustrated raised questions of fact as to feasibility of continuing LLC).

It is undisputed that the two co-Managing Members (Stuart Goldstein and Petitioner) are deadlocked, cannot resolve their differences, and blame each other for the Company's problems. As just one form of retaliation for Petitioner's refusal to acquiesce to the Goldstein family's self-

dealing, the Goldstein filed a lawsuit against Petitioner seeking damages purportedly arising out of Petitioner's failure to bless the self-dealing. (Petition, Exh. Q, ¶¶ 56 – 64). The Goldsteins' Complaint in the Related Action also alleges that the co-Managing Members are deadlocked on whether to sell the Property now. (Id. ¶¶ 50 – 51). Petitioner has asserted counterclaims in the Related Action against the Goldsteins. (Petitioner, Exh. R).

Furthermore, the Complaint in the Related Action falsely alleges that Petitioner improperly managed the Property.[6] (Id. ¶¶ 34 – 49). However, as detailed in the Verified Petition, the Company's problems were caused by the Goldsteins' self-dealing.

The Managing Members also dispute who is entitled to manage the Property and have both asserted claims in the Related Action seeking a declaration that each of them, but not the other, is entitled to manage the Property. Stuart Goldstein seeks a declaration that only he (or his management company run by his son Darin) is entitled to manage the Property. (Petition, Exh. Q, ¶ 76). On the other hand, Petitioner also seeks a declaration that he is entitled to manage the Property. (Petition, Exh. R, ¶¶ 12 – 15, 44 – 68). For the interim, their disagreement on management has deadlocked, and will continue to deadlock, the Company's operations.

II. A Receiver Should Be Appointed

LLC Law § 703(a) authorizes the Court to appoint a receiver to wind up a company's affairs. (LLC Law § 703(a)). Here, the appointment of a receiver is necessary to preserve the Company's assets. As detailed in the Verified Petition, the Company's assets are the Property and the revenue generated thereby. Co-Managing Member Stuart Goldstein and his children (Class B members) have rented the Company's apartments to themselves at below market rate,

[6] The Goldsteins have not produced in the Related Action any proof of such allegations because such allegations are false.

then registered them as rent-stabilized (giving themselves longevity protection), and admit that their intention is to purchase such units "at the insider price" upon a condominium conversion (Petition, Exh. L).

Such self-dealing has deprived, and will continue to deprive, the Company of the ability to rent the apartments to the public at the market rate and to obtain market prices upon a sale or conversion to condominium. In fact, Darin Goldstein admitted in writing that he intends on hoarding even more apartments for himself when he demanded the right to purchase not only his current three-unit combination 14DEF "at the insider price" but "as well as any other units that [he] may subsequently rent in the future." (Id.). The Court should void the Sweetheart Leases because they were not properly authorized by the Court and they significantly undermine the value of the Property.

Thus, the Court should appoint a receiver to wind up the Company's affairs including, but not limited to, the sale of the Property and any other distribution of assets pursuant to LLC Law § 704, and to protect the Company and its members from the Goldsteins' continual misconduct pending the outcome of this proceeding.

III. The Court Should Issue an Injunction Pending Dissolution

Section 6301 of the CPLR provides:

> A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action ... or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

(CPLR § 6301). In order to prevail on a motion for preliminary injunction, the movant must demonstrate (1) a likelihood of success on the merits; (2) irreparable injury absent the granting of the injunction; and (3) that a balancing of the equities tips in its favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 552 N.Y.S.2d 918, 919 (1990). The purpose of a preliminary injunction is to maintain the status quo and prevent dissipation of the property at issue. *Reichman v. Reichman*, 88 A.D.3d 680, 682, 930 N.Y.S.2d 262, 264 (2nd Dep't 2011).

In addition, the Court can also use its general equity power in aid of a dissolution proceeding. *Rust v. Turgeon*, 295 A.D.2d 962, 746 N.Y.S.2d 223, 225 (4th Dep't 2002). "A court, at any stage of a judicial proceeding for judicial dissolution, may, in its discretion, grant an injunction, effective during the pendency of the proceeding or such shorter period as it may specif[y], for, *inter alia*, prohibiting officers and directors from transacting any unauthorized business as well as transferring or delivering property of the corporation absent court permission." *Scomello v. Pascarella*, 33 Misc.3d 1217(A), 941 N.Y.S.2d 541 (Suffolk Co. 2011).

Furthermore, section 11.10 of the Operating Agreement permits the Company's members to seek injunctive relief to protect their rights. (Petition, Exh. E, § 11.10).

As detailed in the Verified Petition, Stuart Goldstein caused the Company to rent four (4) apartments to two of his children for less than the market rate and then improperly registered such apartments as rent-stabilized. Furthermore, the Goldsteins are unwilling to vacate their multiple apartments upon the sale or conversion of the Property to condominium because, according to them, they want to reap the benefits of "insider prices." (Petition, Exh. L). Stated differently, the Goldsteins want discounted condominium units for themselves rather than the Company obtain market price for such units. Such use of the Company's assets for the Goldsteins' personal benefit and to the Company's detriment contravenes the Company's

purpose, which is to generate as much revenue as possible from the leasing and sale of the Property. Furthermore, as noted above, it is undisputed that the Company cannot function as intended because the Managing Members are deadlocked, cannot resolve their differences, and blame each other for the Company's problems. Thus, Petitioner has shown a likelihood of success on the merits.

Significantly, the Goldsteins have not limited their hoarding of the Company's assets to their current four apartments. In a January 28, 2013 email, Darin Goldstein admitted that his intention is to combine Unit 14C (leased to, but not occupied by, Danielle Goldstein) with his Unit 14DEF to create what he referred to as "the Goldstein units." In that same email, Darin demanded that he "have the right to purchase *at the insider price*, apartments 14CDEF, *as well as any other units which I may subsequently rent in the future*." (Petition, Exh. L). The issuance of an injunction will preserve the status quo.

A party seeking preliminary injunctive relief must establish that that the irreparable injury to be sustained is more burdensome than the harm caused to the defendant by the imposition of the injunction. *Burmax Co., Inc. v. B&S Industries*, 135 A.D.2d 599, 522 N.Y.S.2d 177, 179 (2nd Dep't 1987). The balance of the equities favors injunctive relief where "it is apparent that if relief is granted, defendant will suffer no prejudice or inconvenience, while denial of such relief will cause plaintiff substantial and irreparable harm." *Konishi v. Por Kung Lin*, 88 A.D.2d 905, 450 N.Y.S.2d 585 (2nd Dep't 1982). That is the case here. If the Goldsteins are enjoined from renting even more of the Company's apartments to themselves, Darin Goldstein will simply have to make do with his *three-unit combination*, Unit 14DEF, and Danielle Goldstein will have to settle for Unit 14C, in which she does not even reside (she lives in Florida). On the other hand, if the Goldsteins are not enjoined, they will make good on their aforementioned promise to

"subsequently rent" even more apartments at below market rate and then, as Darin admitted, refused to vacate the same upon a sale or conversion of the Property to condominium.

CONCLUSION

For the reasons set forth herein and in the Verified Petition, the Company should be dissolved, a receiver should be appointed to wind up the Company's affairs, and the respondents should be enjoined from transacting any business or exercising any company powers outside of the ordinary course of business, including renting or conveying the Company's apartments to Stuart Goldstein or his family members or affiliates or renewing any current leases with such persons.

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New York, NY

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