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

DONNA REDEL, Plaintiff, -against- IRVING REDEL, VICTORIA REDEL, JESSICA REDEL, LEDER ENTERPRISES, and PAUL SIEGEL, solely in his individual capacity, Defendants.	Index No. 653395/2014 Assigned to: Hon. Shirley W. Kornreich

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ALL DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

February 4, 2014

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Preliminary Statement

Defendants Irving Redel, Victoria Redel, Jessica Redel, Leder Enterprises and Paul Siegel submit this Reply Memorandum of Law in support of their motion to dismiss and for summary judgment dismissing the original Complaint and Amended Complaint. Defined and capitalized terms have the meanings ascribed to them in defendants' initial motion papers and the affirmations and affidavit accompanying this Reply Memorandum of Law.

Plaintiff's opposition papers ignore and fail to address fundamental principles of partnership law in New York, to wit: That a partner is a general agent for his or her partners and the partnership. A partner has actual authority to bind his or her partners, as well as the partnership, to contracts, agreements, notes, other obligations, transactions and the like. By the unambiguous text of the Subscription Agreement and LP Agreement, Mr. Redel, as Leder's managing partner, bound Leder's partnership and partners to the terms of those Agreements. The Agreements do not permit any partner in Leder to: (a) dissolve and wind up Leder, (b) withdraw any portion of Leder's capital contribution, or (c) receive the value of his or her pro rata interest in the Limited Partnership, during the term of the Limited Partnership. The documentary evidence conclusively establishes that plaintiff's causes of action to dissolve and wind up Leder are meritless and should be dismissed with prejudice.

The documentary evidence conclusively establishes that plaintiff's attempted service of the amended pleadings on Mr. Siegel was defective. It also establishes that Mr. Siegel has been a general partner in Leder for 32 years. Plaintiff's conclusory assertion that Mr. Siegel is not a general partner in Leder is wrong and should be dismissed with prejudice.

Plaintiff does not dispute - as she cannot - that she may not assert claim for a breach of fiduciary duty against Mr. Redel until an accounting of Leder has been completed and a balance struck. As there has been no accounting of Leder, and no balance struck among Leder's partners, this Court should dismiss plaintiff's breach of fiduciary duty claim.

Plaintiff's wrongful attempt to dissolve and wind up Leder - and her misguided effort to obtain monies which cannot be obtained from the Limited Partnership or Leder - preclude her from asserting a cause of action for an accounting. Where, as here, a partner has unclean hands concerning matters at issue in an action for a partnership accounting, she is barred from obtaining an accounting of the partnership's books and records.

ARGUMENT

It is well established that where a plaintiff files an amended complaint subsequent to defendants' motion to dismiss, the moving parties may elect to apply their motion to the amended complaint. See Woodie v. Azteca Int'l Corp., 9 Misc. 3d 1104(a) at * 1 n.4 (Sup. Ct. N.Y. Co. July 1, 2005) (Kornreich, J.); see, e.g., 49 West 12 Tenants Corp. v. Seidenberg, 6 A.D.3d 293 (1st Dep't 2004) ("The motion court properly considered defendants' motion to dismiss as against the proffered amended complaint"); DiPasquale v. Security Mutual Life Ins. Co., 293 A.D.2d 394 (1st Dep't 2002). The moving parties may submit supplemental papers addressing issues raised for the first time in the amended complaint. See Woodie, 9 Misc. 3d 1104(a) at * 1 n.4.

The initial defendants, Mr. Redel and Leder, elect to apply their motion to dismiss and for summary judgment to plaintiffs' Amended Complaint. The defendants added in the Amended Complaint - Victoria Redel, Jessica Redel and Paul Siegel – join in Mr. Redel's and Leder's

original motion and elect to have those motion papers apply to the Amended Complaint. All defendants submit this Reply Memorandum in support of their motion to dismiss or, in the alternative, granting their motion for summary judgment dismissing the Amended Complaint.

"[E]ven read liberally and accepting the alleged facts as true, the [Amended Complaint] fails to state a cause of action..." Maroutain v. Fuchs, - A.D.3d - , 2015 WL 304600 (1st Dep't Jan. 26, 2015) (citations omitted). Similarly, the Subscription Agreement, LP Agreement, Power of Attorney annexed to the LP Agreement as an exhibit, partnership tax returns, Mr. Siegel's July 19, 1983 letter to Leder and his July 19, 1983 note to Leder conclusively establish a defense to the causes of action alleged in the Amended Complaint as a matter of law. See, e.g., Leon v. Martinez, 84 N.Y.2d 83, 87 (1994); Sterling Resources Int'l, LLC. v. Leerink Swann, LLC, 92 A.D.3d 538, 539 (1st Dep't 2012). For these reasons, and as explained in detail herein, this Court should dismiss plaintiff's Amended Complaint with prejudice.

(a) THIS COURT SHOULD DISMISS THE AMENDED COMPLAINT AGAINST PAUL SIEGEL

(i) Defective Service

CPLR § 308(2) requires plaintiff to deliver her amended pleadings at defendant's "actual place of business, dwelling place or usual place of abode..." N.Y. Civ. Prac. L & R § 308(2) (McKinney's 2015). The statute further requires mailing of the amended pleadings to defendant's "last known residence...or actual place of business..." Id.

The affidavits of plaintiff's process server and Mr. Siegel establish that plaintiff did not deliver her amended pleadings to him at his actual place of business, actual dwelling place or usual place of abode. The process server's affidavit does not state the location to which he mailed the amended pleadings intended for Mr. Siegel. But even if the process server mailed the

amended pleadings to the 11 East 68th address - where Mr. Siegel has resided lived for 15 years - the amended pleadings were not mailed to his last known residence as required by statute. Plaintiffs' service of the amended pleadings on Mr. Siegel was defective. See Feinstein v. Bergner, 48 N.Y.2d 234, 239-41 (1979); Cuomo v. Cuomo, 144 A.D.2d 331, 332 (2d Dep't 1988) ("It is well settled that the terms 'dwelling place' and 'usual place of abode' may not be equated with 'last known residence' of a defendant for purposes of substituted service pursuant to CPLR 308(2)..." Plaintiffs' delivery of pleadings to defendants' last known residence, as opposed to defendants' actual dwelling place or usual place of abode, "was improper...and the complaint should have been dismissed as to the appellants"). This Court should dismiss the Amended Complaint against Mr. Siegel on this ground.

(ii) The Statute Of Limitations Bars Plaintiffs' Third Cause Of Action Against Mr. Siegel

"[The] statute of limitations in an action for declaratory judgment is determined by reference to the gravamen of the claim or status of the defendant party...If a declaratory judgment action could have been commenced by an alternative proceeding for which a specific limitation period is statutorily provided, that period applies instead of CPLR 213(1)'s six-year catchall provision..." Gress v. Brown, 20 N.Y.3d 957, 959 (2012) (citations and internal quotations omitted). An action for a declaration that an individual or entity is not a general partner - alleged in the third cause of action - is not governed by a specific statute of limitations period. The six-year statute of limitations applicable to actions for which no limitation period has been specifically established is applicable to plaintiffs' third cause of action for a declaration that Mr. Siegel is not a general partner in Leder. See N.Y. Civ. Prac. L & R § 213(1) (McKinney's 2015); Gress, 20 N.Y.3d at 959; Slotnick v. Whalen, 49 N.Y.2d 224, 230 (1980) ("If no other form of

proceeding exists for the resolution of the claims tendered in the declaratory judgment action the six-year limitation of CPLR 213(subd.1) will then be applicable").

In her Amended Complaint, plaintiff alleges that "[Mr. Redel's] attempt to grant Mr. Siegel a partnership interest in Leder Enterprises (a partnership at will) without [plaintiff's] consent would have the legal effect of dissolving that partnership automatically." (Amend. Cplt. ¶ 20.) The text of the Amended Complaint establishes that: (a) Leder was dissolved by Leder's admission of Mr. Siegel as a general partner (N.Y. Partnership Law § 60 (McKinney's 2015)); (b) the partners continued Leder's business after Mr. Siegel's admission to the partnership; and (c) plaintiff's claim for a declaration that Mr. Siegel is not a general partner accrued on July 19, 1983 when Mr. Siegel purchased his four (4%) percent interest in Leder. As plaintiff's application for a declaration that Mr. Siegel is not a general partner accurred on July 19, 1983, it was barred by the statute of limitations on July 20, 1989. See Brooks v. Haidt, 59 A.D.3d 233, 234 (1st Dep't 2009) (plaintiff's motion for a partnership accounting and related relief accrued upon dissolution of the partnership and, having been brought more than six years after dissolution, was barred by the six-year statute of limitations in CPLR § 213(1)); Mashihi v. 166-25 Hillside Partners, 51 A.D.3d 738, 739 (2d Dep't 2008). As plaintiff's claim for a declaratory judgment was time-barred in 1989, this Court should dismiss it today, more than 25 years after the statute of limitations expired.

(iii) The Third Cause Of Action Is Barred By Laches

Mr. Siegel became a partner and invested $60,000 for partnership interest in Leder in the summer of 1983. He has received distributions and IRS Forms K-1 from Leder from 1983 to date. Leder has conducted business with Mr. Siegel as a general partner since July 1983. Laches is "an equitable bar, based on lengthy neglect or omission to assert a right and the resulting

prejudice to an adverse party..." Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 816 (2003) (citations omitted), cert. denied, 540 U.S. 1017 (2003); see Schulz v. State of New York, 81 N.Y.2d 336, 348 (1993), cert. denied, 513 U.S. 1127 (1995). "[H]arm to economic interests can be enough to bar an action on the laches grounds, even if the delay does not affect a defendant's ability to defend against a suit." Saratoga County, 100 N.Y.2d at 817.

Leder has operated for 32 years with Mr. Siegel as a partner. Leder used Mr. Siegel's $60,000 investment as part of its $1.5 million payment to the Limited Partnership to purchase its ten (10%) percent limited partnership interest. The LP Agreement prohibits plaintiff and defendants from withdrawing any portion of Leder's capital contribution to the Limited Partnership, including Mr. Siegel's $60,000 portion of that contribution. Leder has made distributions to Mr. Siegel for 32 years. It is impossible to account for or return of those distributions.

Plaintiff's 32 year delay is seeking a declaration that Mr. Siegel is not a general partner in Leder is grossly excessive and constitutes undue delay as a matter of law. See Schulz, 81 N.Y.2d at 473 ("delays of even under a year have been held sufficient to establish laches"); Application of Paris [Anthony Ave. Realty Corp.], 160 A.D.2d 541, 542 (1st Dep't 1990) (13 year delay in seeking judicial dissolution of a closely held corporation was barred by the statute of limitations in CPLR § 213(1) and laches). Defendants would suffer severe prejudice if the Court granted the relief requested by plaintiff and for obvious reasons: (a) Leder cannot withdraw Mr. Siegel's portion of capital contribution in the Limited Partnership and remit it to him; and (b) Mr. Siegel cannot return distributions received from Leder years ago. See Schulz, 81 N.Y.2d at 473-74 ("Metaphorically, the impossibility of putting genies back in their bottles

springs to the imagination"); Paris, 160 A.D.2d at 542. This Court should dismiss the third cause of action in the Amended Complaint on the ground that it is barred by laches.

We also note that the IRS Forms K-1 from 2004 through 2013 annexed as exhibits to the Amended Complaint - as well as Mr. Siegel's July 13, 1983 letter and note to Leder - conclusively establish that Mr. Siegel is a general partner in Leder. Plaintiff, as a partner in Leder, is bound by the representations in Leder's tax returns, and the contents of Mr. Siegel's letter (countersigned by Leder) and note. Plaintiff's application for a declaration that Mr. Siegel is not a partner in Leder is meritless. See, e.g., Peterson v. Neville, 58 A.D.3d 489 (1st Dep't 2008), appeal dismissed, 13 N.Y.3d 775 (2009); Caplan v. Caplan, 268 N.Y. 445, 456 (1935).

(b) THE AMENDED COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

Plaintiff argues - without citation to any authority - that she may allege a cause of claim for breach of fiduciary duty against Mr. Redel because she is entitled to an accounting of Leder. (P. Opp. Mem. at 18.) Even if plaintiff is entitled to an accounting (although she is not), her argument that she may maintain a claim for breach of fiduciary duty against Mr. Redel is wrong.

Plaintiff's allegations concerning Mr. Redel's purported breaches of fiduciary duty in the Amended Complaint are identical to those in her original Complaint. (Compare Amend. Cplt. ¶¶ 118-121 with Orig. Cplt. ¶¶ 67-70.) Plaintiff's allegations underpinning her cause of action for breach of fiduciary duty "necessarily require[s] inspection of the books, records and accounts of...[Leder]..." Kreigsman v. Kraus, Ostreicher & Co., 126 A.D.2d 489, 490 (1st Dep't 1987). "[A] partner may not maintain an action at law for any claim arising out of the partnership until there has been a full accounting and a balance struck..." Wisenthal v. Wisenthal, 40 A.D.3d 1078, 1080 (2d Dep't 2007) (citations omitted). Where, as here, a claim for breach of fiduciary

duty requires inspection and review of partnership books and records, a partner cannot maintain a cause of action for breach of duty against another partner until there has been a full accounting. See Travelers Ins. Co. v. Meyer, 267 A.D.2d 124, 125 (1st Dep't 1999) (court dismissed partner's cross-claims for breach of fiduciary duty and gross negligence against his partners because there had not been a full accounting of the partnership's books and records); Stark v. Goldberg, 297 A.D.2d 203, 205 (1st Dep't 1999); Kriegsman, 126 A.D.2d at 490. This Court should dismiss plaintiff's fifth cause of action in the Amended Complaint for alleged breaches of fiduciary duty by Mr. Redel.

(c) LEDER IS A PARTNERSHIP FOR A DEFINITE TERM AND A PARTICULAR UNDERTAKING

Three of five partners recall executing a partnership agreement for Leder. More than three decades after its execution, these partners - Mr. Redel and Victoria and Jessica Redel - have not been able to locate a copy of the agreement. Nevertheless, their present inability to locate Leder's partnership agreement does not diminish the irrefutable fact - reflected by the Subscription Agreement and LP Agreement - which Leder's five partners agreed to be bound by and comply with the LP Agreement. The Subscription Agreement and LP Agreement conclusively establish that Leder: (a) is a partnership for a definite term and a particular purpose; (b) cannot withdraw or seek return of any portion of the $1.5 million capital contribution (including the monies that Mr. Redel loaned to plaintiff and Mr. Siegel's $60,000 used to purchase an interest in Leder); and (c) Leder cannot be dissolved and wound up until the earlier of (i) the expiration of Limited Partnership's term or (ii) the Limited Partnership dissolves, liquidates and terminates under the LP Agreement.

(i) Leder's Partners Are Bound By The Subscription Agreement And LP Agreement

Since its inception, Mr. Redel has been the managing partner of Leder. (Amend. Cplt. ¶ 2.) In the Subscription Agreement, Mr. Redel purchased a ten (10%) ownership interest in the Limited Partnership on behalf of Leder and its five general partners. (D. Ex. 2.) In this respect, the IRS tax identification number on page 10 of the Subscription Agreement for Leder is the identical tax identification number which appears on the IRS Forms K-1 issued to Leder and its five general partners. (See D. Ex. 2 [Subscription Agreement at 10]; P. Opp. Ex. E [IRS Forms K-1 for Leder and its partners (2009-2012)]); P. Opp. Ex. I [IRS Forms K-1 for Leder and its partners (2004-2004)].)

The Subscription Agreement which Mr. Redel executed on behalf of Leder and its partners provides, in part, "I may not cancel, terminate or revoke this Agreement...*I shall comply with the terms of the Partnership Agreement* and execute any and all further documents necessary in connection with becoming a limited partner of the Partnership." (D. Ex. 4 [Subscription Agreement ¶¶ 4(b), 4(c)]) (emphasis added). By its plain text, the Subscription Agreement binds Leder and its general partners to terms of the LP Agreement.

Mr. Redel executed the LP Agreement on behalf of Leder and its partners. (D. Ex. 2 [LP Agreement at p. 33].) On behalf of Leder and its partners, Mr. Redel also executed a Power of Attorney authorizing Limited Partnership's general partners to take certain actions on behalf of Leder and its partners. (Id. [Ex. D to the LP Agreement].) The LP Agreement binds Leder and its partners, and defines their rights with respect to, among other things, Leder's capital contribution, distributions, dissolution, winding up, distributions, or distributing the value of Leder's interest in the Limited Partnership to Leder's partners. (Id. [Subscription Agreement §§ 6.3, 7.1, 7.3, 7.5, 7.6, 7.7, 7.8, 7.9, Article VIII, Article IX, Article XI, Exhibit B].)

As a partner in and managing partner of Leder, Mr. Redel had and has actual authority to bind Leder and its partners. In this respect, "'[e]ach partner acts, as to himself, as principal, having a joint interest in the partnership property, and, as to each other partner, as a general agent'..." Caplan v. Caplan, 268 N.Y. 445, 456 (1935), quoting, First Nat. Bank v. Parson, 226 N.Y. 118, 221 (1919); see Deutsche Bank Nat'l Trust Co. v. Bills, 37 Misc. 3d 1209(A) at * 3 (Sup. Ct. Essex Co. Oct. 12, 2012) ("'each partner acts...as to each other partner...as a general agent'...A partner may bind the partnership and all other partners by making, endorsing or accepting bills or notes for partnership purposes") (citation and internal quotation omitted); 15A N.Y. Jur. 2d Business Relationships § 1663 (2014) ("each partner acts as a principal having a joint interest in partnership property as to himself or herself, and as a general agent to each other partner"); U.S. Nat'l Bank Ass'n v. Abel & Hull Builders, 582 F. Supp. 2d 605, 616 (S.D.N.Y. 2008) ("Under New York law...a partner is...an agent of his fellow partners, as well as of the partnership'") (citation and internal quotation omitted); Friedson v. Lesnick, 1992 WL 51543 at * 2 (S.D.N.Y. Mar. 26, 1992) ("Under New York law, each general partner acts as the agent of every other general partner and of the partnership"). Leder, plaintiff and the four other partners are bound by the terms of the Subscription Agreement, LP Agreement and Power of Attorney. See, e.g., Caplan, 268 N.Y. at 456.

(ii) Leder Is Not A Partnership At Will

Plaintiff's contention that Leder did not have a written partnership agreement, while incorrect, is irrelevant. To begin with, an oral partnership agreement having a definite term or for a particular purpose is enforceable and not dissolvable at will by any partner. See Gelman v. Buehuler, 20 N.Y.3d 534, 536-38 (2013). Even if Leder is governed by an oral partnership agreement (though it is not), Leder is a partnership for a definite term and a particular purpose

and plaintiff cannot lawfully seek to dissolve it. See id.; Congel v. Malfitano, 61 A.D.3d 810, 812 (2d Dep't 2009).

More than that, defendants and plaintiff fully performed the purported oral partnership agreement - which terminates in accordance with the text of the LP Agreement - for 32 years. Conclusive documentary evidence of such performance includes: (a) Mr. Redel's execution of the Subscription Agreement, LP Agreement and Power of Attorney on behalf of Leder and its five partners; (b) Mr. Redel's $200,000 loan to plaintiff to enable her to purchase an interest in Leder; (c) Leder's sale of a partnership interest in Leder to Mr. Siegel (Amend. Cplt. ¶¶ 47, 48; P. Exs. 10, 11); (d) Leder's $1.5 million capital contribution to the Limited Partnership, which included the funds loaned to plaintiff and Mr. Siegel's $60,000 capital contribution in Leder; (e) Leder's receipt of cash distributions from the Limited Partnership; (f) Leder's monetary distributions to its five general partners; (g) Leder's counter signature on Mr. Siegel's July 19, 1983 letter; and (f) Leder's issuance of IRS Forms K-1 to its general partners. The oral partnership agreement alleged by plaintiff is enforceable in accordance with its terms, including those established in the Subscription and LP Agreements, and is not barred by the statute of frauds. See, e.g., Louis Dreyfus Corp. v. ACLI Int'l, Inc., 52 N.Y.2d 736, 739 (1980) ("there was an overarching oral agreement among the parent corporations and their subsidiaries, in conformity with the subordinate partnership between the subsidiaries pursuant to their written partnership agreements [, which] was the implementing instrumentality"), rearg. denied, 52 N.Y.2d 899 (1981); H.P.P. Ice Rink, Inc. v. New York Islanders, Inc., 251 A.D.2d 249, 250 (1st Dep't 1998) (partial performance of an oral partnership agreement would be "sufficient to take the oral agreement out of the Statute of Frauds"); McCall v. Frampton, 81 A.D.2d 607, 608 (2d Dep't 1981); Hart v. Hart, 188 A.D. 283 (1st Dep't 1918) ("Where the [partnership] contract is

for a definite term, relief may be granted to the extent of compelling the execution of partnership articles, or the transfer of property, where there has been a partial performance, or to restrain any partner from carrying on business under the partnership name with other persons, or from publishing notices of dissolution").

(iii) Plaintiff's Causes Of Action For Dissolution Should Be Dismissed

Leder is a general partnership having an identifiable termination date, the earlier of (a) December 31, 2033; or (b) the Limited Partnership is dissolved, liquidated and terminated in accordance with the LP Agreement. Leder is thus a partnership for a definite term. Gelman, 20 N.Y.3d at 537; Congel, 61 A.D.3d at 811-12.

Leder also is a partnership for a particular purpose, which is to receive distributions from the Limited Partnership until the Limited Partnership's term expires or the Limited Partnership is dissolved, liquidated and terminated as set forth in the LP Agreement. See Gelman, 20 N.Y.3d at 537; St. Lawrence Factory Stores v. Ogdenburg Bridge and Port Auth., 202 A.D.2d 844, 845-46 (3d Dep't 1994) (parties formed a partnership for a particular undertaking where they agreed to develop and build a retail factory outlet center on a particular parcel of real property); Hooker Chem. & Plastics Corp. v. Int'l Minerals & Chem. Corp., 90 A.D.2d 991 (4th Dep't 1982)("'where a partnership has for its object...the effecting of a specific result, it will be presumed that the parties intended the relation to continue until the object has been accomplished'") (citation omitted); Harin v. Robinson, 178 A.D. 724, 728 (1st Dep't 1916) (where the partnership is for the completion of a specific work or "effecting a specific result[,]...[t]here is...a term fixed by the co-partnership agreement, and until that time arrives one partner cannot terminate the partnership and continue the enterprise for his own benefit"), aff'd without opinion, 223 N.Y. 651 (1918).

As set forth in defendants' initial moving papers, and as established by the text of the Subscription and LP Agreements, should plaintiff wrongfully dissolve Leder before expiration of its term or completion of its undertaking, Leder cannot withdraw from the Limited Partnership. Leder or its successors and assignees will remain a limited partner in the Limited Partnership until the Limited Partnership's term expires or the Limited Partnership is dissolved, liquidated and terminated in accordance with the LP Agreement. In no event will Leder's $1.5 million capital contribution, or Leder's pro rata share of the Premises' value, be returned to (a) Leder and its partners, (b) a Substituted Limited Partner for Leder, or (c) the representatives and assignees of Leder until the earlier of: (i) Limited Partnership's expiration (on December 31, 2033); or (ii) dissolution, liquidation and termination of the Limited Partnership as provided in the LP Agreement. See Riviera Congress Assoc. v. Yassky, 18 N.Y.2d 540, 548 (1966) ("partners may include...practically 'any agreement they wish'" in a partnership agreement) (citation omitted); Lanier v. Bowdoin, 282 N.Y. 32, 38 (1939) (rules contained in New York Partnership Law "for determining the rights and duties of partners and for distribution of assets are applicable only in the absence of an agreement between the partners on the same subject matter"), rearg. denied, 282 N.Y. 611 (1940).

In the event that plaintiff withdraws from or otherwise wrongfully dissolves Leder, the four remaining partners may continue the partnership's business under Leder's name. See N.Y. Partnership Law § 69(2)(b) (McKinney's 2015); St. Lawrence, 202 A.D.2d at 844-45. As plaintiff will no longer be a partner, she will not participate in Leder's management or have any right to inspect the partnership's books and records.

Because Leder is a partnership having a specific term and definite undertaking, plaintiff has: (a) violated Leder's partnership agreement by attempting to dissolve it; and (b) as a result,

failed to state a claim for dissolution under Partnership Law § 62(b)(1). See, e.g., Congel, 61 A.D.3d at 82. Nor has plaintiff stated a cause of action for dissolution under Partnership Law § 63(1)(d) because she failed to allege such gross misconduct, bad faith or other intentionally malicious acts by Mr. Redel that has caused serious and lasting injury to Leder "rendering it impractical to carry on [Leder's] business..." Schneider v. Green, 1990 WL 151142 at * 10 (S.D.N.Y. Oct. 1, 1990); see Skolny v. Richter, 139 A.D. 534, 536 (1st Dep't 1910); Josephthal v. Gold, 104 Misc. 137 (Sup. Ct. N.Y. Co. 1918); Jones v. Jones, 15 Misc. 2d 960, 962 (Sup. Ct. King's Co. 1958). This Court should dismiss the first and second causes of action to dissolve and wind up Leder in the Amended Complaint.

(d) PLAINTIFF IS NOT ENTITLED TO AN ACCOUNTING

The documentary evidence conclusively establishes that plaintiff has breached Leder's partnership agreement by wrongfully attempting to dissolve and wind up Leder and unlawfully extract (a) a share of Leder's capital contribution in the Limited Partnership; and (b) a pro rata share of the value of the Premises (whatever it may be) attributable to Leder before the Limited Partnership (i) expires or (ii) is dissolved, liquidated and terminated as provided in the LP Agreement. Plaintiff's misconduct - which has had a deleterious financial impact on Leder and the other general partners - bars her from maintaining a cause of action for an accounting against defendants. See 15A N.Y. Jur. 2d Business Relationships § 1980 (2014) (the doctrine of unclean hands may bar an action for a partnership accounting "if the plaintiff's misconduct was related to the subject matter of the current litigation and harmed the defendant[s]"); Dinerstein v. Dinerstein, 32 A.D.2d 750, 751 (1st Dep't 1969); Congel, 61 A.D.3d at 810-11. This Court should dismiss plaintiff's fourth cause of action for an accounting under Partnership Law § 44.

Conclusion

For the foregoing reasons, this Court should dismiss the Amended Complaint in all respects.

Dated: White Plains, New York
February 4, 2014

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