

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

AMIR KORANGY,

Plaintiff,

-against-

GEORGIA MALONE, GEORGIA MALONE & CO.  
 INC. DEFINED BENEFIT PENSION PLAN, DANIEL  
 SHIMKO and SALEM & SHIMKO ESQS., LLC

Defendants.

Commercial Division

Index No. 655211/2016

**AMENDED COMPLAINT**

Plaintiff Amir Korangy (“**Plaintiff**” or “**Korangy**”), by and through his attorneys, The Stolper Group, LLP, as and for his Amended Complaint against Defendants Georgia Malone (“**Malone**”) and her entity Georgia Malone & Co. Inc. Defined Benefit Pension Plan (“**Pension Plan**”), and Defendants Daniel Shimko and Salem & Shimko Esqs., LLC (collectively “**Shimko**”), alleges as follows:

**NATURE OF ACTION**

1. In 2013, Korangy and Malone formed a limited liability company named Thirty West Main LLC (the “**Company**”) for the purpose of purchasing and owning real property at 30 West Main Street, Riverhead, New York (the “**Property**”). Korangy and Malone, through her entity, the Pension Plan, entered into an Operating Agreement (the “**Agreement**”).<sup>1</sup> The Agreement was drafted by Malone and executed on December 9, 2013, and is governed by New York law.

2. Korangy and the Pension Plan are the only two Members of the Company, each owning 50% of the membership interest in the Company. The Agreement calls for the Company to be member-managed.

<sup>1</sup> The Agreement is attached hereto as Exhibit A.

3. This dispute arises out of Malone's unilateral and completely unjustified decision to compensate herself with Company refinancing proceeds for services that she claims she provided to the Company. Malone made this payment over Korangy's objection. The Agreement makes absolutely no reference to Malone being entitled to any compensation whatsoever and any contract for services provided to the Company required approval by all Members. Consequently, Malone's self-payment constitutes a breach of the Agreement and of the fiduciary duty owed by Members to the Company and each other. Furthermore, the Pension Plan (acting through Malone) breached its fiduciary duty to the Company when it purchased the building directly adjacent to the Property that competes with the Company for tenants. In addition to damages based on breaches of contract and fiduciary duty, Plaintiff is entitled to damages for the Company's decreased profitability as a result of lost rental opportunities.

4. When the relationship between Plaintiff and Malone became strained due to Malone's breaches, Plaintiff attempted to avoid further conflict by selling his interest in the Company to a third party, which he has the right to do under the Agreement, subject to the Pension Plan's consent. Through a broker, Korangy had negotiated terms with a bona fide purchaser.

5. When Malone learned of the proposed sale, she dispatched her attorney, Shimko, to write simultaneous letters not only to Korangy but to the purchaser as well as the broker, falsely claiming that Korangy had no authority to sell his interest without consent, that consent to the sale would never be given, and threatening legal action based on their possession of Company information. The threatening letters had the intended effect on the purchaser and the broker. This is a textbook case of tortious interference with business relations.

6. The Pension Plan informed Korangy that the Pension Plan would never consent to the sale of Korangy's interest to a third party because the Pension Plan wanted to acquire his interest. This blanket refusal to consent out of self-interest is a blatant violation of the covenant of good faith and fair dealing.

### **PARTIES**

7. Plaintiff Korangy is a natural person residing in New York, New York.

8. Upon information and belief, Defendant Malone is a natural person residing in New York, New York.

9. Upon information and belief, Defendant Pension Plan is a pension plan owned and controlled by Defendant Malone with its principal place of business located at 147 East 61<sup>st</sup> Street, New York, New York.

10. Upon information and belief, Defendant Daniel Shimko is a natural person residing in Kings County, New York.

11. Upon information and belief, Defendant Salem & Shimko is a New York limited liability company with its principal place of business located at 446 Avenue P, Brooklyn, New York.

### **JURISDICTION & VENUE**

12. This Court has jurisdiction over the subject matter of this action because it concerns business transactions that took place in the State of New York.

13. This Court has personal jurisdiction over Defendants because the alleged acts took place within the State of New York.

14. Venue is appropriate in this Court because substantial acts in furtherance of the alleged breach of contract have occurred in the County of New York.

## FACTUAL ALLEGATIONS

15. Korangy and Malone had been personal friends for many years and in 2013 agreed to enter into their first business deal together. Korangy and Malone established the Company for the purpose of purchasing and owning the Property. Malone, who is an attorney, prepared the Agreement or had her own attorney prepare the Agreement. Korangy trusted his friend so he was not represented when both he and Malone (on behalf of the Pension Plan) executed the Agreement in December 2013. Korangy and Malone's entity, the Pension Plan, are the only Members of the Company, each owning 50% of the membership interests in the Company and having put up the same amount of money for the Company to purchase, renovate and fund expenses for the Property.

16. According to the Agreement, management and control of the Company is vested exclusively in its Members. See Agreement ¶ 3.1. The Members have the power to enter into contracts, retain professional and other services, and hire employees and/or contractors in connection with the Company's business. See id. at ¶¶ 3.1.1, 3.1.10 - 3.1.12. With limited exceptions not relevant here, "all matters on which the Members may act ... shall require unanimous consent of the Members." See id. at ¶ 3.3.1.

17. Under New York Limited Liability Company Law ("LLCL"), when management of a limited liability company is vested in its members, as it is here, members exercising management responsibilities shall be deemed to be managers and thus have fiduciary duties to each other and the Company. See LLCL §§ 401, 409. Moreover, any agreement with a manager is voidable if not approved by the remaining disinterested managers. See LLCL §411.

18. When Korangy and the Pension Plan first purchased the Property, Malone immediately became very hands-on. She had a second home in the Hamptons, near the Property

in Riverhead, and being self-employed she had more available time to oversee the Property. As Malone took an active role in overseeing the management of the Property, Korangy contributed time and resources to marketing the Property, using his connections in the real estate industry to cultivate interest in the office space that the Property would offer once completed. Among other things, Korangy provided social media services for the Property, brought in telecommunications experts to assist with set-up of the office space, and provided advertising for the Property in Korangy's real estate publication the Real Deal.

19. After Korangy and Malone together vetted and hired a contractor to do renovations on the Property, Korangy had to travel abroad and was away for at least a month. When Korangy returned, Malone informed him that the contractor had not shown up and was not completing the work he was hired to do but that, inexplicably, she had continued to compensate him. Under Malone's supervision, the Company paid the contractor \$500,000 for \$300,000 worth of work, ultimately resulting in a loss to the Company of \$200,000. Korangy never accused Malone of being responsible for this loss because he believed they were equal partners in every aspect of the business.

20. Once the work was completed, the Company hired a broker to deal with marketing and leasing the space and a part-time superintendent to maintain the premises. The leases for the tenancies were similar and straightforward and so Malone, who is an attorney, offered to paper what should have been template leases.

21. In 2015, Korangy convinced Malone to agree to refinance the Property. The refinancing closing took place in December 2015 and resulted in \$683,000 in distributable proceeds for the Company (\$1.2 million refinancing less the existing mortgage of approximately \$500,000).

## The Breach

22. Shortly thereafter, without any justification whatsoever and in contravention of the Agreement, Malone unilaterally decided to pay herself \$450,000 out of the \$683,000 the Company received in refinance proceeds. Malone's stated rationale was that Malone was entitled to be paid for services she provided to the Company. Malone claimed to be entitled to \$50,000 per year for two years' worth of management services.

23. There are three major problems with Malone's self-payment. The first is that the Agreement does not authorize or contemplate unilateral compensation for services provided. On the contrary, as mentioned above, section 3.1 requires the approval of **both** Members to enter contracts (§ 3.1.1), pay expenses (§3.1.5), retain legal counsel (§3.1.10), retain other services and to pay "remuneration as the Members may deem reasonable and proper" (§3.1.11). Further, under LLCL §411, Malone could not vote for her own contract because she was self-interested. She needed the approval of the disinterested manager, Korangy.

24. Malone never sought nor did she receive Korangy's consent to be paid for any effort Malone made on behalf of the Company, nor did she obtain his consent to unilaterally pay herself from the refinance proceeds. In fact, when Malone first raised the issue after the refinance proceeds had been received, Korangy objected unequivocally. Malone paying herself without authorization or consent is a breach of the Agreement and a violation of LLCL §411.

25. The second problem with Malone's self-payment is the amount of that payment. Even if Malone was entitled to compensation for her efforts in getting the Property up and running, which she was not, the value of the services she allegedly provided was significantly less than what she paid herself. The Company currently pays \$24,000 per year to an outside firm to manage all aspects of the Company's Property, including the services that

Malone claimed to have provided. Thus, Malone's request for \$50,000 per year for having overseen the Property and those that worked for it makes absolutely no sense. Moreover, Malone's assertion that she is owed \$50,000 per year is particularly inappropriate given that she lost the Company \$200,000 in the Company's first year of existence when she exercised poor judgment in paying a contractor \$500,000 for \$300,000 worth of work. Plus any compensation Malone seeks should be offset by the value of services Korangy provided to the Company, including the value of advertising in his real estate publication and his provision of social media services.

26. Finally, Malone's self-payment is problematic because it reveals a fundamental misunderstanding by Malone of basic partnership finances. Even if Korangy agreed that Malone was entitled to compensation of \$50,000 per year (which he does not), Malone and the Pension Plan still would not be entitled to \$450,000 of the refinance proceeds. Against the \$683,000 in proceeds, the Company would have had to deduct \$100,000 to pay Malone her purported compensation. The remaining balance of \$583,000 would then have to be split evenly between the two 50/50 Members (i.e., \$291,500 each) in accordance with the Agreement. See Agreement ¶ 8.2.2 (providing that distributable cash flow shall be distributed "to the Members in proportion to their respective Percentage Interests"). That would mean the most Malone could have paid herself and the Pension Plan was \$391,500 (\$100,000 + \$291,500), not \$450,000.

27. Korangy tried in vain to explain these points to Malone, but Malone was unwilling to recognize the errors in her thinking and calculations. Korangy and Malone thus were deadlocked on this issue. The Agreement provides that if the members are unable to reach a decision regarding an issue, "the Deadlock shall be mediated." See Agreement ¶ 3.3.3. The

Agreement goes on to provide how mediation between the parties should be conducted in the event of deadlock. See id.

28. However, despite the Agreement's provision for a mechanism to resolve deadlock, Malone did not wait to resolve the issue of her claimed compensation via mediation as provided for in the Agreement. Instead, Malone – again, unilaterally and over Korangy's clear objection – took \$450,000 from the Company's bank account. This act constituted a breach of the Agreement. The Agreement does not authorize a member's unilateral action over another member's objection, which is why there is a deadlock provision in the first place.

29. Furthermore, Malone's unilateral decision to compensate herself not only violates the Agreement but also violates LLCL § 411, which bars self-dealing. This fiduciary duty between managing members of an LLC is a duty of undivided and undiluted loyalty. Malone's self-interested actions constituted a breach of the fiduciary duty owed to Korangy and the Company.

30. Malone's unwillingness to recognize let alone cure these breaches created significant trust issues. Korangy no longer felt comfortable being in business with an individual concerned only with her own interests, so blind to basic contract terms and reason. Korangy shared these feelings with Malone.

### **Tortious Interference**

31. Korangy attempted to mitigate the harm from the breaches and avoid a fight with Malone, a long-time personal friend, by finding a third person to buy his membership interest in the Company. He subsequently was in the process of agreeing to terms with a qualified buyer named Stephen Loeb, who was procured by Kristopher Pilles, a seasoned local real estate agent.

32. Before Korangy could even seek the Pension Plan's consent to the proposed sale, Malone had Shimko send simultaneous threatening letters to Mr. Pilles, Mr. Loeb and Korangy. In three letters dated May 17, 2016, Shimko falsely asserted that Korangy was not authorized to sell his membership interest in the Company, and stated that the Pension Plan had no intention of ever consenting to a sale. In addition, Shimko called Mr. Pilles several times threatening to bring lawsuits against Korangy, Mr. Pilles and Mr. Loeb, and telling Mr. Pilles that Shimko was going to seek to have his real estate license revoked. Shimko's behavior was so aggressive and harassing that Mr. Pilles considered filing an ethics complaint against him. The statements and threats Shimko made to Mr. Pilles and Mr. Loeb were not accurate and had no legal basis. But they achieved their desired effect; they scared Mr. Pilles and Mr. Loeb away from the deal. Shimko's misconduct foiled the proposed sale on false grounds.

33. Plaintiff has every right under the Agreement to sell his membership interest in the Company. According to paragraph 6.1 of the Agreement, each Member has the right to voluntarily sell his or its interest in the Company subject to consent of the other Members. Plaintiff must get the Pension Plan's consent to any sale but he is free to sell his interest to a third party without first offering his interest to the Pension Plan.

34. Shimko's statements to the contrary in his letters to Mr. Pilles and Mr. Loeb were false and resulted in the termination of the negotiations and the relationship with Mr. Loeb. For obvious reasons, Mr. Loeb did not want to be partners with someone who sent him a threatening legal letter at the onset. Thus, Shimko's actions, on behalf of Malone and the Pension Plan, were wrongful and constituted tortious interference with the business relationship between Mr. Korangy, on the one hand, and Mr. Pilles and Mr. Loeb on the other hand.

35. While the false content of Shimko's letters to Mr. Pilles and Mr. Loebbs resulted in a failed deal and business relationship, the declarations within Shimko's letter to Korangy also constituted a breach of the covenant of good faith and fair dealing under the Agreement. Shimko stated that the Pension Plan "has no interest" in ever providing consent to the sale of Korangy's membership interest unless it were to the Pension Plan or Malone. As discussed above, Plaintiff has the right under the Agreement to sell his membership interest and so the Pension Plan's blanket refusal to consent to any sale was in bad faith. This conduct, motivated by self-interest, was and continues to be a breach that deprives Korangy of his rights under the Agreement.

### **The Mediation**

36. At this point, Korangy and Malone recognized that they could not come to an agreement on a couple of significant issues affecting the Company and their business relationship and so they decided to submit these issues to mediation. Korangy was hopeful that, with the help of a mediator, the parties could avoid litigation over Malone's breaches.

37. One of the issues discussed at the mediation involved a \$35,000 contribution made by Malone to the Company. Korangy and Malone could not agree on how and when this contribution should be re-paid and so were deadlocked on this issue. According to the Agreement's provision regarding deadlock, when the members are deadlocked on an issue they are to submit that issue to mediation and the "decision of the mediator shall be final and binding." See Agreement ¶ 3.3.3. Because they were deadlocked on this issue, Korangy and Malone agreed that the mediator's suggestion regarding the \$35,000 contribution would be binding.

38. The other issue discussed at the mediation was the disbursement of the refinancing proceeds and Malone's unauthorized payment to herself of \$100,000 for alleged services rendered. Korangy informed the mediator, both in his written statement and orally at the mediation, that Malone's self-payment was not an issue of deadlock but was a violation of the Agreement. The parties did not agree as to how the refinancing proceeds should be disbursed and, rather than submit this issue to mediation as a deadlocked issue pursuant to the Agreement, Malone simply paid herself what she felt she was entitled to. This unauthorized self-payment was an act of breach. The mediation happened after the breach and, as such, any suggestion made by the mediator on the issue of Malone's self-payment was nonbinding.

39. Although Korangy was not required to mediate the issue of the refinancing proceeds, he discussed Malone's unauthorized self-payment in his written statement and at the mediation hearing in the hope that the issue could be resolved without litigation. Unfortunately, the issue was not resolved and Korangy continues to be injured as a result of the breach as Malone has not repaid the \$450,000.

#### **Conflict of Interest**

40. Upon information and belief, Malone had purchased the building at 20 West Main Street in Riverhead, New York, immediately adjacent to the Property. Further upon information and belief, Malone is actively trying to lease out space in the building. This conduct creates a conflict of interest as now Malone's new real estate venture competes with the Property for tenants. As managers of the Company, Malone (on behalf of the Pension Plan) and Korangy have a fiduciary duty to each other and the Company. This fiduciary duty bars self-dealing on the part of Malone and requires avoidance of situations in which Malone's personal interest conflicts with the interests of the Company. As a result of Malone's breach of fiduciary duty,

Korangy is entitled to damages for the Company's decreased profitability resulting from lost rental opportunities.

41. On June 20, 2016, Plaintiff's attorney sent a Notice of Default to Shimko advising him that Malone's self-payment was a breach of the Agreement, the Pension Plan's blanket refusal to consent to a sale of Korangy's interest was a breach of the Covenant of Good Faith and Fair Dealing, and its interference with Korangy's proposed sale constituted tortious conduct. Defendants refused to cure the default or remedy the situation and this Complaint ensued.

**FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT**  
**(Pension Plan)**

42. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs of this Complaint.

43. Plaintiff and the Pension Plan entered into the Agreement.

44. Without consent or justification, Malone compensated herself for services she claimed she provided to the Company.

45. The Agreement does not contemplate or authorize unilateral compensation for services provided. In fact, the provisions of the Agreement require approval of both Members to enter contracts, pay expenses, retain legal counsel, retain other services and to pay "remuneration as the Members may deem reasonable and proper."

46. Further, under LLCL §411, Malone could not vote on her own self-interested transaction; in order for the agreement to pay Malone for services rendered to be valid, Malone needed the approval of the disinterested manager, Korangy. Plaintiff never gave consent to the self-payment and, in fact, objected unequivocally to the payment before payment was

made. Malone paying herself without authorization and over objection is a breach of the Agreement and a violation of LLCL §411.

47. As a direct, proximate and reasonably foreseeable consequence of the breach, Plaintiff has been damaged in an amount to be determined at trial.

48. There are no defenses available to justify the breach of contract.

**SECOND CLAIM FOR RELIEF:**  
**TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**  
**(Defendants)**

49. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs of this Complaint.

50. In an attempt to avoid a difficult and contentious situation, Plaintiff began the process of finding a buyer for his membership interest in the Company. He was far along in the process with Mr. Loeb, a prospective purchaser, through the broker, Mr. Pilles. Before Plaintiff could seek the Pension Plan's consent, Shimko sent letters on behalf of Malone and the Pension Plan to Plaintiff, Mr. Loeb and Mr. Pilles asserting falsely that Plaintiff did not have the right to sell his membership interest and making it clear that Malone would never consent to a sale (even though Malone had no right to make any such blanket refusal to consent). Shimko also called Mr. Pilles several times, threatening to sue all parties involved and to have Mr. Pilles's real estate license revoked. There was no factual or legal basis for these threats; they were simply an attempt to harass and intimidate. As a result of these letters and Shimko's misconduct, the deal was foiled.

51. Shimko and Malone wrongfully interfered with the business relations between Plaintiff, Mr. Pilles and his procured buyer. As a result of this tortious interference, Plaintiff has been damaged in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF: BREACH OF COVENANT  
OF GOOD FAITH AND FAIR DEALING**  
**(Pension Plan)**

52. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs of this Complaint.

53. Defendant the Pension Plan acted in bad faith and in violation of the good faith covenant embedded in all contracts by asserting to Plaintiff that it would never approve a transfer of his membership interest to anyone but itself or Malone, despite the fact that a transfer by Plaintiff is authorized by the Agreement.

54. The Pension Plan's refusal to acknowledge Plaintiff's rights under the Agreement was and continues to be a breach of the covenant of good faith and fair dealing because it has the effect of destroying or injuring Plaintiff's right to receive the benefits of the Agreement.

**FOURTH CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY**  
**(Pension Plan)**

55. Plaintiff repeats and re-alleges each and every allegation of the preceding paragraphs of this Complaint.

56. As a managing member of the Company, the Pension Plan had a fiduciary duty to refrain from self-dealing and to avoid situations in which it or Malone's personal interest conflicted with the Company.

57. Malone, on behalf of the Pension Plan, breached this fiduciary duty when she took \$450,000 of the refinancing proceeds without justification, authorization or consent in violation of the Agreement and LLCL §411. Attempting to overcharge the Company for services allegedly rendered, and taking the money over Korangy's objection and without authority breached the duty of loyalty the Pension Plan owed to Korangy and the Company.

58. In addition, Malone purchased the building directly adjacent to the Property and has been actively seeking tenants for this building. This conduct creates a conflict of interest for Malone (on behalf of the Pension Plan) as the new building competes with the Property for tenants.

59. The Pension Plan has breached its fiduciary duty to the Company and Plaintiff. Plaintiff is entitled to damages in an amount to be determined at trial.

**WHEREFORE**, Plaintiff demands that judgment be entered in its favor and against Defendants as follows:

- (a) granting each of Plaintiff's claims for relief;
- (b) awarding Plaintiff in an amount to be proven at trial, including damages believed to exceed \$500,000.00, plus costs and attorneys' fees as may be provided by law; and
- (c) granting such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues in this action.

DATED: New York, New York  
November 11, 2016

Respectfully submitted,

*/s/ Michael Stolper*

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Michael Stolper  
THE STOLPER GROUP LLP  
241 Centre Street  
6<sup>th</sup> Floor  
New York, NY 10013  
(212) 337-3502

*Attorneys for Plaintiff*