

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

PATRICK K. YU,

Plaintiff,

- against -

GUARD HILL ESTATES, LLC, RAYMOND YU,
and CATHERINE YU,

Defendants.

Index No. _____

SUMMONS

To the above-named Defendants:

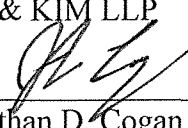
YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

This Court has jurisdiction over the Defendants pursuant to CPLR § 302, and the venue is proper in this County under CLPR § 503. All parties are residents of New York County.

Dated: New York, New York
December 14, 2016

KOBRE & KIM LLP

By: _____


Jonathan D. Cogan
Joseph W. Slaughter
Kelly J. Spatola
800 Third Avenue
New York, New York 10022
Tel.: +1 212 488 1200
Fax: +1 212 488 1220
Jonathan.Cogan@kobrekim.com
Joe.Slaughter@kobrekim.com
Kelly.Spatola@kobrekim.com

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COMPLAINT

Plaintiff Patrick K. Yu (“Plaintiff” or “Patrick”), by and through his attorneys Kobre & Kim LLP, and as for his Complaint against Guard Hill Estates, LLC (“Guard Hill”) and Raymond Yu and Catherine Yu (together, “Defendants”), does hereby allege as follows:

INTRODUCTION

1. This action is for declaratory and other relief stemming from Defendants’ attempts to seize Plaintiff’s ownership interest in Guard Hill, a New York Limited Liability Company wholly owned by Plaintiff and Defendants, who are Plaintiff’s brother and sister.

2. Over the past 18 months, Defendants have caused Guard Hill to take a series of corporate actions designed for the sole purpose of allowing them to convert Plaintiff’s 33 1/3% equity stake in Guard Hill. These actions are motivated by personal animus towards Plaintiff and are unrelated to the business operations of Guard Hill.

3. Through this complaint, Plaintiff seeks, *inter alia*, a declaration that Defendants’ attempts to essentially rob him of his valuable stake in Guard Hill are ineffective under the terms of the Operating Agreement governing the management of Guard Hill, violate New York

Limited Liability Company Law § 409, and constitute a breach of Defendants' fiduciary duty to Plaintiff.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to N.Y. Civil Practice Law and Rules § 301. Venue is proper in this Court because all parties are residents of New York County.

PARTIES

5. Plaintiff Patrick K. Yu is an individual and a resident of the County of New York and the State of New York. He owns 33 1/3% of Guard Hill.

6. Defendant Raymond Yu is an individual, a resident of the County of New York and the State of New York, and the brother of Patrick Yu. He owns 33 1/3% of Guard Hill.

7. Defendant Catherine Yu is an individual, a resident of the County of New York and the State of New York, and the sister of Patrick Yu. She owns 33 1/3% of Guard Hill.

8. Defendant Guard Hill Estates, LLC, is a domestic Corporation duly organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at 200 Park Avenue, 11th Floor, New York, New York 10166.

FACTUAL BACKGROUND

9. The parties to this action are the three adult children of Bong and May Yu (the "Yu Parents"). After immigrating to the United States from Hong Kong and China in the early 1960s the Yu Parents built a highly successful and profitable real estate business in New York City. The Yu family business is operated through various different business entities. Each of the Yu children has worked for the family real estate business in various capacities since the 1990s.

10. Guard Hill was first established in 2002. Under its original Operating Agreement, dated November 12, 2002, the company’s primary purpose was to “acquire a remainder interest in the premises located at 713 Guard Hill Road, Bedford, New York.” The Bedford property is the Yu family “estate” in Westchester County, where Bong and May Yu generally reside on the weekends (the “Property”). On information and belief, Guard Hill was created as an estate planning entity that would allow Bong and May Yu to pass ownership of their estate to their children in a tax efficient way.

11. The management of Guard Hill is governed by an Operating Agreement, originally executed on November 12, 2002. Pursuant to the Operating Agreement, the business and affairs were to be managed jointly by Patrick, Raymond, and Catherine Yu, each of whom was designated a “Managing Member”.

12. The Operating Agreement also provided that ownership of the company was divided evenly amongst the three siblings.

13. On information and belief, Guard Hill acquired the Property from Bong and May Yu on or around January 16, 2003.

14. The management of Guard Hill made no changes to the Operating Agreement from its execution in 2002 until 2015.

15. In late 2013, however, a family dispute—unrelated to the business of Guard Hill—arose between Patrick and his parents. The dispute began shortly after Patrick and his ex-wife divorced, and centered on whether or not Patrick should remain living in a house he owned in Scarsdale or move into an apartment building in Manhattan. Patrick believed that selling the house would allow him to alleviate the financial strain caused by his divorce and would be best for him and his children. For unknown reasons, his father disagreed.

16. Instead, knowing that Patrick was financially vulnerable, Bong Yu demanded that Patrick sell 100% of his ownership stake in all Yu Family entities for \$3 million—*approximately 5%* of its fair value—according to information provided by Raymond Yu during Patrick’s divorce proceedings. To add insult to injury, Bong Yu’s offer called for the \$3 million to be paid out over the course of 30 years.

17. Patrick knew that this demand severely undervalued his holdings and turned it down. Needing money and lacking other options, Patrick eventually sold his Scarsdale house in July of 2014 despite his parents’ opposition.

18. Bong Yu was outraged when he learned that Patrick had “defied” him by selling the Scarsdale house against his wishes and told him he was “out.” Soon thereafter, the Yu family, including Defendants, began taking a series of coercive steps intended to force Patrick to accept the low-ball offer for his interest in the family business. Among other things, and in addition to the actions described below relating specifically to Guard Hill, Defendants took the following actions against Patrick:

- Defendants cut off Patrick’s main source of income by refusing to utilize his legal services for any family businesses.
- Defendants declined to pay Patrick dividends from family businesses, despite significant profits (and concomitant tax bills that Plaintiff was responsible for paying on those profits).
- In and around July of 2015, Defendants suddenly demanded that Patrick repay over \$1.3 million in purported loans from Yu family companies that had—by Defendants own allegations—been in default for between 4-17 years without any action being taken to enforce them.
- In early 2016, Defendants filed three lawsuits against Patrick within a period of two weeks based on these purported loans and the allegedly improper sale of his own house.
- Throughout the second half of 2015 and 2016, Defendants largely ignored and/or rejected Patrick’s repeated attempts to assert his statutory and

common law rights to inspect the books and records of the family entities in which he had a substantial ownership stake.

- Throughout the second half of 2016, Defendants refused and/or placed onerous restrictions on Patrick's access to *his own* property which is in storage in a building owned by another Yu Family enterprise.

19. In addition to the above, and as particularly relevant to this action, on or around July 16, 2015, Plaintiff received a letter from Defendant Raymond Yu on behalf of Guard Hill, stating that the Operating Agreement of Guard Hill had been amended. The amendment, which was approved by Raymond and Catherine Yu, removed Patrick as a Managing Member of Guard Hill. Patrick was afforded no notice prior to the amendment, and the letter provided no reason for the amendment.

20. Next, on or around January 29, 2016, Defendants caused an additional amendment to the Guard Hill Operating Agreement, adding a new Section 8 to the Agreement entitled "Capital Contributions", detailing a process governing member's contributions to the company.

21. Of particular note, Section 8.4(a) of the amended Operating Agreement provided that:

8.4 (a) If the Managers determine that additional Capital Contributions are required, the Managers shall give written notification thereof to the Members (a "Capital Call"), which notification shall set forth the entire amount of additional Capital Contribution required, and the amount due from each Member based on its percentage membership interest in the Company (the "Additional Capital Contribution") and the date by which such Additional Capital Contribution is required to be made, which date shall be not less than ten (10) days from the date that the Capital Call is deemed to have been given...

22. Section 8.4(b) of the amended Operating Agreement detailed the purported consequences of a member's failure to make a "required" Additional Capital Contribution:

(b) If a Member does not timely deliver its Additional Capital Contribution, when called upon, such Member shall be in default under this Agreement. In such event,

the Managers shall send the defaulting Member written notice of such default, and such defaulting Member shall have three (3) days from the date such notice is given to contribute the entire amount of its required Additional Capital Contribution. If the defaulting Member does not deliver the full amount of its required Additional Capital Contribution to the Company within such three (3) day period, the non-defaulting Member(s) may advance funds to the Company to cover those amounts which the defaulting Member fails to contribute. Amounts which a non-defaulting Member so advances on behalf of the defaulting Member shall become a loan due and owing from the defaulting Member to such non-defaulting Member and shall bear interest at the rate of 16% per annum, payable monthly. All cash distributions otherwise distributable to the defaulting Member under this Agreement shall instead be paid to the non-defaulting Member(s) making such advances until such advances and interest thereon are paid in full. The loan from the non-defaulting Member(s) shall be due on demand, upon delivery of thirty (30) days' notice to the defaulting Member. Effective upon a Member becoming a defaulting Member, such defaulting Member grants to the non-defaulting Member(s) who advance funds under this Section 8.4, a security interest in its percentage membership interest to secure its obligation to repay such advances and agrees to execute and deliver a promissory note as described herein together with a security agreement and such UCC-1 or other financing statements and assignments of certificates of membership (or other documents of transfer) as such non-defaulting Member(s) may reasonably request. The defaulting Member hereby grants the non-defaulting Member(s) an irrevocable power of attorney coupled with an interest to execute the documents described in the preceding sentence on behalf of the defaulting Member should he fail to do so.

23. Finally, Section 8.4(c) of the amended Operating Agreement provides a mechanism by which the ownership interest of a member who does not contribute the “required” capital can be foreclosed upon:

(c) In the event that the principal amount and accrued interest on any loan made pursuant to Section 8.4(b) is not repaid in full within sixty (60) days of the date such loan is advanced, then the non-defaulting Member(s) may elect (at such time or at any time thereafter that such loan remains outstanding) to either: (A) leave such loan in place, which loan shall continue to accrue interest at the rate of 16% per annum, payable monthly as described above, until repaid in full; or (B) convert such loan to equity.

24. On September 15, 2016, Patrick served an additional set of requests for books and records on various family entities, including Guard Hill. Less than a week later, on September 22, 2016, Plaintiff received a letter from Defendant Raymond Yu on behalf of Guard Hill

demanding a capital contribution of \$590,887 from each of the members of Guard Hill (the “Capital Call Letter”). Upon information and belief, this capital call was made in retaliation for Patrick’s request for access to books and records and in order to apply further pressure on Patrick to succumb to his family’s attempts to divest him of his ownership interests in the family businesses for a fraction of their actual worth.

25. The letter identified two purported purposes for which the capital contribution was to be used. First, the letter stated that Bong and May Yu had made almost \$1 million of capital improvements to the Property; that Guard Hill was “obligated” to reimburse them for approximately \$800,000 of those expenditures; that Guard Hill had already reimbursed approximately \$644,000; and that \$165,161.02 in unpaid obligations remained. The letter explained that on September 20, 2016 (i.e., *two* business days after Patrick had served his books and records requests), Bong and May Yu had sent a letter to Guard Hill demanding repayment of the outstanding amount for capital improvements.

26. Contemporaneous financial records show that Guard Hill had a capital account balance of approximately \$235,000 at that time.

27. Second, the Capital Call Letter stated that Guard Hill believed that it was “in the best interest of the company” to pay off the existing mortgage on the Guard Hill property, in the amount of approximately \$1.6 million.

28. The Capital Call Letter did not explain the nature of the “capital improvements” Bong and May Yu had made, nor why Guard Hill was “obligated” to repay Bong and May Yu for such improvements to the Property. The Capital Call Letter also did not explain why it was suddenly “in the best interests of [Guard Hill]” to pay off the mortgage on the Property in full “as soon as possible.”

29. The Capital Call Letter did not state that either use for the capital contribution was “required”.

30. Upon information and belief, Raymond and Catherine Yu knew that Patrick did not have enough money to comply with the Capital Call Letter, and they believed that his failure to do so would enable them to take advantage of the remedies that they had inserted into the Operating Agreement.

31. On October 14, 2016, Patrick received another letter from Guard Hill, providing written notice that he was purportedly in default under Section 8.4(b) of the amended Operating Agreement with respect to the capital contribution demanded on September 22, 2016. The letter further stated that Raymond and Catherine Yu had supposedly delivered their portion of the capital contribution and that therefore only Patrick was in default.

32. On December 12, 2016, Patrick received another letter from Defendant Raymond Yu on behalf of Guard Hill. The letter stated that Raymond and Catherine Yu had elected to advance Patrick’s portion of the purported capital call to Guard Hill. The letter attached two Promissory Notes, running from Patrick to Raymond and Catherine respectively, purporting to memorialize the “loan” advanced by Raymond and Catherine pursuant to Section 8.4(b) of the Operating Agreement. The letter also attached two Pledge and Security Agreements, each purporting to encumber half of Patrick’s stake in Guard Hill as security for the Promissory Notes. Finally, the letter demanded that Patrick execute these agreements by December 15, 2016, and stated that if he failed to do so, Raymond and Catherine would sign on his behalf pursuant to Section 8.4(b) of the Operating Agreement.

Count I
(Declaratory Judgment - Capital Call Ineffective)

33. Plaintiff repeats and re-alleges paragraphs 1 to 32 above as if set forth in full herein.

34. Defendants Raymond and Catherine Yu are the Managers of Guard Hill.

35. Under the amended Guard Hill Operating Agreement, Managers are allowed to make a capital call pursuant to a determination that such capital call is “required”.

36. No such determination has been made with respect to the Capital Call communicated to Plaintiff on September 22, 2016. In fact, the pattern of retaliatory and punitive actions taken by Defendants against Plaintiff makes it self-evident that the decision to make a capital call was motivated by animus towards Plaintiff and a desire to enrich Defendants and their family at Patrick’s expense, not by any true business requirement.

37. Plaintiff is therefore entitled to a declaration that (1) the Capital Call is ineffective; and (2) he is not in default with respect to the Capital Call.

Count II
(Declaratory Judgment – Execution of Promissory Notes and Pledge and Security Agreements Ineffective)

38. Plaintiff repeats and re-alleges paragraphs 1 to 37 above as if set forth in full herein.

39. Pursuant to Section 8.4(b) of the Operating Agreement, Defendants purport to give to themselves a power of attorney on behalf of Plaintiff that would allow them to execute the Promissory Notes and Pledge and Security Agreements on Plaintiff’s behalf and without his consent.

40. Plaintiff never signed the January 29, 2016, Amendment to the Guard Hill Operating Agreement and never consented to granting Defendants his power of attorney.

41. Plaintiff is therefore entitled to a declaration that (1) Defendants do not have the right to execute the Promissory Notes and/or the Pledge and Security Agreements on his behalf; and (2) to the extent they have done so, those instruments are ineffective.

Count III
(Violation of N.Y. LLCL § 409)

42. Plaintiff repeats and re-alleges paragraphs 1 to 41 above as if set forth in full herein.

43. New York Limited Company Law § 409 requires that managers of LLCs perform their duties “in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.”

44. Defendants have violated Section 409 by, among other things:

- a. Causing the Operating Agreement of Guard Hill to be modified to remove Plaintiff as a Manager of the company as part of their family’s scheme to punish Plaintiff and enrich themselves;
- b. Causing the Operating Agreement of Guard Hill to be modified to include the capital call provision to gain leverage over Plaintiff; and
- c. Causing the company to issue a capital call not for any corporate purpose but rather for the purposes of pressuring Plaintiff in connection with their family dispute and seeking to divest him of his interest in Guard Hill.

45. Defendant’s mistreatment of Plaintiff was intentional and in bad faith, as Defendants placed their own interests before Plaintiff’s and deliberately undermined Plaintiff’s rights as a member and Manager of Guard Hill.

46. Plaintiff has and will suffer damages as a result of Defendants’ misconduct.

Count IV
(Breach of Fiduciary Duty)

47. Plaintiff repeats and re-alleges paragraphs 1 to 46 above as if set forth in full herein.

48. Defendants are the Managing Members of Guard Hill and owe plaintiff a fiduciary duty.

49. Plaintiff is a non-managing member of Guard Hill.

50. Defendants' actions in amending the Guard Hill Operating Agreement and causing Guard Hill to issue a capital call were made in bad faith and in breach of Defendants' fiduciary duties towards Plaintiff.

51. Plaintiff has and will suffer damages as a result of Defendants' misconduct.

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby respectfully requests the Court:

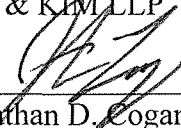
1. With respect to Count I, issue an Order declaring that the Capital Call is ineffective and that Plaintiff is not in default in respect of his obligations to Guard Hill;
2. With respect to Count II, issue an Order declaring that Defendants do not have the right to execute the Promissory Notes and/or the Pledge and Security Agreements on his behalf; and to the extent they have done so, those instruments are ineffective;
3. With respect to Count III, issue an Order stating that the amendments to the Operating Agreement and the Capital Call violate N.Y. LLCL § 409 and are therefore ineffective; and

4. With respect to Count IV, issue an Order stating that the amendments to the Operating Agreement and the Capital Call violate Defendants' fiduciary duty to Plaintiff.
5. Grant Plaintiff's motion for a temporary restraining order and preliminary injunction (filed concurrently with this complaint) prohibiting Defendants from taking any steps to convert Plaintiff's equity stake in Guard Hill during the pendency of this action;
6. Grant an award in favor of Plaintiff for damages in an amount to be determined at trial, but in no event less than \$500,000, together with interest, costs, and reasonable attorneys' fees; and
7. Such other relief as the Court shall deem just and proper.

Dated: December 14, 2016
New York, New York

KOBRE & KIM LLP

By: _____


Jonathan D. Cogan
Joseph W. Slaughter
Kelly J. Spatola
800 Third Avenue
New York, New York 10022
Tel.: +1 212 488 1200
Fax: +1 212 488 1220
Jonathan.Cogan@kobrekim.com
Joe.Slaughter@kobrekim.com
Kelly.Spatola@kobrekim.com