

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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EMIL CANGRO and CARLO CANGRO,

Petitioner(s),

For the Judicial Dissolution of

CLOVE ROAD DEVELOPMENT, LLC., a Limited
Liability Company under Section 702 of the Limited
Liability Company Law and Attorney General of the
State of New York, ANTHONY SENECA,
CARLENE BUONO, CLAIRE KHORSANDI
ESTATE, and MANOOTCHER KHORSANDI.

Respondent(s).

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The Petition of EMIL CANGRO and CARLO CANGRO, (hereinafter known as
CANGRO) respectfully shows to this Court, as follows:

1. That the Respondent, CLOVE ROAD DEVELOPMENT LLC., (hereinafter known as "CLOVE"), at all times mentioned herein was and still is a limited liability company duly organized under the limited liability laws of the State of New York having an address at 1874 Clove Road, Staten Island, New York 10304 formed on April 16, 2004 in the State of New York (see **Exhibit "A"** filing receipt of CLOVE).
2. The Petitioners were and are residents of Richmond County, City and State of New York and Matawan, New Jersey.

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AMENDED
VERIFIED PETITION

3. Upon information and belief CARLENE BUONO (hereinafter known as “BUONO”) was and is a resident of the City and State of New York, County of Richmond.
4. Upon information and belief CLAIRE KHORSANDI ESTATE (hereinafter “KHORSANDI”) was and is domestic Estate having its place of business in the City and State of New York, County of Richmond.
5. Upon information and belief MANOOTCHER KHORSANDI (hereinafter known as “KHORSANDI”) was and is a resident of the City and State of New York, County of Richmond.
6. Upon information and belief ANTHONY SENECA (hereinafter known as “SENECA”) was and is a resident of the City and State of New York, County of Richmond.
7. Upon information and belief KHORSANDI was and is the legal representatives of the CLAIRE KHORSANDI ESTATE.
8. ANTHONY SENECA, CARLENE BUONO, CLAIRE KHORSANDI ESTATE, and MANOOTCHER KHORSANDI are listed as Respondents as their interest in Petitioner may or may not be adversely affected by this action.

STATEMENT OF FACTS

9. That all of the outstanding shares and the voting rights of the Corporation are owned by CANGRO 25%, KHORSANDI 25%, BUONO 25% and SENECA 25%. Your Petitioners are Directors, Officers and Shareholders of said

Corporation; the names and address of all Directors and shareholders are as follows:

NAME	ADDRESS
EMIL CANGRO	164 Buffalo Street Staten Island, New York 10306
CARLO CANGRO	11 Jasmine Road Matawan, New Jersey 08857
CARLENE BUONO	(Address#1) 17 Avery Drive Old Bridge, New Jersey 08857
CARLENE BUONO	(Address#2) 382 Flagg Place Staten Island, New York 10304
ANTHONY SENECA	515 Neckar Avenue Staten Island, New York 10304
MANOOTCHER KHORSANDI	404 Flagg Place Staten Island, New York 10304
CLAIRE KHORSANDI ESTATE	404 Flagg Place Staten Island, New York 10304

10. Upon information and belief the parties specified in Paragraph 9 are the sole Directors and Officers of CLOVE. CLOVE is authorized to issue 200 unit shares and Petitioners hold 50 shares.
11. The purpose for which CLOVE was organized was to engage in the real estate business, specifically, to manage real estate and ultimately sell real estate for a profit.

12. That CLOVE is the owner in fee of premises known as 382 Flagg Place, Staten Island, New York 10304 and vacant lot at Block 3154 and Lot 47, Staten Island, New York 10304 (hereinafter known as the "PROPERTIES"). Three (3) car garage and one (1) family (See **Exhibit "B"** Deeds attached).
13. The PROPERTIES have been owned by the families of the present members of CLOVE for more than twenty (20) years.
14. The PROPERTIES were transferred to CLOVE in 2004 by the above parties and/or their families. When the PROPERTIES were transferred to CLOVE the parties executed an Operating Agreement on May 6, 2004 (see **Exhibit "C"** Operating Agreement of CLOVE).
 - a. The Operating Agreement provides in Article XII 12.1 Dissociation of a Member the following "A person shall cease to be a member upon the happening of any of the following events":
 - b. 12.1 (a) the withdrawal, retirement or expulsion of a Member.
 - c. Section 7.1 of the Operating Agreement provides that the Managing Members are ANTHONY SENECA and CLAIRE KHORSANDI and Section 7.4 states- if there is more than one Managing Member, the Managing Members shall Manage the Company by the affirmative vote of [all/a majority of] the Managing Members. Accordingly the vote of both Managing Members is required to make decisions.

Section 7.3 States only the Managing Member has the power, on behalf of the Company to do all things necessary or convenient to carry out the business and affairs of the Company.

Section 7.6 States each Managing Member shall discharge the Managing Member's duties in good faith and with the degree of care that an ordinarily prudent person would use under similar circumstances.

Section 7.7 states the Managing Member can be removed for fraud, misfeasance, or breach of the Managing Members standard of care as in Section 7.6.

Accordingly, the Managing Member must act jointly and can be removed or expelled for fraud, misfeasance, or breach of good faith.

Section 12.1(a) Dissolution states 12.1(a) A person shall cease to be a Member upon the happening of one of the following events; (a) or expulsion of a Member.

Section 13.1 Dissolution states the Company shall be dissolved upon (a) Dissociation of any Member.

15. The Limited Liability Company Law of the State of New York Section 702 States "on application by or for a Member, the Supreme Court of 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 practical to carry on the business in conformity with the Articles of Organization or Operating Agreement.
16. CLOVE is closely held LLC.

ARGUMENT

17. It has been held that Section 702 of the Limited Liability Company will be ordered where the complaining Member can show that the business sought to be dissolved is unable to function or intended, or else that it is failing financially (see Schindler v. Niche Media Holdings LLC, 1 Misc. 3d 713, 716, 772, NYS 2d 781, 785).
18. Where it is not financial feasible to continue the Limited Liability Company the Court can grant an application to dissolve under Section 702 of the LLC (See Mizrahi v. Cohen 104 AD 3d 917,961 NYS 2d 538, 2013 NY Slip OP 2056, 2013 NY AD Lexis 2003) (NY AD 2nd Dept. 2013), or where there is fraud or frustration of the Limited Liability Company's purposes (see Matter of 1545 Ocean Avenue LLC, 72AD 3d 121, 893 NYS 2d 590, 2010 NY Slip OP 688 2010 NY AD 2nd Dept. 2010).
19. CLOVE has issued 100% of the Membership interest and/or shares of CLOVE.
20. That Petitioner(s) are entitled to vote in an election of Directors or Members of the Limited Liability Company.
21. CLOVE has its principal place of business in the City and State of New York, County of Richmond.
22. CLOVE is not registered as an investment company under any act of Congress.
23. No securities of CLOVE are listed on a National Securities Exchange or regularly quoted in any over the county market by one or more Members of a National or an affiliated Securities Association.

24. The Petitioner(s) were with the knowledge and understanding that CLOVE was formed to provide for the inheritance of the children and grandchildren of CARLO SENECA and that they would receive income from the PROPERTIES owned by CLOVE.
25. CLOVE is the owner of rental PROPERTIES located at 382 Flagg Place, Staten Island, New York 10304 and Vacant Land located at Block 3154 Lot 47, Staten Island, New York.
26. SENECA has taken complete control of the PROPERTIES of CLOVE and its business for the last twenty (20) years to the exclusion of the Petitioners and other Members and SENECA is in complete control of all the assets and bank accounts of CLOVE and has eliminated Petitioner(s) and other Members from any participation in the affairs of CLOVE.
27. SENECA has exerted sole control over the CLOVE PROPERTY and is diverting assets to be non use and using CLOVE'S assets for his own use (see Re Victoria Sales Corp. 32 Misc. 2d 275, 283 NYS 2d 119. Matter of Eklund Farm Machine 40 AD 3d 1325, 836 NYS 2d 732).
28. SENECA is enriching himself from assets and income of CLOVE at the expense of the minority Petitioners by his oppressive conduct which fair minded people would find objectionable (see Horne v. Radiological health Services PC 83 Misc. 2d 446,371 NYS 2d 948).
29. SENECA has manipulated and has shown losses for CLOVE for the past twenty (20) years, even though there are no mortgages on the CLOVE'S PROPERTIES.

30. SENECA has taken loans from CLOVE without consent of the Members.
31. Your Petitioners file this Petition for dissolution of CLOVE under Section 702 of the Limited Liability Law of the State of New York and pursuant to the Operating Agreement Sections, 7.1, 7.3, 7.4, 7.6 and 7.7.
32. CLOVES Managing Members are SENECA and CLAIRE KHORSANDI. CLAIRE KHORSANDI died approximately three (3) years ago and there has been no replacement. SENECA and KHORSANDI were the Managing Members from 2004 until approximately 2013, yet SENECA'S actions were without the consent of KHORSANDI in managing CLOVE.
33. SENECA for the last twenty (20) years and after the formation of CLOVE took complete and exclusive control of the PROPERTIES belonging to CLOVE and the other Members. SENECA has eliminated all the Members and individuals from participation in the affairs of CLOVE and the above PROPERTIES.
34. SENECA has collected all rents, paid all expenses and Managed the PROPERTIES to the exclusion of the Member and above individuals even though the Operating Agreement Section 7.4 which states all decisions must be made by a majority of Members.
35. SENECA has wasted and diverted the assets of CLOVE for his own personal use.
36. SENECA has manipulated the books of CLOVE to above there is no profit only losses for many years. In fact, the 2015 1065 of CLOVE does not even show any income at all (see **Exhibit "D"** 1065 of CLOVE for 2015).

37. That the Petitioners and other Members investment and compensation has been adversely affected by the actions of SENECA.

CONCLUSION

38. That as a result of SENECA'S bad faith and lack of due care as Managing Member of CLOVE, one breach of fiduciary duty as indicated hereinabove SENECA should be expelled as a Member of CLOVE and dissociated as a Member and CLOVE dissolved pursuant to 702 of the Limited Liability Law and pursuant to Sections 7.3, 7.4, 7.6, 7.7 and 12.1 and 13.1 of the Operating Agreement.
39. That all of the above acts by SENECA have been performed without the consent of the other Managing Members and contrary to the Operating Agreement (Section 7.1 and 7.4 of the Operating Agreement).
40. That it is not reasonable practicable to carry out the business of CLOVE due to SENECA'S control over CLOVE.
41. That SENECA has failed for the last twenty (20) years to provide and accounting of the business of CLOVE to Petitioners or the other Members.
42. SENECA has breached his duties as a Managing Member of CLOVE by the Petitioners and has breached the Operating Agreement causing damages to Petitioners.

43. SENECA has taken money from CLOVE for his own personal use of \$207,200.00 without the consent of any Member (See Exhibit "D" 1065 tax return of CLOVE).
44. The Petitioners are holders of the shares of CLOVE at the time of bringing this action and at the time of the transactions complained of herein.
45. The Petitioners have asked SENECA at least five (5) times a year for the last twenty (20) years to turn over the books and records of CLOVE; to return all loans that SENECA has taken without authorization; to return all funds SENECA has taken of the assets and income of CLOVE without authority; to remove himself as an Officer and Director and/or to allow the Petitioners and others Members to manage CLOVE'S affairs; to pay use and occupancy for the CLOVE PROPERTY occupied and used by SENECA, all to no avail.

Petitioners have appealed to the Board of Directors and other Members in CLOVE at least twice a year for the last twenty (20) years to rectify the above actions by SENECA, all to no avail.

46. The Petitioners and the other Members expectations of a return on their interests in CLOVE has been defeated by the actions of SENECA (see In Re *Mintz* 114 AD 2d 803, 493, NYS 2d 488 2nd dept 1995).

**AS AND FOR A FIRST CAUSE OF ACTION
FOR DISSOLUTION**

47. Petitioners repeat and reallege each and every allegation contained in Petitioners complaint in paragraphs 1-46 as if fully set forth herein.

48. As a result of SENECA'S actions indicated hereinabove Petitioner's interest in CLOVE has been damaged, and the only feasible means for the Petitioners to receive a return on their investment is for dissolution and appointment of a temporary receiver under the C.P.L.R Section 6401 of C.P.L.R of the State of New York, to manage the affairs of this Clove until the matter is decided.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR AN ACCOUNTING**

49. Petitioners repeats and realleges each and every allegation contained in Petitioners complaint paragraphs 1-48 as if fully set forth herein.

50. SENECA as an Officer and Director and a fiduciary of CLOVE has failed and refused to account for the assets and income of CLOVE and has used same for his own personal benefit.

51. As a result CLOVE has been damaged to the extent of the assets and income diverted to SENECA'S personal use and Petitioners are entitled to an accounting.

AS AND FOR A THIRD CAUSE OF ACTION

52. Petitioners repeat and reallege each and every allegation of this complaint paragraphs 1-51 as if fully set forth herein.

53. Petitioners will expend thousands of dollars in costs and legal fees to obtain what is rightfully theirs due to the actions of SENECA.

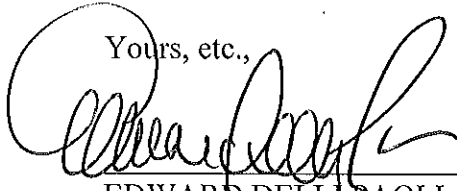
54. As a result Petitioners have been damaged to the extent of the legal fees and costs of this action.

WHEREFORE, Petitioners respectfully requests an Order and Judgment.

- a. On the First Cause of Action granting dissolution of CLOVE ROAD DEVELOPMENT LLC. and awarding Petitioners their interest in CLOVE ROAD DEVELOPMENT LLC. PROPERTIES. Appointment of a temporary Receiver to preserve the assets of CLOVE ROAD DEVELOPMENT LLC. PROPERTIES.
- b. On the Second Cause of Action an accounting of the income and expenses of CLOVE ROAD DEVELOPMENT LLC.
- c. On the Third Cause of Action granting Petitioners reimbursement for attorney's fees, costs and disbursements; and
- d. For such other and further relief as the Court may deem just and proper under the circumstances.

Dated: Staten Island, New York
September 9, 2016

Yours, etc.,



EDWARD DELL'PAOLI, ESQ.

Attorney for Petitioners

EMIL CANGRO and

CARLO CANGRO

129 New Dorp Plaza

Staten Island, New York 10306

Telephone No. (718) 668-0600

To: SEE ATTACHED RIDER

RIDER

TO: CLOVE ROAD DEVELOPMENT, LLC
1874 Clove Road
Staten Island, New York 10304

CARLEEN BUONO
382 Flagg Place
Staten Island, New York 10304

MANOOTCHER KHORSANDI
404 Flagg Place
Staten Island, New York 10304

ANTHONY SENECA
515 Neckar Avenue
Staten Island, New York 10304

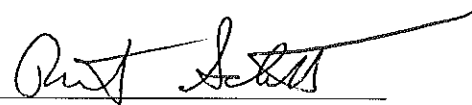
VERIFICATION

Defendant, **EMIL CANGRO**, being duly sworn hereby deposes and says, that
Petition
he/she has read the foregoing Amended Verified ~~Complaint~~ ^{Complaint} bearing Index # 85036/2016
and that he/she maintains that the statements made therein are true, except as to those
matters stated upon information and belief and as to those matters believed same to be
true.



EMIL CANGRO

Sworn to before me this
31 day of August, 2016



Notary Public

ROBERT SCHOTT
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SC4999915
Qualified in Queens County
My Commission Expires August 04, **2018**

SUPREME COURT OF THE STATE OF NEW YORK
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AMENDED VERIFIED PETITION

Pursuant to 22NYCRR 130.1.1, the undersigned attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief, and reasonable inquiry the contentions contained in the annexed documents are not frivolous.

Dated: September 9, 2016



BY: EDWARD DELLI PAOLI, ESQ.
129 New Dorp Plaza
Staten Island, New York 10306
P. (718) 668-0600