

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL TERM PART 35

-----X
VINCENT CORTAZAR, Individually and derivatively
on behalf of 47TH ROAD LLC,

Index No.: 705029/16

Plaintiffs,

- against -

JAMES CORTAZAR and 47TH ROAD LLC, a New York
Limited Liability Company,

**DEFENDANTS’
FINDINGS OF FACT
AND CONCLUSIONS
OF LAW**

Defendants.
-----X

Defendants (and counterclaimants) JAMES CORTAZAR and 47TH ROAD LLC respectfully submit these Findings of Fact and Conclusions of Law following the trial before the Court held on October 17th, 18th and 19th, and November 5th, 7th, 8th, 14th, 16th and November 19, 2018.

I. FINDINGS OF FACT

Background

1. The Subject Premises known as 5-19 47th Road, Long Island City, New York, (Block 00029, Lot 00017, Queens County) was purchased by James Cortazar and Vincent Cortazar, as joint tenants, on or about August 29, 1996, via a Purchase Money Mortgage Agreement. (See Deed, **Ex 1** and Purchase Money Mortgage, **Ex. 2**, Dissolution Hearing Exhibit).

2. On or about August 25, 2009, ownership of the property was transferred to an entity known as 47th Road LLC. (See Deed dated August 25, 2009, **Ex. 3**, Dissolution Hearing Exhibit).

3. The Court determined in the **Judgment/Order After Dissolution Hearing** that James Cortazar and Vincent Cortazar were 50% owners of 47th Road LLC and that the Subject Premises, the property known as 5-19 47th Road, Long Island City, New York, was the LLC's sole asset. (*See Trial Exhibit* from Derivative Action (hereinafter "TT") – **Ex. 1** at page 1).

August 29, 2009 Hypothecator Loan - \$800,000.00

4. On or about August 25, 2009, 47th Road LLC borrowed \$800,000.00 from an entity known as Hypothecator Realty, Corp., which was represented by Plaintiffs' current counsel, Michael Cirrito, Esq., and a mortgage in the amount of \$800,000.00 was placed upon the Subject Premises. (*See Ex. 6 and Ex. 8*, Dissolution Hearing Exhibit).

5. Vincent Cortazar executed the loan documents on behalf of 47th Road, LLC. (*See Ex. 6 and Ex. 8* Dissolution Hearing Exhibit).

6. At the closing, held on or about August 25, 2009, 47th Road, LLC received \$714,420.21 from the loan. (*See, Ex. 9*, Dissolution Hearing Exhibit).

7. The loan proceeds were used to pay bills related to the Subject Premises and to further develop California investment properties. (*See Trial Exhibit, Ex. 20*, pgs. 15 - 16, Dec. 9, 2016 Dissolution Hearing, Derivative Action Trial Transcript [hereinafter "TT"] at pgs. 418 and 419).

8. Vincent Cortazar never objected to the funds from the 2009 Hypothecator loan being used to further the development of the California property previously purchased by James Cortazar. (*See TT* at pg. 155, lines 1 through 22; pg. 157, lines 23-25 and pg. 158, lines 1 - 3).

9. Further, while Vincent Cortazar testified during the trial that he believed that he was to be involved as a partner in the California project(s), and that he had some type of any unexecuted written agreement relating to the California development, Vincent Cortazar never produced any documents at trial to support these allegations and James Cortazar contradicted Vincent's testimony. (See TT at pg. 155 through 157 and pg. 158, lines 1-3, *See also* James Cortazar trial testimony in which he testified that Vincent Cortazar elected not to be involved in the Rio Del Pillar LLC development at TT pg. 451).

10. According to Vincent Cortazar, James purchased the Rio Del Property as long ago as 2007 or 2008, before 47th Road LLC was formed and before the first Hypothecator loan! (See, TT at pg. 155, lines 21-22). James testified during the Dissolution Hearing that the land was bought in California in 2007 or 2008 (Dissolution Hearing Trns., Dec. 9, 2016, Ex. 20, at Pg. 9).

11. James Cortazar testified that some of the money from the 2009 loan was used towards the properties that James and Vincent owned jointly in California, unrelated to Rio Del Pillar. The other California property is known as 578 Hillside Drive. (See TT at pg. 444).

12. Neither Plaintiff Vincent Cortazar, nor Defendant James Cortazar, presented any testimony or documentary evidence to establish that the proceeds from the \$800,000.00 Hypothecator loan were misused, or "converted" by the other party.

October 4, 2010 Hypothecator Loan - \$250,000.00

13. On or about October 4, 2010, Vincent Cortazar, acting as the Managing Member of 47th Road, LLC, entered into a loan agreement with Hypothecator and

obtained a loan in the amount of \$250,000.00, and a second mortgage was placed upon the Subject Premises. (See **Ex. 12** and **Ex. 13**, Loan Documents from Dissolution Hearing. See also **Ex. 14**, List of Individuals present at the closing, exhibit from Dissolution Hearing).

14. James Cortazar was not at the loan closing, which occurred on October 4, 2010. (See **Ex. 14**, Dissolution Hearing).

15. Vincent Cortazar, without approval or consent from James Cortazar, fraudulently utilized the money from the 2010 loan and invested it into a Ponzi Scheme. (See **Ex. D**, Ponzi Scheme Documents).

16. The Ponzi Scheme documents, including the Common Stock Certificated dated 11/15/2010, clearly establish that only Vincent Cortazar would have received any benefit from the purchase of those securities. (See **Ex. D**).

17. Vincent Cortazar admitted that the funds used to purchase the Ponzi Scheme securities were from the \$250,000.00 Hypothecator loan and that the check he wrote for the securities was from an A Plus Construction account. (See TT at pg. 158, L15-18).

18. With respect to the Ponzi Scheme, the Customer Account Agreement is only in the name of "Vincent H. Cortazar", and it is dated February 4, 2011. (See **Exhibit D**, Derivative Action Trial Exhibit).

19. Vincent Cortazar breached his fiduciary duties and misappropriated funds solely for his own benefit, and to exclusion of James Cortazar, almost immediately after he executed 2010 mortgage documents and when Hypothecator disbursed the \$250,000.00.

20. Further, the Customer Account Agreement contradicts Vincent Cortazar's trial testimony, in which he testified that the purchase of the securities were also for James Cortazar's benefit, as James Cortazar's name is completely absent and omitted from any of the documents in Trial Exhibit D.

21. Vincent's malfeasance is also demonstrated therein as he not only misused company money without consent, but he transferred or placed the 47th Road LLC money into his own A Plus Construction account, money that belonged to 47th Road LLC! (See TT at 158 and TT at pg. 160, lines 8 - 22).

22. The remaining \$100,000 from the \$250,000 was not used as Vincent Cortazar testified, where Vincent asserted that James took the money to use in California. (See TT at pg. 161).

23. Documents produced by Mr. Cirrito at trial indicate that the balance was used toward a Jackson Avenue property, to pay interest from the \$800,000.00 loan, and closings fees.

24. None of the money from the \$250,000.00 was used by James Cortazar, nor did James Cortazar ever have access to the loan money. (See, **Ex. 14** and **Ex. 15**, Dissolution Hearing, and checks produced by Michael Cirrito, Esq. at Derivative Action trial).

Hudson Valley Bank Loans

25. On or about February 14, 2011, Vincent Cortazar, acting on behalf of 47th Road, LLC, entered into two loan agreements with Hudson Valley Bank. The loans were in the amounts of \$1,200,000.00 and \$150,000.00. (See **Ex. 16** and **Ex. 17**, Dissolution Hearing).

26. It is undisputed that Hypothecator's loans to 47th Road LLC were paid from the proceeds of the Hudson Valley Bank loan.

27. Neither Vincent Cortazar nor James Cortazar has produced any documentation to establish how the remaining funds were disbursed or spent.

28. On or about May 22, 2012, Hudson Valley Bank assigned the mortgage(s) to Sovereign Bank, N.A. (*See Ex. 20*, Dissolution Hearing Exhibit).

29. On or about March 1, 2016 the loan(s) from Hudson Valley Bank, which were assigned to Sovereign Bank matured and were subsequently sold to 4th Road Funding, Inc. (*See*, Assignment, Mortgage, **Ex. 21**, Dissolution Hearing, *See also*, **Ex. 22**, Certification of Records of 47th Road Funding, Inc., Dissolution Hearing).

30. 47th Road Funding, Inc. commenced a foreclosure action against, *inter alia*, Cojam Realty, Inc., 47th Road, LLC, James Cortazar and Vincent Cortazar, in the Supreme Court of the State of New York, Queens County, on or about June 27, 2016, under Index Number 707559/2016. (*See Ex. 27*, Summons and Complaint, Dissolution Hearing).

31. The Hudson Valley Bank/Sovereign Bank loans went into foreclosure as Vincent Cortazar and James Cortazar did not cooperate together to obtain a new mortgage.

32. James Cortazar attempted to obtain a new loan, but was not able to do so with Vincent Cortazar's cooperation. (*See Ex. C*, June 28, 2016 Letter from All Home Funding Corp. to James Cortazar, *See also*, Dissolution Hearing Testimony, December 9, 2016 from James Cortazar at pg. 25 -27 and pg. 35-38, and Derivative Action Trial Testimony at pgs. 480 and 481).

Derivative Action Filed By Vincent Cortazar – Index No.: 705029/2016

33. On or about April 28, 2016, Vincent Cortazar, individually and derivatively on behalf of 47th Road LLC filed the subject lawsuit against James Cortazar and 47th Road LLC. (*See* Summons and Complaint).

34. Vincent Cortazar alleged, *inter alia*, that James Cortazar diverted monies obtained from various loans for his own personal benefit. (*See* Complaint at Paragraph 10).

35. Contrary to Plaintiff's assertions, the only evidence in existence related to the diversion of loan proceeds relates to Vincent Cortazar diverting funds into an A Plus Construction account controlled by Vincent Cortazar, which said funds were subsequently used solely by Vincent Cortazar and invested into a Ponzi Scheme.

36. Acting on his own accord, as evidenced by the October, 2010 Attendance Sheet, Vincent Cortazar caused 47th Road LLC to unnecessarily incur debt of \$250,000.00, with interest at 14%.

37. Included in Vincent Cortazar's Complaint are eight (8) Causes of Action, which include claims for Breach of Fiduciary Duty (First Cause of Action), Waste (Second Cause of Action), Conversion (Third Cause of Action), Unjust Enrichment (Fourth Cause of Action), and Fraud and Fraudulent Inducement (Fifth Cause of Action).

Answer and Counterclaims by James Cortazar against Vincent Cortazar

38. On or about June 10, 2016, James Cortazar served and filed his Verified Answer with Counterclaims. (*See* Cortazar Answer with Counterclaims).

39. James Cortazar, in the Answer with Counterclaims, denied the allegations against him, including those for Breach of Fiduciary Duty, Waste, Conversion, Unjust Enrichment and Fraud and Fraudulent Inducement.

40. James Cortazar's Counterclaims against Vincent Cortazar (remaining after the Dissolution Hearing) include conversion of funds, unjust enrichment, and breach of fiduciary duties.

41. As provided *supra*, evidence of breach of fiduciary duty include taking the proceeds from the \$250,000 Hypothecator loan and investing the money for his own potential benefit into what turned out to being a Ponzi Scheme.

Dissolution Action – Index Number 705060/2016

42. On or about February 22, 2017, the Court issued its Judgment/Order After Dissolution Hearing. (See, **Ex. 1**, Derivative Action).

43. The Court in its Judgment/Order directed, *inter alia*, that 47th Road LLC be dissolved, that both parties were to provide an accounting, that Joseph Risi be appointed as the Receiver, that security deposits be turned over to the receiver, that the receiver shall collect rents and pay bills as they come due, and that the receiver was authorized to pay taxes and other bills.

James Cortazar's Compliance with Court's Judgment/Order

44. In compliance with the Court's February 22, 2017 Order, James Cortazar did not interfere with the actions of the Receiver(s) and fully complied with the Court's directives.

45. The Court should not hold James Cortazar in contempt of court order and issue any financial penalties (as Plaintiff and Plaintiff's counsel have requested).

46. James Cortazar provided the Receiver and Vincent Cortazar's attorney with copies of the leases in effect and paid over to the Receiver the security deposits in his possession. Any rent monies collected by James Cortazar's assistant were used to pay expenses relating to 5-19 47th Road.

47. In early 2017, Judge Risi collected \$22,000 in rent immediately following his appointment as receiver, up until he notified James Cortazar's assistant that he was becoming a judge and would no longer be the Receiver. (TT at pgs. 53 and 54).

48. As stipulated between counsel, and in contradiction to the false and misleading testimony of Mr. Joseph Mattone, James Cortazar ensured that an insurance policy with in effect covering the property, and I emailed a copy of the policy to Mr. Mattone and Mr. Cirrito in or about January, 2018. (See TT at pgs. 435 and 436)¹. A copy of the insurance policy had also been given to Mr. Risi, and I assumed that Mr. Risi had given a copy of the policy to Mr. Mattone.

49. Further, James Cortazar's assistant provided Mr. Mattone with a spreadsheet of expenses and income received covering the subject premises, as indicated in the email exchanges (**Ex. 5**).

50. Copies of leases and spreadsheets indicating rents received and expenses incurred were also exchanged with Plaintiff's counsel.

NYC Buildings Violations Against the Subject Premises

51. Violations issued against the Building are included in Trial Exhibit **Ex. B**.

¹ On the second day of the trial, I showed to Mr. Ciritto the email which I sent to both Mr. Mattone and Mr. Ciritto which included the attached insurance policy in effect. Mr. Ciritto stipulated that I in fact emailed the insurance policy in compliance with the Court's directive.

52. Joseph Mattone, Jr. (the Receiver) falsely testified that the violations and fines started to accrue in 2015 (*See* TT at pg. 56) when in fact the violations started in 2002 (Ex. K) due to Vincent Cortazar excavating the basement without a permit.

53. Mr. Mattone again falsely testified that there were only “minor violations” before 2015. (*See* TT at pg. 56). Mr. Mattone insisted that prior to 2015, there were only minor violations for “light bulbs out, garbage violations, what we call C violations”. (*See* TT at pg. 56, lines 19 – 25).

54. However, Ex. B includes dozens of violations issued before 2015, almost all of which relate to the illegal work done by Vincent Cortazar in the basement and foundation. *See*, Ex. B.

55. Both Vincent Cortazar and James Cortazar testified that the illegal work completed in the basement, which led to hundreds of thousands of dollars in fines, were caused and completed by Vincent Cortazar. (*See* TT at pg. 132 – 136 and TT pgs. 341, 346, 347, 349 and 351).

56. Vincent Cortazar testified that he did the labor in the building and James Cortazar did the office work with respect to 5-19 47th Road. (TT at pg. 132 – 133).

57. While Vincent obtained a permit to remove partitions in the basement in or about 2009, he never completed the work, he never obtained a permit to cure the other basement related violations, even though he continued to be the Managing Member of the LLC through mid 2011. (*See* TT at pgs. 354 – 356)

58. In fact, even though Vincent testified that he removed the illegal partitions and plumbing fixtures in 2009, (and had to photograph from appraisal report taken in 2009 as supporting evidence – Ex. G Appraisal Report), during cross examination,

Vincent was shown ECB Violation Number 34891055K dated 12/17/2010, which was issued when James Cortazar was in California and Vincent was managing 5-19 47th Road. (See Ex. B and TT at pgs. 171 – 174).

59. ECB Violation Number 34891055K dated 12/17/2010 is for illegal occupancy of the basement and the violation indicates that the cellar had a kitchen, bathroom, and bedding and was being utilized by an adult male. (See ECB Violation Number 34891055K dated 12/17/2010 Ex. B). The fine imposed for ECB Violation Number 34891055K dated 12/17/2010 is \$25,000.00 (*See*, Ex. B).

60. Vincent Cortazar subsequently lied during the trial and claimed that James Cortazar restored the basement apartment to its illegal manner, but the basement apartment was restored prior to mid-2011, when James Cortazar returned and retook management control of the premises. (*See* TT 174 and Ex. B).

61. At the same time ECB Violation Number 34891055K dated 12/17/2010 was issued, the building received an additional violation. ECB Violation Number 34891056M was issued on 12/17/2010 for **“WORK W/O PERMIT, CELLAR SPACE ALTERED INTO 1) CLASSS ‘A’ APT W/INSTALLATION OF GAS LINE FOR STOVE IN KITCHEN, RESIDENTIAL SINK IN KITCHEN AND RESIDENTIAL SINK IN KITCHEN AND STALL SHOWER ADDED TO 2 PC BATH”**. (*See* Ex. B). That specific violation carried a penalty of \$8,000.00.

62. Additionally, on 12/17/2010, 47th Road LLC received Summons 34891057Y, which carried a fine of \$24,000.00 for the condition of: **“FAILURE TO COMPLY W/COMM’S ORDER TO CORRECT VIO 34850082P FOR WORK W/O PERMIT, CUT FOUNDATION (FRONT) WALL, EXCAVATED NEW**

STAIRWAY AND NEW DOOR OPENING TO FRONT CELLAR FROM STREET. NO RECORD OF CORRECTION.” See, **Ex. B.** Violation Number 34891057Y, dated 12/17/2010.

63. Upon review of the approximately 47 pages which comprise **Ex. B**, the ECB Violations, the vast majority of the summonses and fines relate back to the violations issued due to Vincent’s illegal work in the basement and the fines total into the hundreds of thousands of dollars. (See, **Ex. B**).

64. Vincent Cortazar further provided false testimony when he asserted that he did a search of all permits relating to the premises and only found the one that he filed in 2009.

65. During the cross examination of Vincent Cortazar, exhibits **Ex. H**, **Ex. I**, and **Ex. J** were marked and admitted into evidence, which establish that James Cortazar attempted to cure the violations caused by the illegal work committed by Vincent Cortazar in 2007. (See TT at pg. 256 – 264).

66. James Cortazar also testified at length of steps taken to cure the violations, which were required by the Forbearance agreement(s). (TT beginning at pg. 356).

67. After James Cortazar retook control of 5-19 47th Road, he hired an attorney and architect to try to cure the violations. (See Ex. H, I, J).

68. James Cortazar hired attorney Blaise Parascandola (**Ex. M**) and architect Salvati who completed and submitted architectural drawings in order to obtain a work permit. (See **Ex. N** – Drawings and **Ex. O**, payment \$5,000).

69. As the ECB fines totaled close to \$400,000 in or about 2013, James Cortazar could not afford to cure the violations in accordance with the Forbearance agreements, as neither he nor the building had the funds to do so. (TT at pg. 376 – 382).

Vincent Cortazar's Claims for Damages

70. During the trial, Plaintiff testified that he seeks damages based upon the claim of Breach of Fiduciary Duty of James Cortazar. Counsel for Plaintiff asserted damages in six (6) different areas.

71. Plaintiff provided testimony as to what he believed he would be owed as 50% member of the LLC if profits were distributed. With respect to rental income, Plaintiff's counsel requested damages for 50% of rental income going back three (3) years from when the lawsuit was filed in 2016 to 2013. (See, Ex. 13).

72. During James Cortazar's testimony, it was agreed that James Cortazar made certain improvements and incurred fees related to installing a new boiler which costs \$18,500, and that James Cortazar paid at least \$30,000 towards the water bill for the years 2011 through approximately 2016 or 2017. (See, TT at pgs. 398 – 409 and **Ex. P** water charges, **Ex. Q**, invoices for boiler, locksmith).

73. Other than profits from rental income, Plaintiff asserted that he sustained financial damages due to the mortgage default and interest in the amount of \$600,000. (TT at pg. 124 and pg. 125).

74. Vincent Cortazar testified that had James Cortazar agreed with him that Vincent was 50% owner, Vincent would have refinanced the building. (TT at pg. 124).

75. However, James Cortazar attempted to cure the violations and pay the mortgage. James Cortazar should not be financially penalized further because he

opposed Vincent prior to and during the lawsuit when the evidence relating to the violations supports James Cortazar's position that Vincent Cortazar breached his fiduciary duties owed to 47th Road LLC and to James Cortazar.

76. James Cortazar is entitled to the same damages as Vincent Cortazar, as James Cortazar was equally as damaged in the amount of \$600,000 due to Vincent Cortazar refusing to refinance the mortgage at an acceptable rate.

77. The Court should not award damages to Vincent Cortazar based upon the default mortgage foreclosure interest.

78. Thirdly, Vincent Cortazar seeks damages in the amount of \$1,000,000, the principal amount of the mortgage. (See, TT at pg. 126).

79. However, this request must be denied, as Vincent fully agreed to permit James to utilize some of the \$714,000 for California and the balance was used to pay for bills associated with 5-19 47th Road.

80. Additionally, when requesting the \$1,000,000 and asserting fraud, Vincent Cortazar and Mr. Cirrito seem to have forgotten that Vincent took out a loan in the amount of \$250,000.00 and invested it for himself in what turned out to be a Ponzi Scheme. (See, Trial **Ex. D**).

81. Therein, to follow Mr. Cirrito's argument, James Cortazar detrimentally relied upon Vincent Cortazar with respect to the loan causing a clear financial loss of \$250,000.00 not including interest and James Cortazar is the party entitled to damages. (TT at pg. 126).

82. The Hudson Valley Bank loan was taken, in part, to pay off the high interest loans given by Hypothecator. Vincent Cortazar benefited from the Hudson

Valley Bank loan and should not reap the award of \$1,000,000 when Vincent Cortazar committed egregious acts, including embezzling the proceeds from the \$250,000 loan and causing the building to receive violation after violation relating to the illegal cellar construction.

83. Lastly, Vincent Cortazar made a request for legal fees. (TT at pg. 127).

84. Legal fees should not be awarded to Plaintiff, as there was no breach of any written agreement entitling either party to legal fees. Further, the request for legal fees should be denied based upon Plaintiff's own breach of fiduciary duties, unclean hands, fraud, theft of company funds and unjust enrichment.

II. CONCLUSIONS OF LAW

85. The Court determined in the dissolution proceeding that Vincent Cortazar and James Cortazar were 50% owners of the subject premises, regardless of whether they joint tenants or 50% owners of 47th Road LLC.

86. As co-owners of the premises, the parties owed a fiduciary relationship to one another. A fiduciary relationship exists when one party is under a duty to act for or give advice for the benefit of another upon matters within the scope of the relationship. Such a relationship, necessarily fact-specific, is grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length transactions. While courts generally look to the parties' contractual agreement to discover the nature of their relationship, the existence of a fiduciary relationship is not dependent solely upon an agreement or contractual relation. Rather, the actual relationship between the parties determines the existence of a fiduciary duty. See, Fox Paine & Co. LLC v. Houston Cas. Co., 153 A.D.3d 673 (2nd Dept. 2017).

87. The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by one of the parties and (3) damages directly caused by the party's misconduct. See Palmetto Partners, L.P. v. AJW Qualified Partners, LLC, 83 A.D.3d 804 (2d Dept. 2011).

88. In the subject action, the evidence adduced at trial does not support Plaintiff's position that he is entitled to damages for breach of fiduciary duty. James Cortazar did not breach any duty owed. It was Vincent Cortazar who breached his fiduciary duties and caused financial damages to James Cortazar.

89. Due to Plaintiff's unclean hands, own breach of fiduciary duties, fraud, conversion of funds, embezzlement, and negligence, Defendant James Cortazar was forced to retake control as the manager of the building.

90. As the evidence has established during the trial, Vincent Cortazar caused irreparable financial damages to the building by the construction work completed therein. Violations were issued against the building regularly during the period of time in which Vincent Cortazar managed the building and when James Cortazar was in California.

91. The fines of over \$500,000 imposed on the building made it impossible for James Cortazar to cure. He could not cure the violations, and as such, he could not adhere to the terms of the forbearance agreement.

92. Additionally, it was Vincent Cortazar and his attorney that made it impossible for James Cortazar to refinance the building in 2016. Due to Vincent Cortazar's refusal to refinance the building, the default interest soared to over \$600,000.00. Vincent Cortazar should not be entitled to a windfall reward for his egregious acts.

93. Additionally, it was Vincent Cortazar who unilaterally decided to invest all of the proceeds of the 2010 Hypothecator loan into a Ponzi Scheme which caused undue financial distress to 47th Road LLC and to James Cortazar.

94. Vincent's assertion that he invested the money not only for himself but also for James is ludicrous. James Cortazar's name does not appear anywhere within the Ponzi Scheme documents. (Ex. D).

95. Based upon the facts in this matter, the Court must deny all claims by Plaintiff for damages, including any request that Plaintiff makes for attorneys' fees.

96. Also, the Statute of Limitations precludes any request for damages that Vincent Cortazar is making with respect to the loan(s) and/or mortgage(s).

97. The Court should grant James Cortazar's request for damages associated with his counterclaim against Plaintiff.

98. The evidence proves that Vincent Cortazar breached his fiduciary duties owed to not only James Cortazar but to 47th Road LLC.

99. The Court should award to James Cortazar the following:

- The remaining balance from the sale of the premises;
- \$250,000, plus statutory interest at 9% relating to the Ponzi Scheme, from November, 2010, or 50% of amount;
- \$300,000, plus statutory interest at 9% relating to proceeds from Hudson Valley Bank loans, which were under Vincent Cortazar's control and are unaccounted for, from 2011, or 50% of the amount;

- Default interest penalties in the amount of \$617,671.33, or 50% of the amount;
- Penalties imposed by the NYC Department of Buildings, ECB, in the amount of \$500,000, or 50% of the amount; and
- Attorneys fees in the amount of \$15,000.00.

Dated: January 18, 2018

Respectfully submitted,

/s/ James Costo
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