

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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CORNER FURNITURE DISCOUNT CENTER, INC. and :
2901 FURNITURE OUTLET, INC., : Index No.
: :
Plaintiffs, :
: **SUMMONS**
v. :
: :
GARY SAPIRSTEIN, :
: :
Defendant. :
-----X

To the above-named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis for venue in Bronx County is CPLR § 503.

Dated: New York, New York
September 13, 2018

MEISTER SEELIG & FEIN LLP

By: /s/ Mitchell Schuster
Mitchell Schuster
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Attorneys for Plaintiffs

3. Over the past several years, however, Sapirstein has been perpetrating a fraud. Saperstein has been embezzling from the Companies in various contrived ways, including depositing cash sales into his personal bank account, committing benefits fraud, and forging automated money transfers and checks. Sapirstein has been using the Companies to enrich himself. He has been treating the Companies as if they were his own personal piggy bank.

4. Sapirstein admitted to embezzling on July 9, 2018. Remarkably, when confronted by Ronald Stechler and Eric Stechler, he admitted to his continuing misappropriation of the Companies' funds. He maintains that he only looted approximately \$300,000 over the last 10 years. It is plain, however, that Plaintiffs cannot trust the word of an admitted thief.

5. Plaintiffs, therefore, bring this action against Sapirstein as more fully set forth below.

THE PARTIES

6. Corner Furniture Discount Center, Inc. ("Corner") is a corporation organized under the laws of the State of New York. Its principal place of business is located at 2916 White Plains Road, Bronx, New York 10467.

7. 2901 Furniture Outlet, Inc. ("FO") is a corporation organized under the laws of the State of New York. Its principal place of business is located at 2901 White Plains Road, Bronx, New York 10467.

8. Upon information and belief, Gary L. Sapirstein is an individual residing at 5704 Liebig Avenue, Bronx, New York 10471.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Sapirstein pursuant to CPLR 301 because Sapirstein resides in Bronx County.

10. Venue is proper in this County pursuant to CPLR 503. The Companies have their principal places of business in Bronx County. In addition, a substantial portion of the events giving rise to the claims in this action occurred in Bronx County, and much, if not all, of the evidence is located in Bronx County.

FACTS COMMON TO ALL CLAIMS

11. Corner is a discount furniture store in Bronx County that has been operating since 1984. Ronald Stechler owns a fifty-one percent (51%) interest in Corner. Ronald's son, Eric Stechler, owns a twenty-four percent (24%) interest in Corner. Sapirstein owns the remaining twenty-five percent (25%) interest in Corner.

12. FO is also a discount furniture store in Bronx County. FO has been operating since 2012. The corporate make-up of FO is the same as that of Corner: Ronald Stechler owns a fifty-one percent (51%) interest in FO. Ronald's son, Eric Stechler, owns a twenty-four percent (24%) interest in FO. Sapirstein owns the remaining twenty-five percent (25%) interest in FO.

13. Not only was Sapirstein a part-owner of both Corner and FO, but he also acted as Treasurer of the Companies, wherein he handled the care and custody of all the monies and securities of the Companies. Additionally, Sapirstein was the *de facto* manager of the Companies, and he was responsible for the "day-to-day" operations of the Companies, among other things. Sapirstein was specifically responsible for collecting the Companies' daily cash receipts and depositing them into the Companies' bank accounts.

14. The majority of the Companies' sales are generated at the Corner location. All cash for both Corner and FO is deposited in the Companies' Citibank account. Corner's Sunday sales, however, are deposited at JPMorgan Chase bank on the following Monday. As part of his duties as acting manager, Sapirstein was responsible for making all cash deposits for both stores.

15. Plaintiffs recently suspected that Mr. Sapirstein was stealing from the Companies. As a result, a preliminary review of the 2018 Corner cash receipts deposited at Citibank by Sapirstein revealed that the bank account contained less cash than was generated in store sales. Additionally, there appeared to have been instances wherein Corner's daily cash deposit printouts had been altered to conceal the cash Sapirstein had not deposited. In sum, Plaintiffs' preliminary analysis of 2018 Corner bank deposits demonstrated that approximately \$15,000 of cash was misappropriated.

16. An investigative firm was subsequently retained to conduct a more substantial—yet by no means exhaustive—forensic accounting review of the financial records of Corner and FO. The investigators reviewed Corner and FO's sales and cash deposit records from January 2016 through May 2018.

17. The investigative firm, in addition to the Stechlers' own findings, discovered an egregious pattern of self-dealing and misappropriation by Sapirstein which, based on information uncovered to date, includes without limitation:

- a. During the period of January 2016 through June 2018, hundreds of thousands of dollars of Corner's Sunday sales cash receipts prepared for deposit by Sapirstein were not deposited in JPMorgan Chase Bank.

- b. Beginning in 2018, the weekday cash receipts from Corner were altered to reflect a lower amount of cash received and deposited in Corner's Citibank account than was recorded in Corner's sales ledger.
- c. Sapirstein falsified entries for automated money transfers on a check stub, all the while misrepresenting that he would shred the check and it was just for accounting purposes, and then he would use that check to pay his personal Citibank credit card.
- d. Sapirstein changed the billing address and password for the Companies' Citibank Mastercard without proper authorization.

18. Moreover, in January of 2018, Sapirstein made himself the sole signatory on Corner's Bank of America account, notwithstanding the fact that he had no authority on behalf of Corner or its Board of Directors to do so. Sapirstein removed Ronald Stechler and Eric Stechler as signatories fraudulently and without proper authorization. Based on information discovered to date, Plaintiffs have discovered improprieties in the Bank of America account totaling over \$84,893.64.

19. Once Ronald Stechler and Eric Stechler discovered Sapirstein's continuing fraud against the Companies, they met with him to discuss the results of their investigation. At a meeting on July 9, 2018, Sapirstein admitted to stealing from the Companies, and he was immediately terminated from his managerial role. The Stechlers then proceeded to redress Sapirstein's misappropriation of the Companies' banking and financial records.

20. On August 9, 2018, a special meeting of Corner's Board of Directors was convened and voted by majority vote to remove Sapirstein from the Board of Directors.

Sapirstein was removed as a director pursuant to Corner's Bylaws. Sapirstein was also officially removed from participating in any daily operations of the store, and Saperstein's access to all bank accounts, credit cards, company information, company documents, signing rights and other corporate duties was terminated as well.

21. Additionally, a special meeting of FO's Board of Directors met that same day, August 9, 2018, and voted by majority vote to remove Sapirstein from its Board of Directors. Sapirstein was officially removed from participating in any daily operations of the store, and Saperstein's access to all bank accounts, credit cards, company information, company documents, signing rights and other corporate duties was removed as well.

22. Accordingly, and as a result of Sapirstein's fiduciary breaches, fraud, conversion, and violation of the Faithless Servant Doctrine, Plaintiffs are entitled to recover damages to be proven at trial, in an amount no less than one million dollars (\$1,000,000).

CAUSES OF ACTION

First Cause of Action: Breach of Fiduciary Duty

23. Plaintiffs repeat and reallege each and every allegation set forth above, as if fully set forth herein.

24. At all relevant times, Sapirstein was on the Board of Directors of the Companies, and he also acted as Treasurer of the Companies, wherein he handled the care and custody of all the monies and securities of the Companies. Additionally, Sapirstein served as *de facto* manager of the Companies, whereby he made all major operational and financial decisions for the Companies, including handling the daily bank deposits.

25. Accordingly, Sapirstein owed fiduciary duties of loyalty, candor, good faith, and due care to the Companies. Sapirstein was obligated to act in the Companies' best interests and avoid self-dealing and conflicts of interest.

26. Sapirstein was also bound to perform his managerial duties "in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances," pursuant to New York Business Corporation Laws section 717(a). However, Sapirstein failed to do so.

27. Based on information uncovered to date, Sapirstein breached his fiduciary duties to the Companies by, among other things:

- a. Failing to deposit hundreds of thousands of dollars of Corner's Sunday sales cash receipts from January 2016 through June 2018 in the store's JPMorgan Chase Bank account;
- b. Misappropriating approximately \$84,893.64 from the Companies' Bank of America account for his personal enrichment; and
- c. Altering Corner's 2018 weekday cash receipts to reflect a lower amount of cash received and deposited in Corner's Citibank account than was recorded in Corner's sales ledger.

28. Due to Sapirstein's purposeful concealment of his self-dealing, misappropriation, and diversion of monies, Plaintiffs did not know until recently, and could not have known, that Sapirstein was scheming to defraud the Companies in the manner alleged above.

29. Sapirstein's conduct toward the Companies was intentional and in bad faith, as Sapirstein placed his own interests before the Companies' interests, and he acted without loyalty or due care.

30. Accordingly, Sapirstein is liable to the Companies for his breach of fiduciary duties in an amount to be proven at trial, but in no event less than one million dollars (\$1,000,000).

Second Cause of Action: Fraud

31. Plaintiffs repeat and reallege each and every allegation set forth above, as if fully set forth herein.

32. At all relevant times, Sapirstein was on the Board of Directors of the Companies.

33. Additionally, at all relevant times, Sapirstein acted as Treasurer of the Companies, wherein he handled the care and custody of all the monies and securities of the Companies. Sapirstein also served as *de facto* manager of the Companies, whereby he made all major operational and financial decisions for the Companies, including handling the Companies' daily cash deposits.

34. Sapirstein had a duty to be fair and loyal to the Companies, and to manage their money with honesty and integrity.

35. As alleged above, Sapirstein made material misrepresentations and/or material omissions regarding the funds that the Companies were to receive, and he deliberately and knowingly concealed information about his misappropriation of funds from the Companies.

36. Based on information uncovered thus far, Sapirstein's material misrepresentations and material omissions to Plaintiffs include, but are not limited to, (i) materially misrepresenting weekday cash receipts from Corner to reflect a lower amount of cash received and deposited in Corner's Citibank account than was recorded in Corner's sales ledger; and (ii) falsifying entries for automated money transfers on check stubs so that he could use these checks to pay his personal Citibank credit card.

37. The above-listed misrepresentations and omissions made by Sapirstein were material, inasmuch as they enabled Sapirstein to divert and/or misappropriate hundreds of thousands of dollars—if not millions—away from the Companies that otherwise should have been distributed to the Companies' shareholders.

38. Plaintiffs reasonably relied on Sapirstein, believing that their Director, Treasurer, and *de facto* manager would act truthfully and in their best interests, and would avoid self-dealing.

39. Until conducting a preliminary investigation of financial records prior to this pleading, Plaintiffs did not know, and reasonably could not have known, the extent of Sapirstein's misrepresentations and omissions, and had no ability to ascertain the falsity of Sapirstein's statements and/or discover his deliberate fraud.

40. Plaintiffs have been damaged by these misrepresentations and omissions, as Sapirstein has used them to divert sales and profits to himself at the Companies' expense.

41. Accordingly, Sapirstein is liable for fraudulent misrepresentations and omissions in an amount to be proven at trial, but in no event less than one million dollars (\$1,000,000).

Third Cause of Action: Conversion

42. Plaintiffs repeat and reallege each and every allegation set forth above, as if fully set forth herein.

43. At all relevant times, Sapirstein was on the Board of Directors of the Companies, and he also acted as Treasurer of the Companies, wherein he handled the care and custody of all the monies and securities of the Companies. Additionally, Sapirstein served as *de facto* manager of the Companies, whereby he made all major operational and financial decisions for the Companies on a day-to-day basis.

44. The Companies were entitled to receive the proceeds from their operational sales and profits.

45. Based on information uncovered thus far, Sapirstein has interfered with the Companies' ownership and possessory rights to these funds, and he has diverted these funds to himself as if the Companies were his personal piggy bank.

46. Sapirstein has escaped for unknown number of years with the Companies' profits, in which the Companies had—and continue to have—immediate ownership and possessory rights.

47. As such, Sapirstein is liable for conversion in an amount to be proven at trial, but in no event less than one million dollars (\$1,000,000).

Fourth Cause of Action: Violation of the Faithless Servant Doctrine

48. Plaintiffs repeat and reallege each and every allegation set forth above, as if fully set forth herein.

49. At all relevant times, Sapirstein was on the Board of Directors of the Companies. Sapirstein also acted as Treasurer of the Companies, wherein he handled the care and custody of all the monies and securities of the Companies.

50. Additionally, at all relevant times, Sapirstein served as *de facto* manager of the Companies, whereby he made all major operational and financial decisions for the Companies, and he was entrusted with the day-to-day responsibilities of handling the Companies' sales and cash receipts.

51. Sapirstein, in his roles on the Board, as Treasurer, and as a manager, was at all times bound to exercise the utmost faith, loyalty, and fidelity in the performance of his duties owed to the Companies.

52. Sapirstein knowingly and repeatedly breached his duties of good faith, loyalty, and fidelity through his positions on the Board, as Treasurer, and as manager, by his willful self-dealing and misappropriation of monies belonging to the Companies.

53. Sapirstein's unfaithfulness and deliberate scheme to defraud the Companies substantially violated his duties to the Companies. Sapirstein's intentional self-dealing injured the Companies in a substantial and material manner.

54. The extent of Sapirstein's faithless conduct was so broad, pervasive, and destructive that disgorgement of all compensation and benefits paid to Sapirstein during the period of his faithlessness by the Companies is warranted.

55. Accordingly, the Companies are entitled to a money judgment in an amount to be proven at trial, but in no event less than one million dollars (\$1,000,000), as well as the

disgorgement of all compensation and benefits paid to Sapirstein during his faithlessness to the Companies.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- A. On the first cause of action for breach of fiduciary duty against Sapirstein, a judgment in favor of Plaintiffs in an amount to be proven at trial but not less than one million dollars (\$1,000,000), plus interest, costs, expenses and attorneys' fees;
- B. On the second cause of action for fraud against Sapirstein, a judgment in favor of Plaintiffs in an amount to be proven at trial but not less than one million dollars (\$1,000,000), plus interest, costs, expenses and attorneys' fees;
- C. On the third cause of action for conversion against Sapirstein, a judgment in favor of Plaintiffs in an amount to be proven at trial but not less than one million dollars (\$1,000,000), plus interest, costs, expenses and attorneys' fees;
- D. On the fourth cause of action for violation of the Faithless Servant Doctrine against Sapirstein, a judgment in favor of Plaintiffs in an amount to be proven at trial but not less than one million dollars (\$1,000,000), plus interest, costs, expenses and attorneys' fees, as well as an order directing the disgorgement of all compensation and benefits paid to Sapirstein by the Companies; and

E. Such other relief as this Court deems just and proper.

Dated: New York, New York
September 13, 2018

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