

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SAMUEL J. CAPIZZI
141 Leicester Road
Kenmore, NY 14217

Plaintiff,

vs.

Index No.: 810115/2016

BROWN CHIARI LLP
2470 Walden Ave.
Buffalo, NY 14225

JAMES E. BROWN
2470 Walden Ave.
Buffalo, NY 14225

DONALD P. CHIARI
2470 Walden Ave.
Buffalo, NY 14225

Defendants.

AMENDED COMPLAINT

Samuel J. Capizzi, by and through his attorneys, Webster Szanyi LLP, for his complaint against the Defendants Brown Chiari LLP, James E. Brown and Donald P. Chiari, alleges upon information and belief as follows:

1. At all times relevant to this action, Plaintiff Samuel J. Capizzi ("Plaintiff") was, and presently is, a resident of the County of Erie, State of New York and an attorney duly licensed and admitted to practice law in the State of New York.

2. At all times relevant to this action, Defendant Brown Chiari LLP (the “Partnership”) was a limited liability partnership organized under the provisions of the New York Partnership Law (“NYPL”) as evidenced by a certain Certificate of Registration filed with the New York Secretary of State on or about May 24, 2007.

3. Until its dissolution, the Partnership maintained its principal offices at 5775 Broadway, Lancaster, New York 14086.

4. The Defendants Brown and Chiari currently maintain an office at 2470 Walden Avenue, Buffalo, New York 14225 and are primarily engaged in the practice of law.

5. At all times relevant to this action, Defendant James E. Brown (“Brown”) was, and presently is, a resident of Erie County, State of New York and is an attorney duly licensed and admitted to the practice of law in the State of New York.

6. At all times relevant to this action, Defendant Donald P. Chiari (“Chiari”) was, and presently is, a resident of Erie County, State of New York and is an attorney duly licensed and admitted to the practice of law in the State of New York.

7. Plaintiff, Brown and Chiari each intended to establish and operate the Partnership with a partnership relation and interest among the three of them as the three lone equity partners.

8. The Partnership was operated without a written partnership agreement.

9. Plaintiff, Brown and Chiari were each equity partners in the Partnership.

10. Pursuant to an agreement between the three partners, Plaintiff had a 20% interest in the profits and losses of the Partnership, and Brown and Chiari each had a 40% interest in the profits and losses of the Partnership.

11. Plaintiff, Brown and Chiari jointly operated, managed and controlled the Partnership.

12. Plaintiff, Brown and Chiari regularly held and conducted Partnership meetings where the three of them, as the equity partners of the Partnership, would discuss and make decisions regarding various aspects of the business, including, but not limited to, the following:

- a. the operation and management of the Partnership;
- b. the Partnership's line of credit;
- c. expenditures and cash flow;
- d. marketing strategy and costs;
- e. the equity partners' life insurance, retirement and 401(k) plan;
- f. employee benefits, including administration of the Partnership's retirement and 401(k) plan;
- g. the Partnership office location;
- h. Partnership debts and obligations;
- i. staffing and employee compensation;
- j. case strategy on significant litigated matters the Partnership was handling.

13. Plaintiff, Brown and Chiari were the only individuals from the Partnership to receive K-1 schedules.

14. Plaintiff's K-1 schedule identified Plaintiff as partner in the Partnership.
15. Plaintiff, Brown and Chiari each executed personal guarantees securing the Partnership's line of credit.
16. Plaintiff, Brown and Chiari were the only individuals authorized to sign checks on behalf of the Partnership.
17. The Partnership purchased life insurance for Plaintiff, Brown and Chiari, as the equity partners of the firm.
18. The Partnership did not purchase or provide life insurance for the Partnership's employees.
19. From its inception through and including 2015, Plaintiff, Brown and Chiari shared in the profits of the Partnership.
20. From its inception through and including 2015, Plaintiff, Brown and Chiari were responsible for the Partnership's debts and obligations.
21. Upon information and belief, Defendants failed to pay Plaintiff his full and proper share of the Partnership profit for 2014 and 2015.
22. Absent a proper accounting, Plaintiff is unable to determine if Defendants failed to pay Plaintiff his full and proper share of the Partnership income prior to 2014.
23. Plaintiff has never agreed or consented to any reduction in his Partnership interest, including his share of the Partnership's profits.
24. In the absence of his agreement or consent, Plaintiff's interest in the Partnership cannot be reduced.

25. Plaintiff objected to Defendants' improper attempt to reduce his interest in the Partnership.

26. By correspondence dated January 8, 2016, Plaintiff provided written notice of his withdrawal from the Partnership and, as a result, the dissolution of the Partnership.

27. By correspondence dated January 8, 2016, Plaintiff requested an accounting of the Partnership's income and expenses, but defendants Brown and Chiari have ignored and therefore rejected this request.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

28. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 to 27 above as though set forth fully herein.

29. Plaintiff respectfully requests a judgment/declaratory judgment of the Court:

- a. Declaring that, by virtue of Plaintiff's withdrawal from the Partnership on January 8, 2016, the Partnership is dissolved by operation of law, pursuant to NYPL § 62, effective January 8, 2016; and
- b. Declaring that Defendants must immediately wind up the affairs of the Partnership and permit/provide a full and complete accounting of the Partnership's assets, liabilities, income and expenses and pay over to Plaintiff his share of Partnership assets and income.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

30. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 to 29 above as though set forth fully herein.

31. Plaintiff respectfully requests a judgement/declaratory judgment of the Court:

- a. Declaring that all assets, revenue and property of the Partnership be allocated to debts, expenses and liabilities as they existed on January 8, 2016, to the extent that they have not already been satisfied, and that any excess be paid as follows: to Plaintiff, Brown and Chiari as return of their capital accounts; thereafter to Plaintiff, Brown and Chiari as their share of the profits, pursuant to New York Partnership Law § 71;
- b. That to the extent that the Court finds that any partner has a negative capital account, declaring that part of the Partnership's assets include the repayment in full by such partner the totality of his negative balance; and
- c. Declaring that Plaintiff is entitled to a finding of dissolution of the Partnership and winding up of the affairs of the Partnership pursuant to New York Partnership Law § 68, said winding up to be conducted by Plaintiff, Brown and Chiari or, alternatively, by the Court.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

32. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 to 31 above as though set forth fully herein.

33. Defendants Brown and Chiari, as partners of Plaintiff, owed fiduciary duties to Plaintiff including, but not limited to, the duty of utmost good faith, fairness and loyalty.

34. Defendants Brown and Chiari breached these duties by, among other things, unilaterally attempting to reduce the Plaintiff's Partnership interest, including his share of the Partnership's profits, and by improperly allocating a larger share of the Partnership's profits to Brown and Chiari, thereby causing damages to Plaintiff.

35. Based on the above, Plaintiff is entitled to a judgment in the amount of his proportionate share of such excess distributions received by Brown and Chiari since the inception of the Partnership.

FOURTH CAUSE OF ACTION
(Breach of Contract)

36. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 to 35 above as though set forth fully herein.

37. As stated above, Plaintiff contends that Plaintiff was an equity partner in the Partnership; that Plaintiff had a 20% interest in the profits and losses of the Partnership through January 8, 2016; and Brown and Chiari each had a 40% interest in the profits and losses of the Partnership through January 8, 2016.

38. Plaintiff alleges, in the alternative, that, from May 24, 2007 through January 8, 2016, Plaintiff was a partner who was entitled to 20% of the profits of the Partnership pursuant to an agreement with Defendants.

39. Plaintiff fulfilled all of his obligations under the agreement.

40. Defendants breached this agreement by failing to pay Plaintiff 20% of the Partnership profits for the years 2014 and 2015, and through January 8, 2016.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants as follows:

a) On the first cause of action, a declaration of the Court declaring that the Partnership was dissolved effective January 8, 2016 and that Defendants are required to wind up the affairs of the Partnership and to provide a full and complete accounting of the Partnership's assets, liabilities, income and expenses to Plaintiff and pay over to Plaintiff his share of Partnership assets and income;

b) On the second cause of action, a declaration of the Court declaring the respective rights and obligations of the parties as requested in Paragraph 31 above;

c) On the third cause of action, for an order requiring Defendants Brown and Chiari to fully account for, disgorge and turn over to Plaintiff all distributions of net income that each Defendant has received in excess of his agreed upon share of the Partnership's net income since the inception of the Partnership, for redistribution and payment to the Plaintiff, or the entry of judgment against Brown and Chiari for the amount of their respective excess distributions, along with such other and further relief as may be just and appropriate;

d) On the fourth cause of action, for judgment against Defendants in the amount of Plaintiff's damages as a result of Defendants failing to pay Plaintiff 20% of the Partnership profits for the years 2014 and 2015, and through January 8, 2016.

e) Awarding Plaintiff all costs, disbursements, and attorneys' fees incurred in litigating this action; and

f) Awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: March 27, 2018

WEBSTER SZANYI LLP
Attorneys for Plaintiff

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