

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HARVEY RUBIN,

INDEX NO.

Plaintiff,

SUMMONS

-against-

Date Index No. Purchased:

JAMES S. BAUMANN, WINN WINN
ASSET MANAGEMENT LLC, and 330
WEST 85, LLC,

Defendants.

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (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); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is property address which is 330 West 85th Street, New York, New York. Plaintiff resides at 74 Prospect Avenue, Larchmont, New York.

Dated: Jamaica Estate, New York
November 4, 2015

JOSEPH H. NEIMAN, ESQ.
Attorney for Plaintiff
179-36 80th Road
Jamaica Estate, NY 11432
(201) 487-0061

TO: James S. Baumann
16 E 72nd Street, Suite 500
New York, NY

330 West 85, LLC
16 E 72nd Street, Suite 500
New York, NY

Winn Winn Asset Management LLC
16 E 72nd Street, Suite 500
New York, NY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HARVEY RUBIN,

INDEX NO.

Plaintiff,

VERIFIED COMPLAINT

-against-

JAMES S. BAUMANN, WINN WINN
ASSET MANAGEMENT LLC, and 330
WEST 85, LLC,

Defendants.

Plaintiff, Harvey Rubin, by his attorney, Joseph H. Neiman as and for his Verified Complaint, respectfully alleges as follows upon information and belief:

PARTIES

1. Plaintiff, Harvey Rubin (hereinafter referred to as "Rubin") is a resident of the Village of Larchmont, County of Westchester, and State of New York.
2. Defendant James S. Baumann is an individual with offices located at 16 E 72nd Street, Suite 500, in the City of New York, County of New York, and State of New York.
3. Defendant, Win Win Asset Management LLC (hereinafter referred to as "Win") is a New York Limited Liability Company with its principal business address located at 16 E 72nd Street, Suite 500, in the City of New York, County of New York, and State of New York.
4. Defendant, 330 West 85, LLC (hereinafter referred to as "330 West") is a New York Limited Liability Company with its principal business address of 16 E 72nd Street, Suite 500, in the City of New York, County of New York, and State of New York.

5. 330 West is a New York LLC that owns property (an apartment building) located at 330 West 85th Street, New York, New York. The members of the LLC agreed to share in the profits and losses of 330 West in accordance with their respective ownership interests therein.

FACTS COMMON TO ALL ALLEGATIONS

6. Harvey Rubin is a 50% owner of the LLC which owns the premises at 330 West 85th Street, New York, New York.

7. Per the terms of the LLC Operating Agreement (Exhibit A), Rubin is a managing member with equal say in the management of the LLC.

8. Defendant, Baumann is the current "Property" manager through defendant Win, an LLC owned by Baumann, however, Baumann has ignored the request of Rubin to either co-manage the Building (which is Rubin's right as set forth in the Operating Agreement) or have independent management as Rubin has been unhappy with the management by Win.

9. Baumann has effectively ignored Rubin's desires and barred him from participation as a managing member in violation of the Operating Agreement.

FIRST CAUSE OF ACTION **THE SALE OF THE BUILDING; TORTIOUS INERFERENCE WITH CONTRCT AND/OR PROSPECTIVE ECONOMIC ADVANTAGE; BREACH OF CONTRACT**

10. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs 1through 9 hereof as if fully set forth herein.

11. Per the terms of the Operating Agreement, Rubin is allowed to commence proceedings to sell the building.

12. As per Section 8.5 of the Operating Agreement, Rubin gave notice to Baumann, the only other owner/member, that Rubin intended to either sell his interest in the LLC or sell the building and included an offering price as per the Operating Agreement.

13. As part of the terms of the Operating Agreement, Baumann was given a four (4) month exclusive period to either purchase Rubin's interest or hence allow the building to be sold on the open market.

14. Under the terms of the Operating Agreement, the "Company" (which is Rubin and Baumann) and Rubin (the offering member) are to have six (6) months from the time the exclusive period for Baumann to purchase the premises expires until the time the building must be sold.

15. If the building is not sold during those six months, no member may compel a sale for at least two years.

16. During said period, Baumann is obligated to cooperate with Rubin in his efforts to sell the building.

17. Baumann has not cooperated as he has refused to provide Rubin copies of all the leases and has refused to provide to Rubin with access to the building.

18. As a result of Baumann's lack of cooperation and hindrance, Rubin has lost certain interested buyers.

19. As a result of same, Baumann has cost Rubin millions of dollars in damages.

SECOND CAUSE OF ACTION
ACCOUNTING

20. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 19 hereof as if fully set forth herein.

21. Plaintiff has an ownership interest in defendant, 330 West. As such he is entitled to an accounting of all funds belonging to 330 West. Plaintiff has demanded an accounting of the funds of 330 West but defendant, Baumann has refused. Plaintiff does not have an adequate remedy at law.

THIRD CAUSE OF ACTION
MISCONDUCT OF DEFENDANT

22. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs 1 through 21 hereof as if fully set forth herein.

23. Under the Operating Agreement, both Baumann and Rubin were to manage the property and have equal say in the management.

24. While at the early stages of their relationship in the late 90s, Bauman sought Rubin's input on the managerial decisions. He began a pattern of excluding Rubin of the decision making process and without right, locking Rubin out of his own company.

25. Rubin has the right to co-manage and as such would be entitled to half the management fee. As of June, Rubin has demanded he co-manage but Baumann has wrongfully refused same.

26. Rubin should be compensated for his share of the management fee Baumann has taken without authorization.

27. If Rubin is not allowed to co-manage, either an independent managing agent or a receiver should be appointed.

WHEREFORE, Plaintiffs request judgment as follows:


1. On the First Cause of Action, a Court Order allowing Rubin to sell the building, provided Baumann receives at least the minimum provided for in the Operating Agreement; a Court Order directing Baumann to turn over the keys to the Building, names and telephone numbers of the tenants as well as name and telephone number of the Super; a Court Order directing Baumann to turn over copies of all current leases and copies for the last three years; a Court Order directing Baumann to cooperate with Rubin and provide copies of any other records Rubin deems necessary to facilitate the sale of the premises; a Court Order providing plaintiff has six months to sell from the time defendant turns over the keys plaintiff needs to move forward on the sale; as well as damages of \$10,000,000 due to lost opportunities; punitive damages to be determined by the trier of fact but no less than \$2,000.00 for tortious interference with contract and/or economic prospective, plus costs, interest, attorney's fees and such other and further relief as the court deems just and proper;

2. On the Second Cause of Action, directing said defendant to account to plaintiffs with respect to all financial matters including but not limited to all revenue and all expenses with respect to the operation of 330 West, plus costs, interest, attorney's fees and such other and further relief as the court deems just and proper;

3. On the Third Cause of Action, an Order providing Rubin be allowed to co-manage the building or appoint an independent managing agent or receiver; compensatory damages in the sum of not less than \$25,000 plus interest thereon and

punitive damages to be determined by the trier of fact but not less than \$2,000,000 with the precise amount to be determined at trial, plus costs, interest, attorney's fees and such other and further relief as the court deems just and proper;

Dated: Jamaica Estate, New York
November 4, 2015



JOSEPH H. NEIMAN, ESQ.
Attorney for Plaintiffs
179-36 80th Road
Jamaica Estate, New York 11432
(201) 487-0061

ATTORNEY VERIFICATION

JOSEPH H. NEIMAN, of 179-36 80th Road, Jamaica Estate, New York 11432 is an attorney admitted to practice law before the court of the State of New York states:

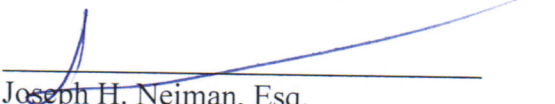
That I have read the Verified Complaint and know the contents thereof are true to my knowledge, expect those matters herein which are stated to be alleged on information and belief, and so as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge is based upon the following.

Investigation and information received from clients and from the file maintained in my office.

The reason why this verification is made by said deponent and not the plaintiffs is that said plaintiffs are not within the county where I have my office.

Dated: Jamaica Estate, New York
November 4, 2015



Joseph H. Neiman, Esq.
Attorney for Plaintiff

EXHIBIT A