SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

KRISTEN L. EIKENBERRY, Plaintiff,	:	Index No. 516653/2020
-against-	:	**AFFIDAVIT OF RICHARD JOSEPH LAMSON**
RICHARD JOSEPH LAMSON, Defendant.	:	Mot. Seq. 001

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

RICHARD JOSEPH LAMSON, being duly sworn, deposes and says the following subject to the penalty of perjury:

1. I am the Defendant in the above-captioned matter and as such, I am fully familiar with the facts and circumstances of this matter.

2. I respectfully submit this affidavit in opposition to Plaintiff Kristen Eikenberry's ("Plaintiff") motion for an order, (i) restraining and enjoining me from selling, assigning, transferring, or in any way encumbering all personal property, real property or other assets in which Plaintiff or me, and any of 330 Atlantic Ave Development LLC, Easy Wind L.L.C., Fairmont Industries Supply, LLC, Fairmont Industries Inc., HTHP Leasing Inc., Two Route 17 South LLC, have an ownership interest, (ii) restraining and enjoining me from cancelling any benefits Plaintiff currently enjoys, including health insurance and access to and use of an automobile, (iii) directing me to restore electronic data to Plaintiff that I purportedly caused to be deleted; and (iv) providing Plaintiff with "distributions" from a Morgan Stanley bank account held in her name (Account # XXX-XXX793) and/or in the name of 330 Atlantic Ave Development LLC (Account # XXX-XXX304) for ongoing expenses as specified in Exhibit N to Plaintiff's Affidavit, dated October 19, 2020, until a final judgment is entered in this matter.

Introduction

3. This lawsuit, which alleges a nonexistent "business partnership," in reality is a familial dispute. Since commencing her lawsuit, Plaintiff has filed several documents containing misrepresentations under oath about the nature of our relationship, and overstating Plaintiff's involvement with my business dealings.

4. While Plaintiff presents an alternate reality of our relationship, which I will address below, perhaps the most cutting part of Plaintiff's allegations are her accusations that I spitefully cast her out, am waging some "war" against her, and am now using our children as pawns in that war, including by refusing to pay their tuition. (Eikenberry Aff. ¶ 100). Nothing could be further from the truth.

5. The present situation with Plaintiff (including her commencement of this litigation) has had no impact on my provision for our four children's needs. Since their mother left to go into an inpatient rehabilitation facility and since she left that program and ostensibly abandoned our family, I not only have taken care of all of their financial needs, as I have done throughout their entire lives, but I have also been dealing with their emotional fallout resulting from our family being shattered. The only reason that children's tuitions had been placed in jeopardy was because the Plaintiff moved all of the monies earmarked for their tuition and before her application, had refused to release the monies to pay their overdue tuition. In fact, just this week was that finally resolved and now there is another bill for about $65,468.75 due for our youngest daughter to attend a program in Switzerland commencing in January. To the extent that our children are even mentioned in this lawsuit, it is because of Plaintiff's erroneous portrayal of the actions I have taken to safeguard our children's well-being in light of Plaintiff's disturbing and unpredictable behavior due to her addictions.

6. At the outset, it is imperative that I inform the Court that there is no such thing as the "EL Partnership," in any form or substance. Put simply, no business partnership between me and Plaintiff exists or has ever existed. Because we lived together as a family unit along with our four[1] children for over twenty years, Plaintiff and I performed for each other tasks routinely done in loving relationships without any expectation of compensation, all while Plaintiff enjoyed the benefits of my business successes. As the love of my life and mother of my children, Plaintiff was provided with unlimited use of a credit card, cash when she needed it, a car, and virtually all of her expenses paid for by me.

7. Over the years, I utilized different business structures (limited liability companies ("LLC's") corporations, etc.) for various reasons. While Plaintiff's name is associated with some of the companies I have operated—*including, among other things, being listed as "manager" of certain LLC's, holding licenses issued to those companies, and/or being an account holder on some bank accounts associated with those companies*—Plaintiff's representation that she and I entered into a "partnership" in 1996 and "agreed that we would both share equally in profits and losses as partners" is a complete and utter fabrication. (Eikenberry Aff. ¶ 6).

8. To the extent Plaintiff's name is associated with any particular company, the corporate organizational documents governing such individual company (and the law of the States applicable to that company) govern Plaintiff's rights and obligations with respect to that company. As will be explained below, given that we were not married, I wanted to ensure that Plaintiff had access to cash in the event that I were to die before my estate was settled. I would never in my wildest dreams have thought that Plaintiff would use my efforts to ensure that she

[1] Notwithstanding the fact that our son Henry is not my biological son, I have and will always considered him to be my son and I find it offensive to mention otherwise.

and the children had financial security in the event of my untimely death as an avenue to pursue a commercial litigation against me.

9. Under no circumstances did Plaintiff and I enter into a blanket oral "partnership" agreement that was to cover the individual corporate governance structures of each company – much less an oral agreement to override the corporate organizational documents and State laws governing each company.

Background of Our Relationship

10. I first met Plaintiff in 1995, and thereafter we maintained a twenty-plus year relationship. During the course of our relationship, we had four children (ages 21, 19, 18 and 15). Although Plaintiff callously points out that our 21-year old son is hers "from a previous relationship," there is no significance to this factor. (Eikenberry Aff. ¶ 9). As Plaintiff well knows, I have been present in my first son's life from the moment he was born. At no point in time was there ever any distinction between him and our other three children. I am the father of all four of our children and have provided equal amounts of love and support to each of them at all times.

11. Despite the fact that we lived together as a family unit since approximately 1998, Plaintiff and I never married, although I asked her to marry me on more than one occasion.

12. I first met Plaintiff in 1995 in Sag Harbor, New York. At the time I was living in a house that I built and owned in East Hampton on Long Island.

13. When we met, I was operating an interior demolition business called Sunset Demolition which I started in the early 1980's. Sunset Demolition is the predecessor company to the company that is now called Fairmont Industries, Inc.

14. Plaintiff's portrayal of my situation in life at the time we met does not comport with reality. She suggests that I was simply running a demolition company, living in a one-bedroom rental, and not buying, building, or developing properties. (*See* Compl. ¶¶ 18-19). That is categorically false.

15. By my mid-thirties, which is when I met Plaintiff, I was considerably accomplished. Not only was I operating a profitable demolition company, but I also achieved success in real estate development; i.e., buying properties, renovating and/or fully developing them, and selling for a profit.

16. I had been operating my real estate development business since the early 1980's and made a significant amount of money doing so. I built my first house in Vernon, New Jersey in 1980, which I later sold for a significant profit. Thereafter, I built, developed, and owned several multi-family houses in Rutherford, New Jersey. I also built a house in East Hampton, New York set on two acres of land. This was the house that I owned and lived in when I met Plaintiff. In addition, while Plaintiff is correct that I may have been "renting" a duplex apartment in a West Village building, she fails to include the fact that I partially owned the building in which the apartment was located.

17. When Plaintiff and I initially met in 1995 and became romantically involved, we were not living together. In fact, we were only sporadically dating between the years 1995-1998.

18. During 1997, Plaintiff was romantically involved with another man. It was after Plaintiff became pregnant with that man's child and prepared to move to England with him, that Plaintiff and I committed to being a couple and I agreed to care for the child she was carrying as if he were my own. Thereafter, Plaintiff broke off her relationship with the other man and decided not to move to England.

19. When Plaintiff gave birth to Henry in 1998, we moved in together for the first time. We lived in my duplex apartment in the West Village and stayed for several years.

20. We then moved to an apartment that I purchased on Harrison Street in the Soho neighborhood of Manhattan. The Harrison Street apartment was purchased exclusively with money I made long before I met Plaintiff. Plaintiff did not contribute any money toward the purchase, nor was she responsible for the mortgage (or any household expenses at that).

21. We moved out of the Harrison Street apartment when our youngest child was born.

22. Up until that time, Plaintiff worked at photo studio called Boylan Studios making few hundred dollars per week. She left that job to take care of our children shortly after our youngest child was born.

My Present Homes

23. In 2007, my family and I moved into a property that I purchased at 297 Pacific Street in Brooklyn ("297 Pacific"). It is my primary home and is not part of any business or "partnership."

24. Contrary to Plaintiff's misrepresentation, 297 Pacific was not purchased with "EL Partnership funds," particularly since there is no such thing. (Eikenberry Aff. ¶ 50). 297 Pacific was purchased using a $2.2 million-dollar mortgage that I secured from a bank.

25. Only my name was on the mortgage, and thus only my name is on the deed to 297 Pacific. Plaintiff contributed no funds towards the purchase, nor was she responsible for the mortgage on 297 Pacific (or any household expenses at that).

26. After purchasing 297 Pacific, I renovated the property substantially and added 4,000 square feet of living space using the earnings I made from the Harrison Street project. As

with the mortgage, only my name was on the loan that provided the funds for the development work. Plaintiff made no financial contributions towards the development of 297 Pacific, nor was she responsible for the attendant debt.

27. Plaintiff's only contribution to 297 Pacific was that she helped decorate the property which became our family's home.

28. I am the exclusive owner of 297 Pacific. The title is, and always has been, solely in my name. Contrary to Plaintiff's misrepresentation, the title to the property is not held "for the benefit of the EL Partnership," because there is no such thing. (Eikenberry Aff. ¶ 53).

29. I also own a farm in Delhi, New York called Birdsong Farm. The farm is my weekend home and serves as my family's weekend getaway. I was able to purchase Birdsong in or around 1996 for a nominal sum of money when its previous owner had fallen significantly behind on property taxes. To purchase the farm, I had to pay the back taxes that had accumulated under the previous owner.

30. I took out a mortgage to buy Birdsong Farm from the mortgage holding bank. Plaintiff's name was not on the mortgage and she had no obligations with respect to the mortgage. Plaintiff did not contribute any funds towards the purchase of Birdsong Farm, nor did she contribute towards the significant amount of back taxes that I had to pay.

31. Plaintiff helped decorate the living spaces at Birdsong Farm, which was to be our family's weekend home.

32. I am the exclusive owner of Birdsong Farm. The title is, and always has been, solely in my name. Contrary to Plaintiff's misrepresentation, title to the property is not held "for the benefit of the EL Partnership," because there is no such thing. (Eikenberry Aff. ¶ 49).

My Businesses and Recent Projects

33. Plaintiff makes references to several of my businesses and projects that I have undertaken in recent years.

34. Because Plaintiff was not at all involved with any of these projects, her Complaint contains fundamental inaccuracies about these projects.

35. For instance, Plaintiff's Complaint misidentifies three distinct projects as being part of a phased three-lot development, which she calls "The Pacific and 330 Atlantic Developments." (Compl. ¶¶ 74-93). Other than their geographic proximity, the First, Second and Third "Lots" referenced in the Complaint had nothing to do with each other.

36. The Schermerhorn Street development, referred to in the Complaint as the "First Lot," was a land deal that I arranged. (Compl. ¶ 77). Neither me nor any of my companies had a role in providing the "design for the lot's development," or had anything to do with the development of this property as Plaintiff erroneously claims. Plaintiff was not involved in the Schermerhorn Street deal in any respect. Further, neither me or any of my companies ever owned an interest in the project, nor did I receive any compensation. (*Id*.).

37. The Schermerhorn Street deal was unrelated to the projects that Plaintiff erroneously refers to as the "Second Lot" or the "Third Lot." (Compl. ¶¶ 78-93).

38. Plaintiff next references the Pacific Street townhouses, located at 319, 321, 323, and 325 Pacific Street in Brooklyn (the "Pacific Street Townhouses"). The Pacific Street Townhouses, which Plaintiff erroneously calls the "Second Lot," consist of four luxury townhouses that I developed with Mr. Philip Mendlow ("Mr. Mendlow"). Mr. Mendlow obtained all of the financing to build the Pacific Street Townhouse.

39. The Pacific Street Townhouses project was unrelated to the projects that Plaintiff refers to as the "First Lot" or the "Third Lot." (Compl. ¶¶ 78-93).

40. My company, Fairmont Industries, Inc., performed certain site services on 325 Pacific Street, for which it received the sum of $150,000. (Eikenberry Aff., Ex. E).

41. Additionally, in my individual capacity, I earned a preferred development fee of $4,328,530.60 for 325 Pacific Street. The fee was payable to me personally. (*Id*.).

42. Completing the Pacific Street Townhouses was a significant accomplishment that involved an enormous output of labor and resources on my part. For over two years, I worked six (sometimes seven) days a week to complete the project, including during the summer months when Plaintiff was vacationing at my New Jersey shore house—the Beach Haven house. Plaintiff did not contribute any work whatsoever towards the construction of the Pacific Street Townhouses.

43. Plaintiff's allegation that she "managed the overall theme and design elements" for the Pacific Street Townhouses is categorically false. (Eikenberry Aff. ¶ 57; Compl. ¶ 79). In concert with Professional design firms I hired (including Mr. Mendlow's design company), I handled all of the design work for the Pacific Street Townhouses – a fact which is well documented. To the extent Plaintiff provided any input or advice it was casual advice provided in her capacity as my romantic partner, not as a business partner.

44. Plaintiff's assertion that she located the realtor "in her network" who sold one of the townhouses is irrelevant. (Compl. ¶ 80). As a favor to Plaintiff and her brother, I retained their friend's wife as a realtor for one of the townhouses. Plaintiff wanting her friend to make the commission on this sale did not make Plaintiff a "partner" on the project.

45. The 330 Atlantic Avenue Project, which Plaintiff erroneously refers to as the "Third Lot," is my current project. It consists of a development deal I entered into with Mr. Mendlow to build a six-story mixed use building at 330 Atlantic Avenue in Brooklyn. My role is to construct the building.

46. The company managing the work on the 330 Atlantic Avenue Project is 330 Atlantic Avenue Development LLC, a Wyoming LLC that I formed in June 2019.

47. When 330 Atlantic Avenue Development LLC was formed, I listed Plaintiff as the organizer of the company with the Wyoming Secretary of State. (Eikenberry Aff., Ex. A).

48. I am the sole member of 330 Atlantic Avenue Development LLC, as is reflected in the company's LLC Operating Agreement. (Eikenberry Aff., Ex. I). I am the sole decisionmaker at the company.

49. 330 Atlantic Avenue Development LLC was administratively dissolved in August 2020 for failing to file an annual report.

50. I applied for reinstatement by filing a reinstatement form with the Wyoming Secretary of State. I was advised by the registered agent for 330 Atlantic Avenue Development LLC that the reinstatement form may be completed and signed by any member, manager, or person authorized to do business on behalf of the LLC.

51. On August 12, 2020, the Wyoming Secretary of State issued a Certificate of Reinstatement for 330 Atlantic Avenue Development LLC, which bears my name only. (Eikenberry Aff., Ex. J).

Plaintiff Enters Rehabilitation and Never Returns

52. In or about May 2020, my children and I held a family intervention with Plaintiff at Birdsong Farm about her persistent alcohol and prescription drug abuse, which the entire

family believed was out of control. Going back at least three years, Plaintiff's alcohol and drug use had been escalating and out of deep concern, we my children and I collectively decided to approach Plaintiff about it.

53. After the intervention, Plaintiff enrolled in a treatment program at the Dunes, a luxury addiction treatment center in East Hampton, New York. I paid approximately $150,000 for Plaintiff's treatment.

54. While enrolled at the Dunes (when Plaintiff was supposed to have been undergoing rehabilitation), Plaintiff spent about $46,000 on clothes and other luxury items using the American Express credit card that she regularly used to make purchases, which I paid. Among the purchases were several Venmo transfers (of over $1,000 each) to unidentified parties, and membership to a private racquet club.

55. Because of Plaintiff's demonstrated fiscal irresponsibility, in or about July 2020 I cancelled the American Express credit card that she had access to.

56. Upon completing a ten-week rehabilitation program at the Dunes, instead of returning home, Plaintiff asked me if I would support her desire to spend the summer of 2020 in the Hamptons at a $50,000 per month 7-bedroom luxury rental home.

57. To avoid relapse, a patient who completes a rehabilitation program typically chooses between transitioning into a "sober living home" or returning home. We were eager for Plaintiff to return home, but instead, she asked for my support in renting the Hamptons house on the premise that it would be a "sober house." Unsurprisingly, the situation that Plaintiff proposed did not include the basic elements of a sober living home; e.g., curfew, house rules, random drug tests, required attendance at recovery meetings, etc.

58. Although I was not happy with the idea and thought $50,000 per month in rent was exorbitantly high, I wanted to support Plaintiff and agreed to contribute to her share of the rental. Despite my desire to support Plaintiff in getting better, I feared that Plaintiff living in a Hamptons home would not be conducive to her sobriety. My main concern was that it would be a "sober house" in name only since it lacked any real indications of accountability.

59. Plaintiff and I maintained sporadic, mostly civil, contact while she was living at the Hamptons house. Our relations broke down after I came to find out about Plaintiff's continued prescription drug use and confronted Plaintiff. I cancelled the credit card she had access to after she had demonstrated fiscal irresponsibility and it did not appear that she was taking her rehabilitation seriously (including being in complete denial about her abuse of prescription medication).

60. Plaintiff never returned to the homes she lived in with me and the children and, upon information and belief, she still resides at the Hamptons rental house.

61. I was devastated about Plaintiff's decision not to return to the family and to take steps to address her prescription medication issue. I was hurt that she would twist my efforts to provide for her and to ensure that she and the children would be financially secure in the event of my death into a lawsuit claiming that I was attempting to defraud her.

Bank Accounts

62. Plaintiff references multiple bank accounts, several of which are unfamiliar to me.

63. Some of the accounts mentioned are business accounts (like the Fairmont Industries Account discussed below), some are personal accounts, and others are accounts established for discrete purposes related to taking care of my family expenses.

64. For instance, I opened an account called MSB FBO West Branch Management, LLC at Morgan Stanley (the "West Branch Account"). The account was funded with, among other things, real estate development profits that I made over the years—including, for example, the profit from the sale of my Long Island home that I was living in when I met Plaintiff. The West Branch account generates a significant amount of interest. I mainly use the West Branch account to pay the mortgages on my homes. I have also used this account to pay some of the children's private school tuitions. Plaintiff did not contribute anything towards this account.

65. Plaintiff makes reference to the Fairmont Industries Account at Santander Bank. (Eikenberry Aff. ¶ 37). The Fairmont Industries Account is the operational account of Fairmont Industries, my interior demolition company. The funds in that account are used for the operational expenses of Fairmont Industries.

66. Plaintiff makes reference to the Easy Wind Account at Morgan Stanley, (Eikenberry Aff. ¶ 35).

67. The Easy Wind Account was opened to hold the money that I made on selling the house that I purchased and improved in Beach Haven, New Jersey.

68. The Beach Haven house was our family's shore house. I bought it in 2015 for $1.1 million and took out a $400,000 mortgage. After making over $650,000 of improvements to the home and property, I sold the Beach Haven house in 2017 for $2.2 million.[2] After paying off the mortgage, I was left with $1.8 million in proceeds.[3]

[2] Plaintiff misrepresents (under oath) that the house sold for $2.7 million. (Eikenberry Aff. ¶69). Because Plaintiff had no involvement whatsoever in my finances, it is not surprising that she is unaware of the sale price. Nevertheless, the sale price of the house is a matter of public record, which Plaintiff and her counsel can easily access.

[3] The proceeds did not reflect the profit I made on the Beach Haven house. The profit was approximately $1.1 million after taking into account the cost of the significant improvements I made to the house and property.

69. I formed an entity called Easy Wind L.L.C., and opened the Easy Wind Account at Morgan Stanley in the name of that entity. Easy Wind was created as a vehicle to hold the $1.8 million in proceeds from the sale of the Beach Haven house. The Easy Wind Account was funded solely with my money—the proceeds of the sale of the Beach Haven house. Plaintiff did not contribute anything towards this account.

70. Plaintiff contributed no funds towards the purchase of the Beach Haven house, nor was she responsible for the mortgage on the house. Plaintiff did not contribute any funds towards the $650,000 of improvements that I made to the house. Plaintiff's name was never on the title to the house.

71. The money in the Easy Wind Account was designated for paying my children's future college tuitions.

72. The LLC operating agreement for Easy Wind LLC (a true and correct copy of which is attached at Exhibit A) provides that I put in 100% of the $1.8 million capital contribution into Easy Wind (Ex. A at p. 2), and that I was the sole member of the LLC.

73. The operating agreement for Easy Wind L.L.C. also provides that Plaintiff was the "manager" of Easy Wind, and that she was to receive $0 in compensation (Ex. A pp. 3-4).

74. I also have a personal account in my name only at Morgan Stanley with a value of approximately $1.25 million. This account holds annuities and other retirement-related income generating vehicles for me personally. Plaintiff did not contribute anything towards this account.

Disputed Account Activity Since Our Relations Broke Down

75. Plaintiff's effort to make my attempted transfers sound nefarious should be ignored. To the extent I made, or attempted to make any transfers from any of the above mentioned bank accounts since May 2020 it was to safeguard the funds in those accounts to

ensure my businesses' continuity and ordinary course payments, as well as ensuring that funds allotted for our family expenses were not dissipated.

76. Plaintiff's behavior since May 2020, including her irrational spending and prescription drug use, raised serious red flags about what Plaintiff was capable of.

77. For example, Plaintiff claims that I "drained" the Fairmont Industries Account without her knowledge or consent. (Eikenberry Aff. ¶ 80). The funds in Fairmont Industries Account are critical to funding the ongoing operating costs of Fairmont Industries. I cannot afford for Plaintiff to take for herself or otherwise encumber those assets. I therefore moved those funds from where they were held (at Santander Bank) into a bank account at Chase bank, where they currently remain and are used to pay for Fairmont Industries operating expenses.

78. Plaintiff's name is on the hauling license for Fairmont Industries. To the extent that Plaintiff is owed any monies (e.g., salary or otherwise) for any involvement with Fairmont Industries, the company's funds where those monies would come from are secure and have not been drained. But restraining me from using the Fairmont Industries account (now at Chase bank) to make ordinary course business operational payments is unwarranted and unconscionable.

79. Plaintiff also claims that I attempted to "drain" the Easy Wind Account at Morgan Stanley without her knowledge or consent. (Eikenberry Aff. ¶¶ 81-85).

80. But as explained above, the funds in the Easy Wind Account were meant to pay for our children's tuition. To ensure that tuition would be paid, I attempted to withdraw money for tuition in July 2020—which I was unable to do because Plaintiff's consent was required and withheld. I subsequently wrote checks to our children to pay for such tuition, which checks did not go through because of Plaintiff's intervention with Morgan Stanley.

81. In August 2020, my fears were realized when Plaintiff moved the money from the Easy Wind Account (all of which belonged to me) into an account at Morgan Stanley in her name only (the "Eikenberry Account"). Morgan Stanley subsequently froze the Eikenberry Account when I provided proof of my ownership of the funds in the Easy Wind Account. Until the interim order issued by the Court on October 27, 2020 (which directed that certain specific tuition payments be made), I had been unable to pay the children's tuition from the funds allotted for that purpose.

82. Plaintiff also claims that I tried to "drain" the account at Morgan Stanley that serves as the operating account for the 330 Atlantic Avenue project. (Eikenberry Aff. ¶¶ 73-78). That is not true.

83. 330 Atlantic Avenue Development LLC maintains an account at Morgan Stanley (the "330 Account"). I funded the 330 Account exclusively with my money; i.e. the money that I earned as a preferred development fee for the work I performed on the Pacific Street Townhouses project.

84. When I first opened the 330 Account, I listed Plaintiff as the account holder even though the funds I used to open the account were mine. Because Plaintiff (who is the mother of my four children) and I were never married, I sometimes opened bank accounts in her name (or named us jointly) so that Plaintiff would have access to the funds in the event that something happened to me. At no point did I tell Plaintiff that putting her name on the accounts would trump the corporate formalities of the companies associated with those accounts, and under no circumstances did I intend to make Plaintiff a "partner" in any of my businesses by putting her name on accounts.[4]

[4] As discussed above, Plaintiff's allegation that I "falsified" corporate records related to 330 Atlantic Development LLC is not true.

85. The 330 Account is critical for my business. It is used to pay all of the requisite third parties involved in the construction of the building, including, among others, the electricians and steel workers.

86. Plaintiff's claim that she is responsible for "interior design" for the 330 Atlantic Avenue project is false. (Eikenberry Aff. ¶ 87). Mr. Mendlow hired the renowned architect, Timothy Dumbleton and the TA Dumbleton Architect firm, to handle all of the design-related work – a fact which is well documented.

87. I have already put about $1 million into the project from funds in the 330 Account. It is estimated that the project will require another $2.5 million to complete. All of those funds are to come out of the 330 Account.

88. As with the Fairmont Industries Account, I cannot afford for Plaintiff to take for herself, or otherwise encumber, the funds in the 330 Account. For this reason, in June 2020 I tried to transfer the funds in the 330 Account to the West Branch Account at Morgan Stanley to safeguard the 330 Atlantic Avenue project so I can keep working. Because Plaintiff's name was on the account, Morgan Stanley contacted Plaintiff to confirm the transfer. When Plaintiff did not authorize the transfer, Morgan Stanley flagged the account and froze it.

89. My business has since been negatively impacted. There are invoices due on a rolling basis, including several high-balance invoices that are currently past due. The only reason that I have been able to keep the project going is because I have earned enough good will with the third parties involved so that they extended me some grace. However, any such mercy is temporary. I have already been threatened with legal action for failure to make certain payment obligations.

90. Additionally, I am obligated to Mr. Mendlow to finish the building within a certain timeframe. If I do not finish on time, I fear the threats of litigation for breach of contract will come to fruition.

91. Therefore, restraining me from using the 300 Account to make ordinary course business payments is unwarranted and unconscionable.

92. Finally, it is I (not Plaintiff) who has always paid, and continues to pay, for all of the family's expenses, including our children's car payments, credit cards, etc. Indeed, Plaintiff acknowledges as much since her "Estimated Monthly Expenses" do not include any line items covering the children's expenses. (Eikenberry Aff., Ex. N). I also pay all of the carrying and operating costs for 297 Pacific and Birdsong Farm (including utilities, etc.).

93. Therefore, restraining me from using any accounts that are used to make such ordinary course payments is unwarranted and unconscionable.

Plaintiff is Not My Business Partner

94. Plaintiff is the mother of my four children, not my business partner.

95. Plaintiff's allegation that we entered into a partnership in 1996 is false.

96. As discussed above, in 1996 our romantic involvement was on-and-off, and in 1997 Plaintiff was pregnant with another man's child and planning to move to England with him. The notion that at that point we were one year into a "partnership" is absurd. We were barely even in contact.

97. There was never any agreement of any kind to split profits and losses from my business dealings—not on a 50/50 basis or otherwise.

98. At no point in time did I ever have an intent to make Plaintiff my business partner, nor did I ever convey to Plaintiff an intent to make her my business partner.

99. At no point in time did Plaintiff ever convey to me a desire or intent to be a business partner with me.

100. Plaintiff never received a single partnership distribution from me.

101. Plaintiff never received a Schedule K-1 from me.

102. To the extent that I put Plaintiff's name on certain entities or bank accounts, it was to ensure continuity in the event that something happened to me.

103. Plaintiff never made any capital investments in any of my businesses or projects.

104. Plaintiff and I have never held common ownership of any properties, including the homes that we lived in.

105. Despite their being no partnership (as Plaintiff falsely alleges), I cared for Plaintiff and worked very hard to ensure that she had everything she wanted.

106. I provided her and my children with a very comfortable and luxurious lifestyle.

107. During the twenty-plus years that we lived together, Plaintiff never worked, while I consistently performed manual labor on large-scale construction projects—sometimes working six to seven days per week.

108. The money I made from my interior demolition and real estate development projects paid for the entirety of my family's expenses. Plaintiff never contributed anything towards the mortgage payments, household expenses, luxury vacations, or even towards her own enormous personal expenses. For personal expenses (clothes, etc.), I provided Plaintiff with an American Express card, which Plaintiff used with impunity, and which I paid.

109. Over the last eighteen years I have put all four of my children through private school and paid the tuition. Plaintiff was never asked to contribute anything towards the children's private schooling.

110. I have no intention of cancelling Plaintiff's health insurance or her access to an automobile. This part of Plaintiff's application is thus moot.

111. Plaintiff also requests an order directing me to restore electronic data to Plaintiff that I purportedly caused to be "deleted." This part of her application is also moot. I did not delete any data belonging to Plaintiff. Sometime after Plaintiff left to attend the Dunes, and thereafter rented the Hamptons house, Plaintiff removed herself from our shared family mobile/data account with AT&T and ported her number to a new carrier. Afterwards, I subsequently changed the Apple ID and password that had been associated with the family mobile/data account, and since then Plaintiff has been unable to access the data behind the Apple ID and password account. Because allowing Plaintiff access to my personal information, including privileged communications with my attorneys, I cannot allow Plaintiff access to the Apple ID. My attorneys, however, are attempting to determine whether any data belonging to Plaintiff (backups, etc.) can be isolated from the rest of the data behind the Apple ID and provided to Plaintiff.

112. While I do not believe any attorney client communications or "privileged information" related to Plaintiff exists behind the Apple ID, under no circumstances will I destroy or attempt to view any privileged information belonging to Plaintiff.

113. In short, there is no such thing as "EL Partnership" "assets" or "distributions." (Eikenberry Aff. ¶¶ 110-11). There are no partnership obligations (Eikenberry Aff. ¶ 113). The whole concept of a partnership was fabricated by Plaintiff.

WHEREFORE, it is respectfully requested that Plaintiff's motion be denied in its entirety, and that the Court grant such other and further relief as may seem just and proper.

RICHARD JOSEPH LAMSON

Sworn to before me this
3rd day of November, 2020

Notary Public
The notarial act has been performed via audio-visual technology pursuant to Executive Order 202.7

Ryan Joshua Casson
Notary Public - State of New York
No. 02CA6302136
Qualified in New York County
Commission Expires April 28, 2022