SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

KRISTEN L. EIKENBERRY,

Plaintiff,

- against -

RICHARD JOSEPH LAMSON,

Defendant.

Index No. 516653/2020

Mot. Seq. 001

Hon. Leon Ruchelsman

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION BY ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION, ACCESS TO PARTNERSHIP DISTRIBUTIONS, AND RELATED RELIEF

BLANK ROME LLP
Martin S. Krezalek
Grace Chamoun Taranto
1271 Avenue of the Americas
New York, New York 10020
Tel. (212) 885-5000

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Plaintiff Kristen Eikenberry ("Plaintiff") implores this Court to issue the most drastic of remedies against defendant Richard Lamson ("Mr. Lamson"), her former romantic partner—an order restraining him from selling, assigning, transferring, or encumbering "*all personal property, real property or other assets*" in which he has an ownership interest, and also enveloping several non-party entities with the same restraint. Additionally, Plaintiff seeks the even more drastic remedy of a mandatory injunction, directing Mr. Lamson and/or certain non-party entities to provide her with "distributions" to cover her excessive luxury expenses, including funding this baseless lawsuit against Mr. Lamson.

The basis for Plaintiff's extraordinary request is the existence of a purported *oral* partnership agreement, lacking any definite material terms, limitless in scope and duration, and evidenced by nothing except for Plaintiff's self-serving and implausible testimony of a vague promise to *share all profits and losses equally*. The alleged oral partnership agreement is so broad that it would trump the corporate structures and applicable laws that Mr. Lamson and other parties chose to conduct certain businesses and projects (serving different purposes and often having no relation to each other). The alleged partnership agreement is even broad enough to cover non-business related assets, like Mr. Lamson's personal residences. In no uncertain terms, there is no such thing as the "EL Partnership," in any form or substance. Plaintiff and Mr. Lamson were never business partners—they lived together as a family unit for over two decades even though they never married. During the course of their romantic relationship, Plaintiff and Mr. Lamson performed tasks routinely done in loving relationships without any expectation of compensation, all while Plaintiff enjoyed the luxuries and benefits of Mr. Lamson's individual business successes.

None of the elements of preliminary injunction are met here given that all of the underlying claims hinge on the existence of a partnership, the facts of which are in sharp dispute (and thus

Plaintiff cannot show likelihood of success); the relief sought is inherently reparable; and the balance of equities weigh against enjoining Mr. Lamson from using business accounts to conduct his businesses, and using his personal accounts to operate his family's expenses. Nor can the Court grant the extraordinary and rare remedy of a mandatory injunction directing payments of *pendete lite* spousal distributions (which are prohibited by New York law and public policy) disguised as partnerships distributions (which are not warranted because there was no partnership).

FACTUAL BACKGROUND

A) The Parties' Relationship

Plaintiff and Mr. Lamson first met in 1995, but were only sporadically dating until 1998, when they first moved in together. (Affidavit of Richard Lamson, dated November 3, 2020, hereinafter "Lamson Aff." ¶ 10). Thereafter, the parties maintained a romantic relationship for over twenty years. (*Id.*) During the course of their relationship, they had four children (ages 21, 19, 18 and 15). (*Id*.)

Plaintiff alleges that Mr. Lamson was simply running a demolition company, living in a one-bedroom rental, and not buying, building, or developing properties when they met. (*See* Compl. ¶¶ 18-19). But this characterization of Mr. Lamson's stature at the time the parties met does not comport with reality. By the time he met Plaintiff, Mr. Lamson had already been operating a profitable demolition company for over sixteen years. (Lamson Aff. ¶¶ 12-16). He had by then also become very successful in real estate development; i.e., buying, renovating and/or fully developing properties, and selling for a profit. (*Id*.) He lived on two acres in East Hampton in a spacious home that he built from the ground up. (*Id*. ¶ 16). While Mr. Lamson was also "renting" a duplex apartment in a West Village building, as the Complaint alleges (Compl. ¶ 18), Plaintiff omits that Mr. Lamson partially owned the building in which the apartment was located. (Lamson Aff. ¶ 16).

The nature of parties' relationship was always as a family unit, not as business partners. (*Id*. ¶ 93). Despite the fact that they lived together as a family for over twenty years, Plaintiff and Mr. Lamson never married. (*Id*. ¶ 11). Given that they were not married, Mr. Lamson placed Plaintiff's name on certain entities and bank accounts to ensure continuity and guarantee that Plaintiff and their children had immediate access to cash in the event he were to prematurely die. (*Id*. ¶ 101).

For example, Plaintiff's name is listed as key controller for the operational account of 330 Atlantic Avenue Development LLC (discussed below), the entity which Mr. Lamson is utilizing to construct a significant mixed-use building in downtown Brooklyn. (Lamson Aff. ¶¶ 82-83). Mr. Lamson listed Plaintiff on the account even though the company was funded exclusively by Mr. Lamson, and even though Mr. Lamson is its sole decisionmaker. (*Id*. ¶¶ 48, 83). Plaintiff also holds a hauling license with Fairmont Industries, Inc., Mr. Lamson's demolition company, and alleges that she is a shareholder of that company. (Lamson Aff. ¶ 13, 77; Compl. ¶ 38).

Despite having placed Plaintiff's name on corporate documents and accounts, under no circumstances did Mr. Lamson ever intend to enter into a "partnership agreement" with Plaintiff, and at no point did he tell Plaintiff that putting her name on the accounts or corporate documents would trump the corporate formalities of the companies associated with those accounts, or somehow make Plaintiff a "partner" in any of his businesses. (*Id*. ¶¶ 83, 94-100). There was never any agreement to split profits and losses from his businesses. (*Id*. ¶ 96). There was never any intent by either party to enter a business partnership together. (*Id*. ¶¶ 97-98). There was no partnership entity that filed or reported taxes as a partnership, and Plaintiff does not allege that she ever received partnership distributions or K-1 statements from any partnership entity. (*Id*. ¶¶ 99-100).

In 1996, the year that Plaintiff claims the partnership was formed, the parties were not even in regular contact. (*Id*. ¶ 17-18, 95). Plaintiff was pregnant with another man's child and was planning an imminent relocation to England. (*Id*. ¶¶ 18, 95). Plaintiff and Mr. Lamson did not resume contact until just before that child (the parties' first) was born in 1998. (*Id*. ¶¶ 18-19).

For the twenty-plus years that Plaintiff and Mr. Lamson were a family, Mr. Lamson worked tirelessly and bore 100% of the financial responsibilities of the family, providing a comfortable and luxurious life for Plaintiff and the couple's children. Plaintiff has never financially contributed to any of Mr. Lamson's properties, projects, or business endeavors. (Lamson Aff. ¶¶ 91, 104-108).

B) Mr. Lamson's Personal Homes

Mr. Lamson moved the family into a property that he purchased at 297 Pacific Street in downtown Brooklyn ("297 Pacific"). Contrary to Plaintiff's misrepresentation, 297 Pacific is not a business partnership asset—it is Mr. Lamson's primary home. (Lamson Aff. ¶ 23). He is the exclusive owner. (*Id*. ¶ 28). The home was not purchased with "EL Partnership funds" (Eikenberry Aff. ¶ 50), particularly since there is no such thing. Rather 297 Pacific was purchased with a $2.2 million-dollar mortgage that Mr. Lamson secured from a bank. (Lamson Aff. ¶ 24). Only Mr. Lamson's name has ever been on the mortgage and deed to 297 Pacific. (*Id*. ¶¶ 25, 28). Plaintiff did not make a single contribution towards the purchase of this property, nor was she responsible for the mortgage or any other expenses. (*Id*. ¶¶ 25-26). Mr. Lamson alone renovated the property, adding 4,000 square feet of living space, by using earnings he made on properties that predated his relationship with Plaintiff. (*Id*. ¶ 26).

Mr. Lamson also owns a farm in Delhi, New York called Birdsong Farm. (*Id*. ¶ 29). Like 297 Pacific, the farm is a not business partnership asset—it is Mr. Lamson's weekend home and has served as the family's weekend getaway. (Lamson Aff. ¶ 29). Birdsong was purchased around

1996 when its previous owner had fallen significantly behind on property taxes. (*Id*.). To purchase the farm, Mr. Lamson paid the back taxes that accumulated under the previous owner. (*Id*.). Plaintiff did not contribute any funds towards the purchase of Birdsong Farm, nor did she contribute towards the significant back taxes that Mr. Lamson paid. (Lamson Aff. ¶ 30).

C) Mr. Lamson's Business Projects

Plaintiff's Complaint contains fundamental inaccuracies about several projects in Brooklyn—in particular, projects at Schermerhorn Street, Pacific Street Townhouses, and Atlantic Avenue in Brooklyn. (*See* Compl. ¶¶ 74-93). The inaccuracies are not surprising because Plaintiff had no substantial involvement with these (or any of Mr. Lamson's) projects. (Lamson Aff. ¶ 34). 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 (*Id*.) had nothing to do with each other. (Lamson Aff. ¶ 35).

The Schermerhorn Street deal, referred to in the Complaint as the "First Lot," was simply a land deal that Mr. Lamson arranged. (Compl. ¶ 77). Neither Mr. Lamson nor any of his companies were involved with the "design for the lot's development" of the Schermerhorn Street development contrary to Plaintiff's misrepresentation. (Lamson Aff. ¶ 36). In fact, neither Mr. Lamson or any of his companies ever had any interest in the project or received any compensation. (*Id*.). Plaintiff was not involved in the Schermerhorn Street land deal in any respect. (*Id*.).

The Pacific Street townhouses, located at 319, 321, 323, and 325 Pacific Street in Brooklyn (the "Pacific Street Townhouses"), consist of four luxury townhouses that Mr. Lamson developed and designed with Mr. Philip Mendlow and his team. (Lamson Aff. ¶ 38). While Mr. Mendlow obtained all of the financing to build the Pacific Street Townhouse, Mr. Lamson spent two years working six or seven days a week to construct the buildings, including during the summer months

when Plaintiff was vacationing at Mr. Lamson's New Jersey shore house. (Lamson Aff. ¶ 42). Plaintiff did not contribute any work whatsoever towards the construction of the Pacific Street Townhouses. (*Id*. ¶ 42). As a favor to Plaintiff and her brother, Mr. Lamson retained their friend's wife as a realtor for one of the townhouses, which realtor received a significant commission for the sale. (Lamson Aff. ¶ 44).

The 330 Atlantic Avenue Project is ongoing. (*Id*. ¶ 45). It consists of a development deal that Mr. Lamson entered into with Mr. Mendlow to construct a six-story mixed use building at 330 Atlantic Avenue in Brooklyn. (*Id*.). Plaintiff had no involvement whatsoever with the design work for this significant project. (*Id*. ¶ 85). Mr. Mendlow hired the renowned architect, Timothy Dumbleton and the TA Dumbleton Architect firm, to handle all design-related work. (*Id*.). Neither Mr. Lamson or any of his companies had anything to do with the design—Mr. Lamson's only role is to construct the building. (*Id*.). The company managing the construction work is 330 Atlantic Avenue Development LLC, a Wyoming LLC formed in June 2019. (*Id*. ¶ 85). When 330 Atlantic Avenue Development LLC was formed, Plaintiff was listed as the organizer of the company with the Wyoming Secretary of State. (*Id*. ¶ 47; Eikenberry Aff., Ex. A). However, Mr. Lamson was and still is the sole member of 330 Atlantic Avenue Development LLC, as is reflected in the company's LLC Operating Agreement. (Lamson Aff. ¶ 48; Eikenberry Aff., Ex. I).

After 330 Atlantic Avenue Development LLC was administratively dissolved in August 2020 for failing to file an annual report, Mr. Lamson applied for reinstatement by filing a reinstatement form with the Wyoming Secretary of State. (Lamson Aff. ¶¶ 49-50). On August 12, 2020, the Wyoming Secretary of State issued a Certificate of Reinstatement for 330 Atlantic Avenue Development LLC, which bears Mr. Lamson's name only. (Lamson Aff. ¶ 51; Eikenberry Aff., Ex. J).

D) The Parties' Break Up and the Present Situation

In or about May 2020, Mr. Lamson and the children were concerned for Plaintiff's wellbeing and held a family intervention about her persistent alcohol and prescription drug abuse, which had been escalating over the last three years. (Lamson Aff. ¶ 52). After the intervention, Plaintiff enrolled in a $150,000 ten-week treatment program at the Dunes, a luxury addiction treatment center in East Hampton, New York. (*Id*. ¶ 52). Mr. Lamson paid for the program. (*Id*.). While she was supposed to have been undergoing rehabilitation, Plaintiff spent over $46,000 on clothes, luxury items, membership to a private racquet club, and several Venmo transfers (of over $1,000 each) to unidentified parties. (*Id*. ¶ 54). Plaintiff's fiscal irresponsibility and unpredictable behavior led Mr. Lamson to cancel Plaintiff's access to the credit card she was using, and which Mr. Lamson was paying. (*Id*. ¶ 55).

Upon completion of the rehabilitation program, Plaintiff asked Mr. Lamson to support her in renting what she called a "sober house," and whether he'd agree to pay her share of a $50,000 a month 7-bedroom luxury rental home in the Hamptons. (*Id*. ¶¶ 56-57). Mr. Lamson's fear that the Hamptons home would not be conducive to her sobriety but, because of his desire to support Plaintiff in getting better, he agreed. (Lamson Aff. ¶ 58). Not to Mr. Lamson's surprise, he discovered that Plaintiff was still using prescription drugs and confronted her about it. (*Id*. ¶ 59). After that confrontation, relations broke down and Plaintiff stayed in the Hamptons house – she still has not returned to her family. (*Id*. ¶ 60).

ARGUMENT

POINT I
PRELIMINARY INJUNCTION IS NOT WARRANTED

A party seeking a preliminary injunction must establish: (1) a likelihood of success on the merits; (2) the possibility of irreparable harm in the absence of a preliminary injunction; and (3)

that the balance of the equities favors the movant. *Wilder v. Fresenius Medical Care Holdings, Inc.*, 175 A.D.3d 406, 409 (1st Dep't 2019); N.Y. C.P.L.R. § 6301. Since a preliminary injunction prevents litigants from taking actions that they would otherwise be legally entitled to take in advance of an adjudication on the merits, it is a drastic remedy which should be issued cautiously. *Related Properties, Inc. v. Town Bd. of Town/Vill. of Harrison*, 22 A.D.3d 587, 590 (2d Dep't 2005). For the reasons that follow, Plaintiff cannot meet any of these elements.

A) Plaintiff is Not Likely to Succeed on the Merits

To establish a likelihood of success on the merits, a moving party must make a "prima facie showing of a reasonable probability of success." *Barbes Restaurant Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep't 2016). Injunctive relief cannot be granted where the movant's proof rests solely on "speculation and conjecture." *Faberge Int'l Inc. v. Di Pino*, 109 A.D.2d 235, 240 (1st Dep't 1985). Establishing a likelihood of success on the merits requires the movant to "demonstrate a clear right to relief which is plain from the undisputed facts." *Blueberries Gourmet, Inc. v. Aris Realty Corp.*, 255 A.D.2d 348, 349–50 (2d Dep't 1998). Where the facts are in sharp dispute, a temporary injunction cannot be granted. *Id.*; *Dental Health Assocs. v. Zangeneh*, 267 A.D.2d 421, 421 (2d Dep't 1999).

Because critical facts regarding the existence of a "partnership" are in sharp dispute, Plaintiff cannot show that she is likely to succeed on the merits of any of her claims, which are all based on the existence of an oral partnership agreement.

1. There Was No Partnership

"A partnership is an association of two or more persons to carry on as co-owners a business for profit." N.Y. Partnership Law § 10 (McKinney). Plaintiff does not allege the existence of a written partnership agreement. (Compl. ¶¶ 20-31). A party like Plaintiff, claiming the existence of an oral partnership, "bears the burden of proving the indicia of such a relationship." *F & K*

Supply, Inc. v. Willowbrook Dev. Co., 304 A.D.2d 918, 920 (3d Dep't 2003). Where there is no written agreement, courts look to the parties' conduct, intent, and relationship to determine whether a partnership existed in fact. *Hammond v. Smith*, 151 A.D.3d 1896, 1897 (4th Dep't 2017). Relevant factors considered in determining whether a partnership exists include the intent of the parties; whether there was a sharing of profits and losses; whether there was joint control and management of the business; contribution of capital; and whether the parties combined their property, skill, or knowledge. *Id*.; *Fasolo v. Scarafile*, 120 A.D.3d 929, 930 (4th Dep't 2014); *Brodsky v. Stadlen*, 138 A.D.2d 662, 663 (2d Dep't 1988). Here, all such factors are in sharp dispute.

a. No Intent to Form a Partnership

Evidence concerning the parties' preliminary negotiations bears directly on their intent. *Hammond*, 151 A.D.3d at 1897; *Boyarsky v Froccaro*, 131 AD2d 710, 713 (2d Dep't 1987). Here, no such evidence exists. Mr. Lamson unequivocally attests that at no point did he ever have an intent to make Plaintiff his business partner, or convey such intent to Plaintiff, nor did Plaintiff ever convey to Mr. Lamson a desire or intent to be his business partner. (Lamson Aff. ¶¶ 97-98).

Plaintiff's claims of a 50/50 partnership are based entirely on her own self-serving affidavit, in which she claims that the parties formed a "partnership" in 1996, almost immediately upon meeting. (Eikenberry Aff. ¶¶ 21-23). But Plaintiff does not detail any preliminary negotiations between the parties about the terms of their alleged partnership agreement. (See Compl. ¶¶ 20-23; Eikenberry Aff. ¶¶ 20-23). Nor does Plaintiff allege the existence of documents or communications reflecting or memorializing any such negotiations. (*Id*.). Plaintiff implies that when she met Mr. Lamson, she was a sophisticated and educated party while Mr. Lamson was a simple demolition worker slumming in a "one-bedroom rental." (*See* Compl. ¶¶ 18-19). This implausible and insulting narrative cannot be credited.

In particular, Plaintiff's assertion that Mr. Lamson was not buying, building, or developing properties is false. (*Id*. ¶ 18). When he met Plaintiff, Mr. Lamson was in his mid-thirties, and was already highly accomplished and prosperous. Mr. Lamson was operating a very successful demolition company. (Lamson Aff. ¶ 15). He had also made a significant amount of money in real estate development. (*Id*. ¶ 16). Contrary to Plaintiff's suggestion, Mr. Lamson did not need Plaintiff (or anyone) to "partner" with to break into that business. In fact, by 1996, Mr. Lamson had been successful in real estate development for over sixteen years. (*Id*. ¶¶ 13, 16). Mr. Lamson built his first house in 1980, a house in Vernon, New Jersey which he sold for a significant profit. (*Id*. ¶ 16). Thereafter, Mr. Lamson built, developed, and owned several multi-family houses in Rutherford, New Jersey. (*Id*.). He also built a house in East Hampton, New York set on two acres of land. (*Id.*). This was the house that he owned and lived in when he met Plaintiff. (*Id*.). In addition, while Mr. Lamson was "renting" a duplex apartment in a West Village building, he partially owned the building in which the apartment was located. (*Id*.).

The intent to form a partnership is also belied by the corporate structures utilized by the respective companies that Plaintiff claims are part of the partnership. "Calling an organization a partnership does not make it one." *Brodsky*, 138 A.D.2d at 663 (rejecting plaintiff's, general manager's, allegations of the existence of a partnership agreement with defendants even though the parties had no written partnership agreement, and business was conducted through a production company called Diana Enterprises). Each of 330 Atlantic Ave Development LLC, Easy Wind L.L.C., Fairmont Industries Supply, LLC, Fairmont Industries Inc., HTHP Leasing LLC, and Two Route 17 South LLC are independent legal entities, most of which are limited liability companies. Limited liability companies are separate legal entities governed by the companies' operating

agreements and the LLC Acts enacted by the States where the entities were formed.[1] To replace the parties' rights and obligations under the companies' respective LLC agreements and applicable state LLC Acts with rights and obligations flowing from a purported oral partnership agreement (with vague and unspecified terms) would be anathema to the well-developed LLC laws and counter to the intent of the parties as memorialized in formal written agreements.[2]

By example, it is undisputed that 330 Atlantic Ave Development LLC is a Wyoming LLC, which, under Wyoming law is "separate and distinct from [its] owners" and/or members. *GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc.*, 2014 WY 144, ¶ 12, 337 P.3d 454, 459 (Wyo. 2014); Wyo. Stat. Ann. § 17-29-104 (West). Relations among the members of a Wyoming LLC are governed by the LLC's operating agreement (Wyo. Stat. Ann. § 17-29-110 (a)(i) (West)), which covers, *inter alia*, distributions to members (*Id*. at (a)(vii)).

Plaintiff claims that 330 Atlantic Ave Development LLC was formed by the "EL Partnership." (Eikenkberry Aff. ¶ 32). But the original Articles of Organization list "Kristen Eikenberry" (not something called the "EL Partnership") as the organizer. (Eikenberry Aff, Ex. A). As explained by Mr. Lamson, he is the sole member of 330 Atlantic Avenue Development LLC, as is reflected in the company's LLC Operating Agreement. (Eikenberry Aff., Ex. I; Lamson

[1] The discussion that follows is by no means an exhaustive analysis of Plaintiff's rights with respect to each entity referenced in her Complaint, but is an exemplar of how Plaintiff's rights *vis-à-vis* each entity must be analyzed.

[2] For instance, Plaintiff's rights to distributions or other monies dues from HTHP Leasing LLC and Two Route 17 South LLC (each a New Jersey LLC) must be analyzed under New Jersey's Revised Uniform Limited Liability Company Act ("RULLCA"), New Jersey's second-generation LLC statute. In enacting RULLCA, the New Jersey legislature codified over two decades of legal developments in the field of LLC law and provided a series of default rules that govern the relations among LLC members in situations they have not addressed in their operating agreement. N.J. Stat. Ann. § 42:2C-1 (West). Plaintiff also alleges that she is a shareholder of Fairmont Industries, Inc. (Compl. ¶ 38). As the alleged shareholder of a New York corporation, Plaintiff has rights under New York law, including statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose. *Ret. Plan for Gen. Employees of City of N. Miami Beach v. McGraw-Hill Companies, Inc.*, 120 A.D.3d 1052, 1055 (1st Dep't 2014). None of the aforementioned inquiries are properly before this Court in this faux-partnership action filed against Mr. Lamson in his individual capacity.

Aff. ¶ 48).[3] Plaintiff claims that she is a member of 330 Atlantic Avenue Development LLC. (Compl. ¶ 33). She also claims that she has an interest in the assets of the company. Whether either of these contentions has merit must be answered under Wyoming law in a case to which 330 Atlantic Ave Development LLC would have to be a party—not in an action filed against Mr. Lamson individually under New York Partnership law.[4] Further, to the extent Plaintiff believes that she is entitled to distributions from the company, or a return of a capital contribution (if any) that she made to the company, she may pursue a claim for conversion. *See Lieberman v. Mossbrook*, 2009 WY 65, ¶ 45, 208 P.3d 1296, 1310 (Wyo. 2009). Plaintiff may have other recourse under Wyoming's Limited Liability Company Act, which creates a statutory right to bring a derivative action on behalf of an LLC by a person who is a member. *Mantle v. N. Star Energy & Constr. LLC*, 2019 WY 29, ¶ 142, 437 P.3d 758, 803–04 (Wyo. 2019). What Plaintiff cannot do, however, is override the Wyoming LLC Act and 330 Atlantic Avenue Development LLC's operating agreement by claiming a right to an equal "share in the profits and losses of the 330

[3] 330 Atlantic Avenue Development LLC was administratively dissolved in August 2020. (Lamson Aff. ¶ 49). The Wyoming LLC Act provides that the effect of administrative forfeiture or dissolution of an LLC is that "the limited liability company shall be deemed defunct and to have forfeited its articles of organization acquired under the laws of this state." Wyo. Stat. Ann. § 17-29-705 (a) (West). However, the Act provides that the LLC may at any time within two (2) years after the forfeiture of its articles of organization or certificate of authority "be revived and reinstated, by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of two hundred fifty dollars ($250.00)." Mr. Lamson applied for reinstatement and, after approving his application, the Wyoming Secretary of State issued a Certificate of Reinstatement bearing Mr. Lamson's name. (Lamson Aff. ¶ 50). Accordingly, the Wyoming Secretary of State's current records list Mr. Lamson's name, and not Plaintiff's, on the Certificate of Reinstatement. (Eikenberry Aff., Ex. J; Lamson Aff. ¶ 51).

[4] The Wyoming LLC Act provides that a "Member" means a person that has become a member of a limited liability company under W.S. 17-29-401 and has not dissociated under W.S. 17-29-602." Wyo. Stat. Ann. § 17-29-102 (a) (xii) (West). Whether plaintiff has been dissociated by the LLC having been dissolved is an open question that is not before this Court. Further, "Transferable interest" means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right." Wyo. Stat. Ann. § 17-29-102 (a) (xxii) (West). Whether Plaintiff has a "transferable interest is also an open question that is not before this Court.

Atlantic project" pursuant to a nebulous oral partnership agreement that allegedly covers "all projects." (Compl. ¶ 93).[5]

Finally, the parties were not even in regular contact in 1996 when Plaintiff claims the alleged partnership was formed. Indeed, Plaintiff was pregnant with another man's child and was about to leave the country to go live in England as late as 1997, a time frame that would have been one year into the alleged partnership. (Lamson Aff. ¶¶ 18, 95). Plaintiff's claim is not plausible on its face. For these reasons and others, Plaintiff's unsubstantiated allegations and assertions of Mr. Lamson's intent to enter into a partnership with Plaintiff in 1996 (or ever) are insufficient to evidence the parties' intent to enter into a partnership. *Hammond*, 151 A.D.3d at 1898.

b. No Sharing of Profits and Losses

Partnership Law § 11(4) provides that "[t]he receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business." N.Y. Partnership Law § 11 (McKinney); *Boyarsky*, 131 A.D.2d at 712. However, the fact that an individual receives a share of the profits is not dispositive of the existence of a partnership since all of the elements of the relationship must be considered. *Boyarsky*, 131 A.D.2d at 712.

Here, Plaintiff does not even allege that she received a share of profits from the alleged partnership, or that any evidence exists of her receiving profits. (*See* Compl., generally). Plaintiff does not allege that the purported partnership filed partnership tax returns, nor does she provide the Court with (or even allege the existence of) K-1 tax statements listing any income that she received from the partnership. *See Rakosi v. Sidney Rubell Co., LLC*, 155 A.D.3d 564, 565 (1st Dep't 2017) (while not solely determinative, K–1 forms are relevant to the inquiry of whether a

[5] Even if 330 Atlantic Avenue Development LLC had no operating agreement, the failure to enter into an operating agreement does not transform a limited liability company into a partnership. *Spires v. Casterline*, 4 Misc. 3d 428, 431, 778 N.Y.S.2d 259, 262 (N.Y. Sup. Ct. Monroe Co. 2004).

partnership exists); *Nanbar Realty Corp. v. Pater Realty Co.*, 242 A.D.2d 208, 210 (1st Dep't 1997) (partnerships' K–1 forms sufficient to demonstrate income from the partnership).

c. Plaintiff Contributed No Capital

The failure of a party to contribute capital is "strongly indicative that no partnership exists." *Brodsky v. Stadlen*, 138 A.D.2d 662, 663 (2d Dep't 1988); *Hammond*, 151 A.D.3d at 1899 ("documentary evidence and plaintiff's own deposition testimony establish that plaintiff made no capital contributions and did not share in the business venture's losses"); *Fasolo*, 120 A.D.3d at 929. Here, Plaintiff does not seriously allege that she contributed any capital to the alleged partnership, offering only one vague and conclusory allegation that "[t]hroughout the years, Lamson and I contributed time, skills, and capital to the EL Partnership, often using Partnership profits to reinvest in additional development projects." (Eikenberry Aff. ¶ 25). Plaintiff does not allege any specific amount of capital that she provided, when it was provided, and/or towards what project. Mr. Lamson, in turn, unequivocally states that Plaintiff never provided capital towards any of his projects or businesses, or any of Mr. Lamson's homes. (Lamson Aff. ¶¶ 20, 25, 30, 69, 102, 107).

* * *

In short, Plaintiff cannot succeed on her claim of an alleged oral partnership because none of the typical indicia of a partnership are present: the purported partnership never reported income as a partnership and there are no partnership tax returns; the purported partnership did not have a business name or bank account (on the contrary, each entity that is alleged to be part of the partnership is a separate legal entity governed by an operating agreement and/or state laws); there were no partnership assets; there is no partnership real property; Plaintiff made no capital contributions; there is no indication that Mr. Lamson shared profits with Plaintiff; Mr. Lamson made all of the critical decisions while Plaintiff made none. Plaintiff cannot prevail on these

insurmountable facts. *See*, *e.g.*, *Fasolo v. Scarafile*, 120 A.D.3d 929 (4th Dep't 2014) (facts "strongly suggest[ed] that no partnership existed" where parties did not file partnership tax returns, alleged partnership did not have a business name or bank account, and there were no partnership assets or capital contributions,); *F & K Supply, Inc.*, 304 A.D.2d at 920–21 (no partnership where defendant made all critical decisions and directed the construction of project, purported partnership never reported income as a partnership, purported partnership took the corporate structure of a sole proprietorship, defendant was alone the title owner of the real property where the project was developed, plaintiff devoted time to working on the project but did not make any capital contributions and there was no indication that he ever shared profits or agreed to share losses); *Cleland v. Thirion*, 268 A.D.2d 842, 844 (3d Dep't 2000) (defendant former girlfriend failed to establish existence of partnership in defendant's glassblowing business, even though she performed services and made financial contributions to business, where studio property was owned solely by defendant and plaintiff made no contribution to its purchase nor assumed responsibility for mortgage payments thereon, former girlfriend was never placed on certificate of doing business as partners, and there was never any sharing of profits or losses between the parties).

2. Breach of Fiduciary Duty

Plaintiff's breach of fiduciary duty claim hinges on the existence of an "established partnership which automatically gives rise to a fiduciary relationship under New York law." (Pl. Br. p. 9). As demonstrated above, Plaintiff is not likely to succeed in proving the existence of a partnership, because there was no partnership. *Trump v. Cheng*, 9 Misc. 3d 1120(A), 862 N.Y.S.2d 812 (N.Y. Sup. Ct. N.Y. Co. 2005) (Trump failed to show a probability of success on the merits of his cause of action for breach of fiduciary duty where defendant's affidavit refuted the conclusory allegations of Trump's affidavit and the allegations of the complaint). Because she offers no other basis for the existence of a fiduciary relationship, this claim will fail.

3. Breach of Contract

The elements of breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his contractual obligations, and resulting damages. *Dee v. Rakower*, 112 A.D.3d 204, 208–09 (2d Dep't 2013).

Plaintiff's breach of contract claim is based on an alleged oral agreement to form a partnership. Pl. Br. p. 10. "As with any contract, an oral agreement is not enforceable unless there is "a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms." *Kelly v. Bensen*, 151 A.D.3d 1312, 1313 (3d Dep't 2017); *Carione v. Hickey*, 133 A.D.3d 811, 811 (2d Dep't 2015) ("[A] court cannot enforce a contract unless it is able to determine what in fact the parties have agreed to, and "[i]f an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract.").

Plaintiff does not describe the material terms of the alleged contract (including, among other things, exactly what consideration she was to provide in return for a 50% share of profits), alleging that the parties' bargain was that she would provide "conceptual, exterior and interior design services" in return for an equal share in the profits and losses of "our business." (Pl. Br. p. 10; Eikenberry Aff. ¶ 21). Plaintiff does not explain what sort of conceptual, exterior and interior design services she was to provide, how often, to what degree, who would pay out pocket expenses, or how the parties were to determine if services satisfying this vague description were actually provided. Moreover, Plaintiff does not identify any limit to the agreement (temporal or otherwise), claiming that it applies to an equal "share in the profits and losses of" all projects. (Compl. ¶ 93). Nor does she explain how the alleged 50/50 profits arrangement would apply in the face of an operating agreement that conflicted with the notion of Plaintiff receiving any profits or distributions, much less 50%. Such an indefinite oral contract, which fails to set forth material terms, is not enforceable. *Best Brands Beverage, Inc. v. Falstaff Brewing Corp.*, 842 F.2d 578,

587 (2d Cir. 1987) (applying New York law) ("if there is no basis or standard for deciding whether the agreement had been kept or broken, or to fashion a remedy, and no means by which such terms may be made certain, then there is no enforceable contract."); *Carione*, 133 A.D.3d at 811; *see also U.K. Cable Ventures, Inc. v. Bell Atl. Investments*, 232 A.D.2d 294, 295 (1st Dep't 1996).

Moreover, a court considering whether or not a contract has been formed must apply an objective test. *Cleveland Wrecking Co. v. Hercules Const. Corp.*, 23 F. Supp. 2d 287, 292 (E.D.N.Y. 1998), *aff'd sub nom. Cleveland Wrecking Co. v. Hercules Const. Corp.*, 198 F.3d 233 (2d Cir. 1999). "[T]he court looks not to the parties' after-the-fact professed subjective intent, but rather at their objective intent as manifested by their expressed words and conduct at the time of the agreement." *Kelly*, 151 A.D.3d at 1313. Here, Plaintiff does not point to any communications by Mr. Lamson reflecting his intent to form a partnership with Plaintiff, nor does she identify any subsequent conduct by Mr. Lamson evidencing his intent to be a partner with Plaintiff. Mr. Lamson vehemently denies any such intent and attests that design services for projects that he was involved with (plaintiff's purported contribution) were provided by professional third-parties. (Lamson Aff. ¶¶ 43, 85).[6] Plaintiff has not possibly established a likelihood of success on the merits of her breach of oral contract claim. *Blueberries Gourmet, Inc.*, 255 A.D.2d 348 at 350 (plaintiff failed to establish its likelihood of success on the merits where there were disputed issues of fact regarding the precise language of a partially handwritten restrictive covenant, the nature of the plaintiff's business operation, and the nature of defendant's proposed business operation).

[6] To the extent Plaintiff claims that decorating Mr. Lamson's homes (in which she lived) entitles her to compensation, Plaintiff's claims are not actionable because it is "impossible to determine if any of the services performed by plaintiff in the course of her relationship with defendant were not rendered gratuitously" and not in anticipation of any remuneration. *Kastil v. Carro*, 145 A.D.2d 388, 389-390 (1st Dep't 1988); *see also Toth v. Spellman*, 96 A.D.3d 484 (1st Dep't 2012) (dismissing claim where "contrary to expecting compensation for performing renovations to certain properties owned by defendant during the parties' romantic relationship, plaintiff performed the renovations out of love and affection for defendant, and in an effort to make her happy."); *Jennings v. Hurt*, 160 A.D.2d 576, 578 (1990) ("[t]he law does not recognize a cause of action for sacrificing career opportunities in order to act as a 'wife.'").

4. Unjust Enrichment

The elements of unjust enrichment are (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. *Swartz v. Swartz*, 145 A.D.3d 818, 829 (2d Dep't 2016).

Plaintiff claims that Mr. Lamson would be unjustly enriched by being allowed to retain assets, including "assets held solely in Lamson's name" (including his personal homes) because Plaintiff has been responsible for "considerable investments of time and money" to the purported partnership, and has been "responsible for half the EL Partnership's expenses." (Compl. ¶¶ 149, 154). But Plaintiff has not identified any money ever invested in Mr. Lamson's properties, or any capital invested in his businesses. As discussed above, Plaintiff's investments of "time" are nonexistent. Moreover, the expenses of the purported partnership (as defined by Plaintiff) have been in the multi-millions of dollars, all of which Mr. Lamson paid himself. (Lamson Aff. ¶¶ 20, 25, 30, 69, 102, 107). Plaintiff's claim (in a verified pleading) that she was responsible for half of the expenses is near-sanctionable. Mr. Lamson paid for every last thing that Plaintiff has enjoyed over the last twenty-plus years. Plaintiff neither had to work or contribute towards the expenses—all while living in luxurious settings in the city, upstate, and summer beach houses without having to pay a dime of rent. For her personal expenses, Plaintiff had unfettered use of a credit card that Mr. Lamson paid. Plaintiff's claim that she "equally contributed" to the "partnership" through her work is also false and directly contested. Mr. Lamson did all of the work. (Lamson Aff. ¶¶ 42, 43, 45, 67, 106). The notion of Mr. Lamson being unjustly enriched at Plaintiff's expense is absurd.

5. Fraudulent Conveyance

The Complaint does not specify which section of Debtor Creditor Law Plaintiff is the basis of Plaintiff's claim. (Compl. ¶¶ 163-68). In her opposition papers, Plaintiff clarifies that she is

relying on DCL § 273 (applicable to a conveyance made with actual intent to hinder, delay, or defraud either present or future creditors") (Pl. Br. p. 11). As with her breach of fiduciary duty claim, Plaintiff's fraudulent conveyance claim hinges on the existence of a partnership and alleges Mr. Lamson "fraudulently conveyed and transferred funds out of the EL Partnership." (Compl. ¶ 164). As demonstrated above, Plaintiff is not likely to succeed in proving the existence of a partnership. Since she offers no other basis for her being a "creditor," this claim too will fail.[7]

B) No Irreparable Harm Because Money Damages are Adequate

The element of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction" and is often dispositive. *Gso Special Situations Master Fund LP v. Wilmington Trust*, No. 653110/2015, 2015 N.Y. Misc. LEXIS 6334, at *7 (N.Y. Sup Ct. N.Y. Co. Oct. 16, 2015) (quoting federal authority). In order to establish irreparable harm, the proponent of a preliminary injunction must show that it cannot be compensated by money damages. *Klein, Wagner & Morris v. Lawrence A. Klein*, 186 A.D.2d 631 (2d Dep't 1992); *Campbell Apartment, Ltd. v. Metropolitan Transp. Authority*, 53 Misc. 3d 282, 302 (N.Y. Sup. Ct. N.Y. Co. 2016). "[T]he movant must establish not a mere possibility that it will be irreparably harmed, but that it is *likely* to suffer irreparable harm if equitable relief is denied." *Bank of Am., N.A. v. PSW NYC LLC*, 29 2010 NY Slip Op 51848[U], *10 (N.Y. Sup Ct. N.Y. Co. 2010) (quoting federal authority).

Here, Plaintiff's lawsuit specifically seeks the payment of money (Compl. ¶¶ 180-187) ("Wherefore" clause demanding a judgment for "monetary damages" and a "money judgment"). Therefore, any harm that Plaintiff would incur would be inherently *reparable*.

[7] Ad discussed below, Plaintiff's assertion that the "parties have shared *a close relationship as . . . significant others*" (Pl. Br. p. 11) (emphasis added) cannot, as a matter law, establish a basis for a claim to Mr. Lamson's assets.

C) Equities Do Not Weigh in Favor of Injunction

If the injunction Plaintiff seeks were granted, Mr. Lamson's ability to conduct business would be severely impaired. As discussed above, an injunction would cripple Mr. Lamson's business, including halting progress on the 330 Atlantic Development project, which would ultimately result in significant liability if he cannot finish the building in time, and halting the carrying on of Fairmont Industries' demolition business. (Lamson Aff. ¶¶ 86-90). Such a forfeiture would be disastrous for Mr. Lamson and result in irreparable harm to him—not to Plaintiff. See *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432 (1st Dep't 2016) (plaintiff would suffer irreparable harm if plaintiff's restaurant, situated at a prime retail location, would be closed, its 19 employees will lose their jobs, and plaintiff would lose its substantial investment in improvements); *see also Boyarsky*, 131 A.D.2d at 713 ("law abhors a forfeiture").

Moreover, part of Plaintiff's requested injunction (which for reasons discussed below amounts to an improper request for palimony) is a directive that Mr. Lamson pay for Plaintiff's "ongoing expenses," which Plaintiff quantified at Exhibit N to her Affidavit. The expenses include, *inter alia*, $13,000 per month for a seven-bedroom Hamptons home (for Plaintiff to live without her family), $4,000 per month for clothes, $800 per month for "exercise" (the average gym costs, at most, $100-200 per month), and $40,000 per month for legal expenses. Such expenses are excessive on their face and would unnecessarily add to the parties' collective expenses. *Goldstone v. Gracie Terrace Apartment Corp.*, 110 A.D.3d 101, 106 (1st Dep't 2013) (balance of the equities did not weigh in plaintiff's favor where plaintiff's proposal would entail substantial extra expenses and the claimed impact to plaintiff, most of which will be compensable by money damages, was far outweighed by the expense of plaintiff's proposal).

D) *Henry v. Gustman* Supports Denial of the Motion

Plaintiff may rely on *Henry v. Gustman*, where this Court granted petitioner's motion for preliminary injunction and enjoined respondent from destroying or altering or secreting company books and records or transferring any income except in the ordinary course of business. No. 509496/18, 2018 WL 3821109, at *3 (N.Y. Sup. Ct. Aug. 2, 2018). *Id*. at *1. But *Henry*, if anything, counsels in favor of denying an injunction. There, unlike here, the parties were in agreement that they formed a law partnership but never implemented an operation agreement. The only disagreement was whether the partnership interest was to be split on a 50/50 or 65/35 basis. *Id*. at *2. This Court found that petitioner showed a likelihood of success on the merits because the fact of the partnership was not disputed, and the only disputed fact was the precise amount to which the petitioner was entitled (35% or 50%). The Court held that the disputed facts were not "key facts" that would render the relief sought by petitioner "speculation and conjecture. *Id*. Here, Mr. Lamson vehemently denies that there was a partnership, and Plaintiff offers no proof whatsoever to the contrary—no communications, writings, no precise terms, no proof of having received profits and losses, no allegations of contributing capital. As discussed above, the facts on which Plaintiff relies (her name on bank accounts, LLC agreements and/or professional licenses) pertain only to what she made be owed from those specific entities and accounts under the applicable State laws and agreements governing hose entities. But Plaintiff's allegations do not speak to the existence of a 50/50 partnership.

In *Henry*, the Court also found there would be irreparable harm based on the potential harm to petitioner's business reputation in the practice of law and the potential loss of a business relationship which ostensibly took time and money to cultivate. *Id*. at *2. Conversely, here,

Plaintiff does not allege, nor can she, that has any business reputation or business relationships to lose. (Pl. Br. pp 12-13). Plaintiff had no involvement with Mr. Lamson's business and has no other independent business to be harmed. Her irreparable harm argument is based on deprivation of income and assets (Pl. Br. p. 12), which, to the extent Plaintiff is entitled to any such assets (and she is not), she can be compensated with money damages.

Finally, in *Henry*, the balance of the equities favored petitioner because the potential irreparable injury to petitioner was readily apparent, while any harm to the respondent would be hard to quantify. *Id*. at *3. Here, the opposite is true. As discussed above, an injunction would cripple Mr. Lamson's business, including halting progress on the 330 Atlantic Development project, which would ultimately result in significant liability if he cannot finish the building in time, and halting the carrying on of Fairmont Industries' demolition business. (Lamson Aff. ¶¶ 86-90). Further, Mr. Lamson would be prevented from ordinary course life payments, such as paying the mortgages on his homes, and carrying his and his children's expenses. (*Id*. ¶¶ 5, 70, 91, 92, 107, 108). Plaintiff, on the other hand, can be compensated with money damages if she prevails. The Court should follow the reasoning of *Henry* and deny Plaintiff's motion.

POINT II
INJUNCTION NOT NECESSARY TO PROTECT DATA OR PREVENT SPOLIATION

Plaintiff requests an order directing Mr. Lamson to restore electronic data to Plaintiff that he purportedly caused to be "deleted." Sometime after Plaintiff left to attend the Dunes Plaintiff removed herself from the family's shared family mobile/data account with AT&T and ported her number to a new carrier. (Lamson Aff. ¶ 110). Mr. Lamson subsequently changed the Apple ID and password that had been associated with the shared account and, since then, Plaintiff was unable to access the data behind the Apple ID and password account. (*Id*.) To the extent Plaintiff is requesting that Mr. Lamson provide her with his new Apple ID, the request should be rejected.

Directing Mr. Lamson to open the door to his personal information (including privileged communications) to his adversary and her counsel would prejudice Mr. Lamson.[8]

To the extent Plaintiff requests an order directing Mr. Lamson not to destroy or attempt to view any privileged information belonging to Plaintiff, this part of the application is moot because Mr. Lamson has promised not to do so, even though it is unlikely that any such information exists behind Mr. Lamson's Apple ID.[9]

POINT III
PLAINTIFF NOT ENTITLED TO CONTINUING PARTNERSHIP DISTRIBUTIONS

As discussed above, because Plaintiff's claims of a "partnership" are not plausible or meritorious she will not prevail in this action, in which she seeks an "accounting . . . and dissolution of the EL Partnership," an entity that does not exist. (Pl. Br. p. 18). Accordingly, Plaintiff is not entitled to interim "partnership" distributions. Where there is doubt as to plaintiff being a partner, an application for *pendente lite* partnership distributions should be denied. *Kirkwood v. Smith*, 64 A.D. 615, 615 (2d Dep't 1901). Even if Plaintiff's claim had merit (and it does not) defendants in an action to obtain an accounting should be unrestrained as to the conduct of the business of the partnership in its ordinary course. *Mester v. Morgenstern*, 281 A.D. 967, 967 (1st Dep't 1953). Further, a request, as here, for a "mandatory injunction," which changes the status quo by compelling an affirmative act is rarely granted and requires a heightened showing. *Hirschmann v. Hassapoyannes*, 11 Misc. 3d 265, 273 (Sup. Ct. N.Y. Co. 2005); *Lexington & Fortieth Corp. v. Callaghan*, 281 N.Y. 526, 531 (1939) ("A mandatory injunction is an extraordinary remedy to which a suitor has no absolute right").

[8] Mr. Lamson's attorneys are attempting to determine whether data belonging to Plaintiff (backups, etc.), if any exist, can be isolated from the rest of the data behind the Apple ID, and provided to Plaintiff. (Lamson Aff. ¶ 110).

[9] Plaintiff's request for an order enjoining Mr. Lamson from cancelling Plaintiff's health insurance or her access to an automobile is moot since Mr. Lamson has no intention to do so.

Here, there is no partnership, and Plaintiff has not established a right to the drastic remedy of an order directing Mr. Lamson, or any non-party separate legal entities, to pay her "distributions" allegedly owed to her pursuant to an oral partnership blanketing those entities.[10]

To the extent Plaintiff claims she is entitled to distributions from Mr. Lamson *personally*, her claims are barred by New York's prohibiting on common law marriage and palimony.[11] While unmarried couples are free to contract with each other to allocate earning and assets upon breakup, such contracts must be express and specific, and will not be implied from the mere fact of cohabitation. *See, e.g., Robinson v. Day*, 103 A.D.3d 584, 585 (2013); *Potter v. Davie*, 275 A.D.2d 961, 963 (4th Dep't 2000) (an agreement will not be inferred under circumstances of quasi-marital relationships or the rendition and acceptance of personal services.). New York courts do not award palimony under the guise of an "implied contract" pertaining to earnings and assets from the relationship of an unmarried couple living together. *Sheinker v. Quick*, 120 N.Y.S.3d 568, 570 (2d Dep't 2020); *Cohn v. Levy*, 284 A.D.2d 293, 293 (2d Dep't 2001). The Court of Appeals has recognized that non-marital relationships do not benefit from the rules of law that govern property and financial matters between married couples. *Morone v. Morone*, 50 N.Y.2d 481, 487 (1980). An express and specific contract is the only vehicle for filling the void in the law on nonmarital post-relationship financial allocation. *Id*. Accordingly, *"[u]nless and until the law imposes*

[10] Plaintiff seeks "distributions" from either the 330 Atlantic Account at Morgan Stanley, or the "account held in her name" at Morgan Stanley. *See* O/S/C, p. 2 (Dkt. No. 32). However, as discussed above, the account in Plaintiff's name contains funds that Plaintiff improperly transferred from the Easy Wind Account—funds belonging to Mr. Lamson, and which were allocated towards the children's tuition. (Lamson Aff. ¶¶ 65-70, 80). Plaintiff should not be allowed to fund her excessive lifestyle and this baseless lawsuit with the children's tuition money.

[11] New York does not recognize common-law marriages. *Mott v. Duncan Petroleum Trans.*, 51 N.Y.2d 289, 292 (1980); *Cross v. Cross*, 102 A.D.2d 638, 639 (1st Dep't 1984); *see also* L.1933, ch. 606; N.Y. Dom. Rel. Law § 11 (2018). New York's legislature statutorily abolished common-law marriages in 1933. *In re Benjamin's Estate*, 34 N.Y.2d 27, 30 (1974). There is no provision that requires either member of an unmarried relationship to pay alimony (i.e., palimony) to the other, and New York courts have emphatically rejected the concept of awarding palimony. *Silver v. Starrett*, 176 Misc. 2d 511, 514, 674 N.Y.S.2d 915 (N.Y. Sup. Ct. N.Y. Co. 1998).

equitable distribution on unmarried couples, in New York, at least, the legal status of marriage remains vitally important to establishing the economic rights of members of a couple." *M v. F*, 910 N.Y.S.2d 406 (N.Y. Sup. Ct., N.Y. Co., 2010); *see also Massey v. Byrne*, 112 A.D.3d 532, 533 (1st Dep't 2013) (where the court held it was "undisputed that no agreement exist[ed] in writing, signed by [the defendant], to convey half of the interest in the condominium to plaintiff.").

Although it is undisputed the parties were never married, Plaintiff claims she is entitled to half of Mr. Lamson's assets, including sharing equally *in his two personal homes*, which have nothing to do with his business endeavors. (Pl. Br. p. 10) ("The partners further agreed that they would share equally in all partnership assets, even those held in Lamson's name, *including Birdsong Farm and 297 Pacific Street*") (emphasis added). Plaintiff's claim for 50% of Mr. Lamson's personal real property that he paid for and acquired in his sole name, is a transparent request for an equitable distribution that would require this Court to treat the relationship as a marriage. New York's Legislature and High Court have determined that marriage, or alternatively a binding contract, are the exclusive means to get the joint financial asset treatment sought here. *Donnell v. Stogel*, 161 A.D.2d 93, 96 (2d Dep't 1990) ("cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation"). Since Plaintiff and Mr. Lamson were never married, and never entered into a contract governing asset distribution, Plaintiff's claims for "distributions" and claim to 50% of the value of Mr. Lamson's personal homes are void against public policy and prevailing law. *Id*. at 96-97; *Morone*, at 484. The fact that Plaintiff attempts to cloak her claims under New York Partnership Law is of no moment—it is the substance that matters. *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382 (1987) (courts look to gravamen not label of a claim).[12]

[12] Lastly, even though Plaintiff is not entitled to partnership distributions, and Mr. Lamson has no obligation to provide Plaintiff with spousal support, as part of the Temporary Restraining Order, fashioned between the parties and the

CONCLUSION

For the foregoing reasons, Plaintiff's motion for a preliminary injunction should be denied in its entirety.

Dated: November 3, 2020
New York, New York

Respectfully submitted,

BLANK ROME LLP

By: *s/ Martin S. Krezalek*

Martin S. Krezalek
Grace Chamoun Taranto
1271 Avenue of the Americas
New York, New York 10020
Tel. (212) 885-5000
mkrezalek@blankrome.com
gchamoun@blankrome.com

Attorneys for Defendant
Richard Joseph Lamson

Court, and signed by the Court on October 27, 2020, Mr. Lamson agreed to release $100,000 to Plaintiff for her expenses.