

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

ALAN LEONARD,

S U M M O N S

Plaintiff,

vs.

Index No.

Date File:

STEPHEN CUMMINS,

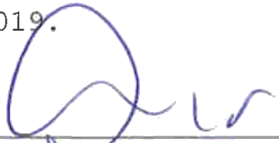
Defendant.

TO THE ABOVE NAMED DEFENDANT(S) :

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Tompkins
The basis of the venue is Residence of Plaintiff
Plaintiff resides in Tompkins County

Dated this 7th day of November, 2019.



DIRK A. GALBRAITH, ESQ.
Coughlin & Gerhart LLP
Attorneys for Plaintiff
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Ithaca, New York 14851-6599
Telephone: (607) 273-5475

TO THE ABOVE NAMED DEFENDANT(S) :

The nature of the action is: See complaint.
The relief sought is: See complaint.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

ALAN LEONARD,

COMPLAINT

Plaintiff,

vs.

Index No.

STEPHEN CUMMINS,

RJI No.

Defendant.

Plaintiff, by his attorneys, Coughlin & Gerhart, LLP, for his complaint against defendant herein alleges and shows to this Court as follows:

1. That plaintiff is an individual residing within the County of Tompkins and the State of New York.

2. That defendant is an individual residing in the County of Tompkins and State of New York.

3. That in 2004 plaintiff was a graduate student at Cornell University.

4. That in 2004 plaintiff was a social acquaintance of defendant.

5. That in 2004 defendant was the owner of certain real property situate in the Town of Ithaca, County of Tompkins and State of New York described in a deed recorded in the Office of the Tompkins County Clerk in Liber 821 of Deeds at Page 34, known as 1408 Trumansburg Road and consisting of approximately forty-one (41) acres of land upon which defendant lived and operated a small farm stand with a production greenhouse and barn used to store nursery trees.

6. That in 2004 the aforesaid real property was encumbered by one or more mortgages held by the United States of America operating

through the Farm Service Administration, the principal balances of which upon information and belief approximately equaled the then fair market value of the property.

7. That in 2004 the tree farm business operated by defendant was not profitable, being barely able to cover payroll and checks written to suppliers, and unable to supply many of the trees which the business had contracted to provide.

8. That in the latter part of 2004 upon an exact date which plaintiff does not recall, defendant offered to form a partnership with plaintiff for the purpose of owning the real estate and jointly operating the fresh fruit and vegetable and tree farm business.

9. That following discussions between plaintiff and defendant, defendant offered to form an equal partnership with plaintiff and to share the profits and losses of the partnership equally with plaintiff.

10. That the offer made by defendant to plaintiff was conditioned upon plaintiff agreeing to leave his studies at Cornell University, devote his full efforts to the partnership business and to move on to the land where the partnership business was conducted.

11. That defendant represented to plaintiff that defendant's capital contribution to the partnership would be the land and nursery and farm stand businesses conducted thereon, subject to the mortgage and capital loan indebtedness owing to the United States of America and the existing contractual obligations to customers.

12. That the capital contribution to be made by plaintiff to the partnership was not initially decided and was left by the parties for future determination.

13. That defendant represented to plaintiff that their partnership agreement was effective immediately and would be reduced to writing at a later date when there would be time and money for lawyers.

14. That in reliance upon the representation of defendant that he would become an equal partner and owner with defendant, plaintiff accepted the offer of partnership.

15. That thereafter plaintiff left his studies at Cornell University and began to devote his entire work, knowledge, skill and ability to the businesses of the partnership.

16. That plaintiff was given access to the business accounts of the tree farm and nursery and paid his living expenses by withdrawals from those accounts.

17. That plaintiff subsequently became a signator upon the business accounts of the tree farm and nursery. From the beginning, all personal and business expenses of both plaintiff and defendant were paid from the same bank accounts into which all business income was deposited.

18. That in the summer of 2006, after making numerous physical improvements to the aforementioned cabin over the previous year, the plaintiff commenced full time residence on the property.

19. That between 2005 and 2007 plaintiff and defendant devoted their full energies seven (7) days a week, often working twelve hours per day, to improve the real property with plantings and irrigation systems and to enable the partnership businesses to become financially stable. During this entire period the farm and nursery business were in a state of financial crisis, constantly at risk of bouncing checks to suppliers, and being unable to make payroll and mortgage payments.

20. That beginning in January 2007 and continuing throughout that year, the plaintiff made a series of payments into the business accounts ultimately amounting to a capital contribution of \$55,000.00 in cash to the partnership.

21. That beginning in 2008 through the joint efforts of plaintiff and defendant the tree farm and nursery business became profitable and in subsequent years the profits of the partnership business increased.

22. That commencing in 2009 and from time to time thereafter, plaintiff approached defendant and requested that their partnership agreement be reduced to a writing and that the partnership real estate be transferred into joint title.

23. That defendant offered various excuses to plaintiff why it was not necessary to formalize their partnership agreement while continuing to operate the tree farm and nursery business with plaintiff in every way as if it were an equal partnership.

24. That commencing in 2005 defendant stated to various persons on numerous occasions that he and plaintiff were business partners and co-owners of the property.

25. That commencing in 2014 various disagreements arose between plaintiff and defendant notwithstanding which the parties continued to operate the tree farm and nursery business as partners.

26. That in May, 2017 upon an exact date which plaintiff does not presently recall, defendant stated for the first time to plaintiff that he did not consider them to have been partners "for a long time" notwithstanding defendant's prior representations, the conduct of the

parties and the operation of their business over the preceding twelve (12) years.

27. That on or about December 1, 2018 defendant demanded that plaintiff cease to participate in the operation of the partnership business and remove himself from the residence located on the partnership real estate.

28. That defendant has excluded plaintiff from the partnership business and thereby dissolved the partnership.

29. That defendant has wrongfully appropriated the real and personal property of the partnership to his own benefit.

WHEREFORE, plaintiff demands judgment:

1. Declaring that plaintiff and defendant formed a partnership within the meaning of §10 of the Partnership Law.

2. Declaring that the real property described in a deed recorded in the Office of the Tompkins Clerk in Liber 821 of Deeds at Page 34, all improvement thereon and all furniture, fixtures and equipment and cash on hand of the tree farm and nursery business located upon the aforesaid real property is the property of the partnership.

3. The partnership be adjudged dissolved.

4. A receiver of the property, rights, assets and goodwill of the partnership be appointed with all the usual powers to dispose of such property, rights, assets and goodwill, to collect the debts due the partnership and to pay all just debts and liabilities of the partnership as well as the expenses and costs of this action.

5. The defendant be enjoined during the pendency of this action and permanently from disposing of any of the assets of the partnership

now in his hands or possession and from interfering with the business of the partnership or otherwise injuring or destroying its assets.

6. All the property rights and assets of the partnership, including the goodwill, be directed to be sold by the receiver.

7. An accounting be had of the affairs of the partnership.

8. The proceeds of the partnership assets after payment of all the just debts and liabilities and the costs and expenses of this action be divided between the parties to this action according to their respective rights.

9. The plaintiff have such other, further or different relief as to this Court may seem just and proper, together with the costs of this action.

Dated November 7, 2019.

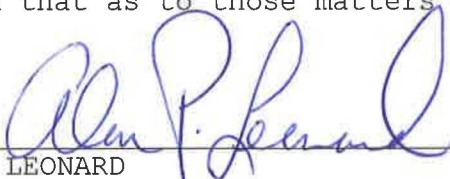


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VERIFICATION

STATE OF NEW YORK
COUNTY OF TOMPKINS : ss.:

ALAN LEONARD, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.


ALAN LEONARD

Sworn to before me this
8th day of November, 2019.


Notary Public

MARCI VAN DER HEIDE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01VA6306346
Qualified In Tompkins County
My Commission Expires June 23, 2022