

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

-----X
ISAAC AZARIA, Individually and Derivatively on behalf of : Index No.
695 MONROE LLC : 504057/2020
Plaintiff, :
-against- :
:
MICHAEL UHR, JONATHON RUBIN a/k/a :
JONATHAN RUBIN, and 695 MONROE LLC :
:
Defendants. :
-----X

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR A DEFAULT JUDGMENT**

The Law Offices of Fred L. Seeman
By: Fred L. Seeman, Esq.
Attorneys for Plaintiff
32 Broadway, Suite 1214
New York, New York 10004
Tel: (212) 608-5000

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CASES AND OTHER AUTHORITIES	ii
PRELIMINARY STATEMENT	1
BACKGROUND	1
DEFAULT JUDGMENT SHOULD ISSUE TO PLAINTIFF	2
PLAINTIFF IS ENTITLED TO AN ACCOUNTING	3
695 MONROE MUST BE DISSOLVED	3
RECEIVER MUST BE APPOINTED	4
LEGAL FEES	5
CONCLUSION	5

TABLE OF CASES AND OTHER AUTHORITIESCASESPAGE

Atlantic Cas. Ins. Co. v. RJNJ Services, Inc.,
89 AD3d 649 (2nd Dept. 2011)2

Conroy v. Cadillac Fairview Shopping Center Properties (Maryland), Inc.,
143 AD2d 726 (2nd Dept. 1988)3

FR Holdings, FLP v. Homapour,
154 AD3d 936 (2nd Dept. 2017)3, 4

Matter of AJG Parkview Corp. v. Calabrese,
187 AD3d 1175 (2nd Dept. 2020)4

OTHER AUTHORITIES

CPLR §32151, 2

CPLR §3215(a).....2

New York Limited Liability Company Law §702.....3

New York Limited Liability Company Law §704.....4

PRELIMINARY STATEMENT

Plaintiff, Isaac Azaria, submits this Memorandum of Law in support of his application, pursuant to CPLR §3215, for a default judgment against the Defendants based upon their failure to timely appear, answer or file a motion with respect to the pleadings filed in this action, after the expiration of the time to do so, inclusive of any applicable tolling provisions.

Upon issuing a default judgment, the Court should direct Defendants, Michael Uhr (hereinafter “Uhr”) and Jonathan Rubin a/k/a Jonathon Rubin (hereinafter “Rubin”) to provide Plaintiff with an accounting of the books, records and finances of 695 Monroe LLC (hereinafter “695 Monroe”). The Court should also issue an order dissolving 695 Monroe based upon the Uhr’s failure, as a member of 695 Monroe, to promote the purpose of 695 Monroe, which is to convert the subject property into a condominium. Upon dissolution, a receiver should be appointed to take control of 695 Monroe in order to facilitate the wind up and liquidation of 695 Monroe’s assets, and the *pro rata* distribution thereof, to Plaintiff and Uhr, the equity members of 695 Monroe.

BACKGROUND

695 Monroe is the fee owner of the property located at 695 Monroe Street, Brooklyn, New York 11221 (hereinafter the “Property”). At the time of 695 Monroe’s formation, Defendant, Michael Uhr, was the sole member thereof. In July, 2018, 695 Monroe sought to convert the Property into a condominium containing four (4) residential units. To that end, Uhr, on behalf of the Sponsor, 695 Monroe, submitted an Offering Plan (hereinafter the “Offering Plan”) to the Attorney General.

Approximately one (1) year later, Plaintiff and Uhr entered into an Operating Agreement for 695 Monroe (hereinafter the “Operating Agreement”) dated July 30, 2019. Under the Operating Agreement, Plaintiff holds a 58% membership interest and Uhr holds a 42% membership interest. Rubin is the “Manager” of 695 Monroe. Although the Operating Agreement lists the Plaintiff as a member of 695 Monroe, the pending Offering Plan does not accurately reflect the membership of the Sponsor because Plaintiff’s name is not listed anywhere in the Offering Plan.

Although the Offering Plan must properly disclose the ownership interests of the Sponsor, the Defendants have failed to do this. Moreover, even though Plaintiff is the majority member of 695 Monroe, he has been completely frozen out of the operations and decisions of 695 Monroe. Indeed, all efforts by the Plaintiff to obtain information about 695 Monroe, including its financial stability, have been consistently ignored by Uhr and Rubin. Accordingly, on December 13, 2019, Plaintiff, through his counsel, requested an accounting of 695 Monroe's books, records and finances. Plaintiff's request was, once again, ignored, forcing Plaintiff to commence this action seeking, *inter alia*, an accounting. This application followed.

DEFAULT JUDGMENT SHOULD ISSUE TO PLAINTIFF

Plaintiff is seeking a default judgment pursuant to CPLR §3215. Specifically, CPLR §3215 states that:

When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.
CPLR §3215(a).

In order to prevail on such a motion, the Plaintiff must:

submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing [internal citations omitted]. *Atlantic Cas. Ins. Co. v. RJNJ Services, Inc.*, 89 AD3d 649, 651 (2nd Dept. 2011).

As set forth in the accompanying Affirmation of Fred L. Seeman, Esq., all of the pleadings herein were properly served upon the respective Defendants, and additional copies were sent in accordance with CPLR §3215. The proof of facts constituting the Plaintiff's claims are set forth in the accompanying affidavit of Plaintiff, Isaac Azaria. Finally, the time for Defendants to appear, answer or move with respect to the Summons and Complaint has expired. Inasmuch as no extension of time has been requested by or given to the Defendants, the Defendants are in default.

PLAINTIFF IS ENTITLED TO AN ACCOUNTING

Plaintiff's first cause of action seeks an accounting of 695 Monroe's books, records and finances.

Caselaw is clear that, in order to prevail on such a claim, Plaintiff must demonstrate:

a demand for an accounting and a failure or refusal by the partner with the books, records, profits or other assets of the partnership in his possession to account to the other partner or partners. Conroy v. Cadillac Fairview Shopping Center Properties (Maryland), Inc., 143 AD2d 726 (2nd Dept. 1988).

Pursuant to Article 5, Section 6 of the Operating Agreement, Rubin, as Manager of 695 Monroe, maintained "all accounts, books, and other relevant Company documents". See, *Exhibit "K"*. By letter dated December 13, 2019, Plaintiff made a demand for an accounting upon Rubin, as the Manager of 695 Monroe, and upon Uhr, as the other Member of 695 Monroe. To date, Rubin and Uhr have failed to provide Plaintiff with such an accounting. Accordingly, upon issuing a default judgment, the Court should direct Uhr and Rubin to permit Plaintiff to inspect the books, records and finances of 695 Monroe.

695 MONROE MUST BE DISSOLVED

The Plaintiff's second cause of action seeks a judicial dissolution of 695 Monroe based upon Uhr's actions, which are contrary to the purpose of 695 Monroe. Pursuant to New York Limited Liability Company Law ("LLCL") §702:

On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement...

To prevail on a claim for judicial dissolution, the Plaintiff must:

establish, in the context of the terms of the operating agreement or articles of incorporation, that (1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or (2) continuing the entity is financially unfeasible [internal citations omitted]. FR Holdings, FLP v. Homapour, 154 AD3d 936, 937 (2nd Dept. 2017).

Pursuant to Article 8 of the Operating Agreement, the purpose of 695 Monroe is to convert the Property into a condominium building consisting of four (4) residential condominium units. Specifically, the

Operating Agreement states “[b]uilding shall be condos and sold as 4 condos”. *See, Exhibit “K”, Article 8, p.*

7. Prior to entering into the Operating Agreement, Uhr advanced this purpose by submitting an Offering Plan to the Attorney General, on behalf of the Sponsor, 695 Monroe, on July 23, 2018. In the initial submission to the Attorney General, Uhr was listed as the only principal of the Sponsor.

This, on its face, is untrue. Plaintiff has been a member of 695 Monroe since July, 2019. The Offering Plan therefore no longer accurately lists the principals involved with the Offering Plan. Pursuant to the New York General Business Law (“GBL”) §352-e(1)(a), “it shall be illegal and prohibited” for the Sponsor to offer the Condominium units for sale unless the Offering Plan includes, amongst other things:

the names, addresses and business background of the principals involved, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the property offered to the syndicate and to those who are to participate in its management... (emphasis added).
GBL §352-e(1)(b).

By failing to amend the Offering Plan to include Plaintiff’s information, Uhr and 695 Monroe are engaging in illegal conduct which, at a minimum, will prevent the Attorney General from approving the Offering Plan. If the Offering Plan cannot be approved and accepted, then 695 Monroe will be unable to convert the Property into a condominium and sell the four (4) residential condominium units. In other words, Uhr’s failure to list Plaintiff as a principal of the Sponsor unequivocally thwarts the purpose of 695 Monroe, as stated in the Operating Agreement. Therefore, 695 Monroe must be dissolved and “wound up” as its purpose has been completely frustrated.

RECEIVER MUST BE APPOINTED

Upon the dissolution of 695 Monroe, the Court is empowered to appoint a receiver to facilitate the wind up of 695 Monroe. *See, Matter of AJG Parkview Corp. v. Calabrese*, 187 AD3d 1175 (2nd Dept. 2020); *FR Holdings, FLP v. Homapour*, 154 AD3d 936 (2nd Dept. 2017). Accordingly, the Court should appoint a receiver to take control of 695 Monroe and facilitate its wind up. Specifically, the receiver should be directed to liquidate 695 Monroe’s assets, including the sale of the Property, and distribute the liquidated assets in accordance with the Operating Agreement and governing statutory requirements. *See, LLCL §704.*

LEGAL FEES

The Plaintiff is also seeking reimbursement for the attorneys' fees that he has incurred in connection with Uhr's and Rubin's violation of the Operating Agreement. Specifically, pursuant to Article 11, Section 3 of the Operating Agreement:

Each member hereby indemnifies and holds harmless the Manager, the other Members, and the Company from and against any losses, costs, damages or liabilities which said other Members or the Company, or both, may suffer or incur as a result of the activities of the indemnifying Member, whether or not wrongful, outside the scope of this Agreement [sic]. *See, Exhibit "K"*.

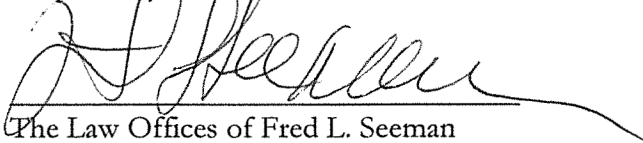
Here, it cannot be disputed that this lawsuit was necessitated by Uhr's and Rubin's failure to (i) provide an accounting of 695 Monroe's books, records and finances and (ii) accurately list the Plaintiff as one of the Sponsor's principals in the Offering Plan pending review by the Attorney General. Accordingly, this matter should be scheduled for a legal fees' hearing.

CONCLUSION

In closing, inasmuch as the Defendants have failed to answer, appear or otherwise move with respect to the pleadings herein, the Court should issue a judgment holding the Defendants in default. Upon issuing said judgment, the Court should direct Uhr and Rubin to provide an accounting of 695 Monroe. Additionally, the Court should issue a judgment dissolving 695 Monroe and appointing a receiver to wind up the company. Finally, a legal fees hearing should be scheduled in this matter.

Dated: New York, New York
July 1, 2021

Respectfully submitted,



The Law Offices of Fred L. Seeman

By: Fred L. Seeman, Esq.

Attorneys for Plaintiff

32 Broadway, Suite 1214

New York, New York 10004

Tel: (212) 608-5000