SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

- X

PETER LENGYEL-FUSHIMI,

Plaintiff,

v.

ANTHONY BELLIS, ZACHARY KINNEY, and

KINGS COUNTY BREWERS COLLECTIVE, LLC

Defendants.

- X

Index No.: 512764/2021

AFFIDAVIT IN SUPPORT OF CROSS-MOTION TO DISMISS COMPLAINT

STATE OF NEW YORK ::
SS::
COUNTY OF KINGS ::

ANTHONY BELLIS having been duly sworn, states or affirms the following under penalties of perjury:

1. I am a member of the Defendant corporation, KINGS COUNTY BREWERS COLLECTIVE, LLC ("KCBC") and an individual defendant in this action. I am fully aware of all facts relevant to this action.

2. I make this affidavit in support of Defendants' cross-motion to dismiss the Complaint pursuant to CPLR §3211.

3. I currently am one of the two Class "A" Managing Member of KCBC, and hold 25.33% of the total equity and 50% of the Class "A" equity interest. My partner, ZACHARY KINNEY, is the other Class "A" Managing Member of KCBC,

also holds 25.33% of the total equity and 50% of the Class "A" equity interest.

4. Mr. KINNEY filed an affidavit in opposition to the Plaintiff's Order to Show Cause seeking a Temporary Restraining Order ("TRO") and preliminary injunction, as such would be damaging to KCBC. Thankfully, the Court did not grant the TRO and declined to sign the Order.

5. KCBC currently is operating under the Second Amended and Restated Operating Agreement ("SAROA"), which I understand is annexed as Exhibit "5" and was filed by the Plaintiff as NYSCEF Doc. 8. This was executed by Mr. KINNEY and me on May 10, 2021 and sent to the other 22 members, who are mostly non-voting members in Class "C", with one Class "B" member, Gregor Rothfuss, who owns 8% and can vote only if we plan to have a merger or acquisition; and Plaintiff, PETER LENGYEL-FUSHIMI, the only Class "D" member, who holds 25.33% of the equity.

6. KCBC was started in 2014. In December 2020, after 6 years, Plaintiff, who had become increasingly difficult in the workplace and had garnered complaints from management and employees, ceased to work at KCBC and has not returned since January 2021.

7. It was my understanding that Plaintiff resigned and stopped working completely for the LLC (back office) and at the brewery. While there were certain requirements of the Original Operating Agreement (Exhibit "3"; NYSCEF Doc. 5) that would prevent resignation, due to Mr. LENGYEL's personal issues and his overall disruptive nature which affected our business, we let him resign and KCBC continued to pay him and paid for his benefits and telephone bills, while we did not pay ourselves. As Managing Members, MR. KINNEY and I decided that was appropriate.

8. After January 2021 when he stopped working for KCBC, Plaintiff asked us to pay for a lawyer to look into other opportunities, including a brewery venture upstate, and requested use of some of our intellectual property. We assisted as we could. He demanded a valuation and a buyout, which he presented at a ridiculous rate of many millions of dollars, when we are not profitable and have no funds to buy him out. He then demanded we allow him to sell his equity to a third-party, which we did not believe was in the best interest of the LLC, so we refused. That sale would make Mr. Rothfuss a holder of more equity than either Managing Member, which we are not comfortable with and did not approve.

9. In the meantime, by vote of Mr. KINNEY and me, KCBC redrafted the original Operating Agreement (Exhibit "3") with a First Amended and Restated Operating Agreement ("FAROA") (Exhibit "4", NYSCEF Doc. 7) which cleaned up a lot of issues in the original version, including a number of changes were made over the prior 6 years with the consent of Plaintiff. The FAROA was necessary for a number of reasons, including to allow Pete's resignation, and to move Plaintiff to Class "D" with special rights no other member has.

10. We signed the FAROA on April 20, 2021. It was effective that day when signed by all the Class "A" members. There was no objection made by Plaintiff to the FAROA and we considered it valid and effective. This was intended as a modification to the Original Operating Agreement, while we were in the process of finalizing the SAROA, which was a longer process as the SAROA was intended to fully replace the Original OA.

11. We had our attorney send Plaintiff his formal Termination Notice and Offer on April 26, 2020 through our attorney. (Exhibit "6"; NYSCEF Doc. 6). At no time did Plaintiff nor anyone else object to the termination until the filing of this action

over 30 days later on May 27, 2021.

12. We believed that Pete accepted the Termination Offer, since he also accepted the severance package we offered. There was no rejection of the offer and we contacted him multiple times to arrange for transfer of bills and benefits.

13. On May 31, 2021, we finalized the Second Amended and Restated Operating Agreement ("SAROA"). Excepting Mr. Rothfuss and two 1% members who are affiliated with the Plaintiff, no one objected to the new document – although we specifically told the members we were not asking them to approve this nor did anyone have to sign it, since a majority of the Class "A" voting equity had executed this document, we also provided the opportunity to sign a individual signature page, mostly to confirm the members had received the documents, had notice and their equity etc. was correctly expressed. We received almost no comments and there were no requests to make any changes from the members. Nineteen of the twenty-two members (19 out of 22) either signed or did not object to the SAROA.

14. The SAROA was essentially a more formal restatement of the FAROA, and since Plaintiff had not objected in over 30 days to the FAROA, and had accepted our Termination Offer, we see no reason this is not effective. There are no material changes to most of the terms from the Original OA or FAROA.

15. It the belief of KCBC that no approvals or signatures beyond a majority of the Class "A" are required under any version of the operating agreement, and since Mr. BELLIS and I make up 50.66% of the total equity and 100% of the Class "A" equity, any action taken is appropriate when approved by both of us.

16. There is no merit to the claims. Pete wants a buyout and we cannot afford to give it to him. He wants us to approve a sale of his equity, but we do not want that valuation and do not want another equal partner who would likely have more equity

than either of us individually.

17. For any of the reasons herein, and as supported by our attorney's memorandum of law, the Court should dismiss the action. Plaintiff resigned and has not appeared at work since December 2020 and accepted the termination offer and its benefits over a month ago, in April 2021.

18. The Company is being operated as it has been, and no immediate harm or danger is about to befall the LLC without Plaintiff.

19. This case is simply revenge and due to bitterness at his failure to get a new venture going, and because the LLC refuses to pay the millions of dollars he believes he should be paid, Plaintiff now lashes out to harm the LLC. We are advised that certain ventures Plaintiff thought would be operational have not moved forward, and it seems Plaintiff now has regrets about his resignation.

20. Plaintiff's equity is secure in Class "D" and he has suffered no harm or loss as a member to the value of his equity interest.

21. The Operating Agreement, now the SAROA, is not required to be signed by any of the Class "B", Class "C" or Class "D" members, as none of these members have any voting rights pursuant to Article 6 of the original agreement (Exhibit 1) and as later ratified by the FAROA (Article 6, 6.1 and 6.4, *et seq*) and SAROA (Article 5, 5.7; Article 7, 7.1, *et seq*).

22. Once the Court reviews the documents and confirms that only the Class "A" has the right to vote and can take any actions with a majority, there are no claims left, to the extent that any were actually stated in the Complaint.

23. This is a bad faith filing made by Plaintiff to gain leverage on KCBC and seeking the Court's intervention to compel a sale or a buyout that the LLC cannot afford. In fact, were the Class "A" members to allow the sale or a buyout, we would

likely be in breach of our fiduciary duties to the LLC and its members.

24. It improper to involve the Court by feigning an immediate harm, calling our documents a "sham" and seeking a TRO just to hurt a company and force a settlement. The actions of the Plaintiff are harmful and must be stopped.

25. I ask the Court to dismiss this action.

26. I swear the above is true to the best of my knowledge and belief.

Dated: June 1, 2021
Brooklyn, New York

ANTHONY BELLIS

NOTARY PUBLIC

KEVIN SEAN O'DONOGHUE
Notary Public, State of New York
No. 01OD612908
Qualified In Nassau County
Commission Exp. 09/08/2024

*** Per EO 202.7**