

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

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RUBEN ELBERG, individually and derivatively on
behalf of ROYAL CP HOTEL HOLDINGS LP, and
ROYAL HI HOTEL HOLDINGS LP,

Index No: 657021/2022

Plaintiff

AFFIDAVIT

against

TAMARA PEWZNER, individually, as co-executor and
co-trustee of the Estate of Jacob Elberg, and as
Co-Manager of ROYAL ONE REAL ESTATE, LLC,
ROYAL REAL ESTATE MANAGEMENT LLC,
ROYAL LIC REAL ESTATE MANAGEMENT LLC,

Defendants.

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STATE OF NEW YORK }
 }ss.:
COUNTY OF NEW YORK }

TAMARA PEWZNER, duly affirms under penalties of perjury as follows:

1. I am a defendant in this action and reside at 23 Waverly Pl., Lawrence, NY 11559 and I make this Affirmation in Opposition to Plaintiff’s Motion for Summary Judgment in Lieu of Complaint and in support of the Cross Motion to Dismiss and other relief requested. I am affirming and not swearing as I am an Orthodox Jew and we are not permitted to swear.

2. I am the daughter of decedent Jacob Elberg and the sister of Ruben Elberg and following Jacob’s death was appointed co-executor of his estate and from this appointment, became co-manager of the LLC entities which Jacob owned and operated during his lifetime.

3. As shown by plaintiff’s motion, my brother Ruben seeks to obtain funds acquired as a result of a merger of limited partnerships owned and operated by my father’s LLCs. This merger was closed on August 25, 2016, and repaid various loans my father had made to these

entities during his lifetime and yielded a profit to these entities that the LLCs accountant, Joseph Buble' of accounting firm Citrin Cooperman, shows to be approximately \$6,000,000.00.

4. Accountant Joseph Bubl  was my father's accountant during his lifetime and took care of various accounting duties for these limited liability companies including the filing of tax returns for them and tax planning activities. Mr. Bubl  was there after my father's passing as the accountant for the LLCs and oversaw the merger transaction including doing tax filings for the entities involved in the merger. An affidavit of Joseph Bubl  dated July 26, 2022 shows that the entire amount of net proceeds yielded from the merger transaction was \$6,038,000.00.

5. After my father Jacob's passing on December 20, 2013, my mother, Esma Elberg, siblings, Ruben Elberg, Michael Elberg and Shalom Elberg as well as my father's estate attorneys, David Portal, Esq., Jack Fitzgerald, Esq. and Meghan Schubmehl. Esq., gathered at the offices of Nixon Peabody, LLP in January of 2014 for the reading of my father's will. For the convenience of members of my family and myself, I recorded the Will Reading and certify that the recording submitted herewith as Exhibit "L" is a true and correct copy of that will reading that I recorded on that date.

6. For ease of review, I had the recorded will reading transcribed by a licensed court reporter and I personally identified the speakers on this recording for purposes of this transcript. A copy of this transcript is annexed to my attorneys' papers as Exhibit "K".

7. I am completely familiar with the voice of my brother Ruben Elberg and identified Ruben as making all of the following statements attributed to him in the transcript, during this Will Reading, in front of all my family gathered and the Estate Attorneys at the offices of Nixon Peabody, LLP. Ruben stated:

<u>PAGE</u>	<u>LINE</u>	<u>TEXT</u>
18	7	RUBEN ELBERG: I have a question.
	9	JACK FITZGERALD: Sure.
	10	RUBEN ELLBERG: My dad, on this real estate that Tamara is discussing, owes close to the \$13 million to the Medallions that my mother owns. That money is not additional money that my father owns. He borrowed money from all the cab corporations, and we have documentation that's been filed with the tax returns, his tax returns in the past, and –
	21	RUBEN ELBERG: He owes loans of over \$13 million to the Medallions that my mother owns as passable without any tax liability. Why would we pay tax on \$13 million of additional value <u>that my father loaned money to another corporation</u> where he is going to have to repay those monies back? I'm just thinking out loud and I'm asking a question. I don't know if it's legitimate.
19	12	JACK FITZGERALD: It's all part of his pot of assets and, to the extent that he had loan obligations, those are a deduction against that pot of assets, so there is a net value.
	17	RUBEN ELBERG: Net value is going to be practically zero.
	19	DAVID PORTAL: You mean, what, on the real estate?
19	21	RUBEN ELBERG: On the real estate, after he pays off what he owes.

<u>Page</u>	<u>Line</u>	<u>Text</u>
20	2	RUBEN ELBERG: I just want to be clear, I don't want my mother paying hundreds of thousands of dollars or the family paying taxes <u>when he outright loaned money from the cabs, and they have to be repaid. That was a clear agreement. His accountant knows it.</u>
	25	DAVID PORTAL: It never got to the level. I wouldn't say fortunately or unfortunately, it just didn't you know what I mean, of where we spoke to the accountant. I know he has an accountant at a place called Citrin –
21	7	RUBEN ELBERG: Cooperman, correct.
	12	RUBEN ELBERG: Very good firm.
	14	DAVID PORTAL: Yeah, yeah, it's a very fine firm.
	16	RUBEN ELBERG: Very fine firm.
22	23	RUBEN ELBERG: I don't want to make a statement in any governmental agency that we have, above and beyond the yellow cabs, another \$13 million or \$20 million in additional assets when they're owed to the cabs. It's just not right.
24	7	RUBEN ELBERG: I had a relationship with <u>my father</u> when I was involved in a limited partnership with him on this, and he <u>was always clear that those monies have to be repaid, first and foremost, before you get any profit sharing out of potential profits out of this investment. So, he was clear. He always want to</u>

<u>Page</u>	<u>Line</u>	<u>Text</u>
		<u>return the money to the cabs.</u> He never wanted to owe the cabs a penny, and that's what we want to make sure it happens.
33	4	RUBEN ELBERG: So, are you saying we're going to have to get an appraisal?
	7	JACK FITZGERALD: Yes.
	8	RUBEN ELBERG: And basically, come to an understanding that, after the appraisal is done, that the value of this is X, that there is monies owed to two or three people and that will be assigned to those people, correct?
	15	DAVID PORTAL: As of the date of the death, that's when the evaluations need to be done or measured by.
	19	RUBEN ELBERG: And then, <u>once we take out the monies owed to people, including Mr. Jacob Elberg, who is owed the bulk of the money, which is over \$13 million.</u>
70	11	RUBEN ELBERG: I have a question.
	13	JACK FITZGERALD: sure
	14	RUBEN ELBERG: And I don't want to complicate things, but I don't want things to be complicated because two corporations that was in my name, but its my father's because we had an agreement, but he never had a chance to transfer it to his name – its my father's.

(Transcript of Will reading, Exhibit "K," *emphasis added*, audio file of Will reading, Ex. "L" at 15:20 to 17:44, 18:27-19:31, 25:30-26:15 and 52:20-52:40)

8. The November 2012 agreements for limited partnerships Royal CP Hotel Holdings, LP (Ex. "F") and Royal HI Hotel Holdings, LP (Ex. "E") both specify a Par. 3.4.2 that only "net proceeds," from a capital event are subject to distribution, not the entire gross consideration involved in the transaction as claimed by Ruben.

9. During his lifetime my father borrowed money from his taxi medallion holdings and made various loans to the real estate projects and LLCs with those funds. He made it clear to all our family members that these were loans which he expected to be repaid. As shown above, at our father's will reading, Ruben reiterated our father's intent that these funds to support the real estate projects were loans that had to be paid back, and which were in fact repaid at the merger closing. In support of that fact my father wrote the word "loan," on various checks that he issued to sustain these real estate entities during his lifetime in order to prevent their insolvency. Copies of the checks are annexed for the court's reference as Exhibit "J"

10. In fact, after our father's passing, these real estate entities lost their only source of funding as our father had continued to loan monies to prop these entities up despite them not making any money and only acting as a drain on his bank accounts. Despite this fact, both I and my mother, Esma Elberg, loaned personal funds to keep these real estate entities afloat while we sought a partner or purchaser who had the assets and experience to take these projects over. Ruben, who obstructed any effort at finding a partner or purchaser for these entities contributed not a single dime to the continuation or maintenance of these projects while at the same time drawing a personal salary from their assets.

11. A hard money loan that our father took on these assets came due after our father's passing and the lender simply refused to renew this loan under any terms. As the over \$3,000,000.00 required to pay this loan did not exist and where no lenders would help us refinance, this loan was sold and a foreclosure action against the LLCs properties was instituted by New Fund, LP and Westlead Bridge, LLC in Queens County under Index No. 709631/2014. A copy of the Complaint in this action is annexed as Exhibit "G." Westlead obtained an order against the LLCs in its foreclosure action and ultimately at the merger, their lien of over \$4,334,000 was assumed by the merging entity and included in the figures of total consideration for this transaction.

12. During my father's lifetime, he sought to reduce the amounts of loans held by third parties and established his own lending entity, Shefa Funding, which purchased back some of the loans against the LLC's property. The loans purchased were secured against LLC properties by a Note and Mortgage held by Rosenthal & Rosenthal, Inc.. Copies of the papers showing the purchase of these loans are attached as Exhibit "H". At the time of the merger, the loans held by Shefa Funding were paid as calculated by the LLC's accountants in the amount of over \$4.4 million.

13. My father, in his Will, annexed as Exhibit "M," intended that all of his worldly assets go to our mother, Esma Elberg, upon the sale and liquidation of his real estate assets and the transfer of his taxi assets into her name. Unfortunately, and due to the litigations pending against these assets, none of the monies in our father's estate has been transferred into the QTIP Trust that was to be created for her benefit in our father's Will.

14. As most of the money loaned by my father to the real estate entities was itself from loans made by Capital One Taxi Medallion Finance, Capital One filed an action against my

father's estate seeking a return of these funds. A copy of this Motion in Lieu of Complaint is annexed as Exhibit "N". The principal amount on their Complaint of over \$21 million has only increased by terms of interest and legal costs.

15. I was able to enter negotiations with Capital One for a reduction of this debt by nearly half its value and proposed a settlement of the Estate's obligations in a petition to the Surrogate's Court to confirm this settlement at Exhibit "P".

16. From his motion it is clear that Ruben has misled this court as to the amount of assets subject to distribution in accordance with the November 30, 2012 limited partnership agreements which specify distribution of net proceeds from a capital event, not a distribution based on total gross consideration. Ruben's presentation of total gross consideration is clearly an attempt to mislead this court as to the amounts available for distribution.

17. As, according to the accountant, a total of \$6,038,000.00 was yielded as net proceeds from these transactions as opposed to the \$36,000,000.00 of gross consideration, Ruben's use this figure of gross consideration in place of net proceeds is improper. Ruben asks this court to distribute monies including monies that went to the federal government as a payment of income tax, the state government as the payment transfer tax and to various lenders for their notes and other loans against these properties. As one cannot distribute what one has not received the amounts requested by Ruben present an impossibility as they would require that funds be disgorged from various legal entities that properly received them including lenders in foreclosure, state and federal tax authorities, professionals who were paid for their services on the projects and other lenders who kept these projects afloat.

17. On that basis it is respectfully requested that this Court grant the relief requested in my Cross Motion to Dismiss and in Opposition to Defendant's Motion for Summary Judgment in Lieu of Complaint.

Tamara Pewzner

TAMARA PEWZNER

Duly Affirmed Before me this 23
day of August, 2022.

Jessie A. Schaff

NOTARY PUBLIC

