SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

ERIC CELIA, individually and derivatively on behalf of Celia Construction, Inc. and Trackside L.P., **Plaintiff,** **- against -** **SAMUEL A. CELIA, DOMINICK S. CELIA, CELIA CONSTRUCTION, INC., TRACKSIDE L.P, and TRACKSIDE APARTMENTS, LLC,** **Defendants,** **and** **CELIA CONSTRUCTION, INC. and TRACKSIDE L.P.,** **Nominal Defendants.**	**Index No. EF20202282** **AMENDED COMPLAINT**

AS AND FOR PLAINTIFF'S AMENDED COMPLAINT, in the above-captioned action, Plaintiff Eric Celia, individually and derivatively on behalf of Celia Construction, Inc. and Trackside L.P., by and through Plaintiff's attorneys, alleges as follows:

PRELIMINARY STATEMENT

1. Sadly, this case involves a very successful family business whereby two brothers have spent years stealing millions of dollars from the business to the detriment of the business and their third brother—Plaintiff Eric Celia ("Eric" or "Plaintiff"). The Defendants Samuel A. Celia ("Sam") and Dominick S. Celia ("Dom") looted at least $5,515,595 from the family business and hid their illegal conduct from their brother by refusing to provide him with basic company documents such as the company's tax returns, payroll records and general ledger. As set forth

below, Defendants have engaged in a pattern of egregious breaches of fiduciary duty, oppression, corporate waste and obstruction of Eric's efforts to investigate the Defendants' wrongdoing.

2. Eric Celia worked with his brothers and father in their family business all of his life, sacrificing time and money to grow Celia Construction, Inc. ("Celia Construction" or the "Company") and Trackside L.P. ("Trackside"). Unbeknownst to Eric, however, his brothers, Sam and Dom Celia, fraudulently and deceptively converted their ailing father's shares, took control of Celia Construction, and used it to enrich themselves at Eric and Celia Construction's expense. Similarly, Eric worked for decades on a large construction project—without salary—on the basis of an oral agreement that he would be an equal partner in the business, Trackside, with his brothers. But Sam and Dom breached this oral contract and limited Eric to a small share of Trackside's profits.

3. To make matters worse, when Eric sought to investigate his brothers' wrongdoing and requested basic documents from Celia Construction, his brothers and the Company's corporate counsel, David Evans ("Evans"), refused to provide them—even though Eric was a director and shareholder of Celia Construction and a partner of Trackside. And when Eric filed a formal books and records demand, Sam and Dom—using the shares they fraudulently converted to exercise control of the Company—removed Eric as a director in order to thwart his investigatory efforts.

4. As set forth below, Sam and Dom have oppressed Eric and breached their fiduciary duties to Celia Construction and Eric by improperly and fraudulently: (i) converting shares of Celia Construction to unlawfully take control of the Company; (ii) taking distributions on the converted shares that they were not entitled to; (iii) wasting Celia Construction's assets on personal matters and in improper related party transactions that were not fair to the Company; (iv) breaching their oral agreements with Eric to include him as an equal partner in Trackside; (v) improperly denying

Eric access to Celia Construction and Trackside books and records; and (vi) improperly removing Eric as a director of Celia Construction when he began to investigate their wrongdoing. Defendants have also been unjustly enriched from Eric's services on Trackside and Celia Construction, and from taking unlawful dividends and distributions from Celia Construction as well as their self-dealing with Celia Construction.

5. By this action, Eric seeks to reverse the conversion of the Celia Construction shares, make Sam and Dom disgorge the dividends they received on those shares, make Celia Construction whole for the damages caused by Sam and Dom's breaches of fiduciary duties, and dissolve Celia Construction and Trackside. Additionally, Eric seeks a declaratory judgment that he is entitled to a 33% interest in Trackside or any successor entity—including Trackside Apartments, LLC ("Trackside Apartments")—and any related distributions in proportional measure. Finally, Eric seeks full access to Celia Construction's and Trackside's books and records as well as attorney fees for being forced to bring this action.

PARTIES

6. Plaintiff Eric Celia is an individual domiciled in Saratoga County, New York. At all relevant times Eric has been, and continues to be, a shareholder of Celia Construction and a partner of Trackside. Eric was previously an officer and director of Celia Construction before being unlawfully removed from those positions by the Defendants.

7. Defendant Sam Celia is an individual domiciled in New York and residing at 20 Mulberry Ct., Whitesboro, NY 13492. Sam is an officer and director of Celia Construction and a partner in Trackside.

8. Defendant Dom Celia is an individual domiciled in New York and residing at 6105 Vittoria Lane, Marcy, NY 13403. Dom is an officer and director of Celia Construction and a partner in Trackside.

9. Defendant and nominal Defendant Celia Construction is a New York Corporation with its corporate offices located at 36 Roosevelt Drive, Whitesboro, NY 13492. Celia Construction also maintains an office in Sam's home, 20 Mulberry Ct., Whitesboro, NY 13492.

10. Defendant and nominal Defendant Trackside is a New York Limited Partnership.

11. Defendant Trackside Apartments is a New York Limited Liability Company and shares its offices with Celia Construction at 36 Roosevelt Drive, Whitesboro, NY 13492.

12. It would be futile for Eric to request that Sam and Dom, as directors and officers of Celia Construction and partners of Trackside, sue themselves. In addition, Eric has repeatedly made written demands to examine the books and records of closely held Celia Construction in his capacity as a director and shareholder of Celia Construction and the Defendants refused to provide the vast majority of the requested documents and terminated Eric as a director in retaliation for investigating corporate wrongdoing. Similarly, the Defendants have refused to provide any of the books and records from Trackside and wrongly claim that Eric is not a partner. Therefore, formal demand would be completely futile and is not necessary on Plaintiff's derivative claims.

FACTUAL ALLEGATIONS

I. ERIC, HIS BROTHERS, AND HIS FATHER CO-FOUND CELIA CONSTRUCTION

13. From his youth, Eric worked with his father, the late Santo Celia ("Santo") in the family construction business.

14. In order to be able to help out the family construction business, Eric attended Clarkson University's School of Engineering and attained his Bachelor of Science degree in Civil Engineering.

15. Upon graduation Eric took a full-time position with the Department of Transportation of the State of New York as a Civil Engineer, while continuing to work nights and

weekends providing all engineering services—without salary—for the family construction business. In so doing, Eric was able to provide otherwise expensive engineering services for the family business while not taxing the family business with paying his salary.

16. In 1993, Eric, Santo, Sam, and Dom decided to incorporate the family construction business as Celia Construction. Celia Construction's 1993 By-Laws (the "Original By-Laws") are attached hereto as Exhibit A.

17. On September 3, 1993, at a joint meeting of the Celia Construction shareholders and board of directors, Celia Construction issued 100 shares of stock. Santo received 52 shares, and the remaining 48 shares were split evenly between Eric, Sam, and Dom—each receiving 16 shares. The resolutions of this meeting are attached hereto as Exhibit B.

18. Initially, Santo was appointed as President of Celia Construction, Eric was appointed Treasurer and Secretary, and Sam was appointed Vice President. Ex. B; Ex. A at 11. All four shareholders, Eric, Santo, Sam, and Dom were selected as directors of Celia Construction. Ex. A at 11.

19. As Treasurer, Eric was required to have custody of the Company's stock certificates. Ex. A, Article IV, §7(a)

20. Under the Original By-Laws each director and officer—including Eric—were to hold office "until his successor has been elected and qualified." Ex. A, Article III, §3. Directors could only be removed for cause by a vote of the shareholders or the board of directors and without cause only by a vote of the shareholders. *Id.* Article III §5. Additionally, Directors were prohibited from receiving compensation for director services except a fixed sum and expenses for "actual attendance" at a board meeting. *Id.* Article III §14.

21. The Original By-Laws provided for a regular annual shareholder meeting and a regular annual board of directors meeting. *Id.* Article III §11. Any meeting outside of the regular annual board of directors or shareholders meeting, required specific notice to each director or shareholder. *Id.*, Article II, §5.

22. All corporate action—other than the election of directors—required authorization by a majority of shareholders which could be taken by vote at a meeting or by written consent of all shareholders. *Id.*, Article II, §§10-11.

23. The Original By-Laws also required that in the event a shareholder sought to transfer his Celia Construction shares, the Company was required to issue the transferee new share certificates and cancel the old share certificates. Any such transfer was required to be journaled in the stock transfer book in Celia Construction's office. *Id.* Article V, §3(a).

24. On January 4, 1995, Eric, Santo, Sam, and Dom held a joint meeting of the shareholders and the board of Celia Construction. At the meeting, Santo resigned as President. Sam was appointed President and Secretary and Eric was appointed Vice President and Treasurer.

25. At some point between 1995 and 2010, Dom was appointed Vice President. Eric remained Treasurer until December 2018.

26. Despite the requirements in the Original By-Laws, formal meetings of the shareholders or board of directors were rare—often many years passing between such meetings.

27. Throughout the 1990s and 2000s, Eric worked tens of thousands of hours for Celia Construction without drawing a salary (although he occasionally received discreet payments for discreet tasks), devoting himself to grow the family business—despite maintaining a full time job as a public servant with the New York Department of Transportation. From 2012–2018 Eric drew a small salary from the Company, averaging $36,000 a year for those seven years.

28. Eric's choice of career as a civil engineer and his decades of working two jobs was designed to allow him to help grow Celia Construction and provide the Company with the expertise to win bids for large construction projects, instead of limiting the Company to building residential homes. The plan worked exceptionally well and Eric's education and experience—and sacrifice in working for little or no pay—allowed Celia Construction to expand and grow into a construction company that builds large apartment complexes and similarly complex projects.

29. Unlike Eric, Sam and Dom always drew regular salaries from Celia Construction over the decades.

30. At a Joint Meeting of the directors and shareholders in July 2017, Eric told his brothers that he wished to retire from his job with New York State and take a larger role in the Company. Although they initially indicated approval of this idea, Sam and Dom rejected Eric's later requests to take a larger role in the operations of Celia Construction.

II. DEFENDANTS FRAUDULENTLY CONVERT THEIR FATHER'S SHARES TO STEAL CONTROL OF CELIA CONSTRUCTION

31. Over the late 1990s and the 2000s, Santo's role in the day-to-day operation of Celia Construction diminished.

32. As Santo's physical and mental health declined, Sam and Dom took control of the day-to-day operations of the Company—with Eric continuing to provide all of the engineering, surveying, and zoning work.

33. In December of 2012, when Santo was 80 years old, Sam and Dom fraudulently cancelled Santo's 52 shares, and issued themselves each 26 Company shares—in addition to the 16 shares they already held. Sam and Dom took these 52 shares without contributing any capital, without any consideration to Santo or Celia Construction, and without notifying Eric or calling a shareholder or board of directors' meeting. Rather, Sam and Dom simply cancelled Santo's shares

in the Company stock ledger and recorded an equal number of new shares under their own names in the ledger.

34. No new share certificates were actually issued to Sam and Don and they did not inform Eric—the Company's Treasurer—of the purported transfer or any issuance of new securities. Rather, Sam and Dom concealed their claimed new shares and control of the Company until the joint board and shareholder meeting in December of 2018.

35. At the meeting in December of 2018, Sam and Dom represented to Eric that their father had gifted them his shares in Celia Construction and that they now had a majority of shares and control of the Company. This was a lie. Indeed, in October of 2018, Santo executed a new last will and testament which purported to bequeath his shares in Celia Construction to Sam and Dom demonstrating that Santo was unaware of any prior transfer of shares.

36. Having illicitly and fraudulently taken control of Celia Construction in 2012, Sam and Dom proceeded to engage in unfair self-dealing, breach their fiduciary duties to the Company, and waste the Company's resources.

37. Currently—after Sam and Dom fraudulently converted Santo's shares—Celia Construction's 100 outstanding shares are held as follows: (a) Eric holds 16 shares; (b) Sam holds 42 shares; and (c) Dom holds 42 shares.

III. <u>SAM AND DOM OPERATE CELIA CONSTRUCTION FOR THEIR OWN PERSONAL BENEFIT AND AT THE EXPENSE OF ERIC</u>

38. After illegally converting a controlling stake in Celia Construction, Sam and Dom began awarding themselves exorbitant salaries and bonuses and have continued to do so through the filing of this lawsuit. They also improperly used corporate funds for their personal use by having Celia Construction pay for an apartment owned by Sam and Don. These are just some of

the related party conflicted transactions that Defendants engaged in that were neither fair nor reasonable to the Company.

39. For example, in 2019, Sam and Dom—over Eric's objection—paid themselves each annual salaries of $650,000. Moreover, they paid themselves or their immediate family members an additional $510,634 in "salaries and bonuses"—for a total of $1,810,634. *See* Celia Construction's 2018 & 2019 Financial Statements, attached hereto as Exhibit C, at 18. Sam and Dom's self-awarded salaries and bonuses were thereby higher than Celia Construction's income for 2019, $1,543,666 before taxes. And this was despite the Company's income being lower in 2019 compared to 2018.

40. Sam and Dom paid themselves these unfair, exorbitant salaries and bonuses without a disinterested shareholder vote and without any review by independent directors to determine whether the salaries and bonuses were fair or reasonable.

41. Sam and Dom also created their own entity, Celia Builders, Inc. ("Celia Builders") without including Santo or Eric as shareholders. From 2017–2019, Sam and Dom directed Celia Construction to pay Celia Builders an additional $224,699 in "administrative and management fees" to themselves or their family members.

42. Eric Celia is unaware of any legitimate business purpose for Celia Builders and upon information and belief, Celia Builders was used by Sam and Dom as an unfair and improper mechanism to drain more money from Celia Construction.

43. Sam and Dom have also directed Celia Construction to pay huge sums for an apartment they own in an unknown location. From 2017–2019, Celia Construction paid $1,043,726 for Sam and Dom's apartment and Sam and Dom recorded these payments in the

Company's books as expenses or costs. There is no legitimate business purpose for Celia Construction to pay for Sam and Dom's apartment nor is it fair and unreasonable to the Company.

44. In February of 2015, Sam and Dom and their wives, Mary Celia and Christine Celia, formed yet another entity, Bardal, LLC ("Bardal") which they used to purchase the building at 36 Roosevelt Drive, Whitesboro, NY 13492 ("36 Roosevelt"). Shortly thereafter, Sam and Dom moved Celia Construction's offices to 36 Roosevelt and began paying Bardal rent.

45. Over 2018 and 2019, Sam and Dom directed Celia Construction to pay Bardal $122,500 in rent. However, in Celia Construction's 2018 and 2019 Financial Statements, Defendants falsely claimed that the Company leased its office space "from an unrelated company." Ex. C at 18. Not only was Bardal formed at the direction of Sam and Dom, it continues to be owned and operated by Sam and Dom's wives. Indeed, Bardal itself operates out of Sam's home, 20 Mulberry Ct., Whitesboro, NY 13492.

46. Sam and Dom and their wives, formed Bardal to charge Celia Construction rent and continue to loot the Company. And, of course, the paying of rent to Sam and Dom's wives' entity was not disclosed to Eric, evaluated by an independent director, or approved by a shareholder vote.

47. The notes to Celia Construction's 2018 and 2019 Financial Statements also mention an investment the company has in Waterloo Partners, L.P. ("Waterloo"), which owns an apartment complex. Ex. C at 16. Although Celia Construction holds a 90% interest in Waterloo (*id.*), Sam and Dom did not consolidate Waterloo within Celia Construction. Instead they carry the Waterloo investment—90% of an entire apartment complex—as worth zero dollars on Celia Construction's balance sheet. (*Id.* at 4, 13, 16.)

48. On information and belief, Sam and Dom control Waterloo and chose to account for Waterloo as described above in order to conceal its true fair value if sold in an arm's length transaction and prevent Eric from properly valuing his interest in Celia Construction.

49. Finally, after Sam and Dom converted Celia Construction's shares in 2012, they each claimed 42 shares of the Company leaving Eric with only 16 shares and Santo with nothing. In 2016, without informing Eric that they had cancelled Santo's shares and reissued them to themselves, Sam and Dom voted as directors for—and fraudulently induced Eric to vote for—Celia Construction to issue a dividend of $11,000 per share—giving themselves each $462,000, instead of only the $176,000 they were actually entitled to as 16% shareholders.

50. Sam and Dom caused Celia Construction to issue similar dividends in 2017–2019, each time taking money out of the Company that they were not legally entitled to take. Ultimately, Sam and Dom were unjustly enriched and deprived the Company of $2,314,000 in excess dividend payments from 2016 through 2019.

51. Sam and Dom have been wasting the resources of Celia Construction and engaging in improper related party transactions and self-dealing since, at least, 2012, all the time actively concealing their wrongdoing from Eric. For example, despite written requests from Eric, Sam and Dom have refused to allow Eric to examine payroll records to determine who is on the payroll and the services provided in return for their compensation. Similarly, Sam and Dom have refused to provide Eric with Celia Construction's tax returns or a general ledger. Therefore, Sam and Dom's self-dealing and wasteful payments to Bardal, Celia Builders, themselves and their families are likely much larger than just the $5,515,595 outlined above. By wasting the Company's assets and enriching themselves with such improper self-dealing transactions that are not fair to the Company, Sam and Dom have breached their fiduciary duties to the Company.

IV. ERIC, HIS BROTHERS, AND HIS FATHER CO-FOUND TRACKSIDE BUT DEFENDANTS CUT OUT ERIC

52. In the early 1990s, Santo purchased two building lots in Marcy, New York, with the intent of building apartment buildings. In the early 2000s, Eric negotiated the purchase of an additional 25-plus acres (together the "Marcy Lots") on behalf of himself, his father and his brothers.

53. Eric, his father, and his brothers agreed that they would all work together to build apartment buildings on the Marcy Lots (the "Trackside Project"). Eric, his father and his brothers agreed that they would split the ownership of the future Marcy Lots apartment buildings equally and all future revenue from the Marcy Lots apartment buildings equally (the "First Oral Agreement"). The intent of the parties was that the revenue from the Trackside Project would function as a "retirement plan" for Eric, Sam and Dom.

54. Pursuant to the First Oral Agreement, Eric performed—without salary—all the surveying, field engineering, civil engineering, and architectural engineering for the Trackside Project. Eric provided the certification for the design and construction of all improvements for the Trackside Project's roadway and building construction. Additionally, Eric prepared and directed all work and requirements for the town board and town zoning of the Town of Marcy as well as Oneida County Health, Oneida County Planning Board, Oneida County Public Works, NYS Department of Environmental Conservation and Mohawk Valley Water Authority. And Eric attended the Marcy Town Board meetings and secured all of the necessary approvals for the Trackside Project for all of its phases: Phase 1, Phase 2 and Phase 2A. Phase 1 started in the mid-1990s. Phase 2 and Phase 2A were substantially completed in 2018.

55. In June of 2009, however, Sam and Dom—together with their father and without informing Eric—formed Trackside as a New York limited partnership. In breach of the First Oral

Agreement, Sam and Dom did not make Eric an equal partner and did not provide him with an opportunity to review or sign the limited partnership agreement. Instead Sam and Dom each took 49% limited partnership interests—with the remaining 2% being held by a Trust in the name of Santo.

56. In 2010, Sam and Dom informed Eric that they had breached the First Oral Agreement and Eric was excluded as a partner in Trackside. Sam and Dom claimed that the decision to cut Eric out was their father's decision and promised that when Santo passed away they would reverse course and re-include Eric as an equal partner in Trackside. Santo was already in ill-health at the time. In the meantime, they said Eric would receive 10% of Trackside's profits.

57. Although, Sam and Dom told Eric that he would only receive a share of Trackside profits, in fact, starting in 2010, Eric received K-1 tax forms from Trackside as a 10% partner. From 2010 on, Eric continued to carry on as a partner of Trackside, a registered New York limited liability partnership, including executing forms and submissions on behalf of Trackside and representing Trackside before town and county government bodies.

58. Eric, Sam and Dom agreed that Eric would continue to provide his engineering services on the Trackside Project in exchange for an equal share of Trackside with his brothers after their father passed-away (the "Second Oral Agreement").

59. From 1996 through 2019, Celia Construction supplied all of the constructions services on the Trackside Project, including machinery, planning, materials, and labor. Upon information and belief Celia Construction provided the construction of the Trackside Project for free. And Sam and Dom got paid for their work on the Trackside Project as employees of Celia Construction—in addition to the distributions they received from Trackside. In contrast, Eric was not paid any salary for his thousands of hours of work on the Trackside Project.

60. All in all, Eric worked thousands of hours between 1996 and 2018 on the Trackside Project—including paying for all engineering, computer, materials, and travel expenses out of his own pocket—in reliance on the First Oral Agreement and then the Second Oral Agreement. Eric fully performed his obligations under both Oral Agreements.

61. Santo passed away in June of 2019. Under the Second Oral Agreement, upon Santo's death, Sam and Dom were required to make Eric an equal partner in Trackside. In breach of the Second Oral Agreement, Sam and Dom refused to make Eric an equal partner in Trackside.

62. Sometime after his father's death, Eric reached out to Sam and Dom to discuss entering into a partnership agreement for Trackside to fulfill the Second Oral Agreement. But despite multiple text messages and a telephone call, Sam and Dom refused to meet with Eric and refused to include him as an equal partner in Trackside.

63. Finally, for the past two years Sam and Dom have withheld all Trackside distributions to Eric—even the prior distribution as a 10% partner that Eric used to receive.

64. Because Eric was never included and never executed any partnership agreement, the Trackside partnership is governed entirely by New York Partnership law statutes and common law. Sam and Dom's withholding of Eric's share of Trackside's profits, and their refusal to provide him with access to Trackside's books and records, is a violation of Sections 121-504, 121-606 and 121-106 of New York Partnership Law.

65. On March 24, 2020—after receiving a books and records demand for Trackside documents from Eric—Evans, Sam and Dom's attorney, formed Trackside Apartments on behalf of Sam and Dom.

66. On information and belief, sometime between September 18, 2020 and November 12, 2020, Sam and Dom caused Trackside to transfer all of its assets to Trackside Apartments for no consideration or grossly inadequate consideration.

67. Upon information and belief, Trackside Apartments is engaged in the same business as Trackside, uses the same employees, uses the same assets, and has commonality and a continuation of ownership with Trackside—namely Sam and Dom. On November 12, 2020, Sam and Dom filed to dissolve Trackside so that they and Trackside could escape their legal obligations to Eric.

68. Trackside Apartments is, therefore, a successor-in-interest to Trackside under New York's "mere continuation" and "de facto merger" doctrines. Therefore, Eric is entitled—pursuant to the First and Second Oral Agreements—to a one-third interest in Trackside Apartments.

V. ERIC ATTEMPTS TO INVESTIGATE DEFENDANTS' WRONGDOING BUT SAM AND DOM REFUSE TO PRODUCE DOCUMENTS AND ULTIMATELY REMOVE ERIC AS A DIRECTOR

69. In July 2017, Eric told his brothers that he was planning on retiring from his job with the New York Department of Transportation and wanted to get more involved in the day-to-day operations of Celia Construction. Although they initially appeared receptive to this idea, Sam and Dom later reversed course and refused to let Eric work for the Company beyond the engineering and surveying duties he had been responsible for since the early 1990s.

70. In early 2018, Eric requested various Celia Construction documents from Sam and Dom to aid in personal estate planning. But Sam and Dom repeatedly rebuffed these requests and often simply ignored Eric's emails and text messages.

71. Then, in December of 2018, at a joint shareholder and board meeting, Sam and Dom told Eric that (i) they now controlled the majority of Celia Construction's shares, (ii) they were stripping Eric of his position as Treasurer of the Company, and (iii) they were removing him

as a director. Eric objected to the foregoing, and after significant discussion, Sam and Dom agreed to allow Eric to remain a director but stripped Eric of his Treasurer position over his continued objections. Sam and Dom also presented Eric with new By-Laws (the "New By-Laws"). The New By-Laws no longer required one director per shareholder and no longer required shareholder votes for corporate actions.

72. At this time, Sam and Dom also voted to pay themselves each $620,000.

73. Fed up with his brothers oppressive and improper conduct and with mounting evidence that his brothers were looting the company for their own personal gain, Eric, in his capacity as a director of the Company as well as his capacity as a shareholder of the Company, followed up the December 2018 meeting by asking for various Company documents—including the previous three years financial statements. Defendants did not respond.

74. In February of 2019, in his capacity as a director and shareholder of the Company Eric again reached out to request information—this time sending a formal letter to Sam and Dom. In particular, Eric requested the financial statements and tax returns of the Company over the previous five years, as well as information about the Company's projects and asked for time to meet and discuss various company issues with his brothers. Again, Eric's request was ignored.

75. In December of 2019, another joint meeting of the shareholders and the board was held. At the meeting Eric—still a director of the Celia Construction—requested financial information about the Company's projects broken down by project. Evans, Celia Construction's counsel, claimed not to have such information.

76. At the December 2019 meeting, Eric again asked to take on a larger role in the business. But Sam declined.

77. In February of 2020, Eric sent a formal books and records demand to Celia Construction and Sam Celia (the "February Demand") pursuant to New York common law, Section 624 of New York Business Corporations Law ("BCL"), and Section 121-106 of the New York Partnership Law. A copy of the February Demand is attached hereto as Exhibit D. The February Demand identified the investigation of potential misconduct by Sam and Dom as the purpose of the request. Ex. D at 1–2. In furtherance of that purpose, the February Demand requested various categories of basic Celia Construction and Trackside documents such as financial statements, meeting minutes, tax returns, related party contracts, and documents related to the purported transfer of Santo's shares to Sam and Dom. *Id*. at 2-3.

78. The February Demand pointed out that it was well-settled under New York law that "investigating alleged misconduct by management and obtaining information that may aid legitimate litigation are proper purposes for a books and records request" under the BCL and the common-law. Ex. D at 2 (citing *Ret. Plan for Gen. Employees of City of N. Miami Beach v. McGraw-Hill Companies, Inc.*, 92 N.Y.S.2d 220, 223-24 (1st Dep't 2014) & *Pokoik v. 575 Realties, Inc.*, 143 A.D.3d 487, 488, 38 N.Y.S.3d 553, 555 (1st Dep't 2016)).

79. On March 10, 2020, Evans responded by refusing to produce any documents unless Eric provided an affidavit of proper purpose and that he was not seeking to compete with the Company. Evans' March 10, 2020 letter is attached hereto as Exhibit E.

80. On April 13, 2020, Eric's counsel sent two follow-up letters to Celia Construction further requesting access to the Company's books and records and noting that the requested affidavit was not necessary under New York law (the "April Letters"). The April Letters are attached hereto as Exhibit F. The April Letters also noted that Eric was a director and under New York law had "an absolute, unqualified right to inspect their corporate books and records" and

requested unlimited access to Celia Construction's books and records going forward. Ex. F at 1 (quoting *Cohen v. Cocoline Prod.*, 309 N.Y. 119, 123, 127 N.E.2d, 906, 907-908 (1955)).

81. Despite an affidavit not being required by law because he was a director, in a show of good faith, Eric also executed the requested affidavit on May 19, 2020 and provided it to Defendants. A copy of the affidavit is attached hereto as Exhibit G.

82. However, instead of producing the documents and giving Eric the access he was entitled to as a director, Defendants immediately called a special meeting of the shareholders for the specific purpose of removing Eric as a director of Celia Construction.

83. On June 2, 2020, the special meeting of Celia Construction's shareholders was held. At the meeting, purporting to control a majority vote by voting their *converted* shares, Sam and Dom voted to remove Eric as a director. A copy of the June 2, 2020 meetings minutes is attached hereto as Exhibit H. Eric objected and asked why he was being removed after being a director of Celia Construction for twenty-three years. Ex. H at 1. Despite repeated questioning by Eric and his counsel, Sam, Dom, and Evans were unable or unwilling to provide a reason. *See Id.* In truth, Sam and Dom removed Eric because they knew that if Eric was given access to the books and records, he would uncover the extent of their wrongdoing and they would no longer be able to loot the Company going forward or hide the evidence of their past looting.

84. On June 5, 2020, Defendants finally produced a smattering of documents—230 pages in total—covering a period of 27 years. The vast majority of the documents requested by Eric, such as Celia Construction's tax returns, payroll records and general ledger, were never produced. These are basic documents that every director and shareholder of a closely held company are entitled to review. And Defendants produced no Trackside documents at all.

85. On June 24, 2020, Eric's counsel sent a follow-up letter to Defendants noting the various categories of basic documents Defendants failed to produce (the "Deficiency Letter"). The Deficiency Letter is attached hereto as Exhibit I. These included: (1) Celia Construction's financial statements for 2016 and the general ledger from 2016 onward; (2) Celia Construction's tax returns; (3) related party transaction documents; (4) documents related to Eric's services and interest in Celia Construction and Trackside; (5) budgets and projection for Celia Construction projects; (6) any documents related to Trackside. Ex. I at 1-2.

86. The Deficiency Letter also noted that the documents produced showed improper conduct and transactions by Sam and Dom Celia and requested additional documents that Defendants could use to justify or explain their conduct. *Id.* at 2-3.

87. Defendants did not produce a single page of the documents demanded in the Deficiency Letter except for Celia Construction's 2019 financial statements.

88. Defendants' removal of Eric as a director of Celia Construction and refusal to produce the vast bulk of the documents requested is further evidence of Sam and Dom's oppression of Eric as a director and minority shareholder.

89. Finally, since Eric started investigating their wrongdoing, Sam and Dom have wrongfully withheld Eric's 2019 distribution from Trackside and have not issued him a dividend from Celia Construction in 2020.

90. Eric worked for decades on behalf of Celia Construction and Trackside for little or no pay. He devoted nights, weekends, and holidays to help grow the family business. But behind his back his brothers illicitly took control of the Company and Trackside, used the businesses as their personal piggy-bank, and worked to cut Eric out—all the while benefiting from Eric's services and expertise.

91. Sam and Dom's oppression of Eric must end and be prevented from happening again. Celia Construction and Trackside must be dissolved and Eric made whole.

CAUSES OF ACTION

I. COUNT I — CONVERSION DERIVATIVELY ON BEHALF OF CELIA CONSTRUCTION AGAINST SAM AND DOM CELIA

92. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

93. Celia Construction has ownership over its own stock and stock certificates.

94. In December of 2012, Sam and Dom cancelled Santo's shares of Celia Construction stock. Then, without consideration to Celia Construction or Santo and without the knowledge or authorization of Eric, they issued themselves 52 new shares of Celia Construction stock.

95. Sam and Dom thereby exercised an unauthorized dominion over Celia Construction's stock. This is conversion of Celia Construction's stock under New York law.

96. Sam and Dom actively and fraudulently concealed this transfer from Eric despite their duty to notify him. It was not until December of 2018 that Sam and Dom revealed to Eric that they held a majority of Celia Construction's shares.

97. Sam and Dom used their unauthorized dominion over Celia Construction's stock to control the Company and engage in extensive self-dealing and waste of the Company's resources.

98. Sam and Dom used their unauthorized dominion over Celia Construction's stock to strip Eric of his role as officer of the Company and block him from accessing the Company's books and records.

99. Furthermore, Sam and Dom caused Celia Construction to issue dividends in 2016–2019 for all shareholders—including for themselves as holders of the fraudulently converted stock.

100. Thus, Sam and Dom each received dividends as holders of 42 shares of Celia Construction stock, 84 shares combined, when in reality they were only entitled to 16 shares each.

101. Between 2016 and 2019, Sam and Dom issued themselves $2,314,000 in dividends on the converted stock.

102. As a result of Sam and Dom's conversion of Celia Construction's stock, Celia Construction has been harmed in an amount to be determined at trial but not less than $2,314,000.

II. COUNT II — FRAUD, DIRECTLY AND DERIVATIVELY ON BEHALF OF CELIA CONSTRUCTION AGAINST SAM AND DOM CELIA

103. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

104. In December of 2012, Sam and Dom wrote in the Company ledger that Santo's shares of Celia Construction stock were cancelled. This was a knowing misrepresentation of material fact because Santo had not cancelled his shares in Celia Construction and had not asked Sam and Dom to cancel his shares in Celia Construction.

105. Then, without consideration to Celia Construction or Santo and without the knowledge or authorization of Eric, Sam and Dom fraudulently issued themselves 52 new shares of Celia Construction stock. This was also a knowing misrepresentation because there was no notice or vote by the board of directors to issue new shares of Celia Construction stock.

106. Sam and Dom then fraudulently concealed this transfer from Eric despite their duty to notify him.

107. It was not until December of 2018 that Sam and Dom revealed to Eric that they held a majority of Celia Construction's shares but even then they claimed that their father, Santo, had transferred the shares to them. This was also a fraudulent misrepresentation.

108. Sam and Dom made this misrepresentation to Eric so that he would not attempt to stop them from removing him as an officer of Celia Construction, taking full control of the Company for themselves, and awarding themselves exorbitant salaries.

109. In reliance on this misrepresentation Eric refrained from taking immediate action to stop Sam and Dom's waste and misuse of the Company's resources.

110. From December 2012 until the present, Sam and Dom used their fraudulent control of the Company to engage in extensive self-dealing and waste of the Company's resources and to strip Eric of his role as officer of the Company and block him from accessing the Company's books and records.

111. Sam and Dom caused Celia Construction to issue dividends in 2016–2019 for all shareholders—including for themselves as holders of the fraudulently transferred stock.

112. Thus, Sam and Dom each received dividends as holders of 42 shares of Celia Construction stock, 84 shares combined, when in reality they were only entitled to 16 shares each. Between 2016 and 2019, Sam and Dom issued themselves $2,314,000 in dividends on the 52 fraudulently issued shares.

113. As a result of Sam's and Dom's fraud, Celia Construction was harmed in an amount to be determined at trial but not less than $2,314,000 and Eric was harmed in an amount to be determined at trial.

III. COUNT III — BREACH OF FIDUCIARY DUTY, DIRECTLY AND DERIVATIVELY ON BEHALF OF CELIA CONSTRUCTION, AGAINST SAM AND DOM CELIA

114. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

115. Sam and Dom Celia have been directors of Celia Construction since 1993. Sam has been an officer of Celia Construction since 1993 and Dom has been an officer of Celia Construction since 1995.

116. Since December of 2012—when they impermissibly converted 52 shares of Celia Construction stock—Sam and Dom Celia have acted together to control the Company.

117. As officers, directors, and controlling shareholders, Sam and Dom owed Eric—a minority shareholder—a fiduciary duty of care and loyalty.

118. As officers, directors, and controlling shareholders, Sam and Dom owed Celia Construction fiduciary duties of care and loyalty.

119. In breach of their fiduciary duty to Eric, Sam and Dom took unlawful control of Celia Construction, engaged in extensive self-dealing and looting of the Company's assets, blocked Eric from reviewing the books and records of the company, and ultimately removed him as a director in order to hide their wrongdoing and to continue looting Celia Construction.

120. In breach of their fiduciary duties to Celia Construction, Sam and Dom converted the Company's stock, engaged in extensive self-dealing and looting of the Company's assets—including the issuance of millions of dollars in dividend payments they were not entitled to receive, and prevented Eric from investigating their wrongdoing.

121. In all of the aforementioned transactions, Sam and Dom were on both sides of the transactions and failed to obtain any independent review of the fairness of the transaction to Celia Construction or is shareholders.

122. All of the aforementioned transactions were unfair and unreasonable to Celia Construction and its shareholders and constitute a breach of Sam's and Dom's fiduciary duties to Celia Construction and Eric.

123. As a result of Sam's and Dom's breaches of fiduciary duty, Celia Construction was harmed in an amount to be determined at trial but not less than $5,515,595 and Eric was harmed in an amount to be determined at trial.

IV. COUNT IV — BREACH OF THE TRACKSIDE AGREEMENTS AGAINST SAM AND DOM CELIA

124. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

125. In the mid-1990s Eric, Sam, Dom, and Santo agreed that they would all work on the Trackside Project in consideration for an equal share in the entity that would own the apartment buildings they were building.

126. Pursuant to this First Oral Agreement, Eric directly negotiated for the purchase of the land from the prior owners, performed all the surveying, civil engineering, and architectural engineering for the Trackside Project and directed all work and requirements for the town planning board, zoning board, and various county agencies.

127. In June of 2009, Sam, Dom, and Santo breached the First Oral Agreement by forming Trackside and not including Eric as an equal partner. However, Eric was included as a 10% partner in Trackside and received distributions as a 10% partner starting in 2010.

128. In 2010, Sam and Dom convinced Eric to continue working on the Trackside Project. In consideration for Eric continuing to provide service on the Trackside Project, Sam and Dom agreed that when Santo passed away, they would make Eric an equal partner in Trackside.

129. In reliance on the Second Oral Agreement, Eric continued providing his services on the Trackside Project.

130. Although Sam and Dom were paid for their work on the Trackside Project, through the salaries they received from Celia Construction, Eric was not paid any salary.

131. Santo passed away in June of 2019. But Sam and Dom breached the Second Oral Agreement with Eric and refused to make him an equal partner in Trackside. On the contrary, they stopped providing him his prior 10% partner distributions from Trackside.

132. In the Fall of 2020, Sam and Dom transferred all of Trackside's assets to a new entity they formed and controlled, Trackside Apartments, and—after the initiation of this action—dissolved Trackside. Trackside Apartments is, therefore, a mere continuation of Trackside and Sam and Dom are required to make Eric an equal partner in Trackside Apartments.

133. As a result of Sam's and Dom's breaches of the Trackside contracts, Eric has been harmed in an amount to be determined at trial and is entitled to injunctive relief.

V. COUNT V — UNJUST ENRICHMENT AGAINST ALL DEFENDANTS

134. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

135. Plaintiff provided heavily discounted or free services for Celia Construction and Trackside for decades on the understanding that he would ultimately share equally with his brothers in the growth of these two businesses.

136. As described above, Sam and Dom Celia fraudulently seized the majority of the Celia Construction's shares and—in breach of their promises to Eric—refused to include Eric as an equal partner in Trackside.

137. Celia Construction and Trackside benefited from decades of free or heavily discounted engineering and surveying services provided by Eric.

138. Sam and Dom, as shareholders and partners of Trackside, benefited from distributions from Celia Construction and Trackside—including distributions in connection with interests that they took unjustly.

139. In the Fall of 2020, Sam and Dom transferred all of Trackside's assets to a new entity they formed and controlled, Trackside Apartments, and—after the initiation of this action—dissolved Trackside. Trackside Apartments is, therefore, a mere continuation of Trackside and has also unjustly benefited from Eric's services.

140. All Defendants, therefore, were enriched from Eric's services between 1993 and 2020 without properly compensating Eric for those services and in good conscience and equity are liable for the value of those services.

141. As a result of Defendants' unjust enrichment, Eric was damaged in amount to be determined at trial.

VI. COUNT VI — UNJUST ENRICHMENT, DERIVATIVELY ON BEHALF OF CELIA CONSTRUCTION, AGAINST SAM AND DOM CELIA

142. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

143. In 2012, Sam and Dom caused the conversion of a majority of Celia Construction's stock.

144. Sam and Dom then used that majority of Celia Construction's stock to pay themselves and their families exorbitant salaries and bonuses and enter into self-interested related party transactions.

145. Moreover, Sam and Dom received millions of dollars in excess and unjust dividends on these fraudulently converted shares.

146. Sam and Dom, therefore, were enriched from the millions they received in payments, related-party transactions, and excess dividends at Celia Construction's expense. In good conscience and equity, Sam and Dom must be liable for these damages.

147. As a result of Sam and Dom's unjust enrichment, Celia Construction was damaged in amount to be determined at trial but not less than $5,515,595.

VII. COUNT VII — DECLARATORY JUDGMENT THAT ERIC CELIA IS A PARTNER OF TRACKSIDE, TRACKSIDE APARTMENTS, OR ANY OTHER SUCCESSOR ENTITY AND AN ACCOUNTING OF TRACKSIDE

148. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

149. In the mid-1990s Eric, Sam, Dom, and Santo agreed that they would all work on the Trackside Project in consideration for an equal share in the entity that would own the apartment buildings they were building.

150. Pursuant to this First Oral Agreement, Eric performed all the surveying, civil engineering, and architectural engineering for the Trackside Project and directed all work and requirements for the town planning board and zoning board.

151. In June of 2009, Sam, Dom, and Santo breached the First Oral Agreement by forming Trackside and not including Eric as an equal partner.

152. Although Sam and Dom did not include Eric as an equal partner Trackside, Eric was included as a 10% partner and received annual distributions as a partner.

153. In 2010, Sam and Dom convinced Eric to continue working on the Trackside Project. In consideration for Eric continuing to provide service on the Trackside Project, Sam and Dom agreed that when Santo passed away, they would make Eric an equal partner in Trackside.

154. Eric continued providing his services on the Trackside Project. Although Sam and Dom were paid for their work on the Trackside Project, through the salaries they received from Celia Construction, Eric was not paid any salary.

155. Santo passed away in June of 2019. But Sam and Dom breached their contract with Eric and refused to make him an equal partner in Trackside. On the contrary, they stopped

providing him distributions from Trackside altogether and, in a letter from their counsel, implied that they no longer viewed Eric as a partner in Trackside.

156. Because Eric was never included and never executed any partnership agreement, the Trackside partnership is governed entirely by New York Partnership law. Sam and Dom's withholding of Eric's share of Trackside's profits, and their refusal to provide him with access to Trackside's books and records, is a violation of Sections 121-504, 121-606 and 121-106 of New York Partnership Law.

157. In the Fall of 2020, Sam and Dom transferred all of Trackside's assets to a new entity they formed and controlled, Trackside Apartments, and—after the initiation of this action—dissolved Trackside. Trackside Apartments is, therefore, a mere continuation of Trackside and Sam and Dom are required to make Eric an equal partner in Trackside Apartments.

158. Eric is entitled to a declaratory judgment that he is currently a 10% partner in Trackside, Trackside Apartments, and/or any successor entity and a declaratory judgment that he is entitled to a full 33% interest in Trackside, Trackside Apartments, and/or any successor entity pursuant to the First and Second Oral Agreements. Eric is also entitled to an accounting to determine the value of Trackside, Trackside Apartments, and Eric's interest in those entities.

VIII. COUNT VIII —DISSOLUTION OF CELIA CONSTRUCTION

159. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

160. Under New York law, a minority shareholder has a common-law right to dissolution where the officers, directors, or controlling shareholders of a corporation are engaged in conduct which is violative of their fiduciary duty to shareholders.

161. Here, Eric spent decades working for Celia Construction and Trackside—much of the time for no pay at all—expecting to be able to share equally with his brothers in the growth of these companies.

162. Instead, Sam and Dom converted their father's shares in Celia Construction to illicitly take control of the Company and breached their agreement with Eric to take control of Trackside.

163. Sam and Dom proceeded to engage in a series of self-dealing transactions to benefit themselves, their other companies, and their family's at Celia Construction and Eric's expense. This was a gross breach of Sam and Dom's fiduciary duties to Celia Construction and Eric.

164. These transactions and their paying themselves and their family members exorbitant salaries and bonuses, was a looting of Celia Construction's funds and waste of its resources.

165. Sam and Dom unlawfully pulled at least $5,515,595 out of the Company between 2016 and 2019. And their prior and subsequent conduct damaged Celia Construction even more.

166. When Eric attempted to review Celia Construction documents, Sam and Dom blocked him at every turn. And when Eric attempted to use his right as a director of the Company to review its books and records, Sam and Dom removed him as a director to prevent Eric from observing and interfering with their unlawful and wasteful activity.

167. Sam and Dom have oppressed Eric for years and subverted his expectations as a shareholder in Celia Construction.

168. The Court should therefore order dissolution of Celia Construction—after it is made whole by Sam and Dom—so that Eric can receive his rightful share of Celia Construction's assets and stop Defendants from continuing to deprive Eric of the benefit of his investment.

IX. COUNT IX — DISSOLUTION OF TRACKSIDE AND TRACKSIDE APARTMENTS

169. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

170. Eric is a 10% partner of Trackside and Trackside Apartments and entitled to a 33% interest in those entities or any successor entity pursuant to the Second Oral Agreement.

171. Under Section 121-802 of the New York Partnership Law, a partner is entitled to dissolution "whenever it is not reasonably practicable to carry on the business."

172. Here, Sam and Dom have so oppressed Eric as partner of Trackside that it is not reasonably practicable for the partners to carry on together.

173. Eric spent decades working for Trackside—for no pay at all—expecting to be able to share equally with his brothers in the growth of the company.

174. Instead, Sam and Dom breached their agreement with Eric to take control of Trackside and when Eric requested his rightful share of the company they cut off his distributions in violation of Sections 121-504 and 121-606 of New York Partnership Law.

175. Additionally they refused to allow him access to Trackside's books and records.

176. In the Fall of 2020, Sam and Dom transferred all of Trackside's assets to a new entity they formed and controlled, Trackside Apartments, and—after the initiation of this action—dissolved Trackside. Trackside Apartments is, therefore, a mere continuation of Trackside and Eric is entitled to a 33% interest in Trackside Apartments—equal with his brothers.

177. Sam and Dom's further attempt to cut Eric out of Trackside by fraudulently transferring all of Tracksides' assets to Trackside Apartments, is further demonstration of Sam and Dom's oppression of Eric and the brothers inability to carry-on together as partners and members.

178. The Court should therefore order dissolution of Trackside and Trackside Apartments—after Eric is declared a 33% partner—so that Eric can receive his rightful share of Trackside and Trackside Apartments' assets and stop Defendants from continuing to deprive Eric of the benefit of his investment.

X. COUNT X — SHAREHOLDER AND DIRECTOR DEMAND TO INSPECT THE BOOKS AND RECORDS OF CELIA CONSTRUCTION

179. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

180. Eric has been a shareholder of Celia Construction since 1993 and was a director of Celia Construction between September 1993 and June 2020.

181. As a shareholder, Eric has a common law right to inspect the books and records of Celia Construction for a proper purpose. Additionally, under New York Business Corporation Law § 624, Eric is entitled to copies of all meeting minutes and shareholder information.

182. On February 28, 2020, Eric sent the February Demand for various categories of documents geared toward investigating misconduct by Celia Construction management and determining the value of his shares.

183. "[I]nvestigating alleged misconduct by management and obtaining information that may aid legitimate litigation" are "proper purposes" for a books and records request under "the common-law." *Ret. Plan for Gen. Employees of City of N. Miami Beach v. McGraw-Hill Companies, Inc.*, 92 N.Y.S.2d 220, 223-24 (1st Dep't 2014).

184. Defendants repeatedly balked and refused to produce the requested documents.

185. In the April Letters Eric also requested Celia Construction's documents in his capacity as a director. But instead of producing the requested documents or giving Eric the full access to the Company's books and records, Sam and Dom removed Eric as a director.

186. After months of requests Celia Construction only produced a small fraction of the requested documents.

187. Eric was denied access to important Company records that he was legally entitled to inspect. The Court should order the production of the books and records requested in the February Demand and the April Letters.

XI. COUNT XI — ACCOUNTING OF CELIA CONSTRUCTION

188. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

189. Eric is a shareholder of Celia Construction.

190. Sam and Dom are officers and directors of Celia Construction and owe a fiduciary duty to Eric as a minority shareholder.

191. Defendants have complete control over Celia Construction's books and records but have repeatedly refused to produce basic Company records—including tax returns, the general ledger, and payroll records.

192. Even the financial statements Defendants did produce concealed critical information about Celia Construction's assets and expenses—including the nature and purpose of Sam and Dom's apartment, the employment of Sam and Dom's immediate family members, and the fair value of Waterloo.

193. Because of Defendants refusal to produce the requested documents and Company accounting, Eric has been unable to determine the value of his shares and the full extent of damages resulting from Sam and Dom's wrongdoing.

194. As a result, Eric is entitled to a full and formal accounting of Celia Construction.

XII. COUNT XII — PARTNER DEMAND TO INSPECT THE BOOKS AND RECORDS OF TRACKSIDE, TRACKSIDE APARTMENTS, OR ANY SUCCESSOR ENTITY

195. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

196. Eric has been a partner in Trackside since at least 2010.

197. As a partner, Eric has a common law right to inspect the books and records of Trackside for a proper purpose. Additionally, under New York Partnership Law §121-106, Eric is entitled to copies of the limited partnership's federal, state, and local income tax or information returns and reports, if any, for the three most recent fiscal years.

198. On February 28, 2020, Eric sent the February Demand for various categories of documents geared toward investigating misconduct by Trackside management and determining the value of his interest.

199. Defendants refused to produce any Trackside documents in response to the February Demand.

200. In the Fall of 2020, Sam and Dom transferred all of Trackside's assets to a new entity they formed and controlled, Trackside Apartments, and—after the initiation of this action—dissolved Trackside. Trackside Apartments is, therefore, a mere continuation of Trackside and Eric is entitled to Trackside Apartments' books and records.

201. Eric was denied access to Trackside's records that he was legally entitled to inspect. The Court should order the production of the books and records requested in the February Demand.

XIII. COUNT XIII — FRAUDULENT TRANSFER AGAINST TRACKSIDE AND TRACKSIDE APARTMENTS

202. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

203. On February 28, 2020, Eric sent the February Demand for various categories of documents geared toward investigating Sam and Dom's refusal to include him as an equal partner in Trackside and other misconduct, and determining the value of Eric's interest in Trackside.

204. On March 10, 2020, Evans responded to the February Demand by denying that Eric was a partner in Trackside—despite the years of K-1s Eric had received stating he was a partner.

205. Two weeks later, on March 24, 2020, Evans formed Trackside Apartments on Sam and Dom's behalf.

206. On September 18, 2020, Eric initiated this action with a Summons with Notice setting forth Eric's claims for his full interest in Trackside, distributions owed to him from Trackside, and refusal to produce demanded books and records—among other claims.

207. On information and belief, shortly thereafter, Sam and Dom caused Trackside to transfer all of its assets to Trackside Apartments for no consideration or grossly inadequate consideration.

208. After the transfer, Trackside was left with little or no assets. And on November 12, 2020, Sam and Dom filed to dissolve Trackside. Trackside is therefore unable to pay Eric for his claims against it.

209. The purpose of the asset transfer and dissolving of Trackside was to shield Trackside's assets from Eric and prevent Eric from enforcing his rights in, and claims against, Trackside.

210. The transfer of Trackside's assets to Trackside Apartments was, therefore, a voidable fraudulent transfer under New York Debtor and Creditor Law §§ 273(a)(1) and 274(a).

211. The Court should take all available steps to remedy this fraudulent transfer, including voiding the transfer, attaching Eric's claims against Trackside Apartment's assets, and

issuing an injunction to prevent further transfers of Trackside Apartment's assets and award Plaintiff attorney's fees.

XIV. COUNT XIV — IMPOSITION OF A CONSTRUCTIVE TRUST OVER THE ASSETS FRAUDULENTLY TRANSFERRED TO TRACKSIDE APARTMENTS

212. Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs, as though fully stated herein.

213. Sam and Dom, as managing and majority partners of Trackside, owe Eric fiduciary duties.

214. Pursuant to the First and Second Oral Agreements, Eric contributed thousands of hours of surveying, civil engineering, and architectural engineering for the Trackside Project and directed all work and requirements for the town planning boards, zoning boards, and various county agencies.

215. Eric provided these services in reliance on the express promise of Sam and Dom that when Santo passed away, they would make Eric an equal partner in Trackside.

216. In violation of this promise, Sam and Dom refused to make Eric partner and when Eric pressed his claim through this lawsuit, they fraudulently transferred Trackside's assets to Trackside Apartments.

217. Trackside's assets were generated—in part—by the services Eric provided and the fraudulent transfer of those assets have unjustly enriched Trackside Apartments and, by extension, Sam and Dom.

218. The Court should find and impose a constructive trust—for the benefit of Eric—over all the assets that Trackside transferred to Trackside Apartments.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully demands preliminary and permanent injunctive relief, disgorgement of ill-gotten gains, common-law dissolution of Celia Construction and Trackside/Trackside Apartments, imposition of a constructive trust on the assets of Trackside Apartments, damages of at least $5,515,595 plus interest and attorney fees, and any other relief the Court deems just and proper.

Dated: New York, NY
February 9, 2021

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