

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

-----X	)	
SIMON LEE,	)	INDEX NO.: 650214/2019
	)	
Plaintiff,	)	<b><u>SUMMONS</u></b>
	)	
- against -	)	
	)	The bases of venue are:
	)	
JOO SUK PARK,	)	CPLR 503(a): Defendant
KI YOUNG KIM,	)	Ki Young Kim resides in
KI WAN KIM,	)	New York County
and 11 W 32, INC.	)	
	)	CPLR 503(c): Defendant
Defendants.	)	11 W 32, INC.'s principal
	)	office is located at 11 W 32
-----X	)	St, New York, NY


TO THE ABOVE NAMED DEFENDANT(S):

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

Dated: New York, New York  
January 11, 2019

Yours, etc.

ELLENBERG GANNON HENNINGER  
FITZMAURICE & LIM, LLP

By:   
Charles Lim, Esq.  
494 Eighth Avenue, 7<sup>th</sup> Floor  
New York, NY 10001  
(212) 629-8585

To:

JOO SUK PARK  
11 W 32 St., 3<sup>rd</sup> Floor  
New York, NY 10001

KI YOUNG KIM  
11 W 32<sup>nd</sup> St., 3<sup>rd</sup> Floor  
New York, NY 10001

KI WAN KIM  
11 W 32<sup>nd</sup> St., 3<sup>rd</sup> Floor  
New York, NY 10001

11 W 32, INC.  
11 W 32<sup>nd</sup> St., 3<sup>rd</sup> Floor  
New York, NY 10001

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

-----X	)	
SIMON LEE,	)	INDEX NO.: 650214/2019
	)	
Plaintiff,	)	<b>VERIFIED</b>
	)	<b><u>COMPLAINT</u></b>
- against -	)	
	)	
JOO SUK PARK,	)	
KI YOUNG KIM,	)	
KI WAN KIM,	)	
and 11 W 32, INC.	)	
	)	
Defendants.	)	
	)	
-----X	)	

Plaintiff, SIMON LEE, by his attorneys, Ellenberg Gannon Henninger Fitzmaurice & Lim, LLP, as and for a Verified Complaint against Defendants JOO SUK PARK, KI YOUNG KIM, KI WAN KIM, and 11 W 32, INC. alleges as follows upon information and belief:

1. Plaintiff brings this action to enforce an oral partnership agreement between the plaintiff and the defendants, to prevent the defendants from distributing to themselves the partnership profits of 11 W 32, INC.'s business operation of MARU, at the exclusion of plaintiff, and at the expense of plaintiff's equitable share of the profits, and to prevent defendants from continuing such practice. This action is necessitated by defendants' failure and refusal to purchase plaintiff's 25% partnership interest in the business operations of 11 W 32, INC., and distribute to plaintiff his 25% share of the profits of the business operations of 11 W 32, INC. since February 1, 2018.

**PARTIES**

2. At all times hereinafter mentioned, plaintiff SIMON LEE (hereinafter "LEE") was and is a resident of the State of New Jersey, Town of Palisades Park.

3. Upon information and belief, at all times hereinafter mentioned, defendant JOO SUK PARK (hereinafter “PARK”) was and still is a resident of the State of New Jersey, Town of Palisades Park.

4. Upon information and belief, at all times hereinafter mentioned, defendant KI WAN KIM (hereinafter “KW KIM”) was and still is a resident of the State of New Jersey, County of Bergen.

5. Upon information and belief, at all times hereinafter mentioned, defendant KI YOUNG KIM (hereinafter “KY KIM”) was and still is a resident of the State of New York, County of New York.

6. Upon information and belief, 11 W 32, INC. is a domestic corporation duly organized and incorporated under the laws of the State of New York with a principal place of business located at 11 W 32<sup>nd</sup> Street, 3<sup>rd</sup> and 4<sup>th</sup> Floors, New York, NY 10001.

7. Upon information and belief, 11 W 32, INC. owns and operates a nightlife venue called “Maru Karaoke Lounge” (hereinafter “MARU”) which contains 2 bars, a karaoke lounge and 6 separate karaoke rooms, and is located at 11 W 32<sup>nd</sup> Street, 3<sup>rd</sup> and 4<sup>th</sup> Floors in the County of New York, State of New York.

8. Upon information and belief, since March 1, 2015, LEE, PARK, KW KIM and KY KIM were in partnership with each other with regard to the management of the business, operations and ventures of 11 W 32, INC., until April 30, 2018, when PARK, KW KIM and KY KIM purported to remove LEE as a partner in the management of 11 W 32, INC.

### **BACKGROUND**

9. On or about August 8, 2011, Defendants KW KIM and KY KIM formed 11 W 32, INC.

10. On or about August 8, 2011, Defendants KW KIM and KY KIM duly organized and registered 11 W 32, INC. as a corporate entity with the New York State Department of Corporations.

11. Defendants KW KIM and KY KIM through 11 W 32, INC. began operating a business called MARU, a 2-floor karaoke lounge and bar, located at 11 W 32<sup>nd</sup> St., 3<sup>rd</sup> and 4<sup>th</sup> Floors, New York, NY 10001 on or about August 8, 2011.

12. Upon information and belief, 11 W 32, INC. does not own any other businesses except MARU.

13. Prior to August 2011, Defendants KW KIM and KY KIM had no prior relevant background in owning, running, managing or operating a nightlife business, event space, lounge, restaurant, bar or karaoke lounge.

14. Consequently, from August 2011 through 2013, MARU and therefore, 11 W 32, INC., was not profitable, and in fact, incurred financial losses.

15. During the month of June 2013, KW KIM and KY KIM discussed with LEE developing a new business model and a new rebrand of MARU to make it profitable.

16. During the month of June 2013, LEE and KW KIM and KY KIM agreed that LEE would be given the role of growing MARU's business and prevent its further financial losses, while being responsible for MARU's day to day operations; and that LEE would initially forego any monetary compensation in exchange for taking on this role; and that if LEE was able to succeed in turning MARU into a profitable venture, LEE would be given a partnership interest in the management of MARU.

17. Plaintiff LEE took responsibility of the day to day operations of MARU on July 1, 2013.

18. As a result of LEE's performance in managing the day to day operations of MARU, from July 1, 2013 to March 2015, MARU went from unprofitable to profitable.

19. On or about March 1, 2015, Defendants KW KIM and KY KIM entered into an oral partnership agreement with Plaintiff LEE, wherein Plaintiff LEE became a principal and a managing partner of MARU, with a 25% partnership interest in the management of 11 W 32, INC.'s business operation of MARU in exchange for Plaintiff LEE agreeing to continue to invest his time, skill, knowledge and effort, and to continue to maintain the business operation of MARU profitable, as LEE had been doing since July 2013, and that this partnership agreement would remain effective until the partners agreed that 11 W 32, INC would sell MARU's business operations.

20. As part of the March 2015 agreement between Defendants KW KIM and KY KIM and Plaintiff LEE, at Plaintiff LEE's request, Defendant PARK became a 25% partner in the profits of 11 W 32, INC.'s venture of MARU, which the partnership managed.

21. As part of the March 2015 agreement between the parties, Defendants KW KIM and KY KIM also each became 25% partners of MARU.

22. At all relevant times, Defendant PARK, managed all the accounting and books of MARU, including the preparation of profit and loss statements, which he then distributed to Plaintiff LEE and Defendants KW KIM, KY KIM.

23. PARK was also responsible for the hiring and firing of all employees, creating work schedules, payroll, and all accounting pertaining to MARU.

24. From July 1, 2013 to April 30, 2018, Plaintiff LEE contributed considerable time, skill, knowledge and effort to the partnership and business operations of MARU.

25. From July 1, 2013 to April 30, 2018, Plaintiff LEE exercised a level of control over



MARU including, but not limited to, managing the business operations of MARU, developing a new identity for the business, redesigning the premises, spearheading the marketing, training personnel, regulating inventory, controlling business hours, streamlining operating protocols, and having the authority to determine when 11 W 32, INC. and the partners of MARU could sell its MARU business operations to another buyer.

26. From July 1, 2013 to April 30, 2018, Plaintiff LEE used his resources, contacts and networks to substantially grow the number of paying customers of MARU.

27. From July 1, 2013 to April 30, 2018, Plaintiff LEE was responsible for the rebranding of 11 W 32, INC. which contributed to a growth in the number of paying customers of MARU.

28. From July 1, 2013 to April 2018, LEE's contribution of time, skill, knowledge and effort into the management of MARU, caused MARU to become profitable and its gross profit margins to grow considerably.

29. From July 1, 2013 to April 30, 2018, Plaintiff LEE succeeded in developing and building a successful business model that is currently MARU.

30. From July 1, 2013 to March 2015, Plaintiff LEE shared in the losses of MARU's business operations as evidenced by his agreement to forego any payment, distribution or remuneration of any kind from July 1, 2013 to March 2015.

31. From March 2015 to January 2018, LEE, PARK, KW KIM and KY KIM each shared equally (25% each) in the profits derived from their management and operation of MARU for 11 W 32, INC.

32. From March 2015 to January 2018, Plaintiff LEE's monthly share in the profits ranged from \$4,000 to \$35,000.

33. On April 30, 2018, Defendants KW KIM, KY KIM and PARK decided to exclude Plaintiff LEE from their partnership and the profits it generated.

34. On April 30, 2018, Defendants KW KIM, KY KIM and PARK purported to remove LEE as a partner of MARU.

35. As the owner of 25% of interest in the partnership and business operations of managing MARU, LEE was and still is entitled to receive 25% of the distributed profits of MARU since February 1, 2018.

36. As the owner of a 25% interest in the partnership and business operations of managing MARU, LEE was and still is entitled to receive 25% of the distributed profits of MARU until MARU is sold to another buyer with LEE's permission.

37. Since February 1, 2018, KW KIM, KY KIM, PARK and 11 W 32, INC. have not paid LEE any distributed profits from MARU's business operations, and upon information and belief, KW KIM, KY KIM, PARK and 11 W 32 INC. intend to not pay LEE any distributed profits from MARU's business operations in the future.

38. Upon information and belief, since February 1, 2018, KW KIM, KY KIM, PARK and 11 W 32, INC. have distributed to KW KIM, KY KIM and PARK the profits of MARU's business operations, to the exclusion of LEE and at the expense of LEE's entitlement to 25% share of the profits, and will continue to do so in the future.

**FIRST CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(BREACH OF CONTRACT)**

39. Plaintiffs repeat the allegations of the above paragraphs 1 through 38 as if fully set forth herein.

40. Plaintiff LEE entered into a binding agreement with Defendants KW KIM, KY



KIM, PARK and 11 W 32, INC.

41. This agreement was supported by valuable consideration.

42. Defendants KW KIM, KY KIM, PARK and 11 W 32, INC. intentionally breached this agreement.

43. More specifically, since April 30, 2018 to up to and including the present, KW KIM, KY KIM, PARK and 11 W 32, INC. breached the terms of the March 2015 Agreement in that, among other things, (i) KW KIM, KY KIM, PARK and 11 W 32, INC. purported to remove LEE as a principal and partner in the partnership managing MARU for 11 W 32, INC. without any legitimate cause or basis; (ii) KW KIM, KY KIM and PARK distributed profits of the partnership managing the business operations of MARU for 11 W 32, INC. to themselves, to the exclusion of LEE; and (iii) KW KIM, KY KIM and PARK have denied LEE access to MARU to perform his responsibilities as a principal and managing partner.

44. As a result of KW KIM, KY KIM, PARK and 11 W 32, INC.'s various breaches, Plaintiff has suffered damages and will continue to suffer damages in the future, including, but not limited to, loss of investment, loss of return on investment, loss of opportunities to make substantial profits, inability to realize a fair price for the sale of his partnership interest in MARU, in an amount to be proved at trial, but believed to be in excess of \$1,000,000.

45. Accordingly, Defendants KW KIM, KY KIM, PARK and 11 W 32, INC. are liable for breach of contract.

**SECOND CAUSE OF ACTION  
AGAINST ALL DEFENDANTS  
(UNJUST ENRICHMENT/QUANTUM MERUIT)**

46. Plaintiffs repeat the allegations of the above paragraphs 1 through 45 as if fully set forth herein.

47. Defendants KW KIM, KY KIM and PARK have diverted to themselves LEE's partnership interest and profits in the entity managing the business operations of MARU for 11W 32, INC. belonging or owing to LEE, and have thereby enriched themselves.

48. The enrichment was at Plaintiff's expense.

49. Plaintiff has no adequate remedy at law.

50. The circumstances are such that equity and good conscience require Defendants to make restitution, in an amount to be proved at trial, but believed to be in excess of \$1,000,000.

WHEREFORE, Plaintiff LEE demands judgment as follows:

a) On the FIRST CAUSE OF ACTION (BREACH OF CONTRACT), judgment against Defendants KW KIM, KY KIM, PARK and 11 W 32, INC. for the following relief: (1) specific performance of the contract; (2) alternative to specific performance, money damages in the amount of \$1,000,000 in actual, compensatory and expectation damages;

b) On the SECOND CAUSE OF ACTION (UNJUST ENRICHMENT), judgment against Defendants KW KIM, KY KIM, PARK and 11 W 32, INC. for the following relief: (1) specific performance of the contract; alternative to specific performance, money damages in the amount to be determined at trial but not less than \$1,000,000.

c) enjoining Defendants KW KIM, KY KIM and PARK from removing or destroying any property or records of 11 W 32 INC., including, but not limited to, papers, documents, notes, books, records, checkbooks, bank statements, point of sales reports, merchant statements, payroll records, time clock reports, employee schedules and rosters, insurance documents, banks statements, profit and loss balance sheets, loan documents used for the purchase of and collateralization of Maru, invoices, desks, computers (including laptop computers), file

cabinets, safes, and other furnishings or inventory (furniture, sound equipment, liquor, etc.);

d) for such other and further relief, together with the above relief, that this Court issue a judgment against all Defendants for costs, fees, attorneys fees and interest and such other legal or equitable relief that is appropriate.

Dated: New York, New York  
January 11, 2019

Yours, etc.

ELLENBERG GANNON HENNINGER  
FITZMAURICE & LIM, LLP

By: 

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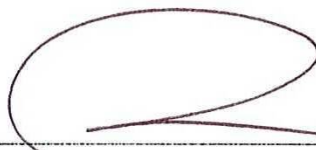
Charles Lim, Esq.  
494 Eighth Avenue, 7<sup>th</sup> Floor  
New York, NY 10001  
(212) 629-8585

VERIFICATION


STATE OF NEW JERSEY       )  
                                          )  
COUNTY OF BERGEN       )       SS.:

SIMON LEE being duly sworn, deposes and says:

I am the plaintiff in the within action. I have read the foregoing Verified Complaint, dated January 11, 2019 and know the contents thereof. The same is true to my knowledge, except as to matters stated to be based on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
SIMON LEE

Sworn to before me this  
15 day of January 2019

  
\_\_\_\_\_  
Notary Public

