

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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NANCY SHUNKUEN NG, individually and
derivatively on behalf of ASQUARED GROUP, INC.
as Successor in Interest to KYOTO
RESTAURANT INC. and KYOTO DINING
GROUP INC.,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

ASQUARED GROUP, INC. as Successor in Interest to
KYOTO RESTAURANT INC. and KYOTO DINING
GROUP INC., XYZ CORP. a fictitious corporation
name intending same to be a successor in interest to
ASQUARED GROUP, INC d/b/a MIRA SUSHI a/k/a
MIRA SUSHI & IZAKAYA, and ANDY LEE,

Defendants.

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Plaintiff, NANCY SHUNKUEN NG (“NANCY”), Individually and Derivatively on
behalf of ASQUARED GROUP, INC. as Successor in Interest to KYOTO RESTAURANT INC.
and KYOTO DINING GROUP INC. (collectively the “Companies”), by her attorneys, WHITE,
CIRRITO & NALLY, LLP, as and for her Verified Complaint, respectfully alleges as follows:

NATURE OF THE ACTION

1. This is an action for damages stemming from the wrongful and illegal acts
perpetrated by Defendant ANDY LEE (“LEE”), with respect to the closely held corporations
KYOTO RESTAURANT INC. (“KRI”) and KYOTO DINING GROUP INC. (“KDG”), each of
which Plaintiff is a twenty-five (25%) percent shareholder and Defendant LEE is a seventy-five
(75%) shareholder.

2. This action arises out of, among other things, the Defendant’s gross
misappropriation of the KRI’S and KDG’S assets, Defendant’s purported transfer for no

consideration of all of KRI'S and KDG'S assets to ASQUARED GROUP, INC. in an attempt to freeze out Plaintiff NANCY, his breach of fiduciary duty, fraud, waste, conversion, unjust enrichment and negligence.

3. In addition, this action seeks an accounting of the books and records and all relevant information contained therein of the Companies, which has yet to be provided to the Plaintiff, a constructive trust, and injunctive relief to prevent further waste and mismanagement.

PARTIES

4. Plaintiff NANCY SHUNKUEN NG is a natural person residing in the County of Somerset, State of New Jersey.

5. Upon information and belief, ASQUARED GROUP INC. is a domestic corporation existing and authorized to conduct business pursuant to the laws of the State of New York, is the successor in interest to KYOTO RESTAURANT INC. and KYOTO DINING GROUP INC. and has a principle place of business located at 153-11 Union Turnpike, Flushing, County of Queens, State of New York.

6. Upon information and belief, XYZ CORP. is a fictitious corporation name intending same to be a successor in interest to ASQUARED GROUP, INC d/b/a MIRA SUSHI a/k/a MIRA SUSHI & IZAKAYA which name(s) are unknown to Plaintiff at this time, and is a domestic corporation existing and authorized to conduct business pursuant to the laws of the State of New York, and has a principle place of business located at 153-11 Union Turnpike, Flushing, County of Queens, State of New York.

7. Upon information and belief, Defendant ANDY LEE is a natural person residing in the County of Queens, State of New York.

BACKGROUND

8. Eddie Choi, Andy Lee and Sau Lai Chan formed a partnership (“Kyoto Partnership”) on October 10, 2004, to run a Japanese restaurant located at 153-11 Union Turnpike, Flushing, New York (“Restaurant”). A copy of the Kyoto Partnership agreement is annexed hereto as Exhibit “A”.

9. Based upon his contribution of \$67,500.00 to the partnership, Eddie Choi held a twenty-five (25%) percent interest in the partnership.

10. Plaintiff is Eddie Choi’s mother.

11. Thereafter, in or about February 19, 2009, the parties formed KYOTO DINING GROUP, INC. This corporation was formed to operate a new restaurant located at 153-15 Union Turnpike, Flushing, New York (“New Restaurant”) next door to the Restaurant.

12. Per the shareholder agreement executed on April 21, 2010, Plaintiff is a twenty-five (25%) percent shareholder of KYOTO DINING GROUP, INC.

13. The Kyoto Partnership then converted into a corporation KYOTO RESTAURANT INC., which incorporated on January 7, 2010, and continued the operation of the Restaurant. Per the shareholder agreement executed on April 21, 2010, Plaintiff is a twenty-five (25%) percent shareholder of KYOTO RESTAURANT, INC.

14. The corporations operated the restaurants and Plaintiff would receive statements as a shareholder. The statements stopped in January, 2015. When the Plaintiff confronted the seventy-five (75%) percent shareholder, Andy Lee, he told Plaintiff that he was being sued by employees. He later told Plaintiff that the restaurants were not making money.

15. Upon information and belief, the restaurant has had a gross revenue in excess of \$200,000 per/month for the past three (3) years and remains exceedingly profitable.

16. Plaintiff learned that in April, 2013, Andy Lee formed a corporation ASQUARED GROUP, INC. A copy of the Secretary of State entity information for ASQUARED GROUP, INC. is annexed hereto as Exhibit "B".

17. ASQUARED GROUP, INC. is and has been performing the exact same function as KYOTO RESTAURANT, INC. and KYOTO DINING GROUP, INC. were, i.e. the operation of the restaurants. Andy Lee simply switched the operation of the restaurants into the name of this new corporation, ASQUARED GROUP, INC., so that he could freeze out the Plaintiff, a twenty-five (25%) percent shareholder of each of KYOTO RESTAURANT, INC. and KYOTO DINING GROUP, INC. (collectively "KYOTO Corporations").

18. Plaintiff was never notified of any sale of the KYOTO Corporations' assets, or of a transfer of any interest of the KYOTO Corporations. Plaintiff was never notified of any vote or meeting to be held regarding transferring the KYOTO Corporations' assets.

19. Upon review of the Secretary of State's Corporate Entity database, Plaintiff learned that Andy Lee had dissolved KYOTO DINING GROUP, INC. on January 15, 2014, and had dissolved KYOTO RESTAURANT, INC. on February 20, 2015. Plaintiff was never notified that the corporations of which she is a twenty-five (25%) percent shareholder were being dissolved, nor did Plaintiff receive anything related to any winding down of the KYOTO Corporations which may have taken place.

20. ASQUARED GROUP, INC. is, for all intents and purposes, simply a continuation of the KYOTO Corporations under a different name, the only difference being that Plaintiff has been frozen out of the operation of the corporation.

21. The corporate books and records of ASQUARED and the KYOTO Corporations are under the exclusive care and control of Andy Lee and upon information and belief are

maintained at the corporate offices located at 153-11 Union Turnpike, Flushing, New York 11367.

22. The Plaintiff has been requesting access to the books and records of the ASQUARED and the KYOTO Corporations but Andy Lee has refused. These requests have been refused with no further explanation or communication.

23. Simultaneously with the commencement of this derivative action, the Plaintiff has also commenced a special proceeding to compel ANDY LEE and the Corporations to produce the Corporations' books and records.

24. Upon information and belief, Defendant ANDY LEE has transferred the Restaurant into the name of a different entity and has changed the name of the Restaurant to Mira Sushi a/k/a Mira Sushi & Izakaya in an attempt to further distance himself and the Restaurant from Plaintiff.

**AS AND FOR A FIRST CAUSE OF ACTION
INDIVIDUAL AND DERIVATIVE CLAIM FOR
BREACH OF FIDUCIARY DUTY AGAINST ANDY LEE**

25. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1-24 herein as if more fully set forth at length herein.

26. As an officer and seventy-five (75%) percent shareholder of the Companies, ANDY LEE at all relevant times owed fiduciary obligations to the Plaintiff and the Companies. By reason of his fiduciary relationship ANDY LEE owed the Plaintiff the highest obligations of good faith, fair dealing, loyalty and due care.

27. As officer and seventy-five (75%) percent shareholder of the Companies, ANDY LEE was in a position of superior knowledge and had a duty to disclose to the Plaintiff all of the material facts related to the operation and control of the Companies.

28. As an officer and seventy-five (75%) percent shareholder of the Companies, ANDY LEE was to conduct himself in good faith in accordance with his fiduciary responsibility to the Companies and the Plaintiff, as a shareholder of the Companies.

29. The conduct of ANDY LEE, including but not limited to the conduct described herein constitute the blatant breach of ANDY LEE's fiduciary obligations to the Companies and to the Plaintiff, as a shareholder of the Companies.

30. ANDY LEE's conduct, described in more detail herein, constitutes fiduciary violations which include but are not limited to (a) issuance of distributions and other monies to himself from the account of the Company and by failing to pay any money whatsoever to its other shareholder; (b) conversion and misappropriation of the funds of the Companies for his personal use; (c) corporate waste and mismanagement; (d) failure to provide Plaintiff with the books and records to which Plaintiff is entitled under the under the New York Business Corporation Law and the common law; (e) failure to conduct himself in good faith; (f) failure to act in accordance with his fiduciary responsibilities to the Company and its members; (g) failure to pay wages to employees of the Companies compliant with the Fair Labor Standards Act and New York Labor Law leading to a lawsuit in the United States District Court for the Eastern District of New York under case number 2:15-07398-DLI-JO.

31. As a direct and proximate result of ANDY LEE's fiduciary violations, Plaintiff has been damaged in an amount to be determined at trial.

32. Moreover, due to the willful and wanton criminal nature of ANDY LEE's acts conducted without any regard to Plaintiff's rights, Plaintiff is entitled to punitive damages in an amount to be proven at trial, but in no event less than FIFTY MILLION (\$50,000,000.00) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION
DERIVATIVE CLAIM FOR WASTE AGAINST
ANDY LEE**

33. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 32 herein as if more fully set forth at length herein.

34. ANDY LEE's actions detailed herein as an officer and seventy-five (75%) percent shareholder of the Companies were for improper purposes and conducted in an unlawful manner.

35. ANDY LEE acted without the knowledge of Plaintiff and did so to the exclusion of the Plaintiff.

36. ANDY LEE's actions to simply transfer all of the assets of the KYOTO Corporations into the name of ASQUARED GROUP for no consideration resulted in a loss to the KYOTO CORPORATIONS and constituted a waste of the assets of the Companies.

37. ANDY LEE'S actions to fail to pay wages to employees compliant with the FLSA and NYLL resulting in a lawsuit constitutes a further waste of assets of the Companies.

38. By reason of the foregoing, the Companies have suffered damages in an amount to be determined at trial.

**AS AND FOR A THIRD CAUSE OF ACTION
DERIVATIVE CLAIM FOR CONVERSION AGAINST
ANDY LEE**

39. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 38 herein as if more fully set forth at length herein.

40. The money ANDY LEE paid to himself from the Company to which he was not entitled, did not belong to ANDY LEE, but, rather, belonged to the Company and to the Plaintiff as its member.

41. ANDY LEE committed the wrongful acts described herein without authority to do so.

42. ANDY LEE committed these acts intentionally and without Plaintiff's knowledge and has interfered with Plaintiff's rights to possess the converted funds and assets of the Company.

43. By reason of the foregoing, the Company has been damaged in an amount to be determined at trial and due to the intentional and deliberate and malicious nature of the conversion, the Company is entitled to punitive damages in an amount to be determined at trial but in no event less than FIFTY MILLION (\$50,000,000) DOLLARS.

**AS AND FOR A FOURTH CAUSE OF ACTION
DERIVATIVE CLAIM FOR UNJUST ENRICHMENT AGAINST
ANDY LEE**

44. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 43 herein as if more fully set forth at length herein.

45. For the reasons described herein, ANDY LEE enriched himself by utilizing Company funds for his own personal benefit and paying himself distributions and other monetary payments to the exclusion of the other member and to the exclusion of the Company.

46. ANDY LEE's unjust enrichment was at the expense of the Company and Plaintiff, who has not received any monies from the Company.

47. The circumstances are such that equity and good conscience should not permit ANDY LEE to keep said funds and should require ANDY LEE to pay the Company all amounts he wrongfully appropriated.

48. By reason of the foregoing, the Plaintiff has been damaged in an amount to be determined at trial and seeks a declaration that the Company is entitled to a pro rata ownership

interest in any of the assets purchased by ANDY LEE with the monies derived from the mortgage loan and other profits of the Company.

**AS AND FOR A FIFTH CAUSE OF ACTION
DERIVATIVE CLAIM AGAINST
ANDY LEE and OTHER AS OF YET UNKNOWN LLCs, CORPORATIONS OR
OTHER ENTITIES SEEKING A CONSTRUCTIVE TRUST**

49. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 48 herein as if more fully set forth at length herein.

50. Based upon the foregoing, the Company is entitled to have a constructive trust imposed upon ANDY LEE or other entities owned or controlled by ANDY LEE to be found to have benefited from the assets, profits and business opportunities of Plaintiff and/or the Company.

**AS AND FOR A SIXTH CAUSE OF ACTION
DERIVATIVE CLAIM FOR AN ORDER ENJOINING
ANDY LEE FROM ACTING AS MANAGER OR MANAGING MEMBER**

51. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 50 herein as if more fully set forth at length herein.

52. As detailed herein, ANDY LEE has blatantly disregarded the Companies' well-being and corporate form by choosing, instead, to treat the Company as his own personal piggy bank.

53. As a result, the Company is entitled to a permanent injunction removing ANDY LEE from acting as a manager and/or managing member of the Company.

54. As described herein, ANDY LEE has inflicted massive harm upon the Company spending all of the Company's rents and profits on himself, and his conversion in refusing to produce to Plaintiff documents regarding the Company's books and records.

55. That without injunction, there is no doubt that ANDY LEE will continue to act in this manner and enrich himself at the expense of the family and its members, and will continue to conceal his actions.

56. There is no adequate remedy at law to address the severe and ongoing mismanagement of the Company.

57. For reasons set forth herein, the balance of equities favors the Company and by reason herein, the Company is entitled to a permanent injunction be imposed upon ANDY LEE from acting as manager or managing member of the Company.

**AS AND FOR A SEVENTH CAUSE OF ACTION
INDIVIDUAL CLAIM FOR ACCOUNTING AGAINST
ANDY LEE AND THE COMPANY**

58. Plaintiff repeats and realleges each and every allegation of the Complaint contained in Paragraphs 1 through 57 herein as if more fully set forth at length herein.

59. Plaintiff has the right to the books and records of the Companies, including all financial information set forth therein.

60. ANDY LEE is an officer and majority shareholder of the Companies and has maintained and continues to possess the books and records of the Companies and has not provided Plaintiff with full access to such books and records to which Plaintiff is lawfully entitled under the New York BCL.

61. That the cost of the continued failure of ANDY LEE to disclose and afford Plaintiff full access to the books and records of the Company deprives the Plaintiff of the knowledge of the financial status of the Companies.

62. The information regarding the financial status of the Companies has been deliberately withheld from Plaintiff by ANDY LEE.

63. ANDY LEE is an officer and majority shareholder of the Companies and at all relevant times owed a fiduciary obligation to NANCY.

64. ANDY LEE has the duty to account and has failed to do so and still has not rendered an accounting of the financial status of the operations of the Companies in accordance with the New York BCL and common law.

65. As a result of the foregoing, the Plaintiff has suffered and will continue to suffer irreparable harm and injury.

66. Plaintiff has no adequate remedy at law.

67. Based upon the foregoing, the Plaintiff is entitled to a full accounting from the Company and ANDY LEE from the inception of the Companies to the present.

WHEREFORE, the Plaintiff prays for the following relief:

a) On the First Cause of Action punitive damages in an amount to be proven at trial, but in no event less than FIFTY MILLION (\$50,000,000.00) DOLLARS;

b) On the Second Cause of Action damages to the Company in an amount to be determined at trial;

c) On the Third Cause of Action punitive damages to the Company in an amount to be determined at trial but in no event less than FIFTY MILLION (\$50,000,000) DOLLARS;

d) On the Fourth Cause of Action a declaration that the Company is entitled to a pro rata ownership interest in any of the assets purchased by ANDY LEE with the monies derived from the mortgage loan and other profits of the Company;

e) On the Fifth Cause of Action declaring that the Company is entitled to have a constructive trust imposed upon ANDY LEE or other entities owned or controlled by ANDY

LEE to be found to have benefited from the assets, profits and business opportunities of Plaintiff and/or the Company;

f) On the Sixth Cause of Action declaring that the Company is entitled to a permanent injunction be imposed upon ANDY LEE from acting as manager or managing member of the Company;

g) On the Seventh Cause of Action declaring that the Plaintiff is entitled to a full accounting from the Company and ANDY LEE from the inception of the Company to the present

h) Awarding the Plaintiff all costs, disbursements and interest, together with reasonable attorneys' fees in this action; and

i) For such other and further relief as to this Court is deemed just and proper.

Dated: Hempstead, New York
October 27, 2016

Yours, etc.,

WHITE, CIRRITO & NALLY, LLP

By: 

MICHAEL L. CIRRITO, ESQ.

Attorneys for Plaintiff

58 Hilton Avenue

Hempstead, New York 11550

(516) 292-1818

VERIFICATION

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

NANCY SHUNKUEN NG, being duly sworn deposes and says:

Deponent is the Plaintiff in the within action and has read the foregoing **COMPLAINT**, knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, deponent believes it to be true.



NANCY SHUNKUEN NG

Sworn to before me this 27
day of October, 2016.



Notary Public

BRITTANY MULCAHY
ID # 50029310
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires Dec. 30, 2020