To be Argued by:
MICHAEL J. MALONEY
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

Docket No.: 2020-06947

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.,

Plaintiff-Respondent,

– 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-Appellants.

BRIEF FOR DEFENDANTS-APPELLANTS

FELICELLO LAW PC
1140 Avenue of the Americas, 9th Floor
New York, New York 10036
(212) 584-7806
mmaloney@felicellolaw.com

Appellate Counsel to:

GRABER LAW FIRM
360 Lexington Avenue, Suite 1502
New York, New York 10017
(212) 877-9009

Attorneys for Defendants-Appellants

Queens County Clerk's Index No. 714168/16

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NATURE OF THE CASE

This appeal involves a dispute between the two shareholders of a restaurant business formed in or around 2004: Eddie Choi ("Mr. Choi") and Defendant Andy Lee ("Mr. Lee"). They formed the venture at adjoining premises located at 153-11 and 153-15 Union Turnpike, Queens, New York. Mr. Lee had 75% ownership, and was to manage all operations. Mr. Choi had 25% ownership. The parties agreed to share in profits and losses according to their respective ownership interests. Despite several changes in corporate form, Mr. Choi's move to China, and the nominal transfer of Mr. Choi's interest to his mother, Nancy Shunken Ng ("Plaintiff"), the shareholders respected the terms of their venture from 2004 through 2015.

Plaintiff brought this action (on Mr. Choi's behalf) in 2016 after the business ceased generating profits. The business's financial problems were due to increased food costs, a rise in the minimum wage, and expenses incurred due to wage and hour violations. Plaintiff sued Mr. Lee for corporate theft, alleging he wrongfully sold the business without Mr. Choi or Plaintiff's knowledge or consent. Plaintiff alleged breach of the shareholder agreements (which included a formula for calculating the "Purchase Price" of Mr. Choi's shares). Most of the claims asserted are derivative claims.

Following a default judgment, the lower court held a damages inquest. At the inquest, Mr. Lee and Asquared Group, Inc. (the post-reorganization entity)

(collectively, "Defendants") submitted proof that Mr. Lee (i) gave Mr. Choi advance notice of the 2014 reorganization; and (ii) after the reorganization, continued to pay Mr. Choi 25% of profits and recognized his continued ownership interest. In a Decision and Order dated May 17, 2010 (the "Decision and Order"), the Supreme Court (Hon. Salvatore J. Modica) awarded Plaintiff (i) $135,208.98 in compensatory damages (ii) $700,000 in punitive damages; and (iii) attorneys' fees, costs and disbursements.

The lower court's findings of fact and conclusions of law should be vacated and reversed. Plaintiff never demonstrated any quasi-criminal conduct to warrant punitive damages. Mr. Choi admitted that Mr. Lee informed him of the intent to reorganize as early as 2013. Mr. Choi and Plaintiff also admitted that after the reorganization, Defendants continued to pay Plaintiff 25% profits and treated her as a continuing owner. This is plainly not a case of corporate theft; it is merely one of shareholder's deadlock once a business ceased being profitable. The company's problem was that Plaintiff refused to take action without Mr. Choi's consent, and Mr. Mr. Choi – living abroad in China – remained unavailable. While the facts may have warranted dissolution per Bus. Corp. Law § 1104(a)(3), they certainly did not warrant punitive damages.

The compensatory damages are also improper because they are based upon conjecture and speculation. The Complaint alleges that Plaintiff's interest was stolen

by way of the reorganization. Plaintiff requested compensatory damages based on a formula in the shareholder agreements that provides for a purchase price based on average monthly "gross sales." However, since no sale of stock ever occurred, Plaintiff tried to calculate compensatory damages based solely on (i) credit card receipts from October 2015 through September 2016; and (ii) Mr. Choi's testimony. These measures are entirely speculative as to "gross sales" because the credit card sales failed to reflect processing fees and other transaction costs and Mr. Choi lacked any personal knowledge of any purported cash sales.

Finally, the lower court erred by granting Plaintiff's motion for judgment on default because Defendants demonstrated a reasonable excuse for their delay and a meritorious defense.

Accordingly, the lower court's decision should be reversed in its entirety. It should be remanded solely for a new trial on compensatory damages.

QUESTIONS PRESENTED

1. Did the lower court err in awarding punitive damages?

   This question should be answered in the affirmative.

2. Did the lower court err in imposing an excessive quantum of punitive damages?

   This question should be answered in the affirmative.

3. Did the lower court err in granting compensatory damages based on conjecture and speculation?

   This question should be answered in the affirmative.

4. Did the lower court err in granting the motion for judgment on default?

   This question should be answered in the affirmative.

STATEMENT OF FACTS

In or around 2004, Mr. Choi and Mr. Lee formed their Japanese restaurant venture in Queens, New York. (Record on Appeal (hereinafter "R_") at 156:22-R157:2, R159:14-R160:1). As described above, Mr. Lee owned 75%, and was the manager of operations, while Mr. Choi owned 25%. (R159:10-13;R178:16-:23;R206:24-R207:6). The parties agreed to share in the profits and losses in accordance with their respective ownership interests. (*Id*.) The evidence and testimony adduced at the inquest demonstrates that they continued to share profits on substantially the same terms from 2004 through 2015, regardless of several changes in the venture's corporate form, and despite the fact that Mr. Choi spent 90% of this time in China.

In or around 2010, Mr. Lee advised Mr. Choi that the restaurant needed to be reorganized. (R156:22-R157:2). Because Mr. Choi was in China, he requested that his mother, Plaintiff, sign the shareholder agreements as the nominal owner of Mr. Choi's 25% interest. (*Id.*; R157:19-R158:25). Plaintiff testified that she signed the agreement because Mr. Choi transferred his interest to her. (*Id*.) Plaintiff stated that she paid no consideration for Mr. Choi's ownership interest. The testimony demonstrates that despite the nominal transfer, Plaintiff took no action to extinguish the 25% interest, and Mr. Choi maintained his shareholder rights. (R210:23-R212:11).

Upon incorporation in 2010, the parties executed two shareholder agreements to correspond to the restaurants' two addresses. Kyoto Restaurant Inc. ("Kyoto Restaurant") nominally operated out of 153-11 Union Turnpike, and Kyoto Dining Group, Inc. ("Kyoto Dining") operated out of the 153-15 Union Turnpike. (The two restaurants are collectively referred to as the "Kyoto Entities"). Both agreements provided that: (i) Mr. Lee would own 75% and manage the restaurant operations; (ii) Plaintiff would own 25%; (iii) no shareholder could transfer his interest without written consent of the other; (iv) in the event of a sale, the purchase price for each shareholder's interest would be his or her respective share times an amount equal to 2.75 times the "average of the gross sales of the last twelve months from the Notice Date" of the sale; and (v) each shareholder would proportionally share all expenses.

Credible testimony shows that after incorporation, Defendants continued to issue Plaintiff and Mr. Choi financial reports and pay them 25% of profits. In or around 2013, Mr. Lee wrote to Mr. Choi about plans to form Asquared, Inc. and reorganize. Mr. Choi acknowledged receiving emails from Mr. Lee in 2013 about the reorganization plans. (R239:20-R240:21). Mr. Choi testified that he did not request access to books and records at that time. (*Id.*)

In or around early 2014, Mr. Lee transferred the assets to Asquared, and dissolved both Kyoto Entities. Mr. Lee concedes he effected the transfer without Plaintiff's written consent but testified that he never sought to deprive Plaintiff of

her 25% interest. Mr. Lee continued to pay her 25% of profits through 2015, and to recognize her (and Mr. Choi) as 25% owners. (*Id*.; R196-R198). Mr. Choi and Plaintiff admit that Defendants continued to pay to Plaintiff 25% of the profits at least through 2015. (R239:20-R240:21). Mr. Lee testified that Plaintiff received no profits after 2015 because the business had to pay increased food costs, increased minimum wage, and expensive wage and hour violations. (R206:6-8). Plaintiff never disputed the fact that the business became unprofitable in 2015. (R239:20-R240:21). When profit-sharing payments ceased, Mr. Choi requested to review the bank statements. Mr. Lee permitted him to do so in person but did not offer to provide electronic copies. (R522). Credible evidence shows Mr. Lee also requested to memorialize Plaintiff's 25% interest in Asquared, Inc. (R522) R210:5-R212:11). Several months later, Mr. Lee requested that Mr. Choi pay 25% of expenses related to the business, including a new lease, but Mr. Choi refused to do so. (R240:6-21). When a new lease was signed, Mr. Lee acted as guarantor. (R214:3-7).

Thus, as of late 2015 to 2016, there existed a stalemate between the two shareholders. In or around September 2016, Mr. Lee sold the assets and operations of the business to an entity named Stellar 153, Inc. (owned by his father's girlfriend), for $50,000 in cash and an interest-free promissory note of $250,000. (R208:6-9; R208:22-24). The note becomes due on October 1, 2021. (R335). Mr. Lee testified that all cash generated from the 2016 sale was used to pay outstanding liabilities of

the business, (R208:6-9; R208:22-24), and that Plaintiff and Mr. Choi are entitled to 25% of the proceeds form the promissory note, (R214:14-16). Plaintiff failed to contest this testimony.

Mr. Choi retained counsel, (R252:19-21), and commenced this action on November 28, 2016 on behalf of his mother, Plaintiff.

PROCEDURAL HISTORY

Plaintiff asserts claims for breach of fiduciary duty, waste, conversion, unjust enrichment, a constructive trust, injunctive relief, and an accounting. The breach of fiduciary duty claim is both direct and derivative. The remaining claims are all derivative.

On December 27, 2017, Plaintiff filed a motion for default judgment. On January 11, 2018, Defendants opposed it, asserting, *inter alia*, that the parties were engaged in settlement discussions and were awaiting a final decision in the wage and hour case (*Zhang Zhong Chen v. Kyoto Sushi, Inc.*, *et al.*, C.A. No. 15-cv-07398 (E.D.N.Y.)). On February 27, 2018, the lower court granted Plaintiff's motion for a default judgment, and ordered a damages inquest. On October 5, 2018, Plaintiff moved to compel discovery, but she withdrew it by stipulation on October 26, 2018.

An inquest was held on May 7, 2019 and June 11, 2019. The parties filed post-inquest submissions on September 25, 2019 and September 27, 2019,

respectively. On March 17, 2020, the lower court issued its Decision and Order. Defendants filed their Notice of Appeal on March 17, 2020.

ARGUMENT

I. THE PUNITIVE DAMAGES AWARD SHOULD BE VACATED AND REVERSED

Punitive damages are proper only upon a showing by clear and convincing evidence of quasi-criminal conduct. *See Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277, 282 (2d Cir. 1990) ("The Supreme Court has ruled that the 'clear and convincing' standard is required by the Due Process Clause in some circumstances and has observed that this standard is appropriate for 'civil cases involving . . . quasi-criminal wrongdoing by the defendant[.]'") (quoting *Addington v. Tex.*, 441 U.S. 418, 424 (1979)); *see also Giblin v. Murphy*, 536 N.Y.S.2d 54, 56 (1988) (requiring a "very high threshold of moral culpability").

There was no evidence that Mr. Lee "stole" Plaintiff's share of the business. Mr. Choi's testimony evidences Mr. Lee's efforts in 2013 to discuss with Plaintiff and her son a transfer of the business to Asquared. Plaintiff and her son both admit that after the 2014 transfer, Defendants continued to pay to Plaintiff 25% profits. The evidence includes Mr. Lee's acknowledgement as late as 2016 that Plaintiff continued to own a 25% interest.

The case might have been ripe for judicial dissolution pursuant to Bus. Corp. Law § 1104(a)(3) (dissolution proper upon "internal dissension and two or more

factions of shareholders are so divided that dissolution would be beneficial to the shareholders."). Plaintiff held the 25% interest in her name but took no action except through her son. Mr. Choi spent 90% of this time in China, was unavailable to discuss corporate affairs, and was unwilling to consent to corporate transactions. Thus, Mr. Lee, the shareholder responsible for the day-to-day operations, faced a stalemate. To permit punitive damages here would be to permit them in ordinary shareholder disputes.

The 2016 sale of the business to Stella 153 fails to support the lower court's findings. The shareholder agreements state that Plaintiff must share in 25% of the expenses of the business. Mr. Choi acknowledged that he declined Mr. Lee's request to contribute additional funds in 2015, when the business faced substantial costs. In short, Mr. Lee sold the business only after Plaintiff refused to contribute her share, and Mr. Lee was unable to meet with Mr. Choi to discuss terms for continuing the business.

Moreover, even though the lower court failed to rule on Plaintiff's claim for a constructive trust over the proceeds of the sale, Plaintiff failed to contest Mr. Lee's testimony that the only cash generated from the sale ($30,000) was used to pay existing liabilities. The buyers' time to perform under the promissory note granted as consideration for the sale has not yet expired and Mr. Lee has testified that Plaintiff is entitled to 25% of the proceeds of the note. (R214:14-16). Accordingly,

Plaintiff failed to adduce evidence that the sale generated any net cash proceeds for the shareholders to split.

The lower court erred in relying on *Giblin v. Murphy*. There, the individual defendants were corporate officers of an entity named Westwood. They surreptitiously formed a no-asset corporation for the purpose of purchasing the assets and operations of Westwood for a small down payment and a promissory note. Following the transaction, the individual defendants caused the buyer to cease payments on the note, resulting in the insolvency of Westwood and losses to its majority shareholder. The Court of Appeals found sufficient evidence of a "very high threshold of moral culpability" and "willful, wanton and reckless conduct" sufficient to warrant punitive damages. *Giblin*, 73 N.Y.2d at 772.

Mr. Choi admitted that Mr. Lee attempted to discuss reorganization with him. Defendants continued to recognize Plaintiff's 25% ownership interest throughout the relevant period. It cannot be said that Mr. Lee utterly denied Plaintiff access to the books and records; Mr. Lee made the requested books and records available to review in person. (R522). A corporation is not required to provide electronic copies of business records over email. *See* Bus. Corp. Law § 624(b) (providing for "examin[ation] in person" of books and records on five days' written demand). And, while Mr. Choi may have been in China, Plaintiff herself was always in the New York area.

"[A]s to a weight of the evidence review of a nonjury determination, the Appellate Division has the power to make new findings of fact. . . ." *Green v. William Penn Life Ins. Co. of N.Y.*, 902 N.Y.S.2d 542, 543-44 (1st Dep't 2010) ("In reviewing a judgment of Supreme Court, the Appellate Division has the power to determine whether a particular factual question was correctly resolved by the trier of facts.") (quoting *Cohen v. Hallmark Cards*, 45 N.Y.2d 493, 498 (1978)). Here, Defendants' conduct plainly did not amount to quasi-criminal conduct as in *Giblin*.

II. THE PUNITIVE DAMAGES AWARD IS EXCESSIVE

The punitive damages itself is also grossly excessive. "It is the duty of the court to keep a verdict for punitive damages within reasonable bounds considering the purpose to be achieved as well as the *mala fides* of the defendant in the particular case." *Faulk v. Aware, Inc.*, 244 N.Y.S.2d 259, 266 (1st Dep't 1963), *aff'd without op.*, 14 N.Y.2d 899; *Manolas v. 303 W. 42nd St. Enters.*, 569 N.Y.S.2d 701, 702 (1st Dep't 1991). "[C]ourts may, of course, exercise their own discretionary authority to overturn an excessive jury verdict and order a new trial unless the plaintiff will consent to a reduction in amount. . . ." *Nardelli v. Stamberg*, 406 N.Y.S.2d 443, 445 (1978); *Coscia v. Jamal*, 2017 NY Slip Op 09114, ¶ 3, 69 N.Y.S.3d 320, 325 (2d Dep't 2017).

The lower court failed to properly consider the motives and lack of *mala fides* on Defendants' part. Plaintiff and her son admitted that Defendants continued to pay

to them profits until 2015, well after the business transferred to Asquared. Mr. Lee made attempts to confirm Plaintiff's continued 25% ownership interest in Asquared. As discussed above, continued operation of the business was impossible given (i) Plaintiff's unwillingness to consent to any corporate transactions without consulting with her son; (ii) Mr. Choi's continued unavailability; and (iii) Mr. Choi's refusal to contribute to expenses in accordance with the parties' long-standing agreement.

"In determining the amount of punitive damages, the trier of fact can properly consider all circumstances immediately connected with the transaction tending to exhibit or explain the motive of the defendant, the harm done to the plaintiff, the wealth of the defendant, and the degree of deterrence resulting from the award. . . ." *Laurie Marie M. v. Jeffrey T. M.*, 559 N.Y.S.2d 336, 342 (2d Dep't 1990). Here, the $700,000 award is plainly excessive.

III. THE COMPENSATORY DAMAGES AWARD SHOULD BE VACATED AND REMANDED FOR FURTHER PROCEEDINGS

Finally, the compensatory damages award is also improper. "New York law does not countenance damage awards based on [s]peculation or conjecture." *Wathne Imports, Ltd. v. PRL USA, Inc.*, 101 A.D.3d 83, 87 (1st Dep't 2012) (internal citation omitted). Even where liability is conceded, a plaintiff still bears the burden of proving any damages "with a reasonable certainty." *City of N.Y. v. State*, 27 A.D.3d 1, 4 (1st Dep't 2005); *76-82 St. Marks, LLC v. Gluck*, 147 A.D.3d 1011, 1013 (1st Dep't 2017).

The business was transferred to Asquared in 2014, and then to Stellar 153 in 2016. Plaintiff alleges in the Complaint that Defendants breached their fiduciary duty by transferring the business from the Kyoto Entities to Asquared in 2014. Yet, at the inquest, Plaintiff failed to present any evidence of the value of her 25% interest as of the date of the transfers to Asquared. Instead, Plaintiff presented limited evidence of restaurant sales as of the Fall 2016 sale from Asquared to Stellar 153.

The lower court made no findings of fact as to which transaction gave rise to the alleged breach of fiduciary duty. The lack of a findings warrants vacatur and remand for a new trial. In light of the testimony and evidence of Defendants' continued receipt of profit distributions in accordance with the original terms of the parties' Shareholder Agreements, and acknowledgement of Plaintiff's continued 25% interest in the business, Plaintiff's decision to seek damages based on the 2016 transfer suggests a waiver on her part of any breach of fiduciary duty based on the 2014 transfer. Such a finding would affect the legal basis for punitive damages. If, however, it is found that the transaction giving rise to the breach of fiduciary duty was the 2014 transfer, then Plaintiff failed to meet her burden of proof with respect to gross sales at the time of that transfer.

A new trial on compensatory damages is also required because the only evidence Plaintiff presented to support the calculation was credit card processing receipts for the restaurant from October 2015 to September 2016, prior to the transfer

to Stellar. Plaintiff argued that this record showed receipts of $1,888,009.12 for an average monthly amount of $157,334.09. Mr. Choi testified that the business received an additional 20% of sales over and above the sales shown on the credit card sales. According to Plaintiff the average monthly total was thus $196,667.62. Plaintiff multiplies this figure by the agreed-upon formula of 2.75 and calculates a buyout price of $540,835.95 for 100% of the restaurant. Plaintiff contends her 25% share is therefore worth $135,208.98.

But on cross-examination, Mr. Choi admitted that he was only speculating as to the amount, if any, of cash sales. (R263:22-R266:14). He was there infrequently because he was living in China. (R266:1-9). Mr. Choi testified that raw credit card data necessarily includes amounts not actually realized by the business as sales, such as tips, sales tax and credit card processing fees. (R280:17-R282:1). Mr. Choi's testimony supports a finding that New York City's 8.875% sales tax is collected through credit card payments at the point of sale but is segregated from sales to the business. (R280:17-R282:1). Sales tax is collected as a trust fund to be remitted to New York City and State and is not a part of gross sales. *See*, *e.g.*, *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433-36 (2d Cir. 1985) (citing Tax Law §§ 1131(1), 1132(a) and 1133). Next, the credit card receivables records on which Plaintiff's calculation is based includes tips of 15-20%, (R283:4-5), which are collected for and paid to servers, but not realized as sales to the business. Finally, the credit card

receipts reflect credit card fees which are retained by the processor and never paid to the restaurant. (R146.3-R146.4). These fees range from 1-2.5% per transaction. (R146.4) Plaintiff failed to present evidence contesting these issues.

The lower court improperly credited Plaintiff with the benefit of any doubt related to the sales transactions because all documentation was "within the exclusive control of Mr. Lee, who failed to provide plaintiff's son with these bank statements and other financial statements." (R29). This statement is incorrect because, as evidenced by Plaintiff's execution of the October 28, 2019 stipulation withdrawing her motion to compel, Mr. Lee agreed to produce all relevant financials and did so. (R119.1) Attesting to this, Plaintiff withdrew her motion. (R119.1) It was therefore erroneous for the court to draw any inference in favor of Plaintiff on the basis that "defendant refused to comply with the requests to examine the corporate bank accounts and expense records" when she was given a full and fair opportunity to request documents, received those documents prior to the inquest, and never raised any other objections to Defendants' production. It cannot be said that Plaintiff's alleged "difficulty faced in calculating damages is attributable to the defendant's misconduct. . . . " *Wolf v. Rand*, 258 A.D.2d 401, 402-03 (1st Dep't 1999).

Instead, the gaps in evidence are attributable to Plaintiff's own neglect in failing to marshal the evidence or hire a forensic expert. The court conceded that "the evidence utilized by the plaintiff to support both credit card sales and cash

receipts was less than ideal. . . .” (R29). The lower court’s contradictory statement that Plaintiff’s “calculations were hardly unreasonable when viewed from the perspective that they relate to restaurants in New York City that have been in business for at least 10 years, and continue to be in operation,” (R29-R30), represents nothing less than *sua sponte* conjecture and speculation for the purpose of filling in gaps in Plaintiff’s insufficient proof.

Accordingly, the compensatory damages award should be vacated and remanded for further proceedings.

IV. THE MOTION FOR JUDGMENT ON DEFAULT SHOULD BE VACATED

“To defeat a facially sufficient CPLR 3215 motion, a defendant must show either that there was no default, or that it had a reasonable excuse for its delay and a potentially meritorious defense.” *Liberty Cty. Mut. v. Ave. I Med., P.C.*, 2015 NY Slip Op 04815, ¶ 2, 129 A.D.3d 783, 785, 11 N.Y.S.3d 623, 625 (2d Dep’t 2015). An oral agreement between counsel may form the basis for reasonable excuse. *See DiIorio v. Antonelli*, 240 A.D.2d 537, 537, 658 N.Y.S.2d 453, 454 (2d Dep’t 1997).

Here, the Supreme Court incorrectly granted the motion for entry of judgment on default because Defendants demonstrated that their counsel was actively engaged in settlement discussions with counsel for Plaintiff and that Defendants had a meritorious defense. (R81-R86). In particular, in light of the evidence, Defendant had a meritorious defense that the demand for punitive damages should have been

dismissed as a matter of law. *See Reinah Dev. Corp. v. Kaaterskill Hotel Corp.*, 59 N.Y.2d 482, 487-88 (1983) (finding plaintiff not entitled to punitive damages as a matter of law); *164 Mulberry St. Corp. v. Columbia Univ.*, 4 A.D.3d 49 (1st Dep't 2004) (reversing denial of motion to dismiss claim for punitive damages as a matter of law).

CONCLUSION

For the foregoing reasons, the Court should reverse the lower court's Decision and Order; vacate the punitive damages award; dismiss Plaintiff's claims for punitive damages; remand this action for a new trial solely on compensatory damages; and grant such other and further relief as it deems just and proper.

Dated: March 15, 2021

Respectfully submitted,

FELICELLO LAW PC
Michael James Maloney
1140 Avenue of the Americas
9th Floor
New York, New York 10036
(646) 564-3510
mmaloney@felicellolaw.com
Attorneys for Defendants-Appellants Asquared Group, Inc. and Andy Lee

APPELLATE DIVISION – SECOND DEPARTMENT
PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: New York, New York
March 15, 2021

Michael James Maloney
FELICELLO LAW PC
1140 Avenue of the Americas
9th Floor
New York, New York 10036
(646) 564-3510
mmaloney@felicellolaw.com
Attorneys for Defendant-Appellants Asquared Group, Inc. and Andy Lee

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court

Appellate Division—Second Department

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.,

Plaintiff-Respondent,

– 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-Appellants.

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1. The index number of the case in the court below is 714168/16.

2. The full names of the original parties are as set forth above. There have been no changes.

3. The action was commenced in Supreme Court, Queens County.

4. The action was commenced on or about November 28, 2016 by the filing of a Summons and Verified Complaint. Issue was never joined.

5. The nature and object of the action involves breach of contract.

6. This appeal is from a Judgment executed by the Clerk of the County of Queens, dated June 9, 2020, which granted Plaintiff's Motion for Default Judgment.

7. This appeal is on the full reproduced record.