

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

IBRAHIM MALICK, individually and derivatively as a
member on behalf of 302 EAST 105TH STREET LLC and
304 EAST 105TH STREET LLC,

Index No.:

Date Purchased:

Plaintiff,

-against-

302 EAST 105TH STREET LLC,
304 EAST 105TH STREET LLC, and
PRAMILA MALICK,

Defendants.

SUMMONS

Plaintiff designates
New York County as
the place of Trial.
Venue is based on
CPLR §503(a).

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Answer, or, if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: New York, New York
February 14, 2021

Yours, etc.,
D. GIACOMO VILELLA, P.C.

DGV
By: Dennis Giacomo Vilella, Esq.
Attorneys for Plaintiff
225 Broadway – Suite 2625
New York, New York 10007
(212) 235-1884

To:

302 EAST 105TH STREET, LLC - 364 East Jacobs Road, Westtown, New York 10998

304 EAST 105TH STREET, LLC - 364 East Jacobs Road, Westtown, New York 10998

PRAMILA MALICK – 304 East 8th Street #6100, New York, New York 10009

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

IBRAHIM MALICK, individually and derivatively as a
member on behalf of 302 EAST 105TH STREET LLC and
304 EAST 105TH STREET LLC,

Index No.:

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

302 EAST 105TH STREET LLC,
304 EAST 105TH STREET LLC, and
PRAMILLA MALICK,

Defendants.

Plaintiff, IBRAHIM MALICK, individually and derivatively as a member on behalf of 302
EAST 105TH STREET LLC and 304 EAST 105TH STREET LLC, through his attorneys, D.
GIACOMO VILELLA, P.C., respectfully alleges as follows:

NATURE OF THIS ACTION

1. This is an action for judicial dissolution as well as recovery for damages stemming
from the wrongful acts by Plaintiff's wife, PRAMILLA MALICK ["Pramilla"], with respect to
two real estate ventures involving 302 EAST 105TH STREET LLC and 304 EAST 105TH
STREET LLC ["the LLCs"], in which Plaintiff and Pramilla are sole shareholders, and for which
Pramilla serves as managing member.

2. This action arises out of Pramilla's mismanagement and misappropriation of the
LLCs' assets, her breach of fiduciary duty, waste, unjust enrichment and other malfeasance.

3. In addition, the action seeks an accounting of the books and records and all relevant
information contained therein of the LLCs and injunctive relief to prevent further waste and abuse
by Pramilla as managing member.

PARTIES

4. Plaintiff is a resident of the County of New York, City and State of New York.

5. Upon information and belief, Defendant PRAMILLA MALICK [“Pramilla”] is a resident of the County of New York, State of New York.

6. Defendant 302 EAST 105TH STREET LLC is a domestic limited liability company. 302 EAST 105TH STREET LLC was formed for the purpose of holding and managing real property located at 302 East 105th Street, New York, NY.

7. 302 EAST 105TH STREET LLC owns a parcel of real property located at 302 East 105th Street, New York, New York [an eight-unit residential apartment building in Harlem herein referred to as “the Building”]. Plaintiff deeded the property to 302 EAST 105TH STREET LLC on or about October 11, 2002.

8. 302 EAST 105TH STREET LLC existed prior to the formation date listed with the Division of Corporations (July 21, 2011). Upon information and belief, 302 EAST 105TH STREET LLC existed at least since October 11, 2002.

9. Defendant 304 EAST 105TH STREET LLC is a domestic limited liability company. 304 EAST 105TH STREET LLC was formed for the purpose of holding and managing real property located at 304 East 105th Street, New York, NY.

10. 304 EAST 105TH STREET LLC owns a parcel of real property located at 304 East 105th Street, New York, New York [an empty lot adjacent to the residential apartment building in Harlem herein referred to as “the Vacant Lot”]. By deed dated on or about July 18, 2000, 304 EAST 105TH STREET LLC became the owner of the Vacant Lot.

11. 304 EAST 105TH STREET LLC existed prior to the formation date listed with the Division of Corporations (July 21, 2011). Upon information and belief, 302 EAST 105TH

STREET LLC existed at least since July 18, 2000 (302 EAST 105TH STREET LLC and 304 EAST 105TH STREET LLC are collectively referred herein as “the LLCs.” The parcels of real property and any buildings or improvements thereon are considered assets of the LLCs and are collectively referred herein as “the Premises”).

JURISDICTION

12. The amount of damages suffered by Plaintiff exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction of this matter.

BACKGROUND

13. Plaintiff and Pramilla are married and have been investing in property together since 2000. In order to facilitate their business partnership and limit their respective liabilities, Plaintiff and Pramilla formed various business entities to be operated as limited liability companies.

14. The LLCs were formed to engage in the business of investment property management.

15. Regarding the Premises described herein, one hundred percent of the cash portion of the purchase price for the acquisition of the Premises, and the costs associated therewith, was paid by Plaintiff.

16. Plaintiff and Pramilla are the sole members of the LLCs.

17. Although no operating agreements were drafted or executed by the shareholders at the time of organization of either of the LLCs, the shareholders agreed as to ownership of the LLCs, the purpose for which the LLCs were formed, and how the LLCs would be managed.

18. At all times relevant, Plaintiff was owner of at least 50% of the LLCs and is at least 50% owner today.

19. At all times relevant, Pramilla was the managing member of the LLCs and is managing member today.

20. Over the years, Plaintiff has made significant capital contributions in order to maintain the LLCs.

21. Pramilla has made no capital contributions.

22. Upon information and belief, the Building's annual rent revenue when fully occupied should be approximately \$150,000.00.

23. Pramilla has failed to keep the Premises fully occupied due, in part, to her failure to maintain the property in a rentable condition, resulting in substantial loss of rental income and diminution of value of the Premises.

24. Notwithstanding her failure as managing member to maintain and keep the premises fully rented, Pramilla has collected rents from Tenants of the Premises from time to time or otherwise benefited without depositing the rents and other benefits with the LLCs.

25. On several occasions, Pramilla has failed to pay real estate taxes owed by the LLCs resulting in tax liens being filed against the Premises in 2002(2), 2003, 2010 and 2019.

26. Each time Pramilla failed to pay real estate taxes, Plaintiff paid out of pocket.

27. Upon information and belief, the amount of unpaid taxes owed by the LLCs and paid by Plaintiff is no less than \$150,000.00.

28. Pramilla's failures and mismanagement would have caused the LLCs to fail financially and lose its and Plaintiff's investment (as member) had Plaintiff not contributed sums in excess of \$150,000.00 to stave off financial ruin of the LLCs, and the loss of the property and the investments of its members.

29. Plaintiff has demanded to see the books and records of the LLCs. Pramilla has failed to provide the demanded books and records to Plaintiff.

30. Pramilla's failures and mismanagement of the LLCs have made it impossible for the LLCs to meet the purpose for which each was formed.

31. Unfortunately for Plaintiff, as member of the LLCs, without an operating agreement, there is no exit-strategy for the members, no "buy-sell" provision should a member desire or need to leave the LLCs and no provisions for dissolution and winding up the affairs of the LLCs. The effect, without judicial intervention and the fashioning of a just and equitable remedy, is to perpetuate an intolerable and unjust partnership that needs to be dissolved.

**AS AND FOR A FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

32. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

33. As a managing member of the LLCs, Pramilla assumed the duty of a fiduciary to the LLCs and its members.

34. As a shareholder and effective manager of the LLCs, Pramilla was to conduct herself in good faith in accordance with her fiduciary responsibility to the LLCs and Plaintiff, as a member of the LLCs.

35. By reason of her fiduciary relationship, Pramilla owed the LLCs and Plaintiff as shareholder the highest obligations of good faith, fair dealing, loyalty and due care.

36. As a shareholder and effective manager of the LLCs, Pramilla was in a position of superior knowledge and had a duty to disclose to Plaintiff all of the material facts related to the operation and control of the LLCs.

37. By reason of the foregoing, Pramilla, individually and as managing member, has breached her fiduciary duties to Plaintiff and the LLCs, and Plaintiff has suffered damages as a result, including, but limited to, diminution of the value of his interest in the LLCs.

38. Upon information and belief, Pramilla's conduct constitutes fiduciary violations which include, but are not limited to:

- a. issuance of distributions and other monies to herself from the rents collected on behalf of the LLCs and by failing to pay money whatsoever to its other shareholder;
- b. conversions and misappropriations of the funds of the LLCs for her personal use;
- c. corporate waste and mismanagement;
- d. failure to provide Plaintiff with the books and records to which Plaintiff is entitled under Business Corporation Law;
- e. failure to conduct herself in good faith;
- f. failure to act in accordance with her fiduciary responsibilities to the LLCs and its members;
- g. failure to act in a responsible manner to pay the real estate taxes on the Premises such as tax liens have been satisfied by Plaintiff in 2002, 2003, 2010 and 2019.

39. The conduct of Pramilla, included but not limited to the conduct described herein, constitutes blatant breach of Pramilla's fiduciary obligations to the LLCs and to Plaintiff, as a shareholder of the LLCs.

40. Pramilla's conduct has resulted in damages to Plaintiff, including, but not limited to, lost profits, out-of-pocket losses, and mental anguish damages.

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

42. Pramilla's fiduciary violations were wanton and malicious.

43. As a result of Pramilla's wanton and malicious conduct, Plaintiff is entitled to punitive damages in an amount to be determined at trial but in no event less than \$1,500,000.00.

44. In addition to Plaintiff's legal remedies stemming from Pramilla's breach of her fiduciary duty, Plaintiff also seeks equitable remedies and seeks judgment for: (a) profit disgorgement; (b) receivership; (c) injunction; and (d) accounting.

AS AND FOR A SECOND CAUSE OF ACTION
NEW YORK LLC LAW SECTION 409(A)

45. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

46. Section 409(A) of New York's Limited Liability Company law provides: "A manager shall perform his or her duties as a manager, including his or her duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances."

47. Pramilla, through her conduct as managing member of the LLCs described herein, has failed to perform her duties in good faith and with that degree of care that an ordinary prudent person in a like position would use under similar circumstances.

48. As a direct and proximate result of Pramilla's statutory violations, Plaintiff has been damaged in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
UNJUST ENRICHMENT

49. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

50. For the reasons described herein, Pramilla enriched herself by utilizing LLC funds for her own personal benefit and paying herself distributions and other monetary payments to the exclusion of the other shareholder and to the exclusion of the LLCs.

51. Pramilla has also been unjustly enriched in that she used the LLCs' assets for other purposes unrelated to the LLCs without the LLCs' authorization.

52. Pramilla's unjust enrichment was at the expense of the LLCs and Plaintiff.

53. The circumstances are such that equity and good conscience should not permit Pramila to keep said funds and should require Pramilla to pay the LLCs all amounts she wrongfully appropriated.

54. By reason of the foregoing, the Plaintiff has been damaged in an amount to be determined at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION
WASTE**

55. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

56. Pramilla's actions detailed herein as shareholder and effective manager of the LLCs were for improper purposes and conducted in an unlawful manner.

57. Pramilla acted without knowledge of the Plaintiff.

58. Pramilla's actions to pay herself and not the LLCs resulted in a loss to the LLCs constituting a waste in assets of the LLCs.

59. By reason of the foregoing, the LLCs has suffered damages in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
CONVERSION

60. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

61. The money Pramilla paid to herself from the LLCs to which she was not entitled, did not belong to Pramilla, but rather belonged to the LLCs and to Plaintiff as shareholder.

62. Pramilla committed the wrongful acts described herein without authority to do so.

63. Pramilla 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 LLCs.

64. By reason of the foregoing, the LLCs have been damaged in an amount to be determined at trial and due to the intentional and deliberate and malicious nature of the conversion, the LLCs are entitled to punitive damages in an amount to be determined at trial but in no event less than \$1,500,000.00

AS AND FOR A SIXTH CAUSE OF ACTION
GROSS NEGLIGENCE

65. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

66. Pramilla, in her management of the LLCs, was required to use reasonable care in performing her duties as managing member.

67. Because of her failure to maintain the Premises, collect and deposit rents, pay taxes and other misconduct as detailed above, Pramilla was grossly negligent in her management of the LLCs.

68. As a result, the LLCs and Plaintiff sustained damages in an amount to be determined at trial.

**AS AND FOR A SEVENTH CAUSE OF ACTION
CONSTRUCTIVE TRUST**

69. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

70. Based upon the foregoing, the LLCs are entitled to have a constructive trust imposed upon Pramilla or other entities owned or controlled by Pramilla to be found to have benefited from the asset, profits and business opportunities of Plaintiff and the LLCs.

**AS AND FOR AN EIGHTH CAUSE OF ACTION
ACCOUNTING**

71. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

72. Plaintiff has the right to the books and records of the LLCs including all financial information set forth herein.

73. Plaintiff has demanded on numerous occasions in various ways to review the financial affairs of the LLCs.

74. Despite due demand, Pramilla has failed and refused to provide Plaintiff with access to the financial affairs of the LLCs.

75. Pramilla has frozen out Plaintiff from the management of the LLCs and has not provided Plaintiff with full access to such books and records to which Plaintiff is lawfully entitled under the Business Corporation Law and common law.

76. Section 1102 of the Limited Liability Company Law provides:

(a) Each domestic limited liability company shall maintain the following records, which may, but need not, be maintained in this state:

(1) if the limited liability company is managed by a manager or managers, a current list of the full name set forth in alphabetical order and last known mailing address of each such manager; (2) a current list

of the full name set forth in alphabetical order and last known mailing address of each member together with the contribution and the share of profits and losses of each member or information from which such share can be readily derived; (3) a copy of the articles of organization and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed; (4) a copy of the operating agreement, any amendments thereto and any amended and restated operating agreement; and (5) a copy of the limited liability company's federal, state and local income tax or information returns and reports, if any, for the three most recent fiscal years.

(b) Any member may, subject to reasonable standards as may be set forth in, or pursuant to, the operating agreement, inspect and copy at his or her own expense, for any purpose reasonably related to the member's interest as a member, the records referred to in subdivision (a) of this section, any financial statements maintained by the limited liability company for the three most recent fiscal years and other information regarding the affairs of the limited liability company as is just and reasonable.

77. By reason of the foregoing, Pramilla has violated Section 1102 of the Limited Liability Company Law. Accordingly, in addition to any contractual rights, Plaintiff has a statutory right to examine the books and records of the LLCs.

78. That the cost of the continued failure of Pramilla to disclose and afford Plaintiff full access to the books and records of the LLC deprives the Plaintiff of knowledge of the financial status of the LLC.

79. The information regarding the financial status of the LLC has been deliberately withheld from Plaintiff by Pramilla.

80. Pramilla is a shareholder and effective manager of the LLC and at all relevant times owed a fiduciary obligation to Plaintiff.

81. Pramilla 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 LLCs in accordance with the Business Corporation Law.

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

83. Plaintiff has no adequate remedy at law and demands a judgment for an accounting.

84. Based upon the foregoing, the Plaintiff is entitled to a full accounting from the LLCs and Pramilla from 2000 to the present.

AS AND FOR A NINTH CAUSE OF ACTION
REMOVAL OF PRAMILLA MALICK AS MANAGING MEMBER

85. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

86. As detailed herein, Pramilla has blatantly disregarded the LLCs' well-being and corporate form by choosing, instead, to treat the LLCs as her own personal piggy bank.

87. As a result, the LLCs are entitled to a permanent injunction removing Pramilla from acting as a manager of the LLCs.

88. As described herein, Pramilla has inflicted massive harm upon the LLCs spending all of the LLCs' rents and profits on herself.

89. Coupled with her conversion and outright refusal to produce Plaintiff documents regarding the LLCs' books and records, Pramilla is not fit to manage the affairs of the LLCs.

90. That without injunction, there is no doubt that Pramilla will continue to act in this manner and enrich herself at the expense of the LLCs and its members and will continue to conceal her actions.

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

92. For reasons set forth herein, the balance of equities favors the LLCs and by reason herein, the LLCs are entitled to a permanent injunction be imposed upon Pramilla from acting as manager of the LLCs.

**AS AND FOR AN TENTH CAUSE OF ACTION
JUDICIAL DISSOLUTION**

93. Plaintiff repeats and reiterates each and every allegation contained above as if repeated and reiterated herein at length.

94. As the managing member of the LLCs, Pramilla's conduct and self-dealing, as described herein, were in direct conflict with her interests as a shareholder of the LLCs.

95. Pramilla had a fiduciary duty to the LLCs and to Plaintiff as the only other member of the LLCs.

96. There is a disagreement and conflict between Plaintiff and Pramilla regarding the means, methods, and finances of the LLCs operations so fundamental and intractable as to make it unfeasible for the LLCs to carry on business as originally intended.

97. Pramilla is incapable of managing the LLCs debts. Pramilla has failed to timely pay real estate taxes owed by the LLCs. The LLCs operate at a loss. The LLCs have no cash reserves and other than Plaintiff's necessary but involuntary contributions in excess of his membership interest, no cash on hand. The LLCs are without cash reserves due to Pramilla's failure and refusal to meet her management commitments to the LLCs and her embezzlement of rents and other benefits belonging to the LLCs. But for the continued infusion of capital into the LLCs by Plaintiff, the LLCs would not have been, and is now unable to, promote the stated purpose for which they were organized. Continuing the LLCs is accordingly unfeasible.

98. As described here, the LLCs business as originally intended was to hold and manage the Premises. With Pramilla's history of self-dealing, ongoing breach of her fiduciary

duty, failure to provide access to the books and records despite due demand, and other misconduct, it is impossible to continue the business of the LLCs.

99. By reasons of the foregoing, it is not reasonably practicable to carry on the business of the LLCs as originally intended. Accordingly, judicial dissolution should be granted.

100. No previous application for any of the within relief herein has been made.

WHEREFORE, Plaintiff respectfully demands judgment by this Court, on all causes of action, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 14, 2021

DGV
Dennis Giacomo Vilella, Esq.

ATTORNEY'S VERIFICATION

DENNIS GIACOMO VILELLA, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am the attorney of record for Plaintiff, Ibrahim Malick. I have read the annexed COMPLAINT and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Plaintiff is not presently in the County wherein I maintain my offices.

Dated: New York, New York
February 22, 2021



DENNIS GIACOMO VILELLA