

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

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DAVID ARONOV, INDIVIDUALLY AND AS A
MEMBER OF 290 13TH STREET, LLC SUING ON
BEHALF OF HIMSELF AND ALL OTHER MEMBERS
OF 290 13TH STREET, LLC SIMILARLY SITUATED
AND IN THE RIGHT OF 290 13TH STREET, LLC,

Index No.: 500499/2016

Hon. Sylvia G. Ash

Plaintiff,

-against-

**AMENDED VERIFIED
COMPLAINT**

EUGENE A. KHAVINSON, MIKHAIL KREMERMAN,
MICHAEL KHAVINSON, VYACHESLAV
FAYBYSHEV, YANA SOSKIL, VITALY KOCHNEV,
ARTYOM KIRZHNER, MIKOLA VOLYNSKY,
ALEXANDER BOGUSLAVSKY, OMNI BUILD INC.,
and 290 13th STREET, LLC,

Defendants.

-----X
Plaintiff David Aronov, Individually and as a member of 290 13th Street, LLC, suing
on behalf of himself and all other members of 290 13th Street, LLC similarly situated and in the
right of 290 13th Street, LLC, by his attorneys, Cyruli Shanks Hart & Zizmor LLP, for their
amended complaint to obtain a judgment in their favor, allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, 290 13th Street, LLC (the “Company”) was
and still is a domestic limited liability corporation duly organized and existing under and by the
virtue of the laws of the State of New York, with its principal place of business at 1122 Coney
Island Avenue, Suite 220, Brooklyn, New York 11230.

2. That at all times hereinafter mentioned the plaintiff David Aronov (“Plaintiff”) is
an individual residing at 186-29 Avon Road, Jamaica, New York 11432.

3. That at all times hereinafter mentioned the defendant Eugene A. Khavinson
(“Khavinson”) is an individual residing at 365 Ardsley Street, Staten Island, New York 10306.

4. That at all times hereinafter mentioned the defendant Mikhail Kremerman (“Kremerman”) is an individual in custody of the Federal Bureau of Prisons located at FCI Otisville, Two Mile Drive, Otisville, New York 10963.

5. That at all times hereinafter mentioned the defendant Michael Khavinson (“M. Khavinson”) is an individual residing at 110 30th Byberry Road, Philadelphia, Pennsylvania 19116.

6. That at all times hereinafter mentioned the defendant Vyacheslav Faybyshev (“Faybyshev”) is an individual residing at 171 Alan Loop, Staten Island, New York 10309.

7. That at all times hereinafter mentioned the defendant Yana Soskil (“Soskil”) is an individual residing at 71 Alan Loop, Staten Island, New York 10309.

8. That at all times hereinafter mentioned the defendant Vitaly Kochnev (“Kochnev”) is an individual residing at 1237 Avenue Z, Brooklyn, New York 11237.

9. That at all times hereinafter mentioned the defendant Artyom Kirzhner (“Kirzhner”) is an individual residing at 108 Alan Loop, Staten Island, New York 10309.

10. That at all times hereinafter mentioned the defendant Mikola Volynsky (“Volynsky”) is an individual residing at 3655 Shore Parkway, Apartment 1A, Brooklyn, New York 11235.

11. That at all times hereinafter mentioned the defendant Alexander Boguslavsky (“Boguslavsky”) is an individual residing at 200 Winston Drive, Apartment 2302, Cliffside, New Jersey 07010.

12. At all times hereinafter mentioned, Omni Build Inc. (“Omni”) was and still is a domestic limited liability corporation duly organized and existing under and by the virtue of the laws of the State of New York, with its principal place of business at 2201 Neptune Avenue, Brooklyn, New York 11224.

NON-PARTIES

13. That at all times hereinafter, Eugene A. Khavinson, Esq., ("Khavinson, Esq.") was, and still is, an attorney licensed to practice in the State of New York with offices at 1601 Gravesend Neck Road, Brooklyn, New York, 11230.

14. At all times hereinafter mentioned, defendant Khavinson & Associates, PC, ("Law Firm") was, and still is, a law firm consisting of attorneys licensed to practice law in the State of New York with offices at 1601 Gravesend Neck Road, Brooklyn, New York 11230.

15. Upon information and belief, Khavinson, Esq. is the principal and managing member of the Law Firm.

16. At all times hereinafter mentioned, Khavinson Esq. and the Law Firm will be collectively referred to as the "Law Firm."

FACTS COMMON TO ALL CAUSES OF ACTION

17. Upon information and belief, the Company is a limited liability company consisting of eight members.

18. At all times hereinafter mentioned, Aronov was and still is a member of the Company possessing a 3 1/3 % membership interest of the Company.

19. At all times hereinafter mentioned, Khavinson was and still is a member of the Company possessing a 13 1/3 % membership interest of the Company.

20. At all times hereinafter mentioned, Kremerman was and still is a member of the Company possessing a 30% membership interest of the Company.

21. At all times hereinafter mentioned, M. Khavinson was and still is a member of the Company possessing a 13 1/3 % membership interest of the Company.

22. At all times hereinafter mentioned, V. Faybyshev was and still is a member of the Company possessing a 30% membership interest of the Company.

23. Upon information and belief, the operating agreement of the Company provides that the management of the Company shall be vested in Khavinson and Kremerman, who shall serve as Operating Managers of the Company (collectively “Operating Managers”).

THE REAL ESTATE DEVELOPMENT PROJECT

24. In mid-2008, Khavinson approached Plaintiff, an unsophisticated investor and employee of the Law Firm, to seek investment in a real estate development project (the “Project”).

25. Upon information and belief, the Company was formed to facilitate the development of the Project.

26. Khavinson estimated the Project would cost approximately two (2) million dollars to construct.

27. Khavinson did not provide a prospectus or offering statement to Plaintiff concerning the Project or the Company.

28. Upon information and belief, Khavinson never filed a prospectus or offering statement with the New York Attorney General in accordance with GBL § 352-e.

29. The Project consisted of four residential condominiums constructed out of one residential home located at 290 13th Street, Brooklyn, New York (the “Premises”), and, upon information and belief, construction on the Project began in early 2009.

30. The Premises were owned by Khavinson when construction began.

31. Defendant Omni was designated by the Operating Managers to be general contractor for the Project.

32. Upon information and belief, the Chief Executive officer of Omni is Faybyshev.

33. Upon information and belief, Kochnev is an employee of Omni and relative of Vaybyshev.

34. At all times herein mentioned, the Law Firm was counsel to the Company, representing the Company in all the Project's transactions and litigation proceedings.

35. That at all times hereinafter mentioned Khavinson has held and continues to hold the office of Operating Manager of the Company.

36. That at all times hereinafter mentioned Kremerman has held and continues to hold the office of Operating Manager of the Company.

37. Upon information and belief, the total funds collected from all initial investors towards construction of the Project was \$2,157,372.00.

38. Upon information and belief, all the Project's condominiums sold for a total of \$4,185,000.00, leaving a substantial profit after construction expenses, mortgage payoff, and related expenses.

39. On January 11, 2010, over a year after construction on the Project began, Khavinson transferred the Premises to the Company and the Law Firm was counsel of record on the deed transfer documents.

THE OPERATING AGREEMENT

40. Khavinson initially requested a \$150,000.00 investment from Plaintiff.

41. After soliciting Plaintiff's investment, Khavinson provided Plaintiff with the operating agreement dated February 9, 2008 (the "Operating Agreement").

42. The Operating Agreement contained a Schedule A which identified all members, their capital contribution, and corresponding membership interest ("Schedule A").

43. According to the Schedule A, members with no capital contributions received substantial membership allocations.

44. Pursuant to the Operating Agreement, the Operating Managers have the right to exercise financial transactions on behalf of the Company that are proper, convenient, or

advisable to effectuate and carry out the purposes and business objectives of the Company and to maximize profits.

45. In reality, the Operating Managers habitually violated the Operating Agreement, diverted Company assets without authorization from the members, solicited and received loans without the approval of the members, and Khavinson in particular used the Company's cash assets to protect his personal exposure and liability.

46. Upon information and belief, cash payments were made to investors who contributed no funds and investors contributing same amount of money or more realized less gain.

47. As the owner of Omni, Faybyshev received a 30% membership share as Omni was to perform the construction work on the Project.

48. Faybyshev did not provide any cash investment to the Company.

49. In February 2012, Operating Manager Kremerman was indicted for insurance fraud.

50. In mid-2012, due to Kremerman's involvement with the Company, multiple banks refused to continue to maintain the Company's cash accounts.

51. In late 2012, Khavinson moved the Company's accounts to the Law Firm's IOLA account, co-mingling the assets of the Company with the funds belonging to other clients of the Law Firm.

52. On June 16, 2014, Khavinson authorized a \$50,000.00 to Kremerman's criminal attorney from the Company's assets in the Law Firm's IOLA account.

53. The Operating Agreement prohibited the Operating Managers from creating any indebtedness for borrowed money without obtaining the unanimous consent of all Members.

54. The Operating Managers solicited and received loans without the unanimous consent of the members in violation of the Operating Agreement.

55. The Operating Managers authorized a loan in violation of the Operating Agreement from Khavinson in the sum of \$207,288.27.

56. The Operating Managers authorized a loan in violation of the Operating Agreement from Fabyshev in the sum of \$20,000.00.

57. The Operating Managers authorized a loan in violation of the Operating Agreement from from Sergey Tsepenyck in the sum of \$30,000.00.

58. The Operating Managers authorized a loan in violation of the Operating Agreement from Grigory Tselenchuk in the sum of \$30,000.00.

59. The Operating Managers authorized a loan in violation of the Operating Agreement from SDM Consulting in the sum of \$22,000.00.

60. The Operating Managers authorized issued funds to individuals with no relationship to the Project.

61. The Operating Managers authorized a payment of \$34,950.00 to Mr. Lazar Faygin, Khavinson's personal friend and doctor who is in prison for insurance fraud.

THE JERZY SNOPI LITIGATION

62. On March 15, 2010, the Company, Omni, and Khavinson were sued by Mr. Jerzy Snop, a worker employed by a subcontractor of Omni at the Project (Kings County Supreme Court, Index No.: 6637/2010) (the "Snop Litigation").

63. The Law Firm filed an answer and defended the action on behalf of Khavinson and the Company in the Snop Litigation.

64. Khavinson transferred the Premises to the Company immediately prior to the commencement of the Snop Litigation in an effort to avoid personal responsibility to Mr. Snop.

65. At the time of Mr. Snop's alleged injury, Khavinson did obtain liability insurance for the construction work at the Premises.

66. Khavinson improperly used the Company's assets without authorization to pay Omni's legal defense costs in the Snop Litigation in the sum of \$98,874.65.

67. Plaintiff in the Snop Litigation sued the Company and Khavinson (Kings County Supreme Court, Index No.: 21891/2012) (the "Fraud Action") alleging violations of the debtor creditor law.

68. Thereafter, the Court in the Fraud Action denied Khavinson and the Company's motion for summary judgment.

69. After the denial, Khavinson and the Law Firm settled both the Fraud Action and the Snop Litigation.

70. Without consulting the members of the Company in violation of the Operating Agreement, Khavinson used Company funds to settle the Fraud Action and Snop Litigation.

71. Khavinson did not provide a copy of the settlement documents to the members of the Company.

72. The Operating Managers never demanded Omni bond the liens and notices of pendency placed on the Premises by Jerzy Snop so the Project's condominiums could be sold.

73. Any request for the Company to commence this action would have been futile since the ability to commence lawsuits or other proceedings is within the exclusive power of operating managers E. Khavinson and Kremerman, who is the party interested in the challenged transactions and/or such a demand would have required E. Khavinson and Kremerman to vote in favor of the commencement of an action against himself.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
CONVERSION

79. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

80. E. Khavinson and Kremerman, as Operating Managers, used the Company's assets and resources to pay for their personal expenses and those of their associates, namely the Defendants.

81. Plaintiff, as a member of the Company with a 3 1/3 % interest, had a superior right of possession of the assets of the Company than any defendant with no interest in Company whatsoever.

82. That Company failed to issue appropriate dividends, readily identifiable funds.

83. Upon information and belief the above stated acts were committed at the direction, approval or acquiescence of the Operating Managers, shareholders, and members.

84. Defendants exercised unauthorized dominion over the money in question, as the only authorized use of the funds of the Company was the facilitation of new construction of four condo apartments at 290 13th Street, Brooklyn, New York 11215, to the exclusion of the rights of Plaintiff.

85. By virtue of the foregoing, Defendants damaged the Company in an amount not presently ascertainable but believed to be \$3,000,000.00.

**SECOND CAUSE OF ACTION ON BEHALF OF THE COMPANY
AGAINST ALL DEFENDANTS
FRAUD AND DECEIT**

86. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

87. The Company was formed to facilitate the new construction of four condo apartments at 290 13th Street, Brooklyn, New York 11215.

88. Defendants instead used Company funds to pay for separate projects which were unrelated to the Company.

89. These actions constitute a material misrepresentation by Defendants of how Company's funds would be used.

90. Defendants made these false statements knowingly, and for the purposes of inducing investment in the Company from Plaintiff.

91. Plaintiff justifiably relied on Defendants' statement that the Company funds would be used for the benefit of the Company to his detriment.

92. By reason of the foregoing, Defendants are liable to Company for common law fraud in the amount of \$3,000,000.00.

**THIRD CAUSE OF ACTION ON BEHALF COMPANY
AGAINST ALL DEFENDANTS
UNJUST ENRICHMENT**

93. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

94. Defendants' retention of the assets of Company has caused them to be enriched at Company's expense.

95. Defendants have failed to make restitution for the benefits received under these circumstances described above.

96. The circumstances of Defendants' enrichment are such that equity and legal obligation requires defendants to make restitution for their unjust enrichment of the assets of Company.

97. By virtue of the foregoing, Defendants damaged Company in an amount not presently ascertainable but believed to be \$3,000,000.00.

**FOURTH CAUSE OF ACTION
AGAINST DEFENDANTS E. KHAVINSON AND KREMERMAN
BREACH OF DUTY**

98. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

99. As operating managers and shareholders of the Company, the all defendants owed a duty of loyalty and good faith to the Company.

100. As aforementioned, the defendants E. Khavinson and Kremerman have breached such duties.

101. By virtue of the foregoing, Defendants E. Khavinson and Kremerman damaged the Company in an amount not presently ascertainable but believed to be \$3,000,000.00.

**FIFTH CAUSE OF ACTION BY THE COMPANY
FOR CONSTRUCTIVE TRUST**

102. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

103. The Operating Managers had a fiduciary duty to act in the best interest of the Company.

104. The recipients of the wrongful transfers by E. Khavinson and Kremerman of the Company's assets were unjustly enriched as a result of E. Khavinson and Kremerman's breach of their fiduciary duty.

105. By virtue of the foregoing, a constructive trust should be placed upon the assets of Company which were wrongfully transferred by E. Khavinson and Kremerman.

**SIXTH CAUSE OF ACTION BY COMPANY
FOR INJUNCTIVE RELIEF**

106. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

107. The Operating Managers have been guilty of illegal, fraudulent and oppressive actions towards the shareholders, the property and assets of the Company are being looted, wasted, or diverted for non-corporate purposes by E. Khavinson and Kremerman, thereby enriching themselves at the expense of the minority shareholders, and continuing the corporation's existence for the sole purpose of benefiting themselves at the expense of such minority shareholders.

108. Plaintiff Company has no adequate remedy at law.

109. Plaintiff Company seeks a permanent injunction restraining the Directors from:
- a. taking any action on behalf of the Company;
 - b. making any payments or transfers of assets of the Company for the benefit of the Operating Managers or shareholders;
 - c. appointing a temporary receiver to oversee the operations of the Company.

**SEVENTH CAUSE OF ACTION BY THE COMPANY
FOR AN ACCOUNTING**

110. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

111. The Operating Managers have been guilty of illegal, fraudulent and oppressive actions towards the shareholders, the property and assets of the Company are being looted, wasted, or diverted for non-corporate purposes by E. Khavinson and Kremerman, thereby enriching themselves at the expense of the minority shareholders, and continuing the corporation's existence for the sole purpose of benefiting themselves at the expense of such minority shareholders.

112. Plaintiff Company has no adequate remedy at law.

113. Plaintiff Company seeks an accounting.

**EIGHTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF
FOR PRODUCTION OF BOOKS AND RECORDS**

114. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

115. Plaintiff Plaintiff made valid demand to the Operating Managers to inspect the books and records of the Company pursuant to BCL § 624.

116. The Operating Managers have failed and refused to produce such books and records.

117. Plaintiff Plaintiff has no adequate remedy at law and seeks the production of the book and records of the Company.

**NINTH CAUSE OF ACTION BY PLAINTIFF
FOR REMOVAL OF OPERATING MANAGERS**

118. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

119. The Operating Managers have been guilty of illegal, fraudulent and oppressive actions towards the shareholders, the property and assets of the Company are being looted, wasted, or diverted for non-corporate purposes by E. Khavinson and Kremerman, thereby enriching themselves at the expense of the minority shareholders, and continuing the corporation's existence for the sole purpose of benefiting themselves at the expense of such minority shareholders.

120. Plaintiff seeks the removal of the Directors.

**TENTH CAUSE OF ACTION BY PLAINTIFF
AGAINST ALL DEFENDANTS**

121. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

122. The Operating Managers had a fiduciary duty to act in the best interest of the Company's shareholders.

123. As aforementioned, the Operating Managers have breached such duties.

124. By virtue of the foregoing, Plaintiff and the other shareholders have been damaged in the amount of \$3,000,000.00.

**ELEVENTH CAUSE OF ACTION BY PLAINTIFF
FOR COMMON LAW DISSOLUTION**

125. Plaintiff repeats, reiterates and realleges each and every allegation contained in the preceding paragraphs as though fully set forth herein.

126. The Operating Managers have been guilty of illegal, fraudulent and oppressive actions towards the shareholders, the property and assets of the Company are being looted, wasted, or diverted for non-corporate purposes by E. Khavinson and Kremerman, thereby enriching themselves at the expense of the minority shareholders, and continuing the corporation's existence for the sole purpose of benefiting themselves at the expense of such minority shareholders.

127. Plaintiff seeks common law dissolution of the Company.

**TWELFTH CAUSE OF ACTION BY THE COMPANY
FOR ATTORNEYS' FEES PURSUANT TO BUSINESS CORPORATION LAW § 626**

128. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth at length herein.

129. Plaintiff has brought this derivative action on behalf of the Company in his capacity as a member.

130. Therefore, pursuant to BCL § 626(e), should he be successful, either in whole or in part, or if anything is received by the Plaintiff as a result of a judgment, compromise, or settlement of this action, the Court is entitled to award the Plaintiff his attorney's fees and reasonable expenses.

131. Accordingly, the Plaintiff asks this Court to direct a hearing on reasonable attorneys' fees pursuant to BCL § 626(e).

WHEREFORE, judgment is demanded against defendants as follows:

- A. In favor of Company in the amount of \$3,000,000.00 against all defendant in each of the first, second, and third causes of action.
- B. In favor of Company in the amount of \$3,000,000.00 against defendants E. Khavinson and Kremerman on the fourth cause of action.
- C. In favor of Company on the fifth cause of action for constructive trust.
- D. In favor of Company on the sixth cause of action for injunctive relief and appointment of a temporary receiver.
- E. In favor of Company on the seventh cause of action for an accounting.
- F. In favor of Plaintiff on the eighth cause of action for production of books and records.
- G. In favor of Plaintiff on the ninth cause of action for removal of the directors.
- H. In favor of Plaintiff in the amount of \$3,000,000.00 against all defendants on the tenth cause of action.
- I. In favor of Plaintiff on the eleventh cause of action for common law dissolution.
- J. In favor of Plaintiff on the sixteenth cause of action for attorneys fees pursuant to BCL § 626.
- K. Together with such other and relief as the Court may deem just and proper and the costs and disbursements of this action.

Dated: New York, New York
November 6, 2018

Cyruli Shanks Hart & Zizmor LLP
Attorneys for Plaintiffs
420 Lexington Ave-Suite 2320
New York, New York 10170
(212) 661-6800

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, the undersigned, am an attorney admitted to practice in the Courts of New York, I have read the foregoing Verified Amended Complaint, the same is true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. My belief as to those matters therein stated upon knowledge is based upon the following: conversations with Plaintiff and books and records in my possession.

The reason I make this affirmation instead of Plaintiff is that Plaintiff is located in a County other than that of the undersigned's office; pursuant to CPLR 3020(d)(3).

Dated: New York, New York
 November 6, 2018



ANDREW PISTOR