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,

Plaintiff,

-against-

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.

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Index No.: 500499/2016

**AFFIRMATION IN OPPOSITION TO DEFENDANTS' MOTION PER CPLR 4404(a) FOR JUDGEMENT NOTWITHSTANDING THE VERDICT**

**RAYMOND R GRASING, Esq.,** an attorney admitted to practice law before the Courts of the State of Law, affirms the following under the penalties of perjury:

1. I am the owner and principal attorney of the Law Firm of Grasing & Associates, P.C., the attorneys for the Plaintiffs 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. As such I am fully familiar with the facts and circumstances surrounding this proceeding from a review of the file maintained by this office and from conversations with the aforementioned Plaintiff.

2. This affirmation is submitted in opposition to the motion of the Defendants, dated, served, and filed January 12, 2024, for an Order, pursuant to CPLR 4404(a), "for judgement

notwithstanding verdict on all claims presented at trial, and (2) granting such other and further relief as this Court deems just and proper." (Defs' Mot. JNOV."

3. The Plaintiff relies, in opposition to Defs' Mot. JNOV, on each of the exhibits entered into evidence at the liability portion of this trial, and will not resubmit each and every one herein with its opposition. Plaintiff, however, does submit, additionally, the following exhibits, including for ease of reference by the court and by the Defendants:

- Plaintiff's Ex "1" Trial Testimony of Eugene Khavinson
- Plaintiff's Ex."2" Trial Testimony of Mikail Kremerman.
- Plaintiff's Ex."3": Trial Testimony of Vyacheslav Faybyshev:
- Plaintiff's Ex."5": Trial Testimony of Vitaliy Kochnev
- Plaintiff's Ex. "6": Trial Testimony of Serge Rosenberg
- Plaintiff's Ex "7": Trial Testimony of Alexsandr Boguslavkiy
- Plaintiff's Ex."8": Trial Testimony of David Aronov
- Plaintiff's Ex."9": the Corporate Tax Return for 2014 for 290 13th Street LLC (the "LLC")
- Plaintiff's Ex."10": the Operating Agreement for the LLC.
- Plaintiff's Ex. "11": the Chase Bank Records for the operating account of the LLC.
- Plaintiff Ex."12": the Ledger for Omni Build, Inc.

4. The jury's verdict of liability against the Defendants on each of causes of action should stand, the juror's award of liability to the Plaintiff should stand, and Defs' Mot. JNOV should be denied in its entirety and Plaintiff should be awarded costs, including reasonable attorneys' fees, for having to oppose the motion; and the court should order this relief to the

Plaintiff for all the reasons that follow, including, most importantly, that reasonable basis exists for the jury's determination; i.e, that there is a valid line of reasoning, and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial.

5. See *Vitenko v. City of New York, 210 A.D.3d 931, 933, 179 N.Y.S.3d 134, 137 (2nd Dept. 2022)*, which holds:

> A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is no valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial" (*Barril v. McClure,* 163 A.D.3d 752, 752–753, 81 N.Y.S.3d 181 [internal quotation marks omitted]; *see Cohen v. Hallmark Cards, Inc.,* 45 N.Y.2d 493, 499, 410 N.Y.S.2d 282, 382 N.E.2d 1145; *Glynn v. Altobelli,* 181 A.D.3d 567, 569, 119 N.Y.S.3d 167).

6. CPLR 4404(a) provides, in relevant part:

> McKinney's CPLR Rule 4404
> **Rule 4404. Post-trial motion for judgment and new trial**
> Currentness
> **(a) Motion after trial where jury required.** After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court.

7. Defendants waived their right to make a 4404(a) motion for a judgement notwithstanding the verdict, which, as they allege, is based on the premise "the verdict was not supported by legally sufficient evidence" (See Defendants Memorandum of Law in Support of Motion for 4404(a) Order for Judgment Notwithstanding Verdict on all Claims, dated 1.12.24 ("Defs' MOL in Support") at "Legal Standard" at p.3), because Defendants did not make a motion

for a Directed Verdict, pursuant to CPLR 4401, at the close of Plaintiff's case.

8. The following is taken from the Editor's notes that accompany the annotated statute in Westlaw. It is long, but cited to try to ensure the current state of the law is fairly presented: that Defendants who have not made a motion for a Directed Verdict pursuant to CPLR 4401 have waived their right to bring a motion for a Judgement Notwithstanding the Verdict pursuant to CPLR 4404(a) if the latter is based on the insufficiency of the evidence, as Defendants clearly state theirs is here. The excerpt analyzes the arguments and authorities for and against this position, which in a coherent and efficient manner, and Plaintiff believes is more effective than Plaintiff's own attempts to rehash the same decisional process would be. Plaintiff has, however, underlined for emphasis the most material portions of the excerpt

N.Y. C.P.L.R. 4404 (McKinney)::

# Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES
by Hon. Mark C. Dillon
2023

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**C4404:1 Post-Trial Motion, Generally**

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There is a rule in place under decisional law that a party failing to move for a directed verdict under CPLR 4401, in effect, implicitly concedes that there are issues of fact to be resolved, and that as a result of that "concession," the same party cannot later make a motion to set aside the verdict or judgment under CPLR 4404(a). This concept can be traced in our case law to at least 1899 and the case of *Hopkins v Clark*, 158 N.Y. 299, 53 N.E. 27 (1899). Of course, the CPLR was enacted in 1962 including the provisions of sections 4401 and 4404, and it is best to examine this issue as spotlighted by post-1962 cases. Among them is one from the Court of Appeals, *Miller v Miller*, 68 N.Y.2d 871, 508 N.Y.S.2d 418, 501 N.E.2d 26 (1986), and several from the Second and Third Departments and trial courts (*e.g. McConnell v Santana*, 77 A.D.3d 635, 909 N.Y.S.2d 86 [2nd Dep't. 2010], *Kayser v Sattar*, 57 A.D.3d 1245, 870 N.Y.S.2d 537 [3rd Dep't. 2008], *Johnson v First Student, Inc.*, 54 A.D.3d 492, 863 N.Y.S.2d 303 [3rd Dep't. 2008], *Hurley v Cavitolo*, 239 A.D.2d 559, 658 N.Y.S.2d 90 [2nd Dep't. 1997], *DiSimone v Royal GM*, Inc., 49 A.D.3d 490, 856 N.Y.S.2d 628 [2nd Dep't. 2008], *Torillo v Command Bus, Co.*, 206 A.D.2d 520, 614 N.Y.S.2d 756 [2nd Dep't.

1994]; *Herbst v Kerr*, 27 Misc.3d 1210[A], 910 N.Y.S.2d 405 [Sup. Ct. Broome County 2010]). In those cases, aggrieved parties were found to have waived the argument that they were entitled to a post-trial verdict or judgment as a matter of law by not having moved during trial for a directed verdict.

Against that backdrop, the late Professor David D. Siegel noted in the main volume for C4404:1 a decade and a half ago that the enactment of CPLR 4404 consolidated all post-judgment motions, and thereby eliminated any connection between trial motions for directed verdicts on the one hand (CPLR 4401) and post-trial motions to set aside verdicts or judgments on the other (CPLR 4404). He also observed, correctly so, that motions for directed verdicts at the close of an opposing party's evidence are routinely made by attorneys at trial. That, in turn, has the effect of limiting the number of occasions when the absence of a motion for a directed verdict may be deemed a concession that an issue of fact exists resulting in the denial of a post-trial CPLR 4404(a) motion on that basis.

In considering who has the better argument on the law-the case law or Professor Siegel--there are three things about CPLR 4401 and 4404 that must be kept in mind. The first is that CPLR 4401 is a single-issue provision, limited by its terms to motions for a directed verdict. By contrast, CPLR 4404(a), while globally permitting courts to set aside verdicts or judgments, is not a single-issue provision, as it splinters into different legal reasons as to why post-trial relief may be granted; namely, setting aside the verdict or judgment as a matter of law (which is typically applied to circumstances where the evidence is insufficient), or against the weight of the evidence, or in the interest of justice. Set-asides in the interest of justice may be ordered for any number of reasons including erroneous trial rulings, mistakes in the charge to the jury, inappropriate closing argument to the jury by adversary counsel, newly-discovered evidence, or surprise (*Heubish v Baez*, 178 A.D.3d 779, 113 N.Y.S.3d 755 [2nd Dep't. 2019]). Therefore, in a sense, CPLR 4401 may be viewed as one apple, while CPLR 4404(a) consists of three oranges.

The second thing to bear in mind about the differences between the statutes, which is related to the first, is the legal standard that courts must apply in determining CPLR 4401 and 4404(a) applications. They differ. The legal standard applied to motions for a directed verdict under CPLR 4401 is whether, upon the evidence presented, there is no rational process by which the fact trier could base a finding in favor of the non-moving party. In determining such motions in any of the four appellate departments, the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in the light most favorable to the non-movant (*Suzanne P. v Joint Board of Directors of Erie-Wyoming Soil Conservation Dist.*, 194 A.D.3d 1483, 147 N.Y.S.3d 843 [4th Dep't. 2021]; *Morales v Davidson Apts., LLC*, 193 A.D.3d 719, 141 N.Y.S.3d 879 [2nd Dep't. 2021]; *Holownia v Caruso*, 183 A.D.3d 1035, 123 N.Y.S.3d 291 [3rd Dep't. 2020]; *Montas v JJC Const. Corp.*, 92 A.D.3d 559, 939 N.Y.S.2d 354 [1st Dep't. 2012]). By contrast, post-trial motions to set aside verdicts or judgments are decided under distinct legal

standards unique to the branch of the CPLR 4404(a) issue that is specifically raised by the proponent, whether it be the insufficiency of evidence as a matter of law, the weight of the evidence, or the interest of justice. The legal standards for determining each are different from one another. For evidentiary insufficiency, the standard is whether there is a valid line of reasoning and permissible inferences by which a rational trier of fact could find in favor of the plaintiff (*Killon v Parrotta*, 28 N.Y.3d 101, 42 N.Y.S.3d 70, 65 N.E.3d 41 [2016]), which is remarkably similar to the directed verdict standard of CPLR 4401.

* * *

Consequently, in terms of the applicable legal standards applied under CPLR 4401 and 4404(a), there is a correlation between the motion for a directed verdict and its focus on whether with all favorable inferences there is a rational process to find in a plaintiff's favor, and the post-trial motion to set aside a verdict or judgment for the insufficiency of evidence which cannot be granted if, with all permissible inferences, a rational trier of fact could hold in favor of a prevailing party. In other words, if CPLR 4401 is an apple, the post-trial set-aside of a verdict or judgment under CPLR 4404(a) based upon the legal insufficiency of the evidence is also actually an apple, and not an orange, as the standard applied to each such motion is virtually the same.

* * *

That all said, the cases holding that the failure to move for a CPLR 4401 directed verdict precludes the court from later considering a post-trial CPLR 4404(a) motion are limited to circumstances where the post-trial motions, and the appeals that followed, regard *only* the claimed legal insufficiency of the evidence. The preclusion of CPLR 4404(a) remedies has not been applied to circumstances involving the weight of the evidence or the interest of justice.

* * *

The argument that the evidentiary record at the close of the plaintiff's case may be markedly different from the record developed by the conclusion of the full trial, as to permit a CPLR 4404(a) motion even in the absence of a prior CPLR 4401 motion, is credible and worth considering, as is the argument that the language and application of CPLR 4404(a) is distinctly broader and more inclusive than that of CPLR 4401. But those arguments, however correct they may be, do not reflect the current state of the decisional law published from all levels of the state judiciary. Therefore, until and unless courts re-evaluate this issue and change the current precedents where the legal insufficiency of the plaintiff's evidence is concerned, attorneys are best advised to continue requesting directed verdicts under CPLR 4401 in order to assure that their potential post-trial CPLR 4404(a) applications, if any, are not foreclosed.

* * *

9. See also *Miller by Miller v. Miller, 68 N.Y.2d 871, 873, 501 N.E.2d 26, 27 (1986)*:

> By failing to move for a directed verdict on the question whether plaintiff had sustained a "serious injury" under the No-Fault Insurance Law (Insurance Law § 5102[d] ), plaintiff conceded the question to be one for the jury (*Gutin v. Mascali & Sons,* 11 N.Y.2d 97, 98, 226 N.Y.S.2d 434, 181 N.E.2d 449; *People v. Davis,* 231 N.Y. 60, 63, 131 N.E. 569; *Hopkins v. Clark,* 158 N.Y. 299, 304–305, 53 N.E. 27; *Hecla Powder Co. v. Sigua Iron Co.,* 157 N.Y. 437, 441, 52 N.E. 650; *see, Thompson v. City of New York,* 60 N.Y.2d 948, 949–950, 471 N.Y.S.2d 50, 459 N.E.2d 159). The Appellate Division, therefore, exceeded its power of review when it determined that "as a matter of law" plaintiff's unrebutted proof established that he had sustained a "permanent loss of use of a body function" (100 A.D.2d 577, 578, 473 N.Y.S.2d 513) (*e.g., People v. Davis,* 231 N.Y., at p. 63, 131 N.E. 569, *supra; see, Thompson v. City of New York,* 60 N.Y.2d, at p. 950, 471 N.Y.S.2d 50, 459 N.E.2d 159, *supra* ). Its prior order of reversal "on the law" was, therefore, erroneous.

[Emphasis, by underlining, supplied].

10. See also, *McConnell v. Santana, 77 A.D.3d 635, 637, 909 N.Y.S.2d 86, 88 (2nd Dept. 2010)*:

> The defendants failed to preserve for appellate review their argument that they are entitled to judgment as a matter of law on the issue of negligence on the ground that the plaintiff failed to establish proximate cause (*see Miller v. Miller,* 68 N.Y.2d 871, 873, 508 N.Y.S.2d 418, 501 N.E.2d 26; *Garrett v. Manaser,* 8 A.D.3d 616, 779 N.Y.S.2d 565; *Sanford v. Woodner Co.,* 304 A.D.2d 813, 814, 758 N.Y.S.2d 399). By failing to move pursuant to CPLR 4401 for judgment as a matter of law on the issue of negligence at the close of the evidence, the defendants implicitly conceded that the issue was for the trier of fact (*see Miller v. Miller,* 68 N.Y.2d 871, 873, 508 N.Y.S.2d 418, 501 N.E.2d 26; *Sanford v. Woodner Co.,* 304 A.D.2d 813, 814, 758 N.Y.S.2d 399; *Hurley v. Cavitolo,* 239 A.D.2d 559, 658 N.Y.S.2d 90).

11. See also *DeSimone v. Royal GM, Inc., 49 A.D.3d 490, 490–91, 856 N.Y.S.2d 628, 629 (2nd Dept 2008)*:

> By failing to move for a directed verdict pursuant to CPLR 4401 on the issue of whether the plaintiff sustained a "serious injury" under Insurance Law § 5102(d), the defendants implicitly conceded that the issue was for the trier of fact (*see *491 Miller v. Miller,* 68 N.Y.2d 871, 873, 508 N.Y.S.2d 418, 501 N.E.2d 26; *Hurley v. Cavitolo,* 239 A.D.2d 559, 658 N.Y.S.2d 90).
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> .

12. See also *Torrillo v. Command Bus Co., 206 A.D.2d 520, 520, 614 N.Y.S.2d 756, 757 (2nd Dept. 1994)*:

> Since the plaintiffs failed to move pursuant to CPLR 4401 for judgment at the close of the evidence on the issue of negligence, they implicitly conceded that the issue was for the trier of fact (*see, Miller v. Miller,* 68 N.Y.2d 871, 873, 508 N.Y.S.2d 418, 501 N.E.2d 26; *Thompson v. City of New York,* 60 N.Y.2d 948, 471 N.Y.S.2d 50, 459 N.E.2d 159; *Gutin v. Mascali & Sons,* 11 N.Y.2d 97, 226 N.Y.S.2d 434, 181 N.E.2d 449; *Segal v. McDaniel Ford, Inc.,* 201 A.D.2d 717, 608 N.Y.S.2d 324).

13. There was a valid line of reasoning and permissible inferences which could possibly lead rational persons to the conclusions reached by the jury on the basis of the evidence presented at trial; and Defendants have not established otherwise. See *Vitenko v. City of New York, 210 A.D.3d 931, 933, 179 N.Y.S.3d 134, 137 (2nd Dept. 2022).*

14. First, Defendants' allegations about the basis for the jury's decision are guess work: Defendants do not know what evidence the jury chose to rely on, out of all the evidence presented at the trial, to reach their determination. Defendants refused, and the court did not submit to the jury, the questions Plaintiff proposed for the verdict sheet which might have enabled both parties to have a better understanding of the factual predicate, and decisions, the jury made in rendering their verdict.

15. There is a rational basis, based on the entered evidence, for each of the causes of action that the jury found the Defendants liable to the Plaintiff for. Please note, one of the causes

of action is for an accounting; Defendants have not sought to overturn liability for it; as of the time this MOL is written, Defendants have not provided an accounting, though it is my understanding that Defendants (in particular Eugene Khavinson, Vyacheslav Faybyshev and Mikhail Kremerman, were to have supplied an accounting to Plaintiff by 1.12.24, which was the same date Defendants were given to make their CPLR 4404(a) motion for judgment notwithstanding the verdict; and that Plaintiff would have been able to use that accounting to oppose this current motion. Plaintiff requests permission to submit further opposition to this motion a reasonable time after it receives Defendants' accounting, as ordered by the jury, and not challenged by the Defendants, because Defendants' failure to provide the accounting has prejudiced Plaintiff.

16. A rational person, based on the evidence admitted at trial, could have found, among other things, that:

A. The managing members transferred money to third parties, including entities controlled by various managing members, and friends of managing members, in an effort to funnel those entities and friends the LLC's money, to which they were not entitled to, and which was not related to the business of the LLC, which was to complete the project (290 13th Street, Brooklyn) and sell the condominiums. Despite Defendants' claims that the LLC was paying back loans, there was no loan documentation, no loan agreements, no promissory notes. (See Loans listed in the memo section of checks that are part of Chase Bank Records, Ex "11," and trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3" and the LLC's 2014 CITR, Ex."9," for the payments to the entities and the identities of the entities. ). This is especially because of the numerous discrepancies on the

LLC's tax returns that the Defendants' managing members each testified, but especially Eugene Khavinson (see trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3") including the loan repayment listed to Alexsandr Boguslavsky for $250,000 that the Defendants testified was never made and therefore never repaid. (See trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3", and the LLC's 2014 CITR, Ex."9," and Trial Testimony of Alexsandr Boguslavsky, Ex."7").

B. The managing members did not attempt to collect the remainder of the balance of the loan the LLC made to Omni Build Inc (the General Contractor on the Project undertaken by the LLC) for $749,800 made in Sept. 2014, even though Omni Build was in default even after the LLC extended the due date of the loan per the amended promissory note which was entered into evidence at trial; and, according to one of the managing members at the time the LLC made the loan to Omni Build, Vyacheslav Faybyshev, who also owned Omni Build, the LLC made a decision not to attempt to force Omni Build to repay the remainder of the loan because Omni Build had its own difficulties (See trial testimony of Eugene Khavinson, Ex."1," and especially Vyacheslav Faybyshev, Ex "3"). Though this decision might have benefitted Mr. Faybyshev Company, Omni Build, it harmed the LLC because the money from the loan would have been put in the LLC's coffers and each member of the LLC been entitled to to their pro-rata share. The jury could have found the same was true because of the LLC's decision not to collect interest on the aforementioned loan even though

the promissory notes for the loan require it.

C. The managing members tried to hide the loan to Omni Build for $749,800. The LLC's Ledger for 2014 lists the transaction as a construction expense booked on 9.10.14 for Legal Settlement; not as a loan; which, as the LLC's tax preparer Serge Rosenberg testified, if the transaction had not been made the LLC would have had that much more money, $749,800, in income. Each member, in turn would have been entitled to their pro rata share of that additional profit. (See trial testimony of Serge Rosenberg, Ex. "6", especially at 82:21-83:14.)

D. The managing members, including Eugene Khavinson, used the $250,000 that is listed, on the LLC's 2014 CITR as a repayment to Alexsandr Boguslavsky of a loan, but which Eugene Khavinson testified the LLC did not pay because Alexsandr Boguslavsky because the LLC never took a loan from him, for purposes unrelated to the LLC; and the jury could have found this even if it found that the LLC never paid that $250,000 to Alexsandr Boguslavsky as Defendants claim. This is because the jury could have found that the money was left in the LLC's operating account, which was Eugene Khavinson IOLA Account at the time and, according to Eugene Khavinson, at least initially had other clients' money in it as well, and the jury could have found that Eugene Khavinson or the other managing members did not use that money for the LLC purposes but used it for their own personal gain, including because of the evidence that transfers were made by the LLC to other companies controlled by friends of the managing members, to friends of managing members, or to companies of which at least some of the managing members had an ownership

interest (including the 749,800 loan from the LLC to Omni Build, which Omni Build immediately used to pay another company, 35 West End Ave, of which both Eugene Khavinson and Vyacheslav Faybyshev had an ownership interest. (See trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3", trial testimony of Vitaly Kochnev, Ex. "5", and Omni Build's Ledger, Ex. "12".)

E. The managing members manipulated the ownership interest of the managing members and the others, without heed to the requirements set forth in the operating agreement (Ex. "10"), including because of the discrepancies between the ownership interest in the LLC of some of the members, including the changes from the end of one year on the tax returns to the beginning of the next, and for members from year to year (including for managing member Vyacheslav Faybyshev, especially in 2014 and how that did not equate with the testimony regarding Alexsandr Boguslavsky's purchase of 2.5% of shares from Mikail Kremerman, and 2.5% of shares from Vyacheslav Faybyshev (trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3", Trial Testimony of Alexsandr Boguslavsky, Ex."7", the LLC's CITR's for 2008-2014, each of which was admitted in evidence at trial, but especially the LLC's CITR for 2014, Ex."9").

F. The purchase of shares of the LLC by Alexsandr Boguslavsky did not actually occur, especially in light of the evidence that he was not listed as a member on any Operating Agreement admitted in evidence, Defendants' prior statements (including on their statement of material facts submitted in support of their

motion for summary judgement) concerning only one Operating Agreement in existence; the evidence that Alexsandr Boguslavsky was listed as a member on the some years of the LLC's CITR but was then removed, a on subsequent years, and then listed again as a member on years subsequent to that, including the 2014 return which was the year the Condo's built by the LLC's project were sold and the money distributed. (See trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3"; Trial Testimony of Alexsandr Boguslavsky, Ex."7", the LLC's CITR's for 2008-2014, each of which was admitted in evidence at trial, but especially the LLC's CITR for 2014, Ex."9"; and the Operating Agreement, Ex. "10.)

17. The jury could have found, rationally and reasonably, from the evidence admitted at trial, including all of the above, that the LLC was harmed by the aforementioned actions, that David Aronov, as a member, also was harmed. Likewise the jury could have found, reasonably, that Eugene Khavinson's testimony, including the testimony the other Defendants, regarding whether Defendants gave unanimous consent for the actions the Operating Agreement required unanimous consent of the members to take, was not believable and that the managing members took those actions without the unanimous consent of the members; and that this harmed the LLC, and David Aronov, as a member. (See trial testimony of Eugene Khavinson, Ex."1," and Mikail Kremerman, Ex."2", and Vyacheslav Faybyshev, Ex "3", Trial Testimony of Alexsandr Boguslavsky, Ex."7", the LLC's CITR's for 2008-2014, each of which was admitted in evidence at trial, but especially the LLC's CITR for 2014, Ex."9"; and the Operating Agreement and the Operating Agreement, Ex. "10.)

18. Plaintiff relies on all of the exhibits at trial, and reserves its right to rely on all of

the evidence, and arguments, at trial, even those not specifically stated herein. There was a reasonable basis based on the admitted evidence for the jury to reach the conclusion and verdict they did; Defendants have not shown otherwise. Most importantly, Defendants' motion pursuant to CPLR 4404(a) for a judgement notwithstanding the verdict is barred because Defendants did not make a motion for a directed verdict, pursuant to CPLR 4401, at the close of Plaintiff's case.

19. For all the reasons cited herein, Defendants' motion should be denied in its entirety and the action be allowed to proceed to scheduled trial on damages.

Dated: January 19, 2024

By: _____
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