

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
JAMES SCHIANO,

Plaintiff

Index No.:

-against-

VERIFIED COMPLAINT

PETER HARSANYI, individually as fiduciary of
SYSTEMS VEND MANAGEMENT CORP.,
VENDING SERVICE.COM, INC.,
CWS VENDING, INC

Defendant.

-----X

The plaintiff, James Schiano (“Schiano”), by and through his attorneys, LAW OFFICES OF E. MICHAEL ROSENSTOCK, P.C., complaining of the defendants, alleges the following upon information and belief:

PRELIMINARY STATEMENT

1. Schiano seeks to recover the value of his investments in several corporations which on paper are owned and controlled by the defendant, Peter Harsanyi (“Harsanyi”). Recognizing that there may be more than one way to view the evidence in this case, Schiano alleges multiple causes of action --- some in the alternative --- related to the same facts and transactions involving his relationship with Defendants which he contends is a *de facto* business partnership in which he invested and otherwise contributed both directly and indirectly valued in excess of \$800,000 beginning around 2010 and ending with Harsanyi unilaterally shutting Schiano out of the business premises in March, 2021.

2. Placing substance over form and labels, Schiano invokes the power and authority of the Court both at law and in equity to enforce his rights to enjoy the benefits of his substantial investment in Defendants as an equal shareholder with Harsanyi in the corporate defendants or as

Harsanyi's and the corporate defendants' equal partner in the businesses owned and operated by them or, in the alternative, to recover the value of those investments together with interest on alternative causes of action for breach of contract, breach of fiduciary duties, unjust enrichment and/or imposition of a constructive trust as set forth herein.

3. As more particularly set forth below herein, Schiano seeks a judgment against Harsanyi:

- (a) declaring that Schiano is a 50% shareholder of and is entitled to an equity interest in the assets and income of the corporate defendants: SYSTEMS VEND MANAGEMENT CORP., ("SVMC"), VENDING SERVICE. COM, INC. ("VSC"), and CWS VENDING, INC ("CWS") (hereinafter each referred to as a "Company" and collectively referred to as the "Companies") and further directing that entries be made on the books and records of each Company to reflect his legal or equitable ownership of and interest in the assets of each Company in proportion to his percentage interest as determined by the court and to issue a share certificate to Schiano evidencing his said proportionate ownership interest;
- (b) Or, in the alternative to (a), declaring that a *de facto* partnership was created between Schiano and Harsanyi and the Companies when Schiano first contributed funds to the Companies and that Schiano is entitled to an equity interest in the assets and income of each of them as a partner in its business and further directing that entries be made on the books and records of each Company to reflect his legal or equitable rights as its partner to share in its assets, income and profits in proportion to his percentage partnership interest as determined by the court;
- (c) ordering defendant, Harsanyi, who has been the sole record officer of each

- Company legally responsible for managing its business affairs at all times mentioned herein, to account to Schiano for the financial affairs and condition of each Company including its assets, liabilities, income, profits and losses;
- (d) ordering a distribution of Schiano's share of each Company's assets, income and profits to Schiano by such manner and method as the Court shall determine;
- (e) permanently enjoining and prohibiting Defendants from causing any transfer, encumbrance, pledge, or sale of any of the assets of any of the Companies without Schiano's prior consent;
- (f) imposing a constructive trust for the benefit of Schiano over all assets of the Companies to protect Schiano's interest in the Companies over which Harsanyi exercises dominion and control including without limitation real property, tangible property, inventory and cash acquired during parties' business relationship;
- (g) the alternative to (a) and (b) above, declaring that a contract exists between Schiano and Harsanyi pursuant to which Schiano made substantial financial and other contributions to the Companies relying on Harsanyi's promise to repay those contributions, and that Harsanyi has breached that contract causing Schiano damages.

PARTIES

4. At all relevant times, plaintiff James Schiano is an individual residing in Nassau County, New York.
5. At all relevant times, defendant SVMC was and remains a corporation, duly organized and existing under and pursuant to the laws of the State of New York, formed in or about September 2009, with an address 4023 Austin Boulevard, Island Park, New York 11558.
6. At all relevant times, defendant VSC was and remains a corporation, duly

organized and existing under and pursuant to the laws of the State of New York, formed in or about August 2014, with an address 114 Old Country Road, S. 248, Mineola, NY 11501.

7. At all relevant times, defendant CWS, was and remains a corporation, duly organized and existing under and pursuant to the laws of the State of New York, formed in or about August 2015, with an address 114 Old Country Road, S. 248, Mineola, NY 11501.

8. Upon information and belief, at all relevant times, defendant Harsanyi was and remains an individual residing Nassau County, New York.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to CPLR 301 because the defendants are located in New York, regularly do business in New York and/or committed tortious acts within New York.

10. Venue is proper in Nassau County pursuant to CPLR 503(a) because Harsanyi resides in Nassau County and it is where a substantial part of the events or omissions giving rise to the claims occurred.

FACTS COMMON TO ALL CLAIMS

Corporate Formation and Scope of the Companies

11. Schiano's claims herein are both legal and equitable in nature and arise initially from his contribution to the Companies of the assets and money received from the proceeds of the sale of businesses he owned solely in his name (each a "Schiano Feeder Company" and collectively the "Schiano Feeder Companies"). One such feeder company --- Kwik Java Coffee Corp. ("Kwik Java") --- owned and operated solely by Schiano --- was sold to a third party and the proceeds of the sale in the amount of \$175,000 were deposited into the SVMC' bank accounts in September, 2014 at a time when none of the Companies had any active

business and were effectively dormant shells.

12. In consideration of this contribution, the parties agreed that they would thereafter be equal partners in the Companies and the business was effectively run that way from that point forward until Harsanyi breached this agreement and forced Schiano to vacate the business premises in March, 2021.

13. Schiano's claim to be a *de facto* and equitable 50% owner of the Companies, whether as a shareholder or partner is evidenced by a long history and course of conduct with Harsanyi.

14. SVMC's core assets and revenue streams all originate from and can be traced back to the ice cream, water and coffee businesses Schiano had an ownership interest in before they were either sold or otherwise terminated. Upon those sales or terminations any surviving business assets and operations were folded into and continued by SVMC.

The Role of VSC

15. VSC tracks and manages vending operations and includes such things as product purchases (snacks, drinks, etc.); liability insurance premiums; all credit card payments made at the company's vending machines; and vending equipment purchased by SVMC using funds acquired from the sale of Kwik Java.

Schiano's Contributions

16. Schiano has made direct and indirect capital contributions to the Companies of at least \$550,000.

17. Schiano borrowed approximately \$350,000 of this money from third parties and incurred

and paid interest on those loans of approximately \$55,000 over the past five years and has also paid interest on approximately \$57,000 of these contributions to the extent he has made contributions to the Companies by borrowing on his personal credit cards.

18. At all times hereinafter mentioned, Harsanyi was and remains obliged to Schiano as a fiduciary with regard to the business of the Companies whether as his partner or as the only record officer of his co-shareholder of the stock of the Companies.

19. For the reasons set forth herein, Harsanyi has breached his fiduciary duties to Schiano.

20. One constant in the business operation of the Companies is that Harsanyi never seemed to have liquid funds to contribute and always turned to Schiano when money was needed to keep the doors open and the employees paid. Schiano's substantial monetary contributions to the businesses as well as other actions such as assuming personal responsibility to pay Cure Water Systems Inc's payroll tax liens total well in excess of \$600,000.

21. Another constant is Harsanyi's spotty attendance at the Companies' business office and his total reliance on Schiano to run the Companies for extended time periods when he was absent. This includes a period of 2 years when he moved to Jacksonville, Florida to qualify for a liver transplant (no contact by phone or email this entire time) and 6 months during COVID.

22. SVMC and VSC tangible assets in excess of \$400,000 not including the value of its many vending machines both on location and in its warehouse. This also does not include intangibles such as good will or the proceeds of the anticipated sale of CWS, water filtration business, to Quench which was expected to be for over \$1MM pre-COVID.

23. Harsanyi is the sole owner of the building which house the Companies located at 4021 and 4023 Austin Boulevard, Island Park, New York.

Corporate Relationship Break Down

24. On March 12, 2021, without any prior notice, Harsanyi unilaterally seized full control of the operations of the Companies by ousting Schiano from the corporate office, refusing to allow Schiano to return to the building and refusing Schiano access to any of the Companies' information, assets, and Schiano's personal property.

FIRST CAUSE OF ACTION
(Declaratory Judgment that Schiano is a Shareholder)

25. Schiano repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 20 as if fully set forth hereat.

26. By reason of the foregoing, Schiano asserts that he is the owner of and entitled to a 50% equity interest in each of the Companies.

27. Schiano has no adequate remedy at law to insure that he is accorded all of the rights to which he is entitled as a shareholder in the Companies.

28. Schiano requests a judgment of this court declaring that he is an equal shareholder of each of the Companies and directing those entries be made on the books and records of each Company to reflect his legal or equitable ownership of and interest in the assets of each Company in proportion to his percentage interest as determined by the court and to issue a share certificate to Schiano evidencing his said proportionate ownership interest.

SECOND CAUSE OF ACTION
(Declaratory Judgment that Schiano is a Partner)

29. Schiano repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 28 as if fully set forth hereat.

30. By reason of the foregoing, Schiano asserts that he and Harsanyi and the Companies are *de facto* equal partners in the businesses owned and operated by the Companies.

31. Schiano has no adequate remedy at law to insure that he is accorded all of the rights to which he is entitled as a partner in the businesses owned and operated by the Companies.

32. In the alternative to the First Cause of Action, Schiano requests a judgment declaring that a *de facto* partnership was created between Schiano and Harsanyi and the Companies when Schiano first contributed funds to the Companies and that Schiano is entitled to an equity interest in the assets and income of each of them as a partner in its business and further directing that entries be made on the books and records of each Company to reflect his legal or equitable rights as its partner to share in its assets, income and profits in proportion to his percentage partnership interest as determined by the court.

THIRD CAUSE OF ACTION
(Accounting of the Companies' Finances)

33. Plaintiff repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 32 as if fully set forth hereat.

34. On or about March 12, 2021, without just cause, Harsanyi forced Schiano to vacate the Companies' business premises and seized and continues to maintain exclusive control and possession of the books, records, banking records, and other documents of and pertaining to the Companies.

35. From the time that he ejected Schiano from the business premises Harsanyi has failed and refused to furnish Schiano with any financial records; to provide Schiano with access to the books and records of the Companies' assets; to provide an accounting of the financial affairs of the Companies; or to pay to Schiano the portion of the net profits due to him, all without just cause and thus depriving Schiano of his rightful share and interest in the Companies and concealing Harsanyi's suspected unlawful diversion or conversion of the Companies' assets.

36. Schiano has demanded that Harsanyi account to him and furnish him with

financial reports and an accounting of all of the Companies' affairs and pay him his rightful percentage of the Companies' net profits, all of which Harsanyi has a fiduciary duty to do.

37. Schiano is entitled to an order directing Harsanyi to fully account for all the Companies' assets as his fiduciary pursuant to the common law.

**FOURTH CAUSE OF ACTION
(Unjust Enrichment)**

38. Plaintiff repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 37 as if fully set forth hereat.

39. On March 12, 2021, Harsanyi seized full control of the operations of the Companies by ousting Schiano from the corporate office, refusing to allow Schiano to return to the building and refusing Schiano access to any of the Companies' assets.

40. For approximately twelve (12) years prior to this time Schiano had devoted his time and contributed his financial resources to the Companies to a far greater extent than any reasonable person would unless he had an equity stake.

41. As a result of being forcibly ejected from the business premises and precluded access to the business books, records and funds, Schiano has been deprived of his rights as one of its owners.

42. Harsanyi's conduct has the effect of an unlawful seizure of Schiano's property without compensation which should not be countenanced.

43. Plaintiff has no adequate remedy at law.

44. It is against equity and good conscience to permit Harsanyi to unilaterally seize Schiano's equity in the Companies and divert them to himself and for his own personal profit.

45. Schiano is entitled to a judgment directing Harsanyi to disgorge any profits he has withheld from Schiano since March 12, 2021, as having unjustly enriched Harsanyi.

**FIFTH CAUSE OF ACTION
(Injunctive Relief)**

46. Plaintiff repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 45 as if fully set forth hereat.

47. From March 12, 2021, to the present date, Harsanyi has had full control of the operations of the Companies and when Schiano advised him that he wanted to resolve the incident and settle the matter amicably Harsanyi refused to allow Schiano to return to the office building and refused Schiano access to any of the Companies' assets.

48. As a result of the foregoing, Harsanyi has complete possession and control over all of the assets of the Companies to the exclusion of Schiano.

49. To prevent Harsanyi from liquidating and depleting the assets of the Companies to a third-party entity for his sole use and enjoyment and to maintain the status quo, plaintiff seeks an injunction prohibiting to transfer, encumbrance, pledge, or sale of any of the assets of the Companies pending the final disposition of this lawsuit.

50. Plaintiff has no adequate remedy at law.

**SIXTH CAUSE OF ACTION
(Constructive Trust)**

51. Plaintiff repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 50 as if fully set forth hereat.

52. Harsanyi owes a fiduciary duty to the Companies and Schiano.

53. Harsanyi holds a number of the Companies' assets in his individual name or accounts for which only he has access which hold Company funds, including but not limited to the corporate bank accounts, machinery, equipment, and inventory.

54. Notwithstanding that the assets are held in Harsanyi's name, these assets, as well as other assets acquired in his name during the Companies' existence are assets of the Companies in which Schiano has an interest.

55. In reliance on his fiduciary relationship with Harsanyi, Schiano made considerable investments including such things as personally paying SVMC's payroll tax liens well in excess of \$600,000. of time, services, energy and money to the Companies including but not limited to substantial monetary contributions to the business as well as other actions such as assuming

56. Notwithstanding Schiano's equitable interest in these assets, Harsanyi is unjustifiably refusing to acknowledge and share them with Schiano.

57. Harsanyi is being unjustly enriched by his record ownership of these assets held on behalf of the Companies, but solely in his name, at Schiano's expense.

58. It is against equity and good conscience to permit Harsanyi to retain full record title of ownership of these assets which have been funded, in whole or in part with the Companies' funds.

59. For the benefit of Schiano, The Companies are entitled to a constructive trust over these assets, pending an equitable distribution representing his 50% interest in the Companies.

SEVENTH CAUSE OF ACTION
(Breach of Contract)

60. Plaintiff repeats, realleges, and fully incorporates herein each of the allegations in the above paragraphs 1 through 59 as if fully set forth hereat.

61. In the alternative to the Cause of Action stated hereinabove, Schiano and Harsanyi entered into an agreement at the time Schiano made his first financial contribution to SVMC that in consideration of that contribution Schiano would receive a 50% equity interest in the business of SVMC.

62. Schiano made multiple subsequent valuable contributions to the Companies in money, credit and time relying on this agreement with Harsanyi.
63. Schiano has demanded to Harsanyi perform his part of the bargain and document Schiano's 50% equity interest in the Companies and these demands have been refused by Harsanyi.
64. Being denied what he bargained for by Harsanyi, Schiano has demanded that all funds he has contributed to the Companies or for the benefit of their business be repaid to him, another request refused by Harsanyi.
65. Harsanyi has breached the contract he has with Schiano.
66. By reason of Harsanyi's breach of contract, Schiano has been damaged in such sum as the trier of facts shall determine, but in no event less than \$800,000.

WHEREFORE, Plaintiff demands judgment in his favor:

- (a) As for the First Cause of Action, declaring that Schiano is a 50% shareholder of and is entitled to an equity interest in the assets and income of the corporate defendants: SYSTEMS VEND MANAGEMENT CORP., VENDING SERVICE.COM, INC., and CWS VENDING, INC., and further directing that entries be made on the books and records of each Company to reflect his legal or equitable ownership of and interest in the assets of each Company in proportion to his percentage interest as determined by the court and to issue a share certificate to Schiano evidencing his said proportionate ownership interest;
- (b) As for the Second Cause of Action, declaring that a *de facto* partnership was created between Schiano and Harsanyi and the Companies when Schiano first contributed funds to the Companies and that Schiano is entitled to an equity interest in the assets and

income of each of them as a partner in its business and further directing that entries be made on the books and records of each Company to reflect his legal or equitable rights as its partner to share in its assets, income and profits in proportion to his percentage partnership interest as determined by the court;

- (c) As for the Third of Action, ordering defendant, Harsanyi to account to Schiano for the financial affairs and condition of each Company including its assets, liabilities, income, profits and losses;
- (d) As for the Fourth Cause of Action, ordering a distribution of Schiano's share of each Company's assets, income and profits to Schiano by such manner and method as the Court shall determine;
- (e) As for the Fifth Cause of Action, permanently enjoining and prohibiting Defendants from causing any transfer, encumbrance, pledge, or sale of any of the assets of any of the Companies without Schiano's prior consent;
- (f) As for the Sixth Cause of Action, imposing a constructive trust for the benefit of Schiano over all assets of the Companies to protect Schiano's interest in the Companies over which Harsanyi exercises dominion and control including without limitation real property, tangible property, inventory and cash acquired during parties' business relationship;
- (g) As for the Seventh Cause of Action, the alternative to (a) and (b) above, declaring that a contract exists between Schiano and Harsanyi and that Harsanyi has breached that contract causing Schiano damages;
- (h) All together with interest, plaintiff's attorneys fees, costs and disbursements, and such other

further and different relief as the court deems just and proper.

Dated: Rockville Centre, New York
March 28, 2022

Law Offices of E. Michael Rosenstock, P.C.

By: /s/ E. Michael Rosenstock
E. Michael Rosenstock, Esq.
Attorneys for Plaintiff
55 Maple Avenue, Suite 206
Rockville Centre, New York 11570
516-766-7600
emrosenstock@rosenstocklaw.com

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, James Schiano, being duly sworn, deposes and states:

I am the defendant in the within action. I have read the within Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Dated: Rockville Centre, New York
March 28, 2022

Handwritten signature of James Schiano over a horizontal line.

Sworn to before me this 28th
day of March, 2022

Handwritten signature of Nancy Lore over a horizontal line, with 'Notary Public' printed below.

NANCY LORE
Notary Public in and for the State of New York
Qualified in Nassau County
Commission Expires on 11/11/23