

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

ADRIANE HARTILL, PAUL DISCALA and GERARD DISCALA

Plaintiffs,

-Against-

JOHN NUNZIATA AND ARTHUR NUNZIATA,

Defendant,

-and-

156 AINSLIE ST., LLC.

Nominal Defendant.

**AMENDED VERIFIED  
COMPLAINT**

Plaintiffs ADRIANE HARTILL, PAUL DISCALA, and GERARD DISCALA (“Plaintiffs”), by the undersigned counsel, as and for their amended complaint against Defendants, 156 AINSLIE ST., LLC., Arthur Nunziata and JOHN NUNZIATA (“Defendants”) state and allege as follows:

**THE PARTIES**

1. Plaintiff, ADRIANE HARTILL, is a resident of the State of New York, County of Richmond.
2. Plaintiff, PAUL DISCALA, is a resident of the State of New Jersey, County of Monmouth.
3. Plaintiff, GERARD DISCALA, is a resident of the State of New York, County of Nassau.

4. Defendant 156 AINSLIE ST., LLC ("the Company") is a New York Limited Liability Company, with its principal place of business at 156 Ainslie Street, Brooklyn, N. Y.

5. Defendant JOHN NUNZIATA is a resident of the State of New York, County of Kings, and the sole managing member of Defendant 156 AINSLIE ST., LLC.

6. Defendant ARTHUR NUNZIATA is a resident of the State of Florida, County of Palm Beach.

### **JURISDICTION AND VENUE**

7. Jurisdiction and venue are proper pursuant to CPLR § § 301, 503, and 509, and all activities alleged in this complaint transpired in Kings County, New York.

### **NATURE OF THE DISPUTE**

8. Plaintiffs bring action for breach of fiduciary duty, declaratory relief, and money damages based on Defendants' failure to act in good faith regarding Defendant's management of real property devised to the parties by their relatives. The property in question, located at 156 Ainslie Street, Brooklyn, NY 11211 (the "Property"), has fallen into disrepair due to Defendant's improper management. Defendants John Nunziata and Arthur Nunziata created the Company to consolidate his control of the Property even while maintaining that Plaintiffs are shareholders of the Company. Defendants have repeatedly breached their fiduciary duty to Plaintiffs by failing to provide Plaintiffs access to the Property's and the Company's books and records. Despite a lawful request by the undersigned counsel, Defendant John Nunziata has acted in bad faith by refusing to make the Property's and Company's books and records available to the Plaintiffs. Plaintiffs are seeking to remove managerial control of the Property from Defendant John Nunziata and money damages and an equitable accounting because of the Defendants' bad faith breach of fiduciary duty in failing to preserve the Property and adequately account for the Property's books.

9. Throughout Mr. Nunziata's tenure as the Property's purported manager, the Property has gone into disrepair. Mr. Nunziata has not maintained the Property's books and records properly. In addition, Mr. Nunziata has not provided Plaintiffs with detailed periodic updates regarding the Property and the Property's financial health. Often, the Plaintiffs received handwritten and imprecise financial information that appeared incomplete and not in compliance with customary business standards for such reports.

**FUTILITY OF DEMAND TO MANAGING MEMBER OF 156 AINSLIE ST., LLC.**

10. A demand to Defendant John Nunziata, the sole managing member of a company he created to consolidate his control of the Property, would have been futile because Mr. Nunziata is interested in the challenged transactions; Mr. Nunziata did not fully inform himself about the challenged transactions to the extent reasonably appropriate under the circumstances; and the challenged transactions are so egregious on their face that they could not have been the product of sound business judgment by Mr. Nunziata.

11. The undersigned counsel, on behalf of the Plaintiffs, sent a letter to Defendant John Nunziata dated August 21, 2023, requesting to inspect the books and records of the Property pursuant to Sec. 1102(b) of the New York Limited Liability Company Law and Article III, Sec. 4 of the Company's Operating Agreement. (Exhibit "A"). To date, Mr. Nunziata has refused to make the Property's books and records available to the Plaintiffs.

**FACTS COMMON TO ALL CAUSES OF ACTION**

12. Defendant John Nunziata's father and Plaintiffs' grandfather, Andrew Nunziata, originally owned the Property, which he devised in his Will to his children, Defendant John Nunziata, Maria Discala, and Defendant Arthur Nunziata. Maria Discala subsequently passed away, but before her passing, she asked that Defendants John Nunziata and Arthur Nunziata ensure that her children, the Plaintiffs here, who inherited Maria Discala's interest in the Property,

be treated fairly. After Maria Discala's passing, Defendant John Nunziata created the Company, largely without the Plaintiffs' input, and appointed himself the sole manager.

13. On or about December 12, 2006, Defendant John Nunziata created the Company and appointed himself as the sole manager.

14. The Company's principal asset is the Property.

15. Plaintiffs, Defendant John Nunziata and Defendant Arthur Nunziata, each own approximately 33⅓ % of the membership interests in the Company.

16. The Company's Operating Agreement is attached to this complaint. (Exhibit "B")

17. Over the last several years, Defendant John Nunziata has left the Property in disrepair. Additionally, Defendant John Nunziata has refused to allocate to Plaintiffs their share of the Property's income and to provide financial information detailing the rents received, operating costs, and distributions to the Property's owners.

18. Defendant John Nunziata has provided Plaintiffs with scant financial information, and the information provided was handwritten and prepared without the assistance of an accountant and not in compliance with customary business standards to report the income and expenses of a limited liability company.

19. Defendant John Nunziata, in bad faith, refused to grant Plaintiffs access to the books and records of the Property.

20. Plaintiffs, as owners, require accurate and timely financial reports to safeguard their ownership interests.

21. The Company has not convened an annual meeting of members as required by Article IV, Section 1 of the Operating Agreement for the last several years.

22. Upon information and belief, Defendants have allowed a tenant to reside in the Property while paying below-market rent.

23. Defendant John Nunziata has deducted funds from the Property's rent distributions to make repairs to the Property while failing to disclose to Plaintiffs what repairs were made, by whom, and at what cost.

24. Defendant John Nunziata has allowed the Property to fall into disrepair and deteriorate, jeopardizing the financial viability of the Property owner's interest.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

25. Plaintiffs repeat and reallege each of the allegations contained in the paragraphs above as if fully set forth herein.

26. Section 1102(b) of the New York Limited Liability Company Law provides:

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)<sup>1</sup> 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.

27. The Defendants, in bad faith and violation of New York Limited Liability Company Law § 1102(b), have refused to provide Plaintiffs with the books and records of the Property and Company notwithstanding their lawful request for the records by their undersigned counsel.

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<sup>1</sup> 1102(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.

28. Plaintiffs, as owners of approximately 33⅓ % of the membership interest in the Property, are entitled to a judgment or order declaring that the Defendants must permit Plaintiffs to inspect the financial statements of the Company and Property, including its federal and state income tax returns, for the three most recent fiscal years.

29. Plaintiffs have no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment)**

30. Plaintiffs repeat and reallege each of the allegations contained in the paragraphs above as if fully set forth herein.

31. Article III, Section 4 of the Company's Operating Agreement provides:

Each member may inspect and copy, at his own expense, for any purpose reasonably related to such members interest as a member, the articles of organization, the Operating agreement, minutes of any meeting of members, and all tax returns or financial statements of the Company for the three years immediately preceding his inspection, and other information regarding the affairs of this Company as his just and reasonable.

32. The Defendants, in bad faith and in violation of Article III, Section 4 of the Company's Operating Agreement, have refused to provide Plaintiffs with the books and records of the Company, notwithstanding their lawful request for the records by their undersigned counsel.

33. Plaintiffs, as owners of approximately 33⅓ % of the membership interest in the Company and Property, are entitled to a judgment or order declaring that the Defendants must permit Plaintiffs to inspect the financial statements of the Company, including its federal and state income tax returns, for the three most recent fiscal years.

34. Plaintiffs have no adequate remedy at law.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Equitable Accounting)**

35. Plaintiffs repeat and reallege each of the allegations contained in the paragraphs above as if fully set forth herein.

36. The right to an accounting is premised upon the existence of a confidential or fiduciary relationship and a breach of the duty imposed by that relationship respecting Property in which the party seeking the accounting has an interest.

37. Defendant John Nunziata, co-owner of the Property and self-appointed managing member of the Company, owes a fiduciary duty to the Plaintiffs.

38. The only accounting that Defendant John Nunziata, as the Company's purported managing member, has provided to the Plaintiffs are handwritten notes covering a fraction of Mr. Nunziata's term as Manager. The notes are attached as Exhibit "C".

39. Plaintiffs, as owners of approximately 33⅓ % of the membership interest in the Property and Company, are entitled to a judgment or order requiring Defendants to account for all income and expenses, including rents, repairs, and capital expenses, that the Property and Company incurred since January 1, 2016, to the present.

40. Plaintiffs have no adequate remedy at law.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**

41. Plaintiffs repeat and reallege each of the allegations contained in the paragraphs above as if fully set forth herein.

42. Defendant John Nunziata, as co-owner of the Property and self-appointed Manager of the Company, owes a fiduciary duty to Plaintiffs.

43. Defendant John Nunziata acted in bad faith and breach of fiduciary duty by:

- Withholding from Plaintiffs information about the Property's and Company's income, expenses, and distributions;

- Failing to provide Plaintiffs with the Company's income tax information regarding members' distributions that allows Plaintiffs to manage their membership interest in the Property and Company;
- Failing to properly maintain the Property, leading it to fall into disrepair and deteriorate;
- Permitting one tenant to occupy the Property at a below-market rent, thereby reducing funds available to distribute to members;
- Deducting funds from distributions to perform repairs on the Property while failing to disclose what repairs were made, at what cost and, by whom, and
- Failing to create and maintain the Property's and Company's books and records.

44. As a result of Defendants' breach, Plaintiffs have been damaged in an amount to be determined at trial, plus interest.

45. Plaintiffs, as owners of approximately 33⅓ % of the membership interest in the Property and Company, are entitled to a judgment or order declaring that the Property be sold and the proceeds divided between the owners as to their ownership interest; or alternatively that management of the Property be turned over to the Plaintiffs.

**WHEREFORE**, Plaintiffs respectfully demand judgment against Defendants as follows:

a) On the First Cause of Action, a judgment or order declaring that the Defendants must permit Plaintiffs to inspect the Company's financial statements, including its federal and state income tax returns, for the three most recent fiscal years.

b) On the Second Cause of Action, a judgment or order declaring that the Defendants must permit Plaintiffs to inspect the Company's financial statements, including its federal and state income tax returns, for the three most recent fiscal years.

c) On the Third Cause of Action, a judgment or order requiring Defendants to account for all income and expenses, including rents, repairs, and capital expenses, that the Company incurred from January 1, 2016, to the present.



d) On the Fourth Cause of Action, damages in an amount to be determined at trial, plus interest; and a judgment or order declaring that the Property be sold, and the proceeds divided between the owners as to their ownership interest; or alternatively that management of the Property be turned over to the Plaintiffs.

e) Granting Plaintiffs such other and further relief as the Court deems just and proper, including the costs, disbursements, and attorneys' fees of this action.

Dated: Brooklyn, New York  
December 11, 2023

ALISME LAW LLC

By: /s/ Joam Alisme

Joam Alisme, Esq.

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*Attorneys for Plaintiffs*

**VERIFICATION**

JOAM ALISME, an attorney duly admitted to the Courts of this State, affirms under penalties of perjury:

I am the attorney for Plaintiffs in this action, and I am fully familiar with this matter.

I have read and know the contents of the foregoing Amended Verified Complaint. The same are true to my own knowledge, except as to matters therein alleged upon information and belief, and as to those matters I believe them to be true.

I make this verification pursuant to CPLR 3020(d)(3) because Plaintiffs are not located in the county in which I maintain my office.

The basis of my verification is conversations with Plaintiffs and a review of Plaintiffs' documents which are relevant to this proceeding.



Joam Alisme

Dated: Brooklyn, N.Y.  
December 11, 2023