

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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JOHN KATSIKOUMBAS, STEFANOS  
KATSIKOUMBAS AND MARIA KATSOUGRAKIS,

**VERIFIED  
COMPLAINT**

Plaintiffs,

v.

Index No.

CHRISTINA KATSIKOUMBAS AND EPIROS, LLC,

Defendants.

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Plaintiffs John Katsikoumbas, Stefanos Katsikoumbas, and Maria Katsougrakis (collectively “Plaintiffs” or “Minority Party”), by and through their attorneys, Phillips Lytle LLP, as and for their Verified Complaint against Christina Katsikoumbas (“Christina” or “Majority Party”) and Epiros, LLC (“Epiros”) (collectively “Defendants”) in this action hereby allege as follows:

**NATURE OF ACTION**

1. In this action, Plaintiffs seek (A) a declaratory judgment that the building at 189-193 West 231st Street, Bronx, New York 10463 (the “Building”) be sold in the manner determined in accordance with the terms of the Member Agreement as follows: (i) two independent appraisals of the Building are performed by appraisers jointly selected by the Majority Party’s and Minority Party’s current accountant or attorney; (ii) the parties jointly engage a broker under a written engagement agreement to offer to sell the Building to third-parties that opens for at least a 90-day period so the best offer made during that time shall serve as the price to be paid for the Building; (iii) pending receipt of an acceptable

third-party offer (i.e., an offer that is no less than \$250,000 below the lowest appraisal), the Offeree (as defined in the Member Agreement) has 10 days to decide if it would like to match the third-party offer ; and (iv) if Offeree does not match the third-party offer within 10 days, the Building is sold to the third-party; (B) granting Plaintiffs specific performance of those portions of the Member Agreement compelling Defendants to specifically perform their obligations under Section 3(b) of the Member Agreement, including but not limited to, selling and transferring Epiros's interest in the Building and cooperating in determining the fair market value of the Building by two independent appraisers being jointly selected, along with engaging a broker to offer and sell the Building; (C) enjoining Defendants from entering a new lease for space in the Building and/or a lease that materially modifies or amends an existing lease in the Building without first obtaining 66% member vote/consent for the same; (D) awarding to the Minority Party its costs and expenses of this litigation including, without limitation, attorneys' fees per the Member Agreement; and (E) awarding to Plaintiffs such other and further relief as the Court may deem just and proper.

### **THE PARTIES AND THE MEMBER AGREEMENT**

2. Plaintiff John Katsikoumbas ("John") is a member of defendant Epiros, LLC and resident of New York with an address of 14 Cedar Place, Rye, New York 10580.

3. Plaintiff Stefanos Katsikoumbas ("Stefanos") is a member of Epiros, LLC and resident of New Jersey with an address of 14 Hartel Ln., Montvale, New Jersey 07645.

4. Plaintiff Maria Katsougrakis ("Maria") is a member of Epiros, LLC and resident of New York with an address of 27 Desmond Ave, Yonkers, New York 10708.

5. Defendant Epiros, LLC is a limited liability company organized and existing under the laws of the State of New York with its principal office located in the County of Bronx and State of New York.

6. Defendant Christina Katsikoumbas is a member of Epiros, LLC and resident of New York with an address of 2711 Henry Hudson Pkwy, Apt 4F, Bronx, New York 10463.

7. On or about November 13, 2006, Dimitrios Katsikoumbas (“Dimitrios”) formed Epiros, in which he was the sole member of record.

8. A true and accurate copy of the Articles of Organization and Operating Agreement for Epiros are attached hereto as **Exhibit A**.

9. The only asset of Epiros is the Building.

10. Previous to this, the Building was owned, operated, and managed, in equal share alike and at tenancy in common, by Dimitrios with his silent business partner Elias Katsikoumbas (“Elias”).

11. The Minority Party (i.e., Plaintiffs John, Stefanos and Maria) are Elias’s children.

12. When Elias died, his silent interest in the Building transferred to the Minority Party. To document this, a Member Agreement was entered into on or about March 16, 2010, wherein Dimitrios transferred 49% of his interest in Epiros to the Minority Party. Member Agreement, p. 1.

13. A true and accurate copy of the Member Agreement is attached hereto as **Exhibit B**.

14. The Member Agreement contains a broad entire agreement clause that states that to the extent “there any inconsistencies between [the Member Agreement] and any term(s) in the operating agreement, the terms of [the Member Agreement] shall supersede those of the operating agreement.” Member Agreement ¶ 8.

15. Dimitrios himself later died and his interest is now owned by the Majority Party.

16. The Member Agreement contemplates a 66% member vote/consent for all matters that materially modify or amend a lease in the Building owned by Epiros. Member Agreement ¶ 3. The Member Agreement was prepared in this way so that issues impacting income would be decided by a 66% vote.

17. Here, leases are Epiros’s only source of income. Accordingly, the Member Agreement states the following in pertinent part:

3) Each of the parties hereto agrees to take whatever steps are necessary to effectuate by appropriate resolution or otherwise, the following:

a. All checks, notes, bills of exchange and other instruments for the payment of money or evidence of indebtedness shall require the signature of one of the members. No construction in an amount exceeding \$20,000.00 , or lease can be signed unless all parties have been notified in advance and consent is given by a 66% vote by the members.

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However, notwithstanding anything herein, the LLC cannot mortgage its building, or lease a vacant store to a tenant selling food, without the written consent of 66% of all the members. Member Agreement ¶ 3 (emphasis added).

The members’ established course of conduct is consistent.

18. The Minority Party, through counsel, has sought assurance that the Majority Party will take actions concerning lease matters consistent with the voting

mechanism of the Member Agreement by 66% vote/consent of the parties. For example, amendment of leases. The Minority Party's concern is that the rent abatements offered by the Majority Party are pretextual and not rationally related to impacts from COVID-19. In addition, leases for various commercial space in the Building are expiring. The Minority Party is concerned that new or replacement leases will be entered into by Epiros *ultra vires*.

19. The Majority Party also controls one the material tenants in the Building, which presents a clear risk for abuse and self-dealing.

20. In an effort to resolve this dispute, the Minority Party has demanded to be updated on, among other things, lease and any rent-abatement negotiations or agreements and demanded to be provided records under Article III ¶ 4 of the Operating Agreement.

21. The Minority Party has not been provided this requested information and continues to investigate whether the Majority Party has taken action that amounts to self-dealing, entering into a new lease for commercial space in the Building, a material lease modification, or lease amendment.

22. Because this investigation is not complete, the Minority Party expressly reserves all rights and remedies with respect thereto, and is seeking injunctive relief herein to prevent an *ultra vires* act of Epiros that negatively impacts the valuation of Epiros or the Building.

23. The Member Agreement also provides a specific procedure for the sale of the Building. In this regard, Section 3(b) of the Member Agreement states the following:

After the expiration of the initial (8) year restriction on sale, if either the majority party (Dimitrios) or minority party (John, Stephanos, and Maria, wishes to sell its interest in the LLC, such offer to sell shall be made only to the other party. If the party to whom the offer is made does not, within 30

days, accept the offer to purchase, and both parties cannot agree as to who should buy the interest of the other and cannot agree upon a price, then, all parties agree to sell the building to a third party, after an appraisal is done by two independent appraisers chosen by their accountant or their lawyer at the time the decision to sell is made. If a valid bona fide offer is made by a third party which is not less than \$250,000.00 than the lowest independent appraisal, then, the building either has to be sold to the third party or the party to whom the offer was first made to sell at the same terms as those offered by the third party should that party choose to purchase the building. Should the party to whom this offer is made not accept to purchase the building within 30 days from when the offer is made, and agree to close within six months, then the building will be sold to the third party. The purchasing LLC member shall have ten business days after having received the third party's offer in writing to decide in writing whether to purchase the entire interest of the LLC. With the same terms as the third party. If that party does not exercise this option, than the building must be sold to the third party. With respect to third parties, the offer to sell shall be open for 90 days so that the best offer made during that time shall serve as the price to be paid for the building. [Member Agreement ¶ 3(b)].

24. The initial eight-year restriction on sales of interest in Epiros has expired.

25. Thus, Section 3(b) of the Member Agreement provides a framework where either the Minority Party or Majority Party offers to sell (i.e., the "Offeror").

26. The Offeree then has 30-days to respond. During this time, the parties negotiate. If the parties cannot agree on price and terms within 30 days, the Building shall be sold as follows:

- Two independent appraisals of the Building are performed by appraisers jointly selected by the Majority Party's and Minority Party's current accountant or attorney;
- The parties jointly engage a broker under a written engagement agreement to offer to sell the Building to third-parties that opens for at least a 90-day period so the best offer made during that time shall serve as the price to be paid for the Building;
- Pending receipt of an acceptable third-party offer (i.e., an offer that is no less than \$250,000 below the lowest appraisal), the Offeree has 10 days to decide if it would like to match the third-party offer; and

- If Offeree does not match the third-party offer, the Building is sold to the third-party

27. Section 11 of the Member Agreement states “In the event of sale of the real estate properties by the LLC, John, Stefanos and Maria shall receive an additional one percent of the net proceeds so that the three shall receive a total of 50% of the net proceeds. Member Agreement ¶ 11. This provision is consistent with, and properly reflects, the equal share and tenancy in common rights in the Building previously held by Elias and Dimitrios.

28. The Member Agreement provides that all legal fees in connection with [the Member Agreement] will be paid by the LLC. Member Agreement ¶ 12.

#### **THE MINORITY PARTY’S OFFER OF ITS INTEREST FOR SALE AND THE MAJORITY PARTY’S REPUDIATION**

29. On August 2, 2021, the Minority Party, acting by and through counsel, exercised their rights pursuant to Section 3(b) the Member Agreement as follows:

The initial eight-year restriction on sales of interest in Epiros has expired. By this correspondence, the Minority Party are exercising their rights pursuant to the Member Agreement to offer to buy the Majority Party’s interest for **\$9,000,000.00** and/or sell the Minority Party’s interest for **\$8,750,000.00**. This offer is based on the financial information of Epiros existing before the 407(a) Notice, without modification or change of any lease. If the Majority Party changes or modifies any lease, this may have a detrimental impact on valuation, and the Minority Party reserves all rights at any time to modify, change or withdraw the offer stated herein, in their complete and absolute discretion.

Should you fail to respond or negotiate, or should the parties fail to agree to terms within thirty (30) days, pursuant to the Member Agreement, two appraisals shall be conducted by two separate appraisers jointly selected. After the appraisals are conducted, the building shall go up for sale to the public for a period not less than ninety (90) days. Once the period for public sale has opened, further negotiations with third-parties

and/or the parties to the Member Agreement shall be conducted in accordance with the Operating Agreement.

A true and accurate copy of this correspondence is attached hereto as **Exhibit C**. This correspondence also demanded that the Majority Party take actions concerning certain lease matters consistent with the voting mechanism of the Member Agreement.

30. In response, the Majority Party, among other things, conceded that “the Minority Party offering its interest for sale” is the “only valid proposal”, but otherwise repudiated her obligations under Section 3(b) of the Member Agreement. A true and accurate copy of the Majority Party’s responding letter dated August 19, 2021, is attached hereto as **Exhibit D**.

31. By correspondence dated August 27, 2021, the Minority Party again duly demanded that Defendants perform their obligation under the Member Agreement with regard to Section 3(b), but Defendants have failed and refused to so cooperate and Defendants have asserted that the Minority Party cannot force the sale of the Building under Section 3(b).

32. In this regard, attached hereto here as **Exhibit E** is a true and accurate copy of the Minority Party’s letter of August 27, 2021, and attached hereto as **Exhibit F** is a true copy of Defendants’ responding letter of September 17, 2021.

33. The Minority Party, through their counsel, offered to provide a detailed appraisal prepared by Cushman & Wakefield, Inc. (“Appraisal”), in support of the Minority Party’s valuation. The delivery of the Appraisal, however, was made contingent upon Epiros and Ms. Katsikoumbas agreeing to not share the Appraisal with other appraisal companies. Minority Party’s January 28, 2022 correspondence reflecting the same is attached hereto as **Exhibit G**.



34. The Majority Party declined this offer and advised they she was “not bound by the imaginary deadlines or restrictions that the [Minority Party is] attempting to impose as part of an attempt to initiate negotiations to sell the [Minority Party’s] interest.” Majority Party’s February 4, 2022 correspondence reflecting the same is attached hereto as **Exhibit H**.

35. Since then, the parties have engaged in direct communications via text message to resolve this dispute, but the Minority Party and Majority Party did not (and remain unable to) agree on price and terms within 30 days of the Minority Party’s offer of \$8,750,000.00 for sale of the Minority Interest.

36. As such, it has become necessary for the Minority Party to commence this lawsuit for a declaratory judgment and specific performance, along with injunctive relief, if necessary.

**AS AND FOR A FIRST CAUSE OF ACTION FOR  
DECLARATORY JUDGMENT**

37. Plaintiffs incorporate herein the allegations in each of the preceding paragraphs.

38. As set forth above and as conceded by the Majority Party, “the Minority Party’s offering its interest for sale” on August 2, 2021, was a “valid proposal”, and since the parties have not agreed on price and terms within 30 days, the Building shall be sold in the manner set forth in Section 3(b) of the Member Agreement and as described above. Yet, Defendants also assert that the Minority Party cannot force the sale of the Building under Section 3(b).

39. The Minority Party has offered to both purchase the Majority Party’s membership interest and sell the Minority Party’s membership interest, which exemplifies

the Minority Party's efforts to resolve this dispute in a commercially reasonable manner and avoid litigation. The Minority Party has opposed these efforts.

40. A justiciable controversy exists between the Minority Party and Defendants concerning whether the Building shall be sold in the manner set forth in Section 3(b) of the Member Agreement and as described above.

41. By reason of the foregoing, the Minority Party is entitled to a judgment declaring that (a) the Building be sold as in the manner determined in accordance with the terms of Section 3(b) of Member Agreement as follows: (i) two independent appraisals of the Building are performed by appraisers jointly selected by the Majority Party's and Minority Party's current accountant or attorney; (ii) the parties jointly engage a broker under a written engagement agreement to offer to sell the Building to third-parties that opens for at least a 90-day period so the best offer made during that time shall serve as the price to be paid for the Building; (iii) pending receipt of an acceptable third-party offer (i.e., an offer that is no less than \$250,000 below the lowest appraisal), the Offeree has 10 days to decide if it would like to match the third party offer; and (iv) if Offeree does not match the third-party offer, the Building is sold to the third-party; and (b) otherwise declaring the rights and obligations of the parties hereto under the Member Agreement based on the allegations set forth above.

**AS AND FOR A SECOND CAUSE OF ACTION  
FOR SPECIFIC PERFORMANCE**

42. Plaintiffs incorporate herein the allegations in each of the preceding paragraphs.

43. As stated above, under the terms of Section 3(b) of Member Agreement, the Defendants are obligated to sell the Building.

44. The Minority Party has performed all obligations under the Member Agreement and Operating Agreement.

45. Defendants have failed and refused to perform their obligations under the Member Agreement concerning Section 3(b).

46. Defendants' failure and refusal as aforesaid constitutes a breach of Defendants' obligations under the Member Agreement.

47. The Minority Party is ready, willing and able to perform all of its obligations under the Member Agreement.

48. For Defendants' breach of the Member Agreement as set forth above, the Minority Party has no adequate remedy at law.

49. By reason of the foregoing, the Minority Party is entitled to a judgment compelling Defendants to specifically perform their obligations under Section 3(b) of the Member Agreement, including but not limited to, selling and transferring Epiros's interest in the Building and cooperating in determining the fair market value of the Building by two independent appraisers being jointly selected, along with engaging a broker to offer and sell the Building.

**AS FOR A THIRD CAUSE OF ACTION  
(Injunctive Relief)**

50. Plaintiffs incorporate herein the allegations in each of the preceding paragraphs.

51. The Minority Party is entitled to an order enjoining Defendants from entering a new lease for space in the Building and/or a lease that materially modifies or amends an existing lease in the Building without first obtaining 66% member vote/consent for the same.

52. Such injunctive relief is necessary to prevent an *ultra vires* act of Epiros that negatively impacts the valuation of Epiros or the Building.

**WHEREFORE**, the Minority Party demands judgment against the Defendants as follows:

A. In the First Cause of Action, (1) a declaratory judgment that Building be sold in the manner determined in accordance with the terms of the Member Agreement as follows: (i) two independent appraisals of the Building are performed by appraisers jointly selected by the Majority Party's and Minority Party's current accountant or attorney; (ii) the parties jointly engage a broker under a written engagement agreement to offer to sell the Building to third-parties that opens for at least a 90-day period so the best offer made during that time shall serve as the price to be paid for the Building; (iii) pending receipt of an acceptable third-party offer (i.e., an offer that is no less than \$250,000 below the lowest appraisal), the Offeree has 10 days to decide if it would like to match the third-party offer; and (iv) if Offeree does not match the third-party offer, the Building is sold to the third-party; and (2) otherwise declaring the rights and obligations of the parties hereto under the Member Agreement based on the allegations set forth above.

B. In the Second Cause of Action, for specific performance of those portions of the Member Agreement compelling Defendants to specifically perform their obligations under Section 3(b) of the Member Agreement, including but not limited to, selling and transferring Epiros's interest in the Building and cooperating in determining the fair market value of the Building by two independent appraisers being jointly selected, along with engaging a broker to offer and sell the Building.

C. In the Third Cause of Action, an order permanently and preliminarily enjoining and declaring against Defendants, and all persons acting for or on their behalf, directly or indirectly, from entering into a new lease for space in the Building and/or a lease that materially modifies or amends an existing lease in the Building without first obtaining 66% member vote/consent for the same.

D. Awarding to the Minority Party its costs and expenses of this litigation in connection with the Member Agreement including, without limitation, attorneys' fees per Section 12 of the Member Agreement;

E. Together with interest, the costs and disbursements of this action and such and further relief as the Court may deem just and proper.

Dated: Rochester, New York  
April 1, 2022

PHILLIPS LYTTLE LLP

By: 

Chad W. Flansburg

Attorneys for Plaintiffs

*John Katsikoumbas, Stefanos Katsikoumbas  
and Maria Katsougrakis*

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Doc #1491765

**VERIFICATION**

STATE OF NEW YORK            )  
                                          ) SS:  
COUNTY OF Westchester    )

John Katsikoumbas, being duly sworn, deposes and says that he is one of the Plaintiffs in this action and is united in interest and plead together with Maria Katsougrakis and Stefanos Katsikoumbas; that he has read the forgoing Verified Complaint and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein alleged on information and belief, and that as to those matters he believes them to be true.

\_\_\_\_\_  
John Katsikoumbas

Sworn to before me this, 15  
\_\_\_\_\_ day of March, 2022

\_\_\_\_\_  
Notary Public

Doc #1491765

**IAN S LANDSMAN**  
Notary Public of New York  
REGISTRATION #01LA8428985  
COMMISSION EXPIRES 02/07/2026