

SUPREME COURT OF THE OF NEW YORK  
COUNTY OF NEW YORK

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VITTORIO ANTONINI individually and as  
A member of BRIDGEVIEW AT BROADWAY, LLC  
on behalf of Himself and all other members of  
BRIDGEVIEW AT BROADWAY, LLC  
similarly situated, and in the right of  
BRIDGEVIEW AT BROADWAY, LLC,

Plaintiff,

-against-

ORAZIO PETITO and  
ROCCO PETITO,

Defendant.  
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Index No.  
Date Purchased:

Plaintiff designates  
New York County  
as the place of trial

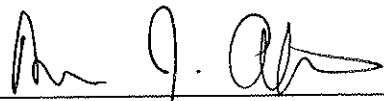
**SUMMONS**

Basis of venue is:  
CPLR 509.

TO THE ABOVE NAMED DEFENDANTS:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: November 19, 2010

  
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DAVID J. ARONSTAM, ESQ.  
Attorney for Plaintiffs  
192 Lexington Avenue  
Suite 1202  
New York, New York 10016  
(212) 949-6210

Defendants' Address:

Orazio Petito and Rocco Petito  
1960 83<sup>rd</sup> Street  
Brooklyn, NY 11214

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

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VITTORIO ANTONINI individually and as a :  
member of BRIDGEVIEW AT BROADWAY, LLC, :  
on behalf of Himself and all other members of :  
BRIDGEVIEW AT BROADWAY, LLC :  
similarly situated, and in the right of :  
BRIDGEVIEW AT BROADWAY, LLC, :  
  
Plaintiffs, :  
  
- against - :  
  
ORAZIO PETITO and ROCCO PETITO, :  
  
Defendants. :  
-----X

Index No. /10

**VERIFIED COMPLAINT**

**THE PARTIES AND THE NATURE OF THEIR RELATIONSHIPS**

1. Plaintiff Vittorio Antonini (“Vittorio”) is an individual who resides in the City, County and State of New York.
2. Defendant Orazio Petito (“Orazio”) is an individual who resides in the City and State of New York, County of Kings.
3. Defendant Rocco Petito (“Rocco”) is an individual who resides in the City and State of New York, County of Kings.
4. Defendant Bridgeview at Broadway, LLC (“Bridgeview” or the “Company”), is a New York limited liability company which was formed for the specific purpose of developing a property in Brooklyn, New York. It was formed by the filing of

Articles of Organization with the New York Secretary of State on August 29, 2006. Its principal office is located at 1960 83<sup>rd</sup> Street, Brooklyn, New York 11214.

5. At the same time, Vittorio, Orazio and Rocco executed an Operating Agreement for Bridgeview setting forth their rights and duties as the Members of Bridgeview (the “Operating Agreement”).

6. At its inception, the Members of Bridgeview held the following interests in the company:

Vittorio – one third

Orazio – one third

Rocco – one third.

7. From its inception until April 2009, Orazio was the sole Managing Member of Bridgeview.

8. In April of 2009, in settlement of litigation commenced by Vittorio against Orazio and Rocco, the parties entered into a settlement agreement (“Settlement Agreement”) which amended the Operating Agreement, *inter alia*, by providing that Vittorio would increase his interest in the Company to fifty percent and Orazio and Rocco holdings were reduced to twenty-five percent each.

9. The Settlement Agreement also provided that Vittorio and Orazio would become joint managing members of the Company.

10. At all relevant times, Orazio has had a proxy from Rocco to vote Rocco’s interest in any manner that he saw fit. Nonetheless, Rocco’s proxy to Orazio does not relieve him of his obligations to the Company or Vittorio.

## **JURISDICTION AND VENUE**

11. Bridgeview is a New York limited liability company with a principal place of business in Kings County.

12. Venue is proper in New York County because the plaintiff resides in New York County.

## **FACTS COMMON TO ALL CAUSES OF ACTION**

13. Bridgeview was formed in August 2006 for the express purpose of acquiring and renovating the premises, for rental to commercial and residential tenants, located at 146-150 Broadway, Brooklyn, New York (the "Premises"). The Premises are two adjacent buildings, one one-story, and one four-story building, in a prime Brooklyn neighborhood (next to Peter Luger steakhouse) with permitted ground floor commercial zoning (the "commercial units") and permitted upper floor residential usage (the "residential units").

14. Each Member contributed the sum of \$285,000 as the required initial capital contributions to the Company.

15. On September 13, 2006, Bridgeview purchased the Premises for a total purchase price of \$2,750,000.00. The purchase price consisted of \$2,515,000 for the fee and \$235,000 for an assignment of contract.

16. In order to finance the purchase of the Premises, and to finance the renovation and construction of the existing structure on the Premises, in September 2006, Bridgeview obtained a mortgage loan from BRT Realty Trust ("BRT") in the principal sum of \$2,500,000.

17. A portion of the BRT loan, \$393,620 (the “Construction Reserve”), was specifically earmarked to finance the renovation and construction of the Premises.

18. Crucially and central to this action is the fact that the Premises were purchased in a state of disrepair which precluded the leasing of the residential units until those renovations were completed and hindered the rental commercial space. The Construction Reserve was specifically available for the renovation. A prudent managing member would have immediately utilized the Construction Reserve upon the closing of the BRT loan so that the Premises could be renovated and income producing. However, due to the inexcusable neglect of Orazio, this simple renovation project (the “Project”) has not significantly progressed.

19. The monthly mortgage payments by the Company to BRT are approximately \$25,000 per month.

20. From the date that the Premises were purchased in September 2006, until April 2009, Orazio, as the sole Managing Member, despite having the Construction Reserve readily available and despite repeated requests from Vittorio, failed to take concrete steps to carry out the prime purpose of the Company, namely, the renovation of the Premises.

21. In the period that he was the sole Managing Member, Orazio squandered Company funds on architects’ fees for unfunded and totally unrealistic development plans and other items, he flip-flopped between developing the Premises for rental purposes and selling the Premises, and he made unreasonable required capital calls on the Members.

22. All in all, although the Construction Reserve was firmly in place for the renovation of the Premises, Orazio failed to cause any substantial work to be done on the Premises to make the commercial and residential units suitable for rental<sup>1</sup>.

23. As a result, on October 23, 2007 Vittorio commenced an action against Orazio in the Supreme Court, New York County under Index No. 603513/07 (the “Lawsuit”). The complaint in said action sought dissolution of the Company, an accounting from Orazio and damages for breach of fiduciary and waste of Company assets.

24. In April 2009, the parties entered into the Settlement Agreement which settled a broad array of disputes between the parties. The relevant provisions in the Settlement Agreement for the purposes of this action are as follows:

A. The membership interests were adjusted as follows:

Vittorio – fifty percent

Orazio – twenty-five percent

Rocco – twenty-five percent.

B. Vittorio acquired the additional interest in the Company by signing conditional promissory notes to Orazio and Rocco in the sum of \$165,000 each. These notes were only due and payable on the occurrence of specific events, namely, the transfer of Vittorio’s interest in the Company, a refinancing of the Company’s mortgage if sufficient proceeds were raised, and a transfer or refinancing regarding another property where the parties had been co-owners. To date, none of these conditions have occurred.

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<sup>1</sup> Nor did he follow through on the sale of the building, a course of action which he vigorously opposes at present despite the Company’s mounting losses with no sign of recoupment.

C. Orazio and Vittorio became joint managing members of the Company. Given that Orazio has always had Rocco's proxy, all actions, not just management decisions, on behalf of the Company had to be by consent of Vittorio and Orazio.

D. In the event of a dispute between the Managing Members, the dispute was first to be mediated by Alex Marra, Esq., and if not resolved by him, then submitted to binding arbitration before Gary Sunden, Esq.

E. Vittorio agreed to pledge his shares in a corporation wholly owned by him to BRT as further collateral for its mortgage. The corporation whose shares were pledged owns a building and houses Vittorio's family restaurant of 35 years in Greenwich Village ("129 MacDougal Street"). The restaurant is Vittorio's sole source of income and BRT exercising the pledge would be devastating to him.

**Orazio's misconduct has caused the development of the Premises to remain substantially incomplete four years after its acquisition despite having construction funds in place from day one**

25. One of the reasons that Vittorio increased his share in the Company to 50% and became a co-managing member was for the express purpose of enabling the renovation of the project to move forward expeditiously. When Orazio was the sole managing member, the project had floundered and Company funds had been wasted with almost no progress being made on the crucial step of renovating the Premises to make it suitable for renting. Vittorio's sincere hope was that if Orazio were no longer the sole managing member that the project stood a much better chance of completion. However, as has become clear and as set forth below, Orazio not only consummated the Settlement Agreement in bad faith, but has continually engaged in bad faith conduct that has significantly delayed the Project yet again.



26. When Orazio was the sole managing member and in control of two-thirds of the voting interests of the Company, with the Construction Reserve in hand, it was a simple task to renovate the Building and make it suitable for leasing. Orazio was in total control of the Company from August 2006 until April 2009 and in this period he made no meaningful progress in renovating the Premises. Aside from getting plans approved, there has not been a single act of construction work performed on the Premises.

27. The gravamen of Vittorio's Lawsuit against Orazio was that it was a breach of fiduciary duty to neglect the renovation of the Premises when it was such a simple task to utilize the Construction Reserve and hire a contractor to renovate the Premises.

28. In April of 2009 Vittorio settled the Lawsuit by increasing his interest in the Company to 50% and becoming a co-managing member with Orazio in the hope of moving the project forward. Nonetheless, Orazio still engaged in conduct, in breach of the Operating Agreement, the Settlement Agreement and his fiduciary duties to the Company and its members which have caused the project to further flounder.

29. In July of 2009, the Company was required to refinance its mortgage with BRT. As part of the refinancing, BRT required the Company to deposit \$80,000 towards the construction expenses of the Project into the BRT loan account to be held by BRT and become part of the Construction Reserve. BRT required this payment to be made at loan signing. BRT would not authorize any construction loan proceeds to be disbursed to the Company until the \$80,000 had been paid by the Company into the Construction Reserve.

30. Vittorio timely paid his \$40,000 share at the loan signing on July 26, 2010. As a result, the Construction Reserve was increased to \$433,620.00.

31. To date, Orazio and Rocco have failed to pay their \$40,000 share to BRT, which failure caused BRT to withhold the Construction Reserve. Six months later, in January 2010, BRT excused the failure to pay the additional \$40,000 of the construction funds and to permit construction to begin, but again Orazio's bad faith as detailed below has prevented this from happening.

32. The first loan extension has since expired and the parties are now negotiating a second loan extension with BRT. With regard to the second loan extension, BRT initially demanded that the additional \$40,000 be paid in full as a condition of the release of the Construction Reserve.

33. In further bad faith, Orazio and Rocco demanded that Vittorio pay an additional \$20,000 towards the Construction Reserve, making his payments total \$60,000 of the \$80,000, despite Vittorio having paid his \$40,000 half share in July 2009, which amount is his complete required contribution.

34. Nonetheless, as a result of Vittorio having kept the mortgage current by making all the payments for over a year, as detailed below, BRT have again excused Orazio and Rocco's failure to pay their share of the Construction Reserve and have agreed that the Company can draw on the Construction Reserve to begin the renovation.

**Orazio and Rocco flagrantly breach the Settlement Agreement and Operating Agreement by failing to contribute half of the monthly BRT mortgage payment**

35. In July of 2009, unilaterally, without any justification or basis, and with no notification whatsoever to Vittorio, Orazio and Rocco stopped making their required monthly additional contribution to the Company to cover the BRT mortgage payments.

Orazio and Rocco's conduct in this regard was willful and designed to deprive Vittorio of his benefits under the Settlement Agreement. Thereafter, Orazio and Rocco failed to make any required additional contributions to pay the BRT mortgage until August of 2010.

36. Vittorio made all the BRT mortgage payments during this period which was of great benefit to the Company because it prevented a default on the BRT mortgage. Vittorio paid the sum of \$328,000 during this period of which half was the express obligation of Orazio and Rocco pursuant to both the Settlement Agreement and the Operating Agreement.

37. Section 1.9 of the Settlement Agreement provides that:

“1.9 Antonini, Orazio, and Rocco represent that after the return of capital contributions described in Section 2 below, Bridgeview shall have sufficient assets to meet its current obligations; provided, however, that the Bridgeview members shall each be required to make monthly contributions to Bridgeview in order for Bridgeview to keep current with its obligations under the Bridgeview Loan and any future loan(s) obtained by Bridgeview to complete the renovations of Bridgeview ('Additional Contribution(s)').”

38. The Operating Agreement for the Company provides at Article V, Section 1 that:

“Each member of this Company shall contribute the amount set forth under his name as set forth in the Books and Record of this Company as the sole Capital Contribution to be made by him. Such contribution may be in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services. The failure of a member to make any required contribution shall be subject to any or all of the following consequences at the option of a majority in interest of the remaining members who shall be entitled to vote thereon.

- a. Reduction or elimination of the defaulting member's interest; and/or
- b. Subordination of the defaulting member's interest to that of the non-defaulting members; and/or
- c. Forced sale of the defaulting member's interest; and/or
- d. Forfeiture of the defaulting member's interest; and/or

- e. The lending by the other members of the amount necessary to meet the defaulting member's commitment; and/or
- f. Any other reasonable and lawful method to rectify such member's failure to meet his obligation."

39. The "Additional Contributions" referred to in Section 1.9 of the Settlement Agreement refer to the contributions required under Article V of the Operating Agreement. As such, the failure of Orazio and Rocco to make the Additional Contributions required by Section 1.9 of the Settlement Agreement subject them to the penalties set forth in Article V of the Operating Agreement.

40. In wrongfully failing to make their share of the monthly BRT mortgage payments, Orazio and Rocco falsely and fraudulently claimed that they were under no obligation to make said payments, and began referring to the required additional contributions as "loans". The timing of their claims in this regard was highly suspect as it occurred shortly after the Settlement Agreement was signed and 129 MacDougal Street was pledged to BRT.

41. Orazio, Rocco and Vittorio had made the express representation that the Company would have sufficient assets to meet its current obligations in Section 1.9 of the Settlement Agreement. If, in fact, Orazio and Rocco were experiencing genuine financial difficulties which would preclude them from making their required monthly contribution<sup>2</sup>, then they deliberately and fraudulently failed to disclose to Vittorio that they were having financial problems which made their representations set forth in Section 1.9 of the Settlement Agreement to be false.

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<sup>2</sup> Vittorio requested proof from Orazio and Rocco of their financial problems but no proof was ever provided. While there are indications of Orazio having financial problems, he and Rocco never made disclosure to Vittorio to prove that their inability to pay was real.

42. If, in fact, Orazio and Rocco were experiencing genuine financial difficulties which would preclude them from making their required monthly contribution, and if they had disclosed this to Vittorio as they should have, Vittorio would not have dropped his lawsuit and would not have entered into the Settlement Agreement.

43. In July of 2009, Orazio deliberately concealed from Vittorio the fact that he and Rocco had not deposited their share of the BRT mortgage payment. At this time, Orazio still controlled the Company's bank account and was wrongfully refusing to provide Vittorio with access to the bank account despite the fact that Vittorio had become a joint managing member with a fifty percent ownership interest in the Company. Orazio was able to make the July 2009 mortgage payment to BRT by using surplus funds in the Bridgeview account and Vittorio's July 2009 contribution.

44. If, in fact, Orazio and Rocco were experiencing genuine financial difficulties which would preclude them from making their required monthly contribution, Orazio and Rocco intentionally and fraudulently withheld such information from Vittorio in order to induce Vittorio to enter into the Settlement Agreement and to induce him to pledge 129 MacDougal Street to BRT as further security for BRT's mortgage.

45. Pursuant to Article V, Section 1 of the Operating Agreement, by notice dated October 8, 2010, Vittorio made his election to terminate the interests of Orazio and Rocco in the Company as a result of their failure to make the required "Additional Contributions" in the form of the BRT monthly mortgage payments. The first cause of action in this complaint seeks a declaratory judgment that this action by Vittorio was valid.

**Orazio engages in further breaches of fiduciary duty**

46. Subsequent to the execution of the Settlement Agreement, Orazio engaged in numerous other breaches of his fiduciary duty to the Company and its members. His intentional withholding of monthly contributions for the debt service of the Company is the prime breach of his duty to the Company and Vittorio.

47. Orazio's misconduct in other respects has caused unreasonable delays in moving the renovation of the Premises forward. At the time of the drafting of this pleading, as a result of the misconduct of Orazio, virtually no progress has been made in renovating the Premises since its acquisition by the Company in September 2006.

48. Without limitation, herewith are some of the acts of Orazio which constitute breaches of his fiduciary duty to the Company and Vittorio:

49. During settlement discussions, it was agreed between Vittorio and Orazio that they would be the General Contractors of record for the Project. Vittorio promptly solicited bids from contractors to do the actual work and when they were received, he promptly submitted them to Orazio on July 14, 2009

50. Despite the fact that the project had no chance of succeeding unless the Premises were renovated, Orazio failed to actively seek bids for contractors following the execution of the Settlement Agreement. Orazio waited until Vittorio had submitted the two bids and only then did he seek a bid for the contracting work. Vittorio was led to believe by Orazio that immediately following the signing of the Settlement Agreement that he too would actively seek bids, but later was told by Orazio that the only bid he received, in an act of blatant nepotism, namely that of his relative Danny, was solicited only after Vittorio submitted his bid.

51. At all times during the settlement discussions, Vittorio made it clear to Orazio that he would not approve Orazio's cousin Daniel Greaves as the contractor. Vittorio's request that Greaves not act as the contractor was made in good faith and was entirely reasonable because (a) Greaves had only been in the contractor field for a few years having previously been employed in an unrelated field; (b) Greaves and Vittorio had sued and countersued each other in two prior lawsuits, (c) Greaves had incurred thousands of dollars of fines on a project where he was the contractor and (d) Greaves was illegally using a company known as Starko Contracting to file with the NYC Dept. of Buildings.

52. In bad faith, Greaves and Orazio colluded to make sure that Greaves submitted the lowest bid having had the benefit of seeing the other bids obtained by Vittorio.

53. In September of 2009, Vittorio and Orazio met with the mediator pursuant to the dispute resolution procedures set forth in the Settlement Agreement in order for the mediator to resolve the dispute concerning the selection of a contractor to carry out the renovation of the Premises.

54. To resolve the issue of which contractor to use, the mediator proposed, and Orazio and Vittorio agreed, to a process whereby each of the contractors would be given exactly the same detailed scope of work to be done, (with specifications) after which each of the contractors would have the opportunity to re-bid for the project in a blind bid process to be resolved the mediator appointed in the Settlement Agreement. When it came to putting together the scope of work, it was agreed that Orazio would prepare a draft of the detailed scope of the work with specifications within a period of

two weeks following the meeting, and then Vittorio would review the same and have the opportunity to discuss any proposed changes.

55. Nonetheless, Orazio never produced the detailed list, despite numerous requests from Vittorio that he comply with the mediator's directives. Moving forward with construction of the Premises was, and is crucial to the success of the Company but no progress could be made because Orazio ignored the directions of the mediator.

56. Despite the dispute resolution procedures set forth in the Settlement Agreement, which procedures were adopted to hasten the resolution of disputes so that the project could be completed, Orazio unreasonably refused to submit the selection of a contractor issue to arbitration for resolution. This bad faith conduct on the part of Orazio is just another reason why the project has languished since September 2006.

57. Despite numerous requests by Vittorio to resolve the contractor issue so that the Premises could be renovated and become income producing, Orazio took no steps whatsoever to act in the mutual selection of a contractor through good faith negotiations with Vittorio until October 25, 2010 when he suggested the names of two contractors with nothing more. Orazio neglected to obtain written proposals from these contractors and the proposal to use them was basically of no value to the Company. As stated previously, Vittorio had presented two detailed bids from contractors back in January 2009.

**Orazio's misconduct prevents the Premises from being sold so that the members can limit their losses**

58. Given Orazio's inaction in getting the project completed even with construction financing fully in place since September 2006; given that the members had invested a total of \$2.25 million of their own cash in the project without any sign of



recovery; and given that, Orazio was falsely claiming that he was not obligated to make monthly contributions to the Company for the BRT debt service from July 2009 through July 2010; it became clear to Vittorio, during this time frame, that the Premises needed to be sold in order to limit the losses which were mounting monthly.

59. As stated above, Vittorio was alone in making the monthly mortgage payments to BRT in full for an entire year in order to prevent BRT from exercising its pledge of the collateral<sup>3</sup>, and the mortgage from going into foreclosure.

60. Despite not making any contributions to the Company's debt service as expressly agreed in the Settlement Agreement, despite not making any effort to get a contractor on board to commence renovations of the Premises, and despite stonewalling all of Vittorio's efforts for the completion of the Project, Orazio, in bad faith, not only refused to consent to the sale of the Premises but rather stalled and delayed the contract negotiations by among other things, requiring redundant assurances from the Company attorney and Vittorio that contract issuance would not bind the company, and finally would not even consent to the transmittal of a draft contract of sale to the final potential buyer who had offered to purchase the Premises for an amount greater than the mortgage debt. As a result of this bad faith conduct, at least two potential purchasers who had offered to purchase the Premises for more than the BRT mortgage debt withdrew their offers to purchase the Premises. As a result, the mortgage debt has increased with no concomitant action by Orazio to put the Premises in a position whereby it could earn income to offset the debt.

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<sup>3</sup> Orazio had originally pledged collateral for the loan when he and /Rocco owned two-thirds of the Company so Vittorio's mortgage payments also saved this collateral from being transferred to BRT.

61. Orazio has since resumed making his portion of the monthly mortgage payments to BRT but is not engaging in any other meaningful action to move the project forward. As a result, the losses incurred by the Company and Vittorio continue to mount.

**Orazio determines that the Company needs a new real estate broker to find a tenant but fails to take steps to renovate the Premises so that it can be leased**

62. In March 2010, despite having not contributed to the debt service of the Company since June 2009, Orazio determined that it was in the best interests of the Company to hire a new real estate broker to solicit tenants for the Commercial Units. Vittorio had no objection to this proposal but repeatedly requested that Orazio take steps to choose a contractor, other than Greaves, who was mutually acceptable to all the members of the Company so that the Premises could be renovated and put in a rentable condition. Vittorio made it clear to Orazio that it could be any competent and experienced contractor other than Greaves, not necessarily the contractors that Vittorio proposed. Nonetheless, Orazio took no action until his useless suggestion of two contractors on October 25, 2010. Other than providing the names of two contractors, Orazio continues to take no meaningful action to engage the services of the contractor, essentially rendering his strategy to lease the Premises completely futile.

63. Despite the mounting losses and despite his inaction in taking the necessary steps to renovate the Premises, Orazio is adamant that the renovation of the Premises must go forward and that the Premises should not be sold.

**The Claims in the Complaint**

64. This complaint asserts both derivative and individual claims against Orazio and Rocco. With regard to making a demand upon Orazio and Rocco to authorize the Company to bring suit against themselves, in such circumstances the demand would

be fruitless. The derivative claims assert that the Company has a claim against Orazio and Rocco for deliberately withholding their monthly payments to the Company for the BRT mortgage as well as all their above described misconduct in causing the project to languish for at least four years and continuing for the foreseeable future. Vittorio asserts individual claims against Orazio for direct harm caused by his breaches of duty and fraud.

65. Pursuant, but not by way of limitation, to CPLR § 3014, and otherwise, each and every allegation and statement contained in the paragraphs of this complaint numbered ‘1’ through ‘64’ inclusive is and are repeated, realleged, incorporated and adopted by reference in each and every subsequent cause of action stated in this pleading as though fully at length therein set forth; and each and every allegation and statement contained in each other cause of action stated in this pleading are, and shall be deemed to be repeated, adopted, realleged and incorporated as though fully at length therein set forth, in every other cause of action stated in this pleading where necessary and effective, and only if necessary and effective, to constitute one or more causes of action.

### **AS AND FOR A FIRST CAUSE OF ACTION**

(Declaratory Judgment)

66. As a result of the aforesaid illegal conduct of Orazio and Rocco, a justicable dispute has arisen regarding the effect of certain provisions of the Operating Agreement as amended by the Settlement Agreement.

67. Article V, Section 1 of the Operating Agreement, subdivision (d), as set forth in paragraph 29 above, provides for certain remedies in favor of the non-defaulting

member in the event that a defaulting member fails to make any required capital contribution.

68. Section 1.9 of the Settlement Agreement amended Article V of the Operating Agreement by providing that contributions to the Company for payment of the BRT mortgage were “Additional Contributions”. The sole purpose of adding this provision to the Settlement Agreement was to make sure that the members contributed their share of the monthly BRT mortgage payment and in the event of a failure to pay same, the defaulting member(s) would be subject to the penalties set forth in Article V, Section 1 of the Operating Agreement, subdivisions a - f.

69. On November 2, 2010, a notice was sent to the attorney for Orazio and Rocco, as defaulting members whereby Vittorio exercised his right to invoke the provisions of Article V of the Operating Agreement and whereby Vittorio, as the non-defaulting member, “[t]hereby vote[d] the provisions of said Article V, Section 1 of the Operating Agreement, subdivision (d), so that Orazio and Rocco forfeit their member interests.”

70. As a result of the foregoing, Vittorio is entitled to a judgment declaring that Orazio and Rocco are subject to the penalties of Article V, Section 1 of the Operating Agreement, subdivision (d) as a result of their failure to make the “Additional Contributions” required by the Settlement Agreement and that Vittorio is entitled to invoke the express remedies set forth in Article V, Section 1 of the Operating Agreement, subdivision (d).

71. Plaintiff has no adequate remedy at law.

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

(Declaratory Judgment)

72. Article V of the Operating Agreement provides for the adjustment of the member's interest in the Company if required contributions are not made to the Company by any member.

73. At the time the Company was formed, the members each owned an interest of one-third (33.33%) of the Company.

74. As set forth in Section 2.2 of the Settlement Agreement, immediately prior to the consummation of the Settlement Agreement, the capital accounts of the members were listed as follows:

Vittorio – \$575,000.00 - 31.768 percent

Orazio – \$617,500.00 - 34.116 percent

Rocco – \$617,500.00 - 34.116 percent

75. The reason that Vittorio's interest had declined was because Orazio and Rocco took the position that Vittorio had failed to make a required capital contribution to the Company and therefore his membership interest had to be reduced accordingly.

76. As set forth in Section 2.5 of the Settlement Agreement, after consummation of the Settlement Agreement, the capital accounts of the members were as follows:

Vittorio – \$905,000.00 - 50 percent

Orazio – \$452,500.00 - 25 percent

Rocco – \$452,500.00 - 25 percent

77. As a result of Rocco and Orazio's failure to make required contributions to the Company from July 2009 to July 2010, and the fact that Vittorio made said contributions on their behalf, the capital accounts of each member to the Company are now as follows:

Vittorio – \$1,278,116.00 - 57.2 percent

Orazio – \$478,500.00 - 21.4 percent

Rocco – \$478,500.00 - 21.4 percent

78. As a result, Vittorio is entitled to a judgment of this Court declaring that:

A. Vittorio's membership interest in the Company has now increased to 57.2% and that Orazio and Rocco's membership interests in the Company has been reduced to 21.4% each.

B. Vittorio is entitled to exercise his voting powers as the member holding a majority interest in the Company with respect to all Company resolutions which only require a simple majority to pass in general, and specifically that pursuant to the Operating Agreement, Vittorio can vote to remove Orazio as a managing member of the Company and replace him with a manager of Vittorio's choice.

79. Plaintiff has no remedy at law.

### **AS AND FOR A THIRD CAUSE OF ACTION**

(Breach of Fiduciary Duty against Orazio)

80. As the Managing Member of the Company, Orazio owes Vittorio and the Company a fiduciary duty which required him to act with the utmost good faith and

loyalty towards Vittorio, always placing the Company's interests ahead of his own interests.

81. Without limitation, Orazio has breached his fiduciary duty to Vittorio and to the Company, by failing to carry out the prime purpose of the Company, by mismanaging the Company, by engaging in waste of the Company's assets, by deliberately failing to honor his written agreements with Vittorio and the Company, and by engaging in other conduct detrimental to the business of the Company. The specific facts regarding Orazio's misconduct are detailed in the section of this Complaint under the facts common to all causes of action and will not be repeated here.

82. Vittorio has, at all times, honored his obligations to the Company by making timely contributions to the Company to pay for debt service and other expenses. Specifically, Vittorio made all the BRT mortgage payments from July 2009 through July 2010 when Orazio and Rocco, in bad faith, unilaterally ceased making such payments despite their written promise set forth in the Settlement Agreement to do so. Orazio and Rocco put the Company at great risk of foreclosure by their misconduct in failing to make their share of the monthly BRT mortgage payment. Vittorio is solely responsible for preventing the BRT mortgage from going into foreclosure.

83. Orazio's misconduct and breaches of duty have caused great harm to the Company and Vittorio. Approximately \$2.3million dollars has been poured into the Company without the prospect of a dollar in return. The Premises should be fully developed and income producing at this time but development has hardly started solely as a result of Orazio's misconduct.

84. The damages caused to Vittorio and the Company by Orazio's breaches of fiduciary duty are to be determined by the Court but are no less than \$1,000,000.

85. In addition, the aforesaid breaches of fiduciary duty by Orazio were deliberate and willful, requiring that he should pay punitive damages to the plaintiff in the amount of \$2,000,000.

#### **AS AND FOR A FOURTH CAUSE OF ACTION**

(Fraudulent Misrepresentation against Orazio and Rocco)

86. In Section 1.9 of the Settlement Agreement, Orazio and Rocco represented that the Company would have sufficient assets to meet its obligations. Given that the Company had no liquidity or income, the only way that this representation could be true is if the individual members had sufficient funds to make monthly contributions to the Company for its debt service and other expenses.

87. In July of 2009, Orazio deliberately concealed from Vittorio the fact that he and Rocco had not deposited their share of the BRT mortgage payment. At this time, Orazio still controlled the Company's bank account and was wrongfully refusing to provide Vittorio with access to the bank account despite the fact that Vittorio had become a joint managing member with a fifty percent ownership interest in the Company. Orazio was able to make the July 2009 mortgage payment to BRT by using surplus funds in the Bridgeview account and Vittorio's July 2009 contribution.

88. In July 2009, Orazio and Rocco ceased making their share of the BRT monthly mortgage payments. If, in fact, Orazio and Rocco were experiencing genuine



financial problems at the time, then they deliberately concealed these financial problems of which they had a duty to disclose to Vittorio.

89. Orazio and Rocco deliberately concealed their alleged financial problems from Vittorio in order to induce Vittorio to sign the Settlement Agreement and the BRT loan extension documents which required Vittorio to pledge 129 MacDougal Street to BRT.

90. Upon information and belief, Orazio and Rocco deliberately concealed the fact from Vittorio that they did not intend to make their share of the monthly mortgage payments to BRT going forward.

91. Such omissions and the failure to disclose were material because if Vittorio had known the truth, he would not have acted to his detriment in entering into the Settlement Agreement and pledging his property at 129 MacDougal Street to BRT as further collateral for the BRT mortgage.

92. The deliberate, intentional and bad faith concealment by Orazio and Rocco put 129 MacDougal Street at risk because BRT could exercise its pledge by notice without having to commence a foreclosure action in the event of a default of its mortgage.

93. The representation in Section 1.9 of the Settlement Agreement made by Orazio and Rocco that the Company would have sufficient assets to meet its obligations was false when made by them and was made deliberately to induce Vittorio to sign the Settlement Agreement and pledge 129 MacDougal Street to BRT.

94. Vittorio reasonably relied upon the said representations made by Orazio and Rocco in Section 1.9 of the Settlement Agreement and such reliance was to his detriment.

95. As a result of the aforesaid fraudulent concealment by Orazio and Rocco, Vittorio and the Company have been damaged in an amount to be determined by the Court but in no event less than \$1,000,000.00.

96. In addition, the aforesaid breaches by Orazio and Rocco were deliberate and willful, requiring that he should pay punitive damages to the plaintiff in the amount of \$2,000,000.00.

#### **AS AND FOR A FIFTH CAUSE OF ACTION**

(Interference with prospective contractual relations against Orazio)

97. Orazio and Rocco wrongfully ceased making their share of the monthly mortgage payments to BRT in July of 2009. Their failure to make the required payments continued until August of 2010. Vittorio, who was making the entire payment to BRT to prevent the mortgage from going into foreclosure repeatedly asked Orazio when he would be able to start making mortgage payments again. Orazio's response was always to the effect that it would not be in the foreseeable future.

98. Given that Vittorio was pouring his own funds into a non-income producing property and given that Orazio was not taking any steps to get renovation started, in order to limit the mounting losses being incurred by the Company and the members, the sale of the Premises became the most prudent course of action for the Company.

99. To this end, Vittorio, through various real estate brokers, solicited offers from buyers to purchase the Premises.

100. Two prospective purchasers made offers to purchase the Premises for \$2.3 million which were \$100,000 in excess of the total outstanding on the BRT mortgage.

101. Even though Orazio and Rocco were not making any of the required monthly contributions to the Company for their share of the monthly mortgage payments to BRT, and even though Orazio, in his capacity as managing member, was not taking any steps whatsoever to move the renovation of the Building to completion, Orazio went to great lengths to prevent the Company from entering into contracts of sale with the prospective purchasers.

102. As a result of Orazio's interference, the prospective purchasers have withdrawn their offers and no viable offers have been received from any other prospective purchasers. In fact, one of the real estate brokers involved advised Vittorio that they would not market the Premises for sale because of the bad faith conduct of Orazio.

103. Vittorio has recently learned that a new prospective purchaser indicated an intention to purchase the property through the real estate broker who has the exclusive rental listing. Orazio deliberately withheld such information from Vittorio and prevented an offer being made to the prospective purchaser.

104. Orazio's above described misconduct is actionable because of his fiduciary duty to act in the best interests of the Company and its members. At a time when he is failing to make the required contributions for the Company's expenses and neglecting his duties as a managing member of the Company, the only viable course of

action for the Company is to sell the Premises so that the losses to the members of their investments is terminated and becomes finite.

105. As a result of the foregoing, Orazio is liable for his wrongful interference with prospective contractual relations in an amount to be determined by the Court but in no event less than \$1,000,000.

### **AS AND FOR A SIXTH CAUSE OF ACTION**

(Breach of the covenant of good faith and fair dealing against Orazio)

106. There is an implied covenant of good faith and fair dealing in every contract. The Operating Agreement and the Settlement Agreement are contracts which contains said covenant.

107. The said covenant is breached when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement.

108. The Settlement Agreement was consummated in order to settle a lawsuit brought by Vittorio where the main allegations made by him against Orazio were that Orazio had breached his duties to the Company and the members by failing to take steps to renovate the Premises so that it could be leased and produce income.

109. At the time, Orazio was the sole managing member and had effective control of the Company by virtue of his proxy and ownership of two-thirds of the Company. Despite having approximately \$400,000 in construction funds available since September 2006, Orazio completely failed to engage in the simple task of hiring a contractor to renovate the Premises and lease out the units.

110. Thus the prime purpose of the Settlement Agreement was to facilitate the completion of the renovation of the Premises so that the units could be leased and the Company could start earning income.

111. Aside from his breach of Section 1.9 of the Settlement Agreement as described in detail above, which in and of itself prevented the renovation of the Premises from making any progress, Orazio engaged in myriad other actions to hinder and delay the renovation of the Premises.

112. Without limitation, Orazio refused to comply with the mediator's directive that he provide Vittorio with a more detailed renovation plan, Orazio selected his relative Greaves as the contractor knowing that Vittorio had already objected to such selection and had good grounds to so object, Orazio completely ignored Vittorio's requests to engage in the selection of a competent contractor, and finally he failed to contribute his share of the \$80,000 required by BRT to be added to the Construction Reserve. All in all, after obtaining approval of the plans from the New York City Department of Buildings, Orazio did virtually nothing to ensure that the renovation process was commenced so that the units in the Premised could be leased and the Company earn income.

113. Since the acquisition of the Premises by the Company in September 2006, Orazio's conduct has prevented the Company from earning any income and has prevented Vittorio from earning any return on his investment in the Company.

114. To date, Vittorio has invested approximately \$1million cash in the Company and has received not a single penny in return.

115. As a result of Orazio's aforesaid breaches of the implied covenant of good faith and fair dealing contained in the Operating Agreement and the Settlement

Agreement, Vittorio has been damages in an amount to be determined by the Court, but in no event less than \$1,000,000.

**WHEREFORE**, the Plaintiff prays that judgment be entered against Orazio and Rocco as follows:

A. On the first cause of action, a judgment declaring that as a result of Orazio's and Rocco's failure to make the required contributions, Vittorio is entitled to exercise his options under Article V, Section 1 of the Operating Agreement.

B. On the second cause of action, a judgment declaring that Vittorio's membership interest in the Company has increased to 57.2%, that Orazio's and Rocco's membership interests have been reduced to 21.4% each and that Vittorio can pass Company resolution's with a simple majority vote as permitted by the Operating Agreement.

C. On the third cause of action against Orazio (breach of fiduciary duty), in an amount to be determined by the Court, but believed to exceed \$1,000,000 with interest in compensatory damages, together with punitive damages of \$2,000,000.

D. On the fourth cause of action against Orazio (fraudulent non-disclosure), in an amount to be determined by the Court, but believed to exceed \$1,000,000 with interest in compensatory damages, together with punitive damages of \$2,000,000.

E. On the fifth cause of action against Orazio (tortious interference with prospective contractual relations), in an amount to be determined by the Court, but believed to exceed \$1,000,000 with interest in compensatory damages, together with punitive damages of \$2,000,000.

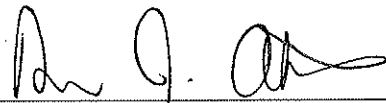
F. On the sixth cause of action against Orazio (breach of the covenant of good faith and fair dealing), in an amount to be determined by the Court, but believed to exceed \$1,000,000 with interest in compensatory damages, together with punitive damages of \$2,000,000.

G. Exemplary damages against all the individual plaintiffs in a sum to be determined by the Court, but in no event less than \$2,000,000;

H. Such other relief as is just and proper in the circumstances;

I. Interest on the monetary awards, the costs, disbursements and reasonable attorney's fees of this action.

Dated: New York, New York  
November 19, 2010



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DAVID J. ARONSTAM, ESQ.  
Attorney for Plaintiff  
40 Exchange Place, Suite 2010  
New York, New York 10005  
(212) 949-6210

**VERIFICATION**

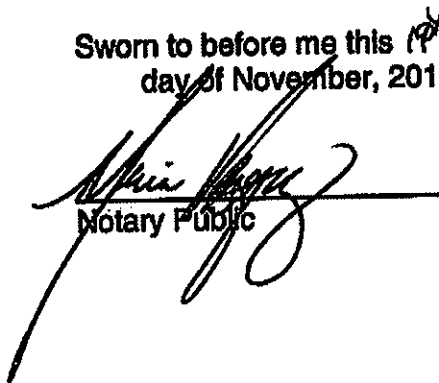
STATE OF NEW YORK)  
COUNTY OF NEW YORK)ss.:

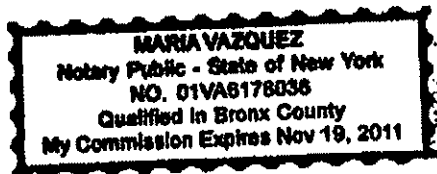
VITTORIO ANTONINI, being duly sworn, deposes and says:

I am the individual plaintiff in this action and a member of the plaintiff limited liability company. I have read the attached Complaint, that I know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

  
VITTORIO ANTONINI

Sworn to before me this <sup>19<sup>th</sup></sup>  
day of November, 2010

  
Notary Public





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

Index No. /10

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VITTORIO ANTONINI individually and as a  
member of BRIDGEVIEW AT BROADWAY, LLC,  
on behalf of Himself and all other members of  
BRIDGEVIEW AT BROADWAY, LLC  
similarly situated, and in the right of  
BRIDGEVIEW AT BROADWAY, LLC,

Plaintiffs,

- against -

ORAZIO PETITO and ROCCO PETITO,

Defendants.

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**SUMMONS & VERIFIED COMPLAINT**

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DAVID J. ARONSTAM, ESQ.

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40 Exchange Place, Suite 2010  
New York, NY 10005  
(212) 949-6210

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