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

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JOHN M. FEROLITO, :
RICHARD N. ADONAILO, as custodian of John Ferolito, Jr., and :
as Co-Trustee for the Ferolito Family 1996 Special Family Trust; :
JF CAPITAL L.P., and :
ELIZABETH ANN BARULIC :

08600396

Index No. _____

Plaintiffs, :

SUMMONS

- against -

DOMENICK J. VULTAGGIO, :
SPENCER VULTAGGIO, :
WESLEY VULTAGGIO, :
DV CAPITAL, L.P., :
DAVID MENASHI as Co-Trustee for the :
Vultaggio Family 1996 Special Trust, :
ROSEANN M. ROCHFORD, :
ARIZONA BEVERAGE COMPANY, LLC, :
ARIZONA BEVERAGES de MEXICO, S. de R.L. de CV, :
ARIZONA BEVERAGES OF CANADA, LLC, :
ARIZONA CORP., INC., :
ARIZONA ENERGY, LLC, :
ARIZONA INTERNATIONAL, LLC, :
BEVERAGE MARKETING USA, INC., :
BLUE LUNA CAFE SPA LLC, :
BOCA/ARIZONA PARTNERS, LTD., :
F & V DISTRIBUTION COMPANY, LLC, :
F & V LEASING COMPANY, LLC, :
F & V PRODUCT DEVELOPMENT L.P., :
F & V PROPERTIES LLC, :
HERBAL ENTERPRISES, LLC, :
HORNELL BREWING CO., INC. :
MAPLEWOOD BEVERAGE PACKERS, LLC, :
MIDNIGHT DRAGON BREWING COMPANY, LLC, :
MISSISSIPPI BREWING COMPANY, LLC, :
PALM BEACH BREWING COMPANY, LLC, :
SPENCER OUTFITTERS, LLC, :
V & F PROPERTIES LLC :

Defendants. :
-----X

FILED
FEB 07 2006
COUNTY CLERK'S OFFICE
NEW YORK

To the above named Defendants.

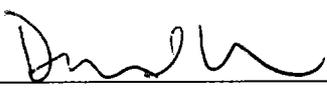
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of

appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the 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 appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue in New York County is based upon the agreement of the parties pursuant to Section 6.3(b) of the Owners' Agreement that is the subject of this action.

Dated: New York, New York
February 8, 2008

DLA PIPER US LLP

By: 
David B. Buss
Robert F. Fink
Michael R. Hepworth
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New York, New York 10020
(212) 335-4500

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COMPLAINT

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NEW YORK

Plaintiffs, upon knowledge of their own actions and upon information and belief as to all
other allegations, by their attorneys DLA Piper US LLP, allege as follows:

SUMMARY OF THIS ACTION

1. In this action Plaintiffs seek a judgment declaring that one of the provisions in an Owners' Agreement (the "Agreement") is invalid, void, and unenforceable.

2. The Agreement purports to set forth certain rights of the owners of a closely held group of companies (the "AriZona Entities") that distribute AriZona Iced Tea and other beverages, and that hold certain intellectual property rights related to AriZona Iced Tea and other products. The Plaintiffs and Defendants are parties to the Agreement. All of them are also family members or affiliates of Plaintiff John M. Ferolito and Defendant Domenick J. Vultaggio, the two individuals who started the AriZona business. A copy of the Agreement is attached as Exhibit A and incorporated in this Complaint.

3. The provision of the Agreement that is at issue (paragraph 4.1, the "Transfer Restriction") purports to bar the sale or transfer of any stock or other ownership interest in the AriZona Entities to anyone except related persons. The group of permitted transferees consists essentially of another owner of the AriZona Entities, an owner's immediate family, or an owner's affiliate. The Transfer Restriction has no time limit. It does not provide any right of first refusal that would let an owner sell to an outsider after the other owners refused to purchase his interests, nor does it have any provision that requires other owners to purchase the interests of an owner at a specified price if he wanted to sell those interests. If an owner wants to sell his interests to someone not listed in the Transfer Restriction, there is no process to seek consent, and in any event the Transfer Restriction does not require that consent not be unreasonably withheld by the other owners. In effect, the Transfer Restriction means that the sale of an owner's interest is impossible to anyone except another owner at whatever price the other owner wishes to pay.

4. Plaintiff John M. Ferolito (“Ferolito”) and others who own interests in the AriZona Entities want to take full advantage of highly attractive current opportunities to sell their interests to persons who are not in the limited group of permitted transferees listed in the Transfer Restriction provision. Defendant Domenick J. Vultaggio (“Vultaggio”) and others affiliated with him contend that such a sale is barred by the Transfer Restriction. Because of Vultaggio’s position, Ferolito and others who own interests in the AriZona Entities have not been able to take advantage of recent opportunities to sell their interests and have been unable to realize the fair value of those interests.

5. This has been a deeply divisive issue among the owners of the AriZona Entities, who are divided into two groups. One group is headed by Ferolito and consists of the “Ferolito Owner Group” (as defined in the Agreement). The other group is headed by Vultaggio and consists of the “Vultaggio Owner Group” (as defined in the Agreement). Each of the two groups has equal ownership and control over the AriZona Entities.

6. The controversy between these two groups is specific and concrete, and has been repeatedly raised in recent meetings and communications between Ferolito and Vultaggio and their representatives. Plaintiff Ferolito and the Ferolito Owner Group contend that the Transfer Restriction is unenforceable because it is unreasonable as a matter of law, against public policy, and an unlawful restraint on the right to sell personal property. Defendant Vultaggio and the Vultaggio Owner Group contend that the Transfer Restriction is enforceable and seek to enforce it.

7. The dispute is of exceptional consequence. The Financial Times reported in 2007 that a large international business conglomerate, the Tata Group, was considering making an offer of \$2 billion (\$2,000,000,000.00) for the AriZona Entities. One of the principal members of the Tata Group, Tata Tea Limited, did approach the AriZona Entities concerning an offer, and

the numbers discussed were even greater. Tata Tea Limited also specifically raised the possibility of purchasing only the ownership interests held by Plaintiffs rather than all of the ownership interests in the AriZona Entities. Because Vultaggio and the Vultaggio Owner Group claim the Transfer Restriction is a complete bar to any such transaction, Plaintiffs seek a judgment declaring that the Transfer Restriction is void and unenforceable.

THE PARTIES

8. Because this action concerns the enforceability of a provision in the Agreement, all parties to the Agreement are named as parties in this action. The parties to the Agreement when it was signed consist of the Ferolito Owner Group and the Vultaggio Owner Group, as well as ten AriZona Entities. As explained below, certain other entities arguably have become parties to the Agreement (as AriZona Entities) after it was signed, and therefore they have been named as parties to this action.

The Main Parties

9. The core of this lawsuit is a dispute between Plaintiff Ferolito and Defendant Vultaggio, the two individuals who founded the AriZona business that is now operated by the AriZona Entities.

10. Plaintiff Ferolito is an individual who is a citizen and resident of Florida. Ferolito is the head of the Ferolito Owner Group of owners of the AriZona Entities. Ferolito is a party to the Agreement.

11. Defendant Vultaggio is an individual who is a citizen and resident of New York. Vultaggio is the head of the Vultaggio Owner Group of owners of the AriZona Entities. Vultaggio is a party to the Agreement.

The Ferolito Owner Group

12. In addition to Ferolito, the Ferolito Owner Group includes John Ferolito Jr., the Ferolito Family 1996 Special Trust, JF Capital, L.P., and Elizabeth Ann Barulic.

13. John Ferolito, Jr., is the son of Ferolito and a resident of Florida. Although a party to the Agreement, he did not sign the Agreement because at that time he was a minor. Richard N. Adonalio ("Adonalio"), an individual who is a citizen and resident of New York, signed the Agreement on his behalf as custodian under the New York Uniform Gifts to Minors Act until Age 21. John Ferolito, Jr., is now 20 years old.

14. The Ferolito Family 1996 Special Trust is a trust that was created in 1996. Adonalio signed the Agreement as co-trustee of the Ferolito Family 1996 Special Trust and is suing also in that capacity.

15. Plaintiff JF Capital, L.P., is a limited partnership organized under the laws of New York.

16. Plaintiff Elizabeth Ann Barulic is the sister of Ferolito and a resident of New Jersey.

The Vultaggio Owner Group

17. In addition to Don Vultaggio, the Vultaggio Owner Group includes Spencer Vultaggio, Wesley Vultaggio, DV Capital, L.P., the Vultaggio Family 1996 Special Trust, and RoseAnn M. Rochford.

18. Defendant Spencer Vultaggio, is an individual who is a citizen and resident of New York. Spencer Vultaggio is the son of Vultaggio. The Agreement was signed on Spencer Vultaggio's behalf by Adonailo as custodian under the New York Uniform Gifts to Minors Act until age 21. Spencer Vultaggio is now over the age of 21.

19. Defendant Wesley Vultaggio is an individual who is a citizen and resident of New York. Wesley Vultaggio is the son of Vultaggio. The Agreement was signed on Wesley Vultaggio's behalf by Adonilo as custodian under the New York Uniform Gifts to Minors Act until age 21. Wesley Vultaggio is now over the age of 21

20. Defendant DV Capital, L.P., is a limited partnership organized under the laws of New York.

21. The Vultaggio Family 1996 Special Trust is a trust that was created in 1996. Defendant David Menashi, an individual who is a citizen and resident of New York, signed the Agreement as co-trustee of the Vultaggio Family 1996 Special Trust. Defendant David Menashi is being sued as co-trustee of the Vultaggio Family 1996 Special Trust.

22. Defendant RoseAnn M. Rochford is an individual who is a citizen and resident of New Jersey. She is the sister of Vultaggio.

The AriZona Entities

23. After the Agreement was signed, additional entities have arguably become parties to the Agreement as AriZona Entities under paragraph 6.1(b) of the Agreement, which provides in part that "any entities that are hereafter created by the Owners that directly or indirectly are involved in the ownership or operation of the AriZona Rights shall automatically be deemed to be an AriZona Entity hereunder" (Agreement ¶ 6.1(b)). These additional entities are either corporations or limited liability companies involved in the AriZona business.

24. The AriZona Entities are parties to the Agreement and are therefore also named as defendants. The AriZona Entities are 50% owned or controlled by Ferolito or the Ferolito Owner Group, and 50% owned or controlled by Vultaggio or the Vultaggio Owner Group (except for two AriZona Entities where each group still owns or controls the same percentage as the other, although that percentage is less than 50%). Because the AriZona Entities are owned

and controlled equally by the Ferolito Owner Group and its affiliates, and the Vultaggio Owner Group and its affiliates, the AriZona Entities are only nominal Defendants in this action.

25. The AriZona Entities are listed and identified in Exhibit B hereto, which is incorporated in the Complaint.

BACKGROUND

26. Ferolito and Vultaggio began marketing AriZona Iced Tea in 1992. It was a highly successful product, and Ferolito and Vultaggio expanded their business to include other beverage products. In 2007 yearly sales of AriZona beverage products exceeded \$600 million.

27. From its beginning and at all times since then, fifty percent of the business run by the AriZona Entities has been owned by Ferolito and his family or affiliates, and fifty percent of the business has been owned by Vultaggio and his family or affiliates.

28. Ferolito directly managed the business in its early years, but in the mid-1990s he reduced his involvement in day-to-day management. At all times, however, Ferolito has continued to be involved in major business decisions, both directly and indirectly through his appointed proxy. Vultaggio currently has control of the day-to-day management of the AriZona business.

THE AGREEMENT

29. In or about 1998, Ferolito and Vultaggio discussed issues concerning the ownership of the business of the AriZona Entities. They agreed orally that if one of them died before the other, the decedent's family would continue to own 50% of the business, but would not inherit the decedent's voting power or have a role in the management and affairs of the business. They also agreed that they would have voting control over their children's ownership interests in the AriZona Entities.

30. To make this agreement binding on all of the owners, David Menashi, a CPA who was an advisor to the AriZona Entities, Vultaggio, and Ferolito at that time, and who is now CEO of the AriZona business, undertook responsibility for having a written agreement prepared to embody what Ferolito and Vultaggio had agreed upon. Menashi had the Agreement prepared by a lawyer. In the time after Ferolito and Vultaggio made the oral agreement that was to be memorialized in the written Agreement, Ferolito never saw any draft of the Agreement and was not involved in its drafting in any way. Ferolito did not have any additional discussions about the content of the Agreement and was never consulted regarding the contents of the Agreement.

31. When he was presented with the signature page of the Agreement and asked to sign it, Ferolito did not read the Agreement but relied on Menashi's representation that it contained only what Ferolito and Vultaggio had discussed. Ferolito's reliance on Menashi was reasonable. Menashi was a trusted advisor of the business and was regularly relied upon by both Ferolito and Vultaggio. Ferolito signed the Agreement believing that it contained only the specific points orally agreed upon with Vultaggio, as Menashi had represented.

32. The Agreement, however, went well beyond what Ferolito had discussed with Vultaggio.

33. One of the provisions of the Agreement that had not been discussed or agreed to, and that was not explained to Ferolito at any time, including when he signed the signature page of the Agreement, was paragraph 4.1. Paragraph 4.1 of the Agreement is the Transfer Restriction provision at issue in this action. (*See Exhibit A at pages 7-8.*)

34. The Transfer Restriction purports to restrict any transfer of stock or ownership interests in the AriZona Entities, except to a highly limited group. The list of "Permitted Transferees" in the Transfer Restriction is so limited that an owner effectively has no meaningful market for his shares except another owner, who does not have to agree to buy the interests or to

pay any price ever. The group of Permitted Transferees essentially consists of another owner or some person who is effectively inseparable from an owner. Permitted transferees are defined as:

- (i) any Affiliate of such Owner.
- (ii) any lineal descendant, lineal ancestor, sibling, or spouse of any such Owner,
- (iii) in case of death, any personal representative or executor of such Owner,
- (iv) any trust for the benefit of, and any corporation, partnership or other entity, all of the interests of which are at all times held by, only the transferring Owner and any persons with respect to such Owner described in subparagraphs (i), (ii) and/or (iii) above, or
- (v) any other Owner.

35. The Transfer Restriction is completely unreasonable. The Transfer Restriction has no time limit, it does not provide a first option to another owner at a specified price that would enable a selling owner to realize the value of his interests, and it effectively restricts transfers to a member of the other family or one of its affiliates. The Transfer Restriction prevents an owner from transferring his interests to anyone but himself or the other founder's family.

36. Moreover, the Transfer Restriction does not even contemplate the idea of consent by the other owners to a transfer of some ownership interests to an outside party. The first sentence of the Transfer Restriction states "Each of the Owners hereby agrees that no Transfer, as hereinafter defined, shall be permitted at any time." (Agreement ¶ 4.1(a).) There is no provision requiring that consent to a sale to an outside party shall not be unreasonably withheld. Since it does not set any price that another owner must pay for the interests of an owner who would like to sell his interests, the Transfer Restriction essentially means that the sale of an owner's interest is impossible. Other than transfers within a family, the only option is sell to the other family or its affiliates.

THE DISPUTE OVER THE TRANSFER RESTRICTION

37. In 2005 and 2007, two large international companies approached Ferolito and Vultaggio and expressed an interest in purchasing all or part of the AriZona Entities. One of the potential buyers was Coca-Cola. The other was Tata Tea Limited, one of the world's largest manufacturers and distributors of tea. Tata Tea Limited is one of the companies in the Tata Group, one of the largest conglomerates in the world. The Tata Group reports on its Website that it employs some 2.8 million people in 98 companies, with a market capitalization of over \$59 billion.

38. The Financial Times reported in 2007 that the Tata Group was considering making an offer of \$2 billion (\$2,000,000,000.00) for the AriZona Entities. One of the principal members of the Tata Group, Tata Tea Limited, did approach the AriZona Entities concerning an offer, and the numbers discussed were even greater. Tata Tea Limited also specifically raised the possibility of purchasing only the ownership interests held by Ferolito or the Ferolito Owner Group rather than all of the ownership interests in the AriZona Entities. The Transfer Restriction, if it is enforceable, would bar any such transaction.

39. The Tata Tea Limited opportunity is of immense value to the AriZona Entities and their owners. Tata Tea Limited can provide a global platform for distribution of AriZona products. Those owners of the AriZona Entities who may wish to sell their interests would have an opportunity to maximize the value of their ownership interests. The disagreement between Plaintiffs and Vultaggio and the Vultaggio Owner Group over the Transfer Restriction is of high immediate concern.

40. Ferolito and those in the Ferolito Owner Group would like to take full advantage of current opportunities to sell their ownership interests. Vultaggio and the Vultaggio Owner Group, however, have said they would prevent Ferolito and those in the Ferolito Owner Group

from being able to pursue those opportunities. In recent meetings and communications, Vultaggio and the Vultaggio Owner Group have repeatedly insisted that the Transfer Restriction provision in the Agreement bars any such sale.

41. Plaintiffs have made good faith efforts to negotiate with Vultaggio and the Vultaggio Owner Group to reach a resolution of the dispute over the Transfer Restriction provision in the Agreement. These efforts have not been successful.

CAUSE OF ACTION
(Declaratory Judgment on a Justiciable Issue of Law)

42. Plaintiffs repeat the allegations in paragraphs 1-41 of the Complaint.

43. There is a justiciable controversy between Plaintiffs and Vultaggio and the Vultaggio Owner Group concerning the validity of the Transfer Restriction provision in the Agreement.

44. As explained above, the Plaintiffs who own interests in the AriZona Entities would like to sell their ownership interests to persons who are not included in the list of permitted transferees in the Transfer Restriction provision in the Agreement.

45. Vultaggio and the Vultaggio Owner Group contend that such a sale is barred by the Transfer Restriction provision in the Agreement.

46. Plaintiffs contend that the Transfer Restriction provision in the Agreement is invalid, void, and unenforceable because it is unreasonable as a matter of law, against public policy, and an unlawful restraint on the right to sell personal property. The Transfer Restriction has no time limit, it does not provide a first option to another owner at a specified price that would enable a selling owner to realize the value of his interests, and it effectively restricts transfers to another owner, his estate, or an affiliate he controls. It does not contain a provision that consent to a sale to an outside party shall not be unreasonably withheld. The Transfer Restriction means, in effect, that the sale of an owner's interest is impossible to anyone except

another owner, and then only at the other owner's discretion and on his terms at whatever price he wishes to pay. The Transfer Restriction is an unlawful restraint on the alienation of personal property.

47. Because of this controversy, Plaintiffs who own interests in the AriZona Entities have not been able to take advantage of opportunities to sell their interests and have been unable to realize the fair value of those interests. The parties' dispute is definite, concrete, and substantial, and it admits of specific relief through a Court decree.

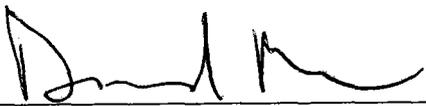
48. Plaintiffs are therefore entitled to a declaration that the Transfer Restriction is invalid, void, and unenforceable.

WHEREFORE, Plaintiffs demand judgment against Defendants:

- (a) Declaring that the Transfer Restriction provision, which is paragraph 4.1 of the Agreement, is invalid, void, and unenforceable;
- (b) Granting or awarding such further or consequential relief as may be just and proper because of Defendants' actions concerning the Transfer Restriction provision in the Agreement; and
- (c) Granting such other and further relief to Plaintiffs as the Court may determine is just and proper.

Dated: February 8, 2008

DLA PIPER US LLP

By: 

David B. Buss

Robert F. Fink

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New York, New York 10020-1104
(212) 335-4500

Attorneys for Plaintiffs

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