

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

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HAROLD E. GARBER, RONALD SEIDEN,
SEYMOUR C. NASH, ROBERT C. MAGOON,
GORDON MILLER, STEPHEN M. KULVIN,
STEVEN ZARON and LEE DUFNER, as limited
partners of and in the right of KINPIT ASSOCIATES,
L.P., a New York limited partnership,

Index No. 601917/05

**AMENDED AND SUPPLEMENTAL
COMPLAINT**

Plaintiffs,

-against-

TROY D. STEVENS, JR. individually and d/b/a
DEVELOPMENT CO., KINPIT REALTY CORP.,
KINPIT REALTY, INC., KINPIT REALTY CO.,
KINPIT MANAGEMENT
and DAWMICH INDUSTRIES, INC.,

Defendants.
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Plaintiffs, by their attorney, Edward B. Safran, complaining of the defendants,
respectfully allege as follows:

BACKGROUND

1. This is a derivative action for an accounting, breach of contract, reformation of the contract, breach of fiduciary duties, misuse of partnership assets, violation of Article 12-a of the New York Real Property Law, mismanagement and fraud brought by the limited partners of Kinpit Associates, L.P., a New York limited partnership ("Kinpit" or "Partnership"), against its general partner, Troy D. Stevens, Jr. ("Stevens"), and certain entities controlled by and acting as the alter ego of, Stevens. As will be demonstrated in this lawsuit, the general partner's dealings with the

Partnership and the limited partners was marked by total contempt for honesty and fair dealing. Accordingly, plaintiffs also seek judgment removing Stevens and his entities as general partner of the Partnership to preserve the Partnership and stop the fraud.

2. Kinpit was organized pursuant to a limited partnership agreement (the "Agreement") dated and effective as of July 30, 1974. A copy of the Agreement is annexed hereto and incorporated herein as **Exhibit A**. The business of Kinpit was and is the ownership and management of certain residential rental property located at 369 Mother Gaston Boulevard, a/k/a 1800 Pitkin Avenue, Brooklyn, New York (the "Property"). The Property is improved with a five story residential building constructed in or about 1956, comprising in excess of 80,000 square feet, and containing eighty-three (83) residential units and five (5) retail stores. Kinpit acquired fee title to the Property on or about December 12, 1975. Upon information and belief, at the time of its acquisition, financing had been provided by or on behalf of the City of New York, and that financing was ultimately paid off in due course.

3. Following the execution of the Agreement, Stevens undertook the position of general partner along with a purported entity which he owned or controlled known as "Development Co." Sometime later, Stevens added or substituted Kinpit Realty Corp. and/or Kinpit Realty, Inc. as either a co-general partner or as sole general partner. Upon information and belief, Stevens owns and controls both Kinpit Realty Corp., Kinpit Realty, Inc., Kinpit Realty Co., and Dawmich Industries, Inc., and uses them as his alter ego in connection with his management of the Property and the business of the Partnership. Stevens also transacts business under the name and

style "Kinpit Management." Upon information and belief "Kinpit Management" is not a corporate entity but is a trade name used exclusively by Stevens in the management, leasing and operation of residential real estate.

4. For some period of time prior to the commencement of this action, Stevens has been dealing with the Property and Partnership assets as if they belonged solely to him, without reporting or accounting to the individual plaintiffs, and without obtaining their required consent to certain transactions, such as refinancing the Property. Stevens has failed, refused and neglected to respond to inquiries concerning the Property and the Partnership assets and business affairs made by and on behalf of the plaintiffs, has failed, refused and neglected to disclose Partnership financial and business records, and has essentially engaged in stonewalling the plaintiffs as cover for his looting and milking the Property and the Partnership assets. For instance, Stevens has, in violation of the Agreement, refinanced the Property on multiple occasions without notifying and obtaining the consent of the plaintiffs, as required, obtaining in excess of \$5.3 Million, but has refused to account for the proceeds of those financings. He has, also in violation of the Agreement and his common law duties as a fiduciary, wrongfully taken huge fees for management and administration of the Property, and has caused the Partnership to pay extraordinary expenses for repairs and renovation, vastly out of proportion to the needs of the Property and inconsistent with expenses incurred for similar properties in the area. Stevens caused the Partnership to pay him those fees notwithstanding that not having a valid New York State Real Estate Broker's License, payment and receipt of those fees was wrongful and criminal in nature. Upon information and belief, Stevens and his associates have wrongfully and unlawfully profited from the outrageous and bogus expenses charged to and paid for

by the Partnership in violation of his contractual obligations and fiduciary responsibilities.

PARTIES TO THIS ACTION

5. Harold E. Garber ("Garber") is an individual, party to the Agreement, whose proportion of limited partners' interest in the partnership was, at the time of the execution of the Agreement, 30% thereof. Garber is presently, and at the time of the commencement of this action, a limited partner of the partnership. Pursuant to the terms of the Agreement, the aggregate interests of all limited partners in the partnership at the time of its execution was 95%, and the aggregate interests of the general partners was 5%. The Agreement provides that beginning 20 years after the date of the Agreement, the interests of the limited partners as a group would be diluted to 50% of all partnership interests, and the interests of the general partners as a group would be increased to 50% of all partnership interests. Consequently, Garber is authorized to bring this derivative action pursuant to New York Partnership Law § 115-a and § 121-1002(b), and individually meets the test of New York Partnership Law §115-b and § 121-1003 dispensing with the requirement of posting security for expenses.

6. Ronald Seiden ("Seiden"), Seymour Nash ("Nash"), Robert C. Magoon ("Magoon"), Gordon Miller ("Miller"), Steven Kulvin ("Kulvin"), Steven Zaron ("Zaron") and Lee Dufner ("Dufner") are each individuals, each of whom is a party to the Agreement, and each of whom is presently a limited partner of the partnership. At the time of the execution of the Agreement, each of the foregoing individuals respectively acquired 10% of the limited partnership

interests in the partnership. Accordingly, Seiden, Nash, Magoon, Miller, Kulvin, Zaron and Dufner are each authorized to bring this derivative action pursuant to New York Partnership Law § 115-a and § 121-1002(b), and upon information and belief each individually meets the test of New York Partnership Law §115-b and § 121-1003 dispensing with the requirement of posting security for expenses. The foregoing limited partners as a group meet the test of New York Partnership Law § 115-b and § 121-1003 dispensing with the requirement of posting security for expenses.

7. Kinpit Associates, L.P., formerly known as Kinpit Associates, is a New York limited partnership formed on or about July 30, 1974. Kinpit maintains its principal offices at 875 Sixth Avenue, Suite 1603, in the City, County and State of New York.

8. Stevens is an individual residing at 77 Summerwind Drive, Muttontown, New York 11545. Stevens maintains a place of business at 875 Sixth Avenue, Suite 1603, in the City, County and State of New York, which is also the business address of Kinpit, Kinpit Realty Corp., Kinpit Realty, Inc., Kinpit Management and Dawmich Industries, Inc. Upon information and belief Kinpit Management is a trade name used by Stevens, and is not a corporate entity.

9. Upon information and belief, Kinpit Realty Corp., Kinpit Realty, Inc., and Dawmich Industries, Inc. are each New York corporations.

10. Upon information and belief, Stevens is the principal shareholder of, and controls Kinpit Realty Corp., Kinpit Realty, Inc., and Dawmich Industries, Inc.

11. At the time of execution of the Agreement, Stevens received, as a general partner, 4% of the partnership interests of Kinpit.

12. At the time of the execution of the Agreement, Kinpit Realty Corp. received, as a general partner, 1% of the partnership interests of Kinpit.

13. On or about January 24, 2004, when executing Kinpit's 2002 U.S. Return of Partnership Income, Form 1065, Stevens claimed that the ownership of all partnership interests in Kinpit is as follows: Stevens individually as general partner - 50%; Garber - 15%; Seiden 5%; Nash - 5%; Magoon - 5%; Miller - 5%; Kulvin - 5%; Zaron - 5%; and Dufner - 5%.

THE AGREEMENT

14. The Agreement provides in relevant part as follows:

A. The Partnership is formed pursuant to the Partnership Law of the State of New York (§ 1);

B. The business of the Partnership is the acquisition of the Property, rehabilitation of the Property, obtaining Housing Administration secured financing pursuant to applicable law, including § 236 of the National Housing Act (§ 4);

C. Troy Stevens and Kinpit Realty Corporation are designated as general partners (§ 6);

D. The limited partners are to contribute, in their respective proportionate shares, the aggregate sum of \$360,000 as their capital contributions (§ 7);

E. No capital contribution is required of the general partners (§ 7);

F. The limited partners, as a group, shall own an aggregate of 95% of interests in the Partnership. The general partners, as a group, shall own an aggregate of 5% of interests in the Partnership. After 20 years, the interests are changed so that the limited partners, as a group, shall own an aggregate of 50% of interests in the Partnership. The general partners, as a group, shall own an aggregate of 50% of interests in the Partnership (§ 9).

G. All Partnership distributions are to be paid to the limited partners as a group until they receive an aggregate benefit of \$1,380,000. Thereafter, subject to lender's and other third party requirements, all Partnership distributions are to be paid *pari passu* in according with the then percentage interest of each partner (§ 10 A-B). As demonstrated below, Stevens breached this provision of the Agreement.

H. The proceeds of all refinancings, among other funds available for distribution, are to be paid first to the limited partners until they receive benefits aggregating \$1,380,000, and then 50% to the limited partners as a group and 50% to Development Co. (§ 10 C). As demonstrated below, Stevens breached this provision of the Agreement.

I. Each partner is to have access to the Partnership books at all reasonable times (§ 11 A), and a certified accounting to each partner is to be made at the end of each fiscal year and monthly reports of receipts and disbursements are to be submitted to the partners (§ 11 C). As herein demonstrated, Stevens breached these provisions of the Agreement.

J. The general partners shall not employ the credit or capital of the Partnership in any other than Partnership business (§ 14). As herein demonstrated, Stevens breached this provision of the Agreement.

K. The general partners shall have no authority to refinance the Property without the approval of 51% of the limited partners (§ 14 C[7]). As herein demonstrated, Stevens breached this provision of the Agreement.

L. The general partners may not be compensated for services rendered to the Partnership (§ 14 F). As herein demonstrated, Stevens breached this provision of the Agreement.

15. The structure of the Agreement readily discloses the intent of the parties in forming the Partnership and their expectations therefrom. Stevens was, in essence, a promoter or syndicator, who put no money into the deal. He found the Property, solicited investors, and syndicated the partnership. The compensation for his “promote” was to include a “back-end” success fee upon which the transaction was structured. *If* the limited partner investors received a stipulated return, and *if* Stevens managed the Partnership and successfully administered its sole asset, the Property, Stevens could then expect an increase in his Partnership percentage from 5% to 50%. However, by mismanaging the Property and diverting income and Partnership assets, and by wrongfully refinancing the Property and looting the proceeds, the consideration for Stevens’ “promote” and “back-end” success fee vanished and the contractual expectations of the plaintiffs was extinguished. By his egregious breaches of his contractual and fiduciary obligations, the Agreement needs to be reformed to reflect the actual intent and expectations of the parties.

**STATEMENT PURSUANT TO PARTNERSHIP
LAW §§ 115-A(3) AND 121-1002(C)**

16. The Partnership was formed prior to July 1, 1991 and is accordingly governed by Article 8 of the Partnership Law. Plaintiffs presently lack knowledge or information sufficient to allege whether or not the Partnership elected to be governed by or came under the Revised Limited Partnership Act effective on July 1, 1991, and plaintiffs respectfully refer all questions of law to the Court.

17. This is an action brought against the general partners of the Partnership and their affiliates arising from tortious acts and omissions perpetrated by them, as well as breach of contract and an accounting. Efforts to secure initiation of this action by the general partners would have been futile under the circumstances, and no such efforts were therefore made.

SPECIFIC ALLEGATIONS OF WRONGDOING

A: THE NORTH FORK MORTGAGES - A SOURCE OF FUNDS FOR STEVENS

18. On or about July 7, 2000, in violation of his fiduciary duties and in violation of the Agreement, Stevens caused the Partnership to refinance the Property by obtaining a mortgage loan from North Fork Bank in the principal sum of \$2,600,000 without the knowledge, permission and consent of 51% of the limited partners. By failing to notify and obtain plaintiffs' consent thereto, as required by the Agreement, Stevens was able to conceal his deceit and scheme to milk the assets of the Partnership.

19. On or about March 8, 2001, in violation of his fiduciary duties and in violation of the Agreement, Stevens caused the Partnership to refinance the Property by obtaining another

mortgage loan from North Fork Bank in the principal sum of \$500,000 without the knowledge, permission and consent of 51% of the limited partners.

20. On or about March 14, 2002, in violation of his fiduciary duties and in violation of the Agreement, Stevens caused the Partnership to refinance the Property by obtaining another mortgage loan from North Fork Bank in the principal sum of \$429,377.30 without the knowledge, permission and consent of 51% of the limited partners. Stevens then caused the Partnership to execute instruments consolidated the existing North Fork mortgages to form a single lien in the principal amount of \$3,475,000.

21. On or about May 16, 2003, in violation of his fiduciary duties and in violation of the Agreement, Stevens caused the Partnership to refinance the Property by obtaining another mortgage loan from North Fork Bank in the principal sum of \$650,000 without the knowledge, permission and consent of 51% of the limited partners.

22. On or about October 14, 2003, in violation of his fiduciary duties and in violation of the Agreement, Stevens caused the Partnership to refinance the Property by obtaining another mortgage loan from North Fork Bank in the principal sum of \$533,765.60 without the knowledge, permission and consent of 51% of the limited partners. At that time Stevens caused the Partnership to execute instruments consolidated the existing North Fork mortgages to form a single lien in the principal amount of \$4,600,000.

23. Pursuant to the express terms of the Agreement, Stevens was unauthorized

to refinance the Property without the consent of 51% of the limited partners. By causing the Partnership to refinance the Property without such consent, Stevens exceeded his authority, breached the Agreement and violated his fiduciary duties to the Partnership and the limited partners.

24. Stevens caused the Partnership to receive a total of \$4,600,000 from the refinancings described above. Stevens has failed, refused and neglected to account to the Partnership and the limited partners for the funds so received.

25. No distributions were made to the limited partners of any of the proceeds of the refinancings as required by the Agreement. By failing to account to the partners for the proceeds of the refinancings, Stevens breached the Agreement and violated his fiduciary duties to the Partnership and the limited partners.

26. Upon information and belief, Stevens diverted some or all of the proceeds of the refinancings to his own use in violation of the Agreement and his fiduciary duties. Stevens used fraudulent methods to conceal the refinancings, his misuse of Partnership assets and his defalcations pertaining thereto by, among other deceptions presently unknown to plaintiffs, (a) generating bogus repair and maintenance expenses and causing payments to be made to affiliated entities, such as Dawmish Industries, Inc. and unaffiliated entities secretly controlled by Stevens, (b) receiving kick-backs and other consideration from various contractors, (c) disguising payments made to himself and controlled entities as consulting, advisory, management and administrative expenses, and (d) failing to inform and obtain plaintiffs' consent to the refinancings..

27. Examples of bogus repair and rehabilitation expenses can be found in income tax statements for the year 2000, in which repairs and maintenance were listed at \$624,535 or \$7,097 per unit; for the year 2001, in which repairs and maintenance were listed at \$731,323 or \$8,310 per unit; and for the year 2002, in which repairs and maintenance were listed at \$363,903 or \$4,135 per unit. Upon information and belief, typical expenses for repair and maintenance for properties such as the Property are approximately \$400 per unit per year. The gross annual rental income of the Property during those years averaged about \$855,000.

28. Examples of disguised and unlawful payments can be found in the 2001 tax statement in which "administrative expenses" were listed as \$66,816, and "management fees" were listed at \$67,968, and in the 2000 tax statement in which "administrative expenses" were listed as \$144,437 and "management fees" were listed at \$67,968. According to the Agreement, the general partner is not to be compensated for its services.

**SPECIFIC ALLEGATIONS OF WRONGDOING
B: OTHER DIVERSIONS OF PARTNERSHIP ASSETS**

29. Notwithstanding his failure to account to the Partnership and the limited partners as required by the Agreement and the need to cloak wrongdoing in secrecy to avoid detection, certain of the Partnership tax statements reveal diversions of Partnership assets in addition to the examples contained in paragraphs 26 and 27 above. For instance, in the 1998 tax statement administrative expenses in the sum of \$43,234 and management fees of \$67,968 are listed; and in the 1999 tax statement administrative expenses in the sum of \$72,200 and management fees in the

sum of \$67,968 are listed notwithstanding the prohibition in the Agreement against the general partner receiving compensation for his services. No such large payments for "administrative expenses" appeared in the 1993, 1994, 1995, 1996, or 1997 tax statements, because none were required. No change in the management of the Property was reported to the partners in and after 1998 supporting such large payments. Upon information and belief in 1998 Stevens found another source of Partnership funds from which to enrich himself at Partnership expense.

30. Stevens engaged in a pattern of milking the Property and looting the Partnership prior to the North Fork refinancing of 2000 in addition to labeling payments as "administrative expenses" and "management fees." Examples of bogus repair and rehabilitation expenses can be found in income tax statements for the year 1994, in which repairs and maintenance were listed at \$416,024, or \$4,728 per unit, for the year 1995, in which repairs and maintenance were listed at \$467,147, or \$5,308 per unit; for the year 1996, in which repairs and maintenance were listed at \$489,000, or \$5,557 per unit; for the year 1997, in which repairs and maintenance were listed at \$425,600, or \$4,836 per unit; for the year 1998, in which repairs and maintenance were listed at \$377,462, or \$4,289 per unit; and for the year 1999, in which repairs and maintenance were listed at \$522,254, or \$5,935 per unit. The average annual rental income of the Property for the period described was about \$827,379.

31. Prior to obtaining the North Fork financings, Stevens described the Property in the tax statements as "Section 8 Housing." Nevertheless, for a continuous period going back to at least 1994, and likely earlier, Stevens engaged in a pattern of diverting about 50% or more of the gross rental income to himself under the rubric of "maintenance and repairs," and in 1998 added

another 15% or more under the guise of “administrative and management” expenses to his gravy train.

**SPECIFIC ALLEGATIONS OF WRONGDOING
C: THE PARTNERSHIP IS USED AS STEVENS’
PERSONAL PIGGY-BANK**

32. Treating the assets of the Partnership as his own piggy bank, in addition to the examples described above, and in violation of the express provisions of the Agreement, in or about 2000 and 2001 Stevens caused the Partnership to lend or extend credit in the sum of at least \$35,000 to Dawmich Industries, Inc., an entity which, upon information and belief, acts as Stevens’ alter ego.

33. Beginning in about 1990, and without notice to or consent from the limited partners, Stevens listed on the Partnerships’ tax statement a Partnership liability owed to the general partner in the sum of \$968,145.46. Upon information and belief the Partnership paid interest on that phony liability to the general partner. According to the Partnership tax statements prepared by Stevens, that liability continued for years, being slowly paid down. In 1995 the Partnership liability to the general partner was listed at \$932,393; a sum which remained constant until 1999, when the tax statement for that year revealed, in addition to the foregoing liability, another Partnership debt due to Troy Stevens in the sum of \$35,000.

34. According to the Partnership tax statement filed for the year 2000 by Stevens, the general partner caused the Partnership during the year 2000 to satisfy the “note payable” in the principal sum of \$932,393. However, the 2000 tax statement alleges that the Partnership liability to

Troy Stevens was increased from \$35,000 to \$205,000. In 2001 that Partnership liability to Stevens as reflected on the 2001 Partnership tax statement swelled to \$286,000, and, upon information and belief, grew to \$306,000 in 2002..

35. The unexplained purported Partnership liability to Stevens aggregating over \$1 Million is unsupported by any disclosure to the limited partners, violates the express terms of the Agreement requiring that 51% of limited partners' interests approve any such financing, is unsupported by proof of consideration, constitutes a conflict of interest and violation of Stevens' fiduciary duties to the Partnership, and, upon information and belief, the alleged Partnership liability in favor of Stevens and the general partner is a sham and a subterfuge used by Stevens to loot the Partnership of its assets.

FIRST CAUSE OF ACTION - ACCOUNTING

36. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 35 of this complaint as though more fully set forth herein at length.

37. Stevens, and upon information and belief the corporate co-defendants, at all times since the formation of the Partnership and to date, have been exclusively in control of and maintained custody of the books, records and financial accounts of the Partnership. Steven has refused and neglected to make those books and records available for inspection by the plaintiffs, has refused and neglected to render both certified and uncertified financial reports concerning the business of the Partnership as required by the Agreement, and has refused and neglected to account

to the Partnership and the plaintiffs for the business of the Partnership. According to the Agreement, each partner is to have access to the Partnership books at all reasonable times, and a certified accounting to each partner is to be made at the end of each fiscal year and monthly reports of receipts and disbursements are to be submitted to the partners. Notwithstanding due demand that Stevens provide the certified annual accountings and monthly reports of receipts and disbursements, Stevens breached these provisions of the Agreement.

38. Upon information and belief Stevens and the corporate defendants took for themselves, directly and indirectly, Partnership assets and Stevens paid himself more than the amounts permitted under the Agreement and more than his percentage interest therein.

39. Stevens and the corporate defendants are required to account to the Partnership and to the plaintiffs for the income, assets and liabilities of the Partnership.

40. Plaintiffs have no adequate remedy at law.

SECOND CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

41. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs 1 through 39 of this complaint as though more fully set forth herein at length.

42. Stevens had, individually and as owner and the controlling person of the corporate defendants, or either of them, assumed and undertook the position of general partner of

the Partnership since its formation.

43. As general partner of the Partnership, and as the controlling person of a corporate general partner, if any, Stevens assumed the duty of a fiduciary to the Partnership and to the limited partners. As such, Stevens owed the Partnership and its limited partners a duty of the finest loyalty, a standard of behavior measured by "not honesty alone, but the punctilio of an honor the most sensitive."

44. By his behavior, Stevens has demonstrated a consistent disregard for the interests of the Partnership and the limited partners. He conducted the affairs of the Partnership for his own benefit, engaged in self-dealing, used and obtained the benefit of Partnership credit and assets without the consent of the limited partners, took monies in violation of his duties as a general partner and in breach of the Agreement, engaged in deceptive and fraudulent conduct regarding the business and financial affairs of the Partnership, caused outrageous and unlawful expenditures to be made by the Partnership for his and his affiliates' benefit, refused to disclose business and financial transactions as required of a fiduciary and pursuant to the Agreement, and breached his fiduciary duties in various and sundry other manners to the detriment and damage of the Partnership and its limited partners.

45. Upon information and belief Stevens and the corporate co-defendants also violated their fiduciary duties in mismanaging the Property by failing to utilize Partnership funds and the proceeds of several institutional financings to rehabilitate, renovate and improve the Property as

to maximize rental income, by causing and/or permitting the Property to become rundown and be in a state of disrepair, by causing and/or permitting the Property to accumulate an enormous number of municipal violations, many of which were safety related, by hiring and paying related persons, friends and affiliates for services unperformed and/or out of proportion to the value of services actually performed, and in such other manners not yet known to the plaintiffs but to be determined upon proper discovery.

46. Upon information and belief Stevens and some or all of the corporate co-defendants controlled by him engaged in fraudulent and deceptive conduct in the pursuit of diverting Partnership assets and milking the Property of its revenues in further violation of his fiduciary duties. Such fraudulent and deceptive conduct included, but was not limited to, (a) mischaracterization of expenses and liabilities on financial statements to hide the diversion of Partnership income and assets, (b) filing false instruments with a federally regulated lending institution to obtain, on Partnership credit and the security of the Property, \$4.6 Million in financings, (c) creation of fictitious and unsupported debts and liabilities of the Partnership; and (d) creation of bogus repair and maintenance agreements used to fleece the Partnership of assets.

47. By reason of the foregoing the Partnership and the limited partners thereof have been damaged in sums not presently ascertained but believed to be in excess of \$10 Million.

THIRD CAUSE OF ACTION - BREACH OF CONTRACT REQUIRING REFORMATION

48. Plaintiffs repeat, reiterate and reallege the allegations contained in paragraphs

1 through 46 of this complaint as though more fully set forth herein at length.

49. The term of the Partnership is 50 years unless extended by agreement. The Partnership's sole asset is the Property and the income which it produces. Upon information and belief the Partnership is solvent, and the continuation of the business of the Partnership is and will be in the best interest of the limited partners, provided the affairs of the Partnership are managed in an honest and businesslike manner.

50. Stevens has demonstrated his consistent disregard for the interests of the Partnership and the limited partners. By reason thereof Stevens should be removed as general partner.

51. The expectations of the parties when entering into the Agreement, as set forth in paragraph 15 above, was to have honest and professional management of the Partnership and its assets so that the investors therein would receive income and profits therefrom. Stevens, by the acts and omissions herein demonstrated, breached and subverted the fundamental core of the Agreement to the detriment of the Partnership and the limited partners. It was not the intent of the Agreement, or the expectation of the parties thereto when entering into the Agreement, to reward Stevens with an increased share of partnership interests for his fraud, mismanagement, breach of contract and breach of his fiduciary duties.

52. By reason of the foregoing the Agreement should be reformed to eliminate

therefrom the provision permitting Stevens to benefit from a "success fee" by diluting the limited partners' interests from 95% of the total Partnership interests to 50% of the total Partnership interests.

53. Plaintiffs have no adequate remedy at law.

54. Plaintiffs are entitled to a judgment declaring that the interest of the general partner is limited to five (5%) per cent of total partnership interests, and the interests of the limited partners as a group shall be as originally stated in the Agreement and intended by the parties at ninety-five (95%) per cent of the total partnership interests.

FOURTH CAUSE OF ACTION - RETURN OF MANAGEMENT FEES

55. Upon information and belief, since approximately January 1, 1985 to the present, Stevens collected and was paid fees from Kinpit for negotiating and securing leases and rentals of apartments and stores at the Property, for negotiating and securing mortgage financing for the Property and for management of the building owned by Kinpit at the Property.

56. Upon information and belief, at no time during the period commencing January 1, 1985 to the present, did Stevens possess a valid New York Real Estate Broker's license.

57. All payments made by Kinpit to Stevens, and all payments received by Stevens, directly or indirectly, arising from or relating to management of the Property were caused

to be made by Stevens acting in his capacity as a fiduciary of Kinpit.

58. All payments made by Kinpit to Stevens, and all payments received by Stevens, directly or indirectly, arising from or relating to management of the Property, were unlawful under Article 12 of the New York Real Property Law because said payments were made and received by him notwithstanding that at the time each such payment was made and received, Stevens was not a licensed real estate broker.

59. Plaintiffs do not presently know the total amount of payments Kinpit made to Stevens in violation of Article 12 of the New York Real Property Law, but believe that such payments exceeded \$3 Million.

60. The Partnership is entitled to a return of all management fees paid to Stevens, and Stevens is obligated to return all such fees, with appropriate interest.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

A. That an accounting be had of the affairs of the Partnership from the commencement thereof, and upon such accounting a balance be struck;

B. For compensatory damages on the Second Cause of Action for breach of fiduciary duty in a sum to be determined at trial, but estimated to be in excess of \$10 Million.

C. For punitive damages on the Second Cause of Action for breach of fiduciary duty in the sum of \$10 Million.

D. For the removal of Troy D. Stevens, Jr. and any of the co-defendants or other corporate entities controlled by him acting in such capacity, as general partner of the Partnership, and the substitution thereof with a person to be selected by the majority in interests of the limited partners.

E. For a declaration that the Agreement has been breached by Stevens on the Third Cause of Action and the reformation thereof by declaring that the interest of the general partner to be limited to five (5%) per cent of total partnership interests, and the interests of the limited partners as a group to be ninety-five (95%) per cent of the total partnership interests.

F. On the Fourth Cause of Action for a judgment in the sum of \$3 Million or such other sum as is found to have been paid to and received by Stevens for management fees in violation of Article 12-a of the Real Property Law.

G. For a penalty on the Fourth Cause of Action in the sum of four times the sums received by Stevens in consequence of his violation of Article 12-a of the Real Property Law as provided by §442-e thereof.

H. For attorney's fees and expenses reasonably incurred in the investigation of

the underlying acts and omissions, the commencement and prosecution of this action, and services required for the enforcement of all orders, decrees and judgments arising therefrom.

- I. For appropriate interest, costs and disbursements on each Cause of Action.
- J. For such other and further relief as may be just and proper.

Dated: New York, New York
May 27, 2008

Yours, etc.,

S

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