

AMERICAN

Supreme Court of the State of New York  
County of NEW YORK

ROBERT T. GIAIMO, Individually and as Co-Executor  
of the Estate of Edward P. Giaimo

against

EGA ASSOCIATES INC., and JANET GIAIMO VITALE

Defendant

FILED  
OCT 09 2007  
NEW YORK  
COUNTY CLERKS OFFICE

Index No.

Plaintiff designates

NEW YORK  
County as the place of trial

The basis of the venue is  
Defendant's Residence

**Summons**

Plaintiff resides at  
8708 Brook Road  
McLean, VA  
County of

To the above named Defendant EGA Associates

**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(s) 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.

Dated, Oct 3, 2007

Defendant's address:  
EGA Associates  
1057 1st Ave  
New York, NY

  
Philip Kalban  
Attorney(s) for Plaintiff

Putney, Twombly, Hall & Hirson LLP  
Post Office Address  
521 Fifth Ave, 10th Floor  
New York, NY 10175  
(212)-682-0020

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

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**ROBERT T. GIAIMO,**  
**individually and as Co-Executor of**  
**the Estate of Edward P. Giaimo, Jr.,**

Index No. \_\_\_\_\_

**Plaintiff,**

**COMPLAINT**

**- against -**

**EGA ASSOCIATES, INC. and**  
**JANET GIAIMO VITALE,**

**Defendants.**

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Plaintiff, by his attorneys, Putney, Twombly, Hall & Hirson LLP, complains of Defendants as follows:

1. Robert T. Giaimo is an individual residing at 8708 Brook Road, McLean, Virginia.
2. Defendant EGA Associates, Inc. ("EGA") is a New York corporation with a principal place of business at 1057 First Avenue, New York, New York, in the City, County and State of New York.
3. Defendant Janet Giaimo Vitale is an individual residing at 677 Esplanade, Pelham Manor, New York 10803.
4. Plaintiff is and at all times relevant hereto was a shareholder and director of EGA.
5. On March 12, 2007, Plaintiff was the owner of 1/3 of the issued and outstanding shares of capital stock of EGA.
6. As of March 12, 2007, the other shareholders of EGA, each also owning 1/3 of the issued and outstanding shares of capital stock, were Edward P. Giaimo, Jr. ("Edward") and Janet Giaimo Vitale ("Janet").

7. Edward and Janet were the brother and sister of Plaintiff and Plaintiff's only siblings.

8. Plaintiff is advised and believes on or about March 13, 2007, Edward purported to sell one share of stock in EGA to Janet.

9. On or before March 13, 2007, Edward was suffering from cancer that had spread throughout his body and into his brain, and from which he died on March 26, 2007.

10. Edward's will was admitted to probate in the Westchester County Surrogate's Court, and Plaintiff and Janet were appointed as co-executors.

11. Pursuant to the will of Edward, Plaintiff and Janet have each inherited one-half of the shares of Edward in EGA.

12. At the time of the purported sale, Edward was living in a house of Janet's.

13. As of March 13, 2007, Edward's EGA stock certificate, as well as the EGA stock certificates of Plaintiff and Janet, was signed by Edward as president and Janet as secretary-treasurer.

14. As of March 13, 2007, Edward's EGA stock certificate, as well as the EGA stock certificates of Plaintiff and Janet, bore three "Share Restrictions".

15. A copy of Edward's stock certificate for his shares of EGA that he owned on March 13, 2007 ("Certificate #1") is attached hereto as Exhibit 1.

16. The front of Edward's Certificate #1, as well as certificates #s 2 and 3 issued to Janet and Plaintiff, respectively, states "SHARE TRANSFERS AND MORTGAGE RESTRICTIONS STATED ON REAR."

17. The back of the certificate contains the following restriction:

Shares are not transferable without granting the corporation thirty (30) days written notice of sale of terms, involved parties, and a first option to

purchase said shares before transfer to other existing shareholders or to third parties, except in the case of transfers to immediate family (spouse and children only). Such restrictions shall not apply. Corporate first option preserved for all subsequent transfers.

18. Neither Edward nor Janet advised Plaintiff of the proposed March 13, 2007 sale, the terms of sale or the involved parties.

19. Neither Edward nor Janet gave EGA 30 days' notice or a first option to purchase said shares.

20. The share restriction number 3 on Certificate #1 explicitly prohibits transfers between existing shareholders without the 30-day written notice to EGA and providing EGA the opportunity to purchase the shares.

21. The purported transfer and sale of one share of stock of EGA stock from Edward to Janet on or about March 13, 2007, is, therefore, null and void *ab initio*.

22. Plaintiff has made demand of Janet for the return of the share purportedly transferred on March 13, 2007, and she has refused.

23. A demand on EGA for a cancellation of the share certificate issued to Janet on or after March 13, 2007, would be futile in that Janet currently controls the Board of Directors of EGA.

#### **FIRST CAUSE OF ACTION**

24. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 23 above.

25. Plaintiff has no adequate remedy at law.

26. By reason of the foregoing, Plaintiff requests that the court enter a declaratory judgment declaring that the purported transfer and sale of one share of EGA stock from Edward to Janet on or about March 13, 2007, is null and void *ab initio*.

## **SECOND CAUSE OF ACTION**

27. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 26 above.

28. Plaintiff has no adequate remedy at law.

29. By reason of the foregoing, Plaintiff requests that this Court enter an injunction requiring and directing that EGA cancel any and all share certificates issued to Janet and Edward on or after March 13, 2007, and issue to the Estate of Edward P. Giaimo (the "Estate") and to Janet new share certificates in the same share amounts as reflected in the certificates existing as of March 12, 2007, thereby reversing the purported March 13, 2007 sale of stock and restoring the one share to the Estate of Edward P. Giaimo.

## **THIRD CAUSE OF ACTION**

30. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 29 above.

31. Janet is the Vice President of EGA.

32. On information and belief, as Vice President, Janet has the power to and is acting as President of each of EGA because Edward was President and his death left that office vacant.

33. On information and belief, Janet conducted a shareholders' meeting in New York at 4:00 pm on July 23, 2007 (the "Shareholders' Meeting").

34. Janet and EGA failed to give the required notice of the Shareholders' Meeting to either the Estate or to Plaintiff.

35. The notice of Shareholders' Meeting was defective and the meeting on July 23 a nullity.

36. Paragraph 8 of the EGA by-laws requires that at any shareholders' meeting the holders of a majority of the issued and outstanding stock of the corporation be present in person or by proxy to have a quorum sufficient to act.

37. Janet committed in writing that the Estate shares would "not be considered at the meeting."

38. Because neither Robert Giaimo's nor the Estate's stock was present in person or by proxy, there was no quorum at the Shareholders' Meeting.

39. Any business transacted at the Shareholders' Meeting, including the purported election of Janet's lawyer as a director, was illegal, invalid, null and void.

40. Prior to Edward's death, there had been three directors, Edward, Janet and Plaintiff.

41. After Edward's death, Plaintiff and Janet were the directors.

42. Plaintiff received by mail in the afternoon of Friday, July 27, 2007, a purported notice of an EGA board of directors' meeting to be held at 4:00 pm on Monday, July 30, 2007 (the "Directors' Meeting").

43. Paragraph 18 of the EGA by-laws requires 5 days' notice of a directors' meeting.

44. The notice of the Directors' Meeting was untimely and defective.

45. At the Directors' Meeting, Janet's lawyer, Joseph O. Giaimo, acted as a director and voted on proposed resolutions.

46. Without the vote of Joseph O. Giaimo, none of the resolutions had a majority or plurality.

47. Any resolutions passed and actions taken at the Directors' Meeting were illegal, ineffective, null and void.

48. Plaintiff has no adequate remedy at law.

49. By reason of the foregoing, Plaintiff requests that the court enter a declaratory judgment declaring that any purported actions and resolutions passed at the Shareholders' Meeting, including the election of Joseph O. Giaimo as a director, and at the Directors' Meeting are ineffective, invalid, null and void, and further declaring that the sole directors of EGA are Plaintiff and Janet.

#### **FOURTH CAUSE OF ACTION**

50. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 49 above.

51. On information and belief, Janet as an officer and director of EGA has conducted at least one improperly noticed directors' meeting and improperly conducted business at such meeting.

52. On information and belief, Janet as an officer and director of EGA has failed to maintain accurate and honest books and records for EGA.

53. On information and belief, Janet as an officer and director of EGA has failed to segregate the security deposits of residential tenants of EGA-owned and operated buildings and has commingled such deposits with other corporate funds.

54. On information and belief, Janet as an officer and director of EGA has failed to account for all rent payments from tenants of EGA-owned buildings.

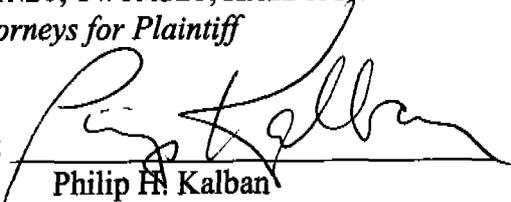
55. By reason of her illegal and improper actions as an officer and director of EGA, the Court should enter an order removing Janet as an officer and director of EGA.

**WHEREFORE**, Plaintiff demands judgment against defendants declaring that the purported transfer and sale of one share of EGA stock from Edward Giaimo to Janet

Giaimo Vitale on or about March 13, 2007, is null and void *ab initio*; requiring and directing that EGA cancel any and all share certificates issued to Janet Giaimo Vitale and Edward Giaimo on or after March 13, 2007, and issue to the Estate of Edward P. Giaimo and to Janet Giaimo new share certificates in the same share amounts as reflected in the certificates existing as of March 12, 2007; declaring that any purported actions and resolutions passed at the Shareholders' Meeting, including the election of Joseph O. Giaimo as a director, and at the Directors' Meeting are ineffective, invalid, null and void, and further declaring that the sole directors of EGA are Plaintiff and Janet Giaimo Vitale; removing Janet Giaimo Vitale as an officer and/or director of EGA; and granting Plaintiff such further relief as is just.

Dated: New York, New York  
October 2, 2007

PUTNEY, TWOMBLY, HALL & HIRSON LLP  
*Attorneys for Plaintiff*

By: 

Philip H. Kalban

521 Fifth Avenue  
New York, New York 10175  
(212) 682-0020

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