

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

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JG CLUB HOLDINGS, LLC, as assignee of TDK Holdings,
LLC, Individually and derivatively
on behalf of JACARANDA CLUB, LLC,

Index No. 652246/10

Plaintiffs,

- against -

JACARANDA HOLDINGS, LLC, DAVID M. TALLA
a/k/a MICHAEL TALLA and CLUB AT 60TH ST., INC.

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR APPOINTMENT OF TEMPORARY RECEIVER
AND TO INTERVENE**

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VENTURES, LLC, individually and
derivatively on behalf of JG CLUB
HOLDINGS, LLC

This Memorandum of Law is respectfully submitted in support of the motion by GRKS II, LLC (“GRKS II”) and DZ Ventures, LLC (“DZ Ventures”), individually and derivatively on behalf of JG Club, LLC (“JG Club”) for (1) an order pursuant to CPLR 1012(a)(2) permitting GRKS II and DZ Ventures to intervene in this action for purposes of seeking the dissolution of Plaintiff Jacaranda Club, LLC (“Jacaranda”), and (2) an order pursuant to CPLR 6401 for the appointment pending such dissolution of a temporary receiver of the “gentlemen’s nightclub,” restaurant and bar known as “Sapphire New York,” operated by Jacaranda at 333 East 60th Street, New York, New York (hereinafter, “Sapphire”), together with such other and further relief as may seem just and proper to the Court.

The facts herein are fully set forth in the accompanying affidavits of Jack Constantine and Francis Moezinia. Rather than repeating the full contents of the same here, and burdening the Court with unnecessary repetition, the Court is instead respectfully referred to the Constantine and Moezinia Affidavits for the full contents thereof. This Memorandum of Law is submitted solely for the purposes of briefly highlighting for the Court's convenience the legal authorities cited below (of which the Court no doubt already is aware).

A. Application to Intervene

GRKS II and DZ Ventures seek to intervene in this action for the purpose of seeking the dissolution of Jacaranda on the ground that it is not reasonably practicable to carry on the business of Jacaranda (the operation of Sapphire) in conformity with Jacaranda's Operating Agreement. Dissolution of Jacaranda therefore is proper pursuant to the express provisions Section 702 of New York's Limited Liability Company Law.

While the movants fully agree with the gravamen of Plaintiffs’ claims against the Defendants, intervention by GRKS II and DZ Ventures nevertheless is appropriate and should be granted pursuant to CPLR 1012(a)(2) on the ground that the movants’ interests are not being

adequately represented in this action by the present parties (despite their best and good faith efforts), and the movants will, as members of JG Holdings, effectively be bound by the judgment to be rendered herein. Simply stated, movants GRKS II and DZ Ventures believe that Plaintiffs' failure to seek the dissolution of Jacaranda and instead to essentially seek that this Court micro-manage the business of Jacaranda is not the proper solution in this matter, will by definition cause Jacaranda to be operated in violation of its Operating Agreement, will condemn all of the parties to continue operating under conditions that have proven to be completely untenable, and will inevitably result in further litigation that will unnecessarily and unduly burden movants GRKS II and DZ Ventures and the Court.

This Court simply cannot be expected (and should not attempt) to continuously intervene in perpetuity in the disputes between the parties regarding the operation of Sapphire. Jacaranda should be dissolved (hopefully through the successful sale of Sapphire), and the profits (if any) from the sale should be distributed among the proper parties. Of course, Plaintiffs' claim for damages to date should be resolved by this Court as in the case of any lawsuit, and the judgment with respect to such damages appropriately applied in connection with whatever ultimate distribution from the dissolution occurs.

Finally, it is now well established that the members of an LLC may derivatively bring a claim on behalf of the LLC. Tzolis v. Wolff, 10 N.Y.3d 100, 884 N.E.2d 1005, 855 N.Y.S.2d 6 (2008). Accordingly, GRKS II and DZ Ventures are entitled to seek the dissolution of Jacaranda derivatively on behalf of JG Club.

B. Application of Appointment of Temporary Receiver

Defendants Jacaranda Holdings, LLC (“Jacaranda Holdings”) and David M. Talla (“Talla”) remain solely in control of the collection of the gross income, for the bank deposits, the payment of all business expenses and generally for all the financial aspects of Sapphire.

Jacaranda Holdings and Talla have failed to account to Plaintiffs for the profit earned by Sapphire from its inception, have failed and refused to make any distribution to JG Club, and have continued to fail to do so. At the same time, Jacaranda Holdings and Talla have looted Jacaranda and are continuing to do so.

Unless a receiver is appointed by the Court to oversee and manage all the financial aspects of Sapphire pending the dissolution Jacaranda, including, but not limited to, the collection of all gross receipts, the deposit of such gross receipts in a designated bank account, the payment of all payroll expenses, the payment of all operating expenses and supplies, and the division of the resulting net profits between JG Club and Jacaranda Holdings, all members of JG Club (including but not limited to the movants) will continue to be injured and incur substantial financial loss in that such net profit which is due to JG Club will neither be received nor realized.

Only by the appointment of a receiver will Jacaranda Holdings be precluded from engaging in the practice commonly known as "skimming," in which an owner or manager of a business fails to report the true income to the income tax bureaus of the state and federal government, the sales tax bureau of the state and to all those beneficially interested in the operation and profitability of the business. Indeed, as a bar and restaurant, a substantial portion of Sapphire's revenue is in cash and therefore, absent the proper supervision of a receiver, is too easily diverted with no record of the same. In addition, the appointment of a receiver will prevent Defendants from continuing to loot Jacaranda by the inflation of expenses paid by Jacaranda to companies owned or controlled by Talla.

The fair and accurate accounting to be made by the receiver is the only practical method by which JG Club can obtain its rightful share of the net profit of the business pending the dissolution of Jacaranda. Indeed, Plaintiffs' prospects on its accounting cause of action are certainly less encouraging than the independent account prepared by a receiver. Moreover,

allowing the scope of any accounting to continue to increase by not appointing a receiver will ultimately further and unnecessarily burden the Court. If a receiver is not appointed by the Court, JG Club will be left with no adequate remedy. Accordingly, the appointment of a receiver is necessary and proper pursuant to CPLR 6401.

WHEREFORE, it is respectfully requested that this Court issue an order (1) permitting GRKS II and DZ Ventures to intervene in this action for purposes of seeking individually and derivatively on behalf of JG Club the dissolution of Plaintiff Jacaranda , and (2) directing the appointment of a receiver to manage the business known as Sapphire, together with such other relief as the Court deems just and proper.

Dated: Melville, New York
November 16, 2011

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