

SUMMONS AND VERIFIED COMPLAINT, DATED MARCH 9, 2009 [8-22]

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU

Index No.: *005308/09*
Filed 3/20/09

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GUY-MICHEL PHILOGENE and GUY-MICHEL PHILOGENE, a MEMBER of VERITY ASSOCIATES, LLC suing in the right of VERITY ASSOCIATES, LLC,

Plaintiffs designate Nassau County as place of trial.

The basis of venue is based on residence of Plaintiff Guy-Michel Philogene.

Plaintiffs,

-against-

SUMMONS

RONALD G. DUCKETT,

Residence of Plaintiff
934 Laurel Place
North Valley Stream, NY 11580


Defendant.

-----X

To the above named Defendant:

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 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 or your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
March 9, 2009

BY: 
MICHAEL MORICI, ESQ.
MORICI AND MORICI, LLP
Attorneys for Plaintiffs
1399 Franklin Ave., Suite 202
Garden City, NY 11530

Defendants' Addresses:
Ronald G. Duckett
48 Hendrick Avenue
Glen Cove, NY 11542

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
GUY-MICHEL PHILOGENE and GUY-
MICHEL PHILOGENE, a MEMBER of VERITY
ASSOCIATES, LLC suing in the right of VERITY
ASSOCIATES, LLC,

Index No:

~~005/5~~
005308/09

Plaintiffs,

-against-

VERIFIED
COMPLAINT

RONALD G. DUCKETT,

Defendant.

-----X
The plaintiffs GUY-MICHEL PHILOGENE ("Philogene") and Guy-Michael

Philogene, a member of Verity Associates, LLC, suing in the right of Verity Associates,
LLC (collectively "Plaintiffs") by their attorneys, Morici & Morici, LLP, as and for
their verified complaint as against defendant Ronald G. Duckett ("Duckett" or
"Defendant"), hereby allege as follows:

PARTIES

1. Verity Associates, LLC, a Plaintiff, ("Verity" or the "Company") is a New York limited liability company with its registered place of business located at 205-06 115 Avenue, Suite B, St. Albans, NY 11412.
2. The Company is currently operated from the residences of both Duckett and Philogene, both of which are located in the State of New York, County of Nassau.
3. Philogene, a Plaintiff, at all times mentioned herein, was and is a resident of the State of New York, County of Nassau.
4. Plaintiff Philogene is a member and officer of the Company.
5. Plaintiff Philogene owns fifty-percent (50%) of all issued and outstanding membership interests of the Company.

6. Defendant Duckett, at all times mentioned herein, was and is a resident of the State of New York, County of Nassau.

7. Defendant is a member and officer of the Company.

8. Defendant owns fifty-percent (50%) of all issued and outstanding membership interests of the Company.

FACTUAL ALLEGATIONS

VERITY BUSINESS OPERATIONS

9. Verity markets and publishes various books and other literature related to cooking and recipes. Since its formation in October of 2002, Verity has produced, published and sold thousands of copies of several successful cookbooks and other similar books, including *America's Most Wanted Recipes*, *Low Fat Recipe Secrets* and *Tried and True Recipe Secrets*.

10. The online cookbook and recipe business is highly competitive and success depends principally on the reputation of its products and one's ability to attract new customers and maintain return business from existing customers.

11. Since its formation in 2002, Verity has developed confidential trade secrets and information, including, among other things, customer lists, email address lists, customer information, client profiles, particularly among individuals who are likely to purchase the material produced by Verity via the internet and methods of operations in performing services for each of Verity's customers (collectively such confidential information and trade secrets are referred to as the "Email Lists and Customer Information").

12. Since its formation in 2002, Verity has maintained a high level of

success by reason of the efforts of its members and through laboriously developed working relationships with its customers as a provider of high quality products.

13. Philogene and Duckett entered into the Operating Agreement for the Company in October of 2002 (the "Operating Agreement").

14. According to the Operating Agreement of the Company, attached hereto as Exhibit 1, the Company is to be managed by its Members.

15. According to the Operating Agreement of the Company, each member shall not work for another business that would compete with the Company's business.

16. Thomas Grossmann is the sole employee of the Company that is not a member or officer of the Company.

17. Thomas Grossman has been an employee of the Company since April of 2006.

DEFENDANT'S FIDUCIARY OBLIGATIONS TO VERITY & PHILOGENE

18. At all times during Verity's corporate existence, defendant was and is one of Verity's two members.

19. As per Section B.3. of the Operating Agreement, the Company is to be managed exclusively by its members, and as such, each member is also deemed a manager of the Company.

20. At all times during Verity's corporate existence, Defendant has been and is the owner of fifty-percent (50%) of all of the issued and outstanding membership interests of Verity.

21. At all times during Verity's corporate existence, Plaintiff Philogene has been

and is the owner of fifty-percent (50%) of all of the issued and outstanding membership interests of Verity.

22. As a member and manager of Verity, Defendant owes an undivided duty of loyalty and good faith to Verity such that, among other things, Defendant must, at all times, act in the best interest of Verity.

23. As a member and manager of Verity, Defendant, at all times, owed Verity a fiduciary duty to avoid diverting to his own use and/or benefit any corporate opportunities, assets (including, but not limited to the Email Lists and Customer Information) and/or profits rightfully belonging to Verity.

24. As a result of Defendant's fifty-percent (50%) equity interest in the Company, a closely held limited liability company in which Philogene was and is the only other membership interest holder, Defendant owes a fiduciary duty to Philogene, individually, to avoid diverting to his own use and/or benefit any of the corporate opportunities, assets (including, but not limited to the Email Lists and Customer Information) and/or profits rightfully belonging to Verity and/or its shareholders.

25. As a result of Defendant's fifty-percent (50%) equity interest in Verity, a closely held limited liability company in which Philogene was and is the only other membership interest holder, Defendant owes a fiduciary duty to Philogene, individually, such that in any dealings with Philogene and/or Verity involving the operations, assets and/or Email Lists and Customer Information of Verity, Defendant must act in good faith and must devote his undivided and unqualified loyalty to Verity and its membership interest holders.

MISAPPROPRIATION OF CORPORATE OPPORTUNITIES & ASSETS

26. Upon information and belief, beginning as early as January of 2003, Defendant, for his own individual benefit and to the detriment of both Verity and Philogene, has threatened and engaged in a plan and scheme to misappropriate, usurp, and obtain for himself, through the threatened liquidation of Verity, creation and ownership of competing businesses and websites and other acts, including, upon information and belief, the solicitation of Verity's customers/clients and key employee, and other methods unknown to Plaintiffs and without Plaintiff's knowledge or consent, Verity's corporate assets, including Verity's goodwill, Email Lists and Customer Information.
27. In complete disregard to Defendant's fiduciary obligations to Verity and Philogene, Defendant has started, developed and owned businesses that directly compete with Verity.
28. Defendant has utilized the Email Lists and Customer Information to create and grow these competing businesses without any compensation to Verity or Philogene.
29. Defendant has utilized the services of Thomas Grossmann to assist in the creation and growth of these competing businesses without any compensation to Verity or additional compensation to Mr. Grossmann.
30. As a result of Defendant's aforesaid plan and acts Verity has lost, and is in jeopardy of losing further, business opportunities, good will, Email Lists and Customer Information, which Verity has nurtured and developed over many years through expenditures of time, labor and money.

31. The foregoing acts of Defendant were done intentionally, recklessly, willfully and without just cause, with the intent, purpose and objective on the part of Defendant of usurping and abrogating for Defendant's benefit, Verity's corporate assets (including Verity's Email Lists and Customer Information) and/or the value of Philogene's membership interests.

32. Defendant has misappropriated propriety and confidential information from Verity and has used that information for his sole benefit, without Plaintiff's permission and in derogation of Plaintiff's rights.

BREACH OF CONTRACT

33. As per Section B.9. of the Operating Agreement, "Each member [of the Company] shall agree not to own an interest in, manage or work for another business, enterprise or endeavor, if such ownership or activities would compete with LLC's business goals, mission, profitability or productivity, or would diminish or impair the member's ability to provide maximum effort and performance in accomplishing the business objectives and, if applicable, managing the business of this LLC."

34. Upon information and belief, beginning as early as January of 2003, Defendant, for his own individual benefit and to the detriment of both Verity and Philogene, has threatened and engaged in a plan and scheme to misappropriate, usurp, and obtain for himself, through the threatened liquidation of Verity, creation and ownership of competing businesses and websites and other acts, including, upon information and belief, the solicitation of Verity's customers/clients and key employee, and other methods unknown to Plaintiffs and without Plaintiffs' knowledge or consent, Verity's corporate assets, including Verity's goodwill, Email Lists and Customer

Information.

35. In complete breach to Defendant's contractual obligations to Verity and Philogene, Defendant has started, developed and owned businesses that directly compete with Verity's business goals, mission, profitability and/or productivity in clear breach of the Operating Agreement.

36. Defendant has utilized the Email Lists and Customer Information to create and grow these competing businesses without any compensation to Verity or Philogene in clear breach of the Operating Agreement.

37. Defendant has utilized the services of Thomas Grossmann to assist in the creation and growth of these competing businesses without any compensation to Verity or additional compensation to Mr. Grossmann in clear breach of the Operating Agreement.

38. As a result of Defendant's aforesaid plan and acts Verity has lost, and is in jeopardy of losing further, business opportunities, good will, Email Lists and Customer Information, which Verity has nurtured and developed over many years through expenditures of time, labor and money.

39. As a result of Defendant's aforesaid plan and acts, Defendant has diminished his ability to provide maximum effort and performance in accomplishing the business objectives and management of the Company's business in clear breach of the Operating Agreement.

40. The foregoing acts of Defendant were done intentionally, recklessly, willfully and without just cause, with the intent, purpose and objective on the part of Defendant of usurping and abrogating for Defendant's benefit, Verity's corporate assets

(including Verity's Email Lists and Customer Information) and/or the value of Philogene's membership interests.

41. Defendant has breached the Operating Agreement for his sole benefit, without Plaintiffs' permission and in derogation of Plaintiffs' rights.

AS AND FOR A FIRST CAUSE OF ACTION

42. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through and including 41, above as though more fully set forth herein in length.

43. By virtue of the foregoing, Defendant has breached his agreements with, and fiduciary duty, including his duty of loyalty and good faith, to Plaintiffs.

44. Plaintiffs have and will continue to be irreparably damaged and injured in their business by the continuance of Defendant's acts as described above and, unless and until Defendant is restrained, Plaintiffs have and will continue to suffer irreparable injury and damage.

45. Plaintiffs have no adequate remedy at law.

46. By reason of the foregoing, Plaintiffs are entitled to an injunction temporarily and permanently enjoining Defendant from (i) directly or indirectly soliciting Verity's customers; (ii) directly or indirectly soliciting Verity's employee or future employee(s); (iii) directly or indirectly disclosing, using or in any way utilizing the Email Lists and Customer Information for purposes other than to advance Verity's legitimate business interests; (iv) directly or indirectly utilizing Verity's cash, credit or other assets for Defendant's individual benefit and/or Defendant's personal obligations; (v) directly and/or indirectly competing with Verity's business operations; (vii) directly

and/or indirectly establishing, owning and/or participating in the operations of Verity's actual and potential competitors and (viii) filing any petition and/or action for the voluntary and/or involuntary dissolution of Verity.

AS AND FOR A SECOND CAUSE OF ACTION

47. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through and including 46, above as through more fully set forth herein at length.

48. Defendant, by reason of the actions described hereinabove, breached his fiduciary obligation and duty to Plaintiffs.

49. By reason of the Defendant's breach of his fiduciary obligation to Plaintiffs, Plaintiffs have suffered damages in an amount to be determined at trial but not less than \$500,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

50. Plaintiffs repeat, reiterate and reallege each allegation contained in paragraphs numbered 1 through and including 49, above as if fully set forth at length herein.

51. Upon information and belief, defendant has, by reason of his conversion of corporate assets, wrongfully received funds, which are properly the property of Verity.

52. By reason of the foregoing, Plaintiffs are entitled to an order-directing Defendant to account for and to pay over to Plaintiffs all monies Defendant may have received which were wrongfully diverted from Plaintiffs to Defendant in an amount to be determined at trial but not less than \$500,000.00.

AS AND FOR A FOURTH CAUSE OF ACTION

53. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through and including 52, above as through more fully set forth herein at length.

54. By reason of the foregoing, Defendant knowingly and willfully breached his fiduciary obligations and his express and implied agreements with Plaintiffs.

55. During the time he was in breach of his aforesaid obligations, Defendant continued to wrongfully convert and take business and other assets from Verity, which business and assets were taken by him despite their being no proper or legitimate corporate or business purpose to do so.

56. That solely as a reason of the foregoing, Plaintiffs have suffered damages in an amount to be determined at trial but not less than \$500,000.00

AS AND FOR A FIFTH CAUSE OF ACTION

57. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered 1 through and including 56, above as through more fully set forth herein at length.

58. By reason of the foregoing, Defendant has breached the Operating Agreement in that Defendant and companies and websites owned by him competed against Verity.

59. During the time he was in breach of his aforesaid obligations, Defendant continued to wrongfully benefit from such competing businesses and websites to the detriment of Verity and Philogene.

60. That solely as a reason of the foregoing, Plaintiffs have suffered

damages in an amount to be determined at trial but not less than \$500,000.00

WHEREFORE, Philogene, individually, and as a membership holder of Verity, on behalf of himself and all other membership holders of Verity, demands judgment as follows:

On the First Cause of Action, a preliminary, temporary and permanent injunction enjoining Defendant from (i) directly or indirectly soliciting Verity's customers; (ii) directly or indirectly soliciting Verity's employee or future employee(s); (iii) directly or indirectly disclosing, using or in any way utilizing the Email Lists and Customer Information for purposes other than to advance Verity's legitimate business interests; (iv) directly or indirectly utilizing Verity's cash, credit or other assets for Defendant's individual benefit and/or Defendant's personal obligations; (v) directly and/or indirectly competing with Verity's business operations; (vi) directly and/or indirectly establishing, owning and/or participating in the operations of Verity's actual and potential competitors and (viii) filing any petition and/or action for the voluntary and/or involuntary dissolution of Verity; and

On the Second cause of action, money damages in an amount to be determined at trial, but not less than \$500,000.00; and

On the Third cause of action, for an order directing Defendant to account for and to pay to Plaintiffs all monies which Defendant has received which were wrongfully diverted from Plaintiffs to Defendant in an amount to be determined at trial, but not less than \$500,000.00;

On the Fourth cause of action, money damages in an amount to be determined at trial, but not less than \$500,000.00;

On the Fifth cause of action, money damages in an amount to be determined at trial, but not less than \$500,000.00 together with such other and further relief as this Court may deem appropriate together with the costs and disbursements of this action.

MORICI & MORICI, LLP

BY: 

MICHAEL D. MORICI, ESQ
Attorneys for Plaintiffs
1399 Franklin Avenue, Suite 202
Garden City, NY 11530

whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.”

12. It is respectfully submitted that, given the instant litigation and disagreement between the only two members of the company, it is not reasonably practicable for Verity to carry on its business. The Appellate Division, Second Department has held that, for dissolution of a limited liability company, the petitioning member must establish, in the context of the terms of the operating agreement or articles of incorporation, that (1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or (2) continuing the entity is financially unfeasible. (*See, e.g.* In the Matter of Dissolution of 1545 Ocean Ave., LLC, 72 AD 3d 121 (2d Dept. 2010)).

13. It is abundantly clear herein that the management of Verity (i.e. Plaintiff Philogene and Defendant Duckett), are now unable to promote the stated purpose of Verity given the conflict and disagreement which has arisen between them. Even before the instant litigation, Defendant has alleged that Plaintiff completely abdicated all responsibility and involvement in the company. As such, it is clear from the foregoing that Verity Associates, LLC must be dissolved. The Court is respectfully referred to the annexed affidavit of the Defendant with regard to the facts and circumstances of this matter.

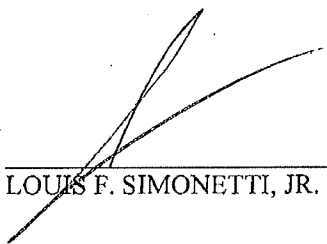
STANDARD OF REVIEW

14. As this Court is well aware, it is axiomatic that a party is entitled to summary judgment where there is no issue as to any material fact and the moving party establishes his right to judgment as a matter of law. A party seeking summary judgment must establish its position by evidentiary proof in admissible form sufficient to warrant judgment for it as a matter of law (*see, Zuckerman v City of New York*, 49 N.Y.2d 557 (1980)). Further, if the movant has

made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action (*see, Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986)). It is respectfully submitted that Defendants have met this burden. The very fact of this litigation itself between the only two members of the LLC, which has now been going on for nearly seven (7) years makes it patently clear that they simply cannot work together to promote the interests of the LLC. As such, there is no alternative but for it to be dissolved.

WHEREFORE, it is respectfully requested that this Court grant Defendant's Motion for Summary Judgment pursuant to CPLR § 3212 in its entirety, together with such other and further relief as this Court deems just and proper:

Dated: Woodbury, New York
May 24, 2016



LOUIS F. SIMONETTI, JR.