

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

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DOUGLAS QUINT, individually, and derivatively on
behalf DAVENPORT, TURNBLAD & FISHPAW, Index No.
LLC,

Plaintiff, **SUMMONS**

-against-

JON CHAPSKI and EDIBLE ASSETS LLC,

Defendants.

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TO:

JON CHAPSKI
1133 Broadway, Suite 735
New York, New York 10010

EDIBLE ASSETS LLC
130 Watts Street, #5
New York, NY 10013

YOU ARE HEREBY SUMMONED, to answer the Complaint in this action and to serve a copy of your Answer to the Plaintiff’s attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after the completion of service or service made in any manner other than personal delivery within the State of New York. 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: New York, New York
August 25, 2023

HELBRAUN & LEVEY LLP

By: s/ Hamutal G. Lieberman
Hamutal G. Lieberman
Melissa L. Greenberg
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOUGLAS QUINT, individually, and derivatively on
behalf DAVENPORT, TURNBLAD & FISHPAW,
LLC,

Plaintiff,

-against-

JON CHAPSKI and EDIBLE ASSETS LLC,

Defendants.

Index No.:

VERIFIED COMPLAINT

DOUGLAS QUINT (“Quint” or “Plaintiff”) by and through his attorneys, Helbraun & Levey LLP, as and for its Complaint, individually and derivatively on behalf of DAVENPORT, TURNBLAD & FISHPAW, LLC (the “Company”), as against defendants JON CHAPSKI (“Chapski”) and EDIBLE ASSETS LLC (“Edible”) (collectively “Defendants”) alleges as follows:

NATURE OF THE ACTION

1. This is an action for damages and attorneys’ fees arising out of Defendants’ breach of contracts and fiduciary duties to Plaintiff and the Company.

PARTIES

2. Quint, a natural person residing in Somerset County, Maine, has a thirty-five percent (35%) membership interest in the Company, a Delaware limited liability company, which operates a chain of retail locations under the name Big Gay Ice Cream in New York.

3. Upon information and belief, Edible is a New York limited liability company with its principal place of business located at 130 Watts Street #5N, New York, NY 10013.

4. Edible has thirty-five percent (35%) membership interest in the Company.

5. Upon information and belief, Chapski is a natural person residing in the State of New York, County of New York, is the sole manager and member of Edible, and is a manager of the Company appointed by Edible.

6. Upon information and belief, Chapski is a controlling member of Edible, exerts total control over Edible, and Edible is an alter ego of Chapski.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over Defendants pursuant to CPLR § 301 and based upon contracts at issue which dictate that the courts of New York County, New York are proper for commencing suit.

8. Venue is proper in this Court based on the primary place of business of defendant Edible, the residence of defendant Chapski, and a substantial part of the events or omissions giving rise to the claims herein occurred in the County of New York, pursuant to CPLR § 503.

FACTUAL BACKGROUND.

9. The Company was formed on or around December 28, 2012.

10. At all relevant times the members and their respective membership interests were Bryan Petroff, 35%, Douglas Quint, 35%, and Edible, 30%, pursuant to the Operating Agreement, dated August 22, 2013 (“OA Agreement”), and First Amendment to the Operating Agreement, dated January 5, 2016 (“OA Amendment”) (collectively, the “LLC Agreement”).

11. Upon information and belief, Chapski exercises complete control of Edible. As such, Chapski is liable for the actions of Edible and any sums due from Edible to Plaintiff and/or

the Company since Chapski and Edible failed to observe corporate formalities and does not maintain accurate and complete financial records. By their actions, Chapski and Edible have abused the privilege of operating as a business entity and have thereby effected wrongs against and causing harm to Plaintiff and the Company.

12. Pursuant to the paragraph 2 of the OA Amendment, Chapski was named the “‘Manager’ or ‘Managing Member’ or ‘Co-Managing Member’ . . . appointed by Edible Assets.”

13. Chapski’s various obligations and responsibilities as Manager are very clearly laid out in the LLC Agreement.

14. Pursuant to paragraph 3 of the OA Amendment, Section 4.1(a) of the OA Agreement was amended to provide, in relevant part:

Each of the Managers shall have one vote on any and all actions taken by the Managers and the Managers shall act by majority consent of the Managers, except that (1) each of Bryan Petroff and Douglas Quint, shall have final authority and unilateral decision making power over the creative direction and aspects of the Company, and (ii) Jon Chapski, or the Manager appointed by Edible Assets, shall have final authority and unilateral decision making power over all financial matters

15. As the Manager responsible for “all financial matters”, Chapski was responsible for maintaining the Company’s books and records and providing reports to the members of the Company pursuant to Article 8.5(a) and (b) of the LLC Agreement.

16. Chapski assured Quint and the Company that based on his experience he was personally qualified to take over financial operations of the Company.

17. Despite the provisions of the LLC Agreement, Chapski and Edible willfully ignored Quint’s decisions regarding the creative direction and aspects of the Company.

18. For example, Chapski refused to roll out new ice cream flavors created by Quint and disregarded suggestions relating to expansion of the brand in order to unilaterally carry out his own scheme and defrauding the Company and its remaining members.

19. Edible and Chapski have failed to fulfill their obligations under the LLC Agreement, which wrongful and unilateral failures constitute gross negligence, bad faith, and willful misconduct, all while reaping the monetary benefits provided by the LLC Agreement.

20. Edible and Chapski have failed to properly manage the finances of the Company.

21. The Company, through direct ownership of various subsidiary entities, operated a number of Big Gay Ice Cream (“BGIC”) across New York City, and elsewhere in the United States.

22. Defendants used and mismanaged a series of corporate entities to perpetrate their scheme against Plaintiff.

23. Each individual BGIC location was operated under a separate corporate entity, including Pineapple Princess LLC, Starfish & Coffee LLC, 55 Secret Street, LLC, Square to Spare LLC and Big Gay Agenda LLC.

24. Upon information and belief, Defendants stopped paying rent at the BGIC locations resulting in at least four eviction proceedings being commenced in the Supreme Court, New York County.

25. An action was filed against Starfish & Coffee LLC and Plaintiff, individually, under Index No. 656854/2020.

26. An action was filed against 55 Secret Street LLC and Plaintiff, individually, under Index No. 157389/2020.

27. An action was filed against Pineapple Princess LLC under Index No. 656986/2020.

28. An action was filed against Square to Spare LLC and Big Gay Agenda LLC under Index No. 154904/2021.

29. All four of those matters resulted in orders of eviction and money judgments, against the various companies and Plaintiff, individually, in the cases where he was named.

30. Specifically, the action against Starfish & Coffee LLC and Plaintiff, individually, under Index No. 656854/2020 resulted in a money judgment dated September 12, 2022, against Starfish & Coffee LLC and Big Gay Inc., jointly and severally, for the sum \$339,298.03 and against Plaintiff, personally, \$82,211.87.

31. The action against 55 Secret Street LLC and Plaintiff, individually, under Index No. 157389/2020 resulted in a money judgment dated August 15, 2022, against 55 Secret Street LLC and against Plaintiff, personally, for the sum of \$162,713.83.

32. The action against Pineapple Princess LLC under Index No. 656986/2020 resulted in a money judgment dated October 11, 2022, for the sum of \$392,029.23 pursuant to a default judgment because Chapski did not hire counsel to represent the entity, nor did he inform any of the other members that the entities owed rent, let alone that such litigation was on going.

33. Finally, the action against Square to Spare LLC and Big Gay Agenda LLC under Index No. 154904/2021 resulted in a money judgment dated March 13, 2022, for the sum of \$418,428.117 pursuant to a default judgment against the entities and against shareholder Bryan Petroff, personally, because once again Chapski did not hire counsel to represent the entity, inform any of the other members that the entities owed rent, or that such litigation was on going.

34. Plaintiff was never contacted by any attorney to represent him personally or as a member of the Company in any of those matters despite an attorney entering an appearance on his behalf.

35. Upon information and belief, Chapski fraudulently executed retainer agreements on Plaintiff's behalf without authorization in an effort to prevent Plaintiff from being fully aware of Chapski's conduct and the financial condition of the Company.

36. As a result of the above, Plaintiff was precluded from putting on his own defense with an attorney of his choosing in those matters. The only attorneys appearing having been chosen by Chapski and in contact only with Chapski.

37. A matter was commenced in the Supreme Court, Bronx County in 2019 by a supplier for non-payment of goods.

38. That matter was captioned *Imperial Bag & Paper Co., LLC v. Big Gay Inc. d/b/a Big Gay Ice Cream, Pineapple Princess LLC d/b/a Big Gay Ice Cream, Starfish & Coffee LLC d/b/a Big Gay Ice Cream, and Quint*, Index No. 22632/2019 ("Imperial Bag Case").

39. Although withdrawn shortly after commencement, the Complaint filed in the Imperial Bag Case further suggests Chapski's fraudulent activity to the direct harm of Plaintiff.

40. The Verified Complaint in the Imperial Bag Case alleges the existence of a personal guarantee executed by Quint for the debts of the corporate entities named as defendants therein.

41. Quint never executed a personal guarantee related to any contracts or amounts due with Imperial Bag & Paper Co., LLC.

42. Upon information and belief, Chapski fraudulently executed a personal guarantee in Plaintiff's name.

43. Defendants' actions in these matters have only recently come to be revealed to Plaintiff.

44. Upon information and belief, Chapski and Edible failed to pay the applicable sales tax obligation for the BGIC location in Philadelphia, PA.

45. The failure to pay sales tax for the Philadelphia location created liability for and issues with several of the Company's investors.

46. Moreover, upon information and belief Chapski unilaterally entered into several contracts without the consent of his fellow members including but not limited to selling the Company's Upper West Side store location, entering into intellectual property licensing agreements, opening and closing a kiosk in Madison Square Garden, opening a Company TriBeCa location and engaging in recipe development all without the authorization of the remaining members of the Company.

47. Upon information and belief, Chapski obtained government funds from the SBA for the Company on August 11, 2020 in the amount of \$42,700 and for an entity, Starfish and Coffee, LLC, on September 4, 2020 in the amount of \$149,900 that was not used to pay rent or any other business expenses.

48. Upon information and belief, Chapski also fraudulently obtained government funds from the SBA's Payroll Protection Plan for an entity, Pretty Pretty IP, LLC, on June 1, 2020 in the amount of \$102,600, despite the fact that it did not have any employees further exposing the Company to claims of fraud to the government. Upon information and belief, these funds were also not used towards any business expenses.

49. As a result of Edible's and Chapski's mismanagement of the Company's finances and failure to pay rents due, the Company's various locations have been forced to close and/or been evicted, and money judgments have been entered against the various entities and Quint personally. Edible and Chapski are each liable to both Quint and the Company for the amounts of the judgments resulting from the failure to pay rents.

50. Additionally, Edible and Chapski have failed to provide proper financial information regarding the Company to Quint despite repeated requests and his right to such information.

51. Despite due demand, Edible and Chapski have refused to provide Quint with up-to-date profit and loss statements and other financial information to which Quint is entitled and which Edible and Chapski are required to provide.

52. Once Plaintiff began questioning Defendants' actions, he was further cut off from any knowledge of the company and its operations by having his access to his company email revoked.

53. Notwithstanding the requirements of the LLC Agreement, Quint has been completely isolated from the operations of the Company and its finances, including that he was excluded from discussions and decisions regarding the creative direction of the Company.

FIRST CAUSE OF ACTION
(Breach of Contract)
(Individual and Derivative Claim
Against Defendants Chapski and Edible)

54. Plaintiff, individually and as a member on behalf the Company, repeats and realleges each allegation contained in paragraphs "1" through "53" above herein with the same force and effect as if the same were fully set forth herein.

55. Plaintiff and Edible entered a valid, binding contract, the LLC Agreement.

56. Plaintiff at all times fully performed his obligations under the LLC Agreement.

57. Plaintiff's further involvement in the Company was stymied by Defendants' willful actions in excluding him from the Company, including its operations, finances, and creative direction.

58. Despite the obligations explicitly laid out in the LLC Agreement for Defendant Edible as Member and Chapski as the Manager appointed by Edible, Edible and Chapski have (1) failed to properly manage the finances of the Company and fund the operations of the Company by, including but not limited to, failing to pay sales tax and rent resulting in significant, unnecessary liability and consequences not only to the Company, but to Plaintiff, personally, despite repeated requests to fix the issues and Edible's responsibility to do so; (2) failed to provide proper financial records of the Company as required in the LLC Agreement and to which Plaintiff is entitled as a member of the Company; (3) improperly prevented Plaintiff from participating in the Company and receiving the benefits to which he is entitled as a member of the Company; (4) unilaterally binding the Company and its members to obligations and/or sales without first obtaining the authority of the remaining members of the Company; and (5) improperly licensing the Company's intellectual property without obtaining the authority of the remaining members of the Company.

59. Plaintiff has been damaged by the failure to receive his due share of the profits of the Company.

60. Plaintiff has been damaged by the creation of the judgment liability against him personally for unpaid rents and other breaches of lease at the various BGIC locations.

61. The damages inflicted upon Plaintiff and the Company are a direct result of defendants Edible's and Chapski's breaches of the LLC Agreement.

62. Though Plaintiff has repeatedly requested and demanded that these breaches be remedied, and yet defendants Edible and Chapski have failed to do so.

63. As a result of Defendants' actions, Plaintiff has been damaged in an amount to be determined at trial but in no event less than \$1,000,000.00.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)
(Individual and Derivative Action)
Against Defendants Chapski and Edible

64. Plaintiff, individually and as a member on behalf the Company, repeats and realleges each allegation contained in paragraphs “1” through “63” above herein with the same force and effect as if the same were fully set forth herein.

65. Plaintiff and Defendants Edible and Chapski have an existing fiduciary relationship, in that Plaintiff and Edible are members of the Company, and Chapski is the Manager appointed by Edible and is solely responsible for the financial matters of the Company.

66. As controlling member and alter ego of Edible, Chapski owes a fiduciary duty to the Company and Plaintiff.

67. Defendants Edible’s and Chapski’s wrongful and unilateral failures constitute gross negligence, bad faith, and willful misconduct, all while reaping the monetary benefits of their own actionable conduct.

68. Defendants Edible and Chapski have unilaterally and intentionally: (1) failed to properly manage the finances of the Company and fund the operations of the Company; (2) failed to provide proper financial records of the Company as required in the LLC Agreement and to which Plaintiff is entitled; (3) excluded Plaintiff from participating in the Company and reaping the benefits of membership to which he is entitled, in violation of the terms of the LLC Agreement; and (4) misappropriated assets belonging to the Company for their own interests.

69. As a direct result of Defendants Edibles and Chapski’s breaches, Plaintiff and the Company have been damaged in an amount to be determined at trial but in no event less than \$1,000,000.00.

THIRD CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty)
(Individual and Derivative Claim)
Against Defendant Chapski

70. Plaintiff, individually and as a member on behalf the Company, repeats and realleges each allegation contained in paragraphs “1” through “69” above herein with the same force and effect as if the same were fully set forth herein.

71. Defendant Edible breached its fiduciary duty to both Plaintiff and the Company.

72. Chapski, acting in complete control of Edible, knowingly participated in Edible’s breach by failing to manage the Company, pay sales tax, pay rent, failing to provide Plaintiff with the proper financial records of the Company, and acting as the Manager of the Company appointed by Edible.

73. As a direct result of Chapski’s aiding and abetting, Plaintiff and the Company have been damaged due to the significant monetary judgments entered, damages and lost profits resulting from the closure of the Company’s BGIC locations, and failure to reap the benefits to which both of them are owed through the LLC Agreement.

74. Plaintiff and the Company have each been damaged in an amount to be proven at trial but in no event less than \$1,000,000.00.

FOURTH CAUSE OF ACTION
(Accounting)
Individual Claim
Against Defendant Edible

75. Plaintiff, individually as a member on behalf the Company, repeats and realleges each allegation contained in paragraphs “1” through “74” above herein with the same force and effect as if the same were fully set forth herein.

76. Plaintiff and Edible have a relationship of a mutual and confidential nature in that they are members of the Company and owe each other fiduciary duties.

77. As a Member whose appointed Manager is responsible for all financial matters related to the Company, Defendant Edible owes additional fiduciary duties to Plaintiff. Edible has the authority and responsibility of, at a minimum, managing and controlling the budgeting, funding, and banking for the Company, such responsibility and authority imposes the obligation to account to the members for all funds entrusted to its care.

78. Because Edible has failed time and time again to properly keep Plaintiff apprised of the financial status of the Company by failing to provide the proper financial records of the Company, despite numerous requests for this information, further demand would be futile.

79. Plaintiff has no adequate remedy at law.

80. Plaintiff has demanded an accounting from Defendant Edible, but Edible has refused to provide an accounting.

81. Accordingly, Plaintiff is entitled to and demands a full and complete accounting.

FIFTH CAUSE OF ACTION
(UNJUST ENRICHMENT)
(Individual and Derivative Action)
Against Defendants Chapski and Edible

82. Plaintiff, individually as a member on behalf the Company, repeats and realleges each allegation contained in paragraphs “1” through “81” above herein with the same force and effect as if the same were fully set forth herein.

83. Chapski and Edible have engaged in acts specifically designed to extract for themselves value belonging to Plaintiff and the Company.

84. Defendants’ actions were unjust, improper, and willful.

85. As a result of Defendants' actions they have been enriched at Plaintiff's expense and at the expense of the Company.

86. By reason of the aforesaid, Plaintiff and the Company have each been damaged in an amount to be proven at trial but in no event less than \$1,000,000.00.

WHEREFORE, Plaintiff, individually and as a member on behalf the Company, hereby demands judgment against the Defendants as follows:

1. On the First Cause of Action, an amount to be proven at trial but in no event less than \$1,000,000.00, plus statutory interest, costs and expenses, including reasonable attorney's fees;
2. On the Second Cause of Action, an amount to be proven at trial but in no event less than \$1,000,000.00, plus statutory interest, costs and expenses, including reasonable attorney's fees;
3. On the Third Cause of Action, an amount to be proven at trial but in no event less than \$1,000,000.00, plus statutory interest, costs and expenses, including reasonable attorney's fees;
4. On the Fourth Cause of Action, an accounting and payment of all sums due to Plaintiff;
5. On the Fifth Cause of Action, an amount to be proven at trial but in no event less than \$1,000,000.00, plus statutory interest, costs and expenses, including reasonable attorney's fees; and
6. Together with interest, punitive damages, fees and expenses, including attorney's fees, and the costs of this action, and such other and further relief as to this Court seems just and proper

Dated: New York, New York
August 25, 2023

HELBRAUN & LEVEY LLP

s/ Hamutal Lieberman

By: Hamutal Lieberman, Esq.
40 Fulton Street, 28th Fl.
New York, New York. 10038
212-219-1193
Hamutal.lieberman@helbraunlevey.com

VERIFICATION


STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, DOUGLAS QUINT, am the Plaintiff in the within action. I have read the foregoing Complaint and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.



DOUGLAS QUINT

Subscribed and sworn to before me
this 25 day of August 2023



Notary Public

Robin L. Chase
Notary Public, State of Maine
My Commission Expires January 21, 2028

