

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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OFER DAVID and NIR DAVID, individually :  
and derivatively on behalf of 3449-3461 FORT :  
HAMILTON LLC, :

Index No.:

Dated Filed: February 5, 2020

Plaintiffs,

**SUMMONS**

- against -

Plaintiffs designate Kings County as the  
place of trial.ISRAEL HESHY GOTTDIENER, DOV :  
ZABROWSKY, 3449-3461 HAMILTON FT :  
LLC, ACIER HOLDINGS LLC, THOMAS W. :  
KLUEBER, MOSHE GLATZER, and JAKE :  
GLATZER. :The basis of venue is the location of the  
real property.

Defendants.

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**TO THE ABOVE NAMED DEFENDANTS:**

**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 Plaintiffs' attorney 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: New York, New York  
February 3, 2020

HERRICK, FEINSTEIN LLP

By: /s/ Avery S. MehlmanAvery S. Mehlman  
Heather M. Zimmer  
*Attorneys for Plaintiffs*  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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OFER DAVID and NIR DAVID, individually	:	
and derivatively on behalf of 3449-3461 FORT	:	Index No.:
HAMILTON LLC,	:	
	:	
Plaintiffs,	:	<b><u>VERIFIED COMPLAINT</u></b>
	:	
- against -	:	
	:	
ISRAEL HESHY GOTTDIENER, DOV	:	
ZABROWSKY, 3449-3461 HAMILTON FT	:	
LLC, ACIER HOLDINGS LLC, THOMAS W.	:	
KLUEBER, MOSHE GLATZER, and JAKE	:	
GLATZER.	:	
	:	
Defendants.	:	
	:	
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Plaintiffs Ofer David and Nir David, individually and derivatively on behalf of 3449-3461 Fort Hamilton LLC ("Fort Hamilton" or "Company") by and through their attorneys, Herrick, Feinstein LLP, as and for their Verified Complaint, allege as follows:

**NATURE OF THE ACTION**

1. Nearly two and a half years after inducing the individual Plaintiffs to provide \$1,500,000 in capital for the purchase of two properties and help form a company – Fort Hamilton – to maintain and operate these properties, on or about October 2017, defendant Heshy Israel Gottidener, the managing member of Fort Hamilton, fraudulently conveyed the deed to Fort Hamilton's properties to Defendants 3449-3461 Hamilton FT LLC, Acier Holdings LLC, Dov Zabrowsky, Thomas W. Klueber, Moshe Glatzer, and Jake Glatzer and misappropriated the profits derived from the sale all without authorization or the Plaintiffs' knowledge. This conduct was done in furtherance of Defendants' scheme whereby Gottdiener agreed to convey the deed to

the Defendants in exchange for a greater benefit from the properties in derogation of Plaintiffs' rights.

2. This action is brought by Plaintiffs, both directly and derivatively on behalf of Fort Hamilton, to quiet title, and rescind and declare void this unauthorized and fraudulent transfer by Gottdiener, to defendants Dov Zabrowsky, Thomas W. Klueber, Moshe Glatzer, Jake Glatzer, 3449-3461 Hamilton FT LLC, and Acier Holdings LLC of Fort Hamilton's sole assets, two valuable commercial real estate properties located in Brooklyn, NY.

3. The action also seeks to collect damages against Gottdiener in connection with this fraudulent and wrongful transfer including, *inter alia*, Gottdiener's (i) outright theft and gross misappropriation of Fort Hamilton's sole assets, (ii) diversion and misappropriation of the Company's revenues for his personal use, (iii) misappropriation of the individual Plaintiffs' distributions, (iv) unlawful transfer of Fort Hamilton's sole assets, the Properties, to Defendants, (v) self-dealing, (iv) failure and refusal to provide a complete and accounting of the Company's finances, and (vi) deliberate interference with the Company's business by, among other things, transferring the Company's sole assets to the Defendants so that he could receive greater benefits.

### **THE PARTIES**

4. Plaintiff Ofer David ("Ofer") is an individual residing in Israel. Ofer owns a membership interest in Fort Hamilton.

5. Plaintiff Nir David ("Nir," together with Ofer, the "David Plaintiffs") is an individual residing in Israel. Nir owns a membership interest in Fort Hamilton.

6. Derivative plaintiff Fort Hamilton (together with the David Plaintiffs, "Plaintiffs") is a limited liability company, having an address at 78 Decatur Avenue, Unit 101, Spring Valley,

NY 10977, and is organized under the laws of the State of New York. Fort Hamilton's business is to purchase and manage real property.

7. Upon information and belief, Defendant Israel Heshy Gottdiener ("Gottdiener") is an individual residing in New York. Gottdiener is the managing member of Fort Hamilton and owns a membership interest in Fort Hamilton.

8. Upon information and belief, Defendant 3449-3461 Hamilton FT LLC ("Hamilton FT") is a limited liability Company having an address at Acier Holdings LLC, 150 Airport Road, Suite 1500, Lakewood, NJ 08701, and is organized under the laws of the State of New York. Upon information belief, Hamilton FT is a small, closely held company.

9. Upon information and belief, Acier Holdings LLC ("Acier") is a limited liability company having an address at 110 Chestnut Ridge Road, Montvale, NJ 07645 and is organized under the laws of the State of New York and is the sole member of Hamilton FT. Upon information belief, Acier is a small, closely held company.

10. Upon information and belief, Defendant Dov Zabrowsky ("Zabrowsky") is an individual residing in New Jersey and is the managing member, chairman, and chief financial officer at Acier.

11. Upon information and belief, Defendant Moshe Glatzer ("Moshe") is an individual residing in New Jersey and is the founder and a partner at Acier.

12. Upon information and belief, Defendant Jake Glatzer ("Jake") is an individual residing in New Jersey and is the president and a partner at Acier.

13. Upon information and belief, Defendant Thomas W. Klueber ("Klueber," together with Gottdiener, Hamilton FT, Acier, Moshe, and Jake, "Defendants") is an individual residing in Pennsylvania and is the chief executive officer at Acier.

14. This action is brought by the David Plaintiffs in their individual capacities and derivatively on behalf of Fort Hamilton. The David Plaintiffs made a demand on Gottdiener to bring this action on behalf of Fort Hamilton against Gottdiener, but that demand was refused. On or about November 18, 2019, Plaintiffs met with Gottdiener, managing member of Fort Hamilton, to demand that Gottdiener transfer the Properties back to Fort Hamilton, distribute the monies to Plaintiffs in connection with the sale of the Properties, and bring an action based on Gottdiener's egregious misconduct described herein, including that Gottdiener breached his fiduciary duty, misappropriated and converted Fort Hamilton's funds and sole assets, and fraudulently transferred the Properties, without Plaintiffs' knowledge or authorization, to Defendants in derogation of Plaintiffs' rights. The David Plaintiffs told Gottdiener that they would bring an action if Gottdiener refused to bring an action or return the assets and funds belonging to Fort Hamilton. Gottdiener refused to correct his egregious misconduct, transfer the Properties back to Fort Hamilton, return the \$9,350,000 he converted from Plaintiffs, or bring an action. Accordingly, after giving an appropriate amount of time to bring an action or return the assets and funds rightfully belonging to Plaintiffs, Plaintiffs brought the instant action.

#### **JURISDICTION AND VENUE**

15. The Court has personal jurisdiction over Gottdiener, Klueber, Moshe, Jake, Zabrowsky, Hamilton FT, Acier, and Fort Hamilton pursuant to: (i) New York Civil Practice Law and Rules § 301 and/or (ii) New York Civil Practice Law and Rules § 302(a) in that, among other things, the defendants Hamilton FT and Gottdiener are residents of the State of New York and/or Defendants have transacted business, committed tortious acts, or both, within the State of New York.

16. Venue is proper in this County pursuant to CPLR § 507 because it is the County where the subject premises is located.

### **BACKGROUND**

#### **A. Formation of the Company and Purchase of the Properties**

17. 3449-3461 Fort Hamilton LLC is a New York limited liability company whose sole purpose is to purchase and manage the real property located at 3449 Fort Hamilton Parkway, Brooklyn, NY (also known as Block 5302, Lot 44) and 3461 Fort Hamilton Parkway, Brooklyn NY (also known as Block 5302, Lot 40) (collectively, the “Properties”).

18. Fort Hamilton was formed on or about September 2014 by Ofer, Nir, Gottdiener, and Eliyahu Brand (“Brand”) for the sole purpose of buying and managing the Properties.

19. The Properties are commercial real estate parcels located on a parkway in Brooklyn and were bought as part of a development project.

20. In or about the summer or fall of 2014, Gottdiener approached the David Plaintiffs with a business idea to purchase and develop the Properties and form a company to manage and operate the Properties. Gottdiener induced the David Plaintiffs in September 2014 to enter into an agreement to purchase the Properties and contribute \$1,500,000 for the purchase of the Properties.

21. At or around the same time, Ofer, Nir, Gottdiener, and Brand entered into a written agreement “for the purpose of purchasing a lot at the address of 3449-3461 Fort Hamilton Pkwy, Brooklyn, NY,” which was thereafter amended on December 31, 2014.

22. Pursuant to the terms of the agreement, the parties agreed “to establish a company in the United States that will jointly hold the property” with the following division of the holdings in the company: Gottdiener: 47.5%, Ofer and Nir: 47.5%, and Brand: 5%.

23. In consideration of 47.5% of the company and the agreement, Ofer and Nir agreed to pay \$1,500,000 for the purchase of the Properties.

24. Gottdiener did not make any capital contribution for the purchase of the Properties.

25. Pursuant to the parties' agreement, the remaining funds for the purchase of the Properties were to be obtained by outside financing, which Gottdiener agreed to secure.

26. Because Plaintiffs Ofer and Nir reside in Israel, the parties agreed that Gottdiener would manage the company and the Properties as he is a resident of New York.

27. Pursuant to the parties' agreement, Gottdiener also agreed to develop a portion of the Properties and thereafter lease it out.

28. Gottdiener was also obligated to transfer a portion of the proceeds from the rents and leases on the Properties, after repayment of the loan on the Properties, to Ofer and Nir at the beginning of each month.

29. Gottdiener also agreed to rent out a portion of the Properties for a fee of \$250 per square meter to be paid to the Company, which amounted to approximately \$125,000 per year.

30. In order to close on the Properties, on or about March 9, 2015, Gottdiener entered into a written loan agreement with Ofer and Nir in which Gottdiener borrowed approximately \$350,000 from Ofer and Nir (the "Loan Agreement").

31. Pursuant to the express terms of the Loan Agreement, the money "was received as a loan for the purpose to close on 3449-3461 Fort Hamilton Parkway Brooklyn NY."

32. Further, the maturity date of the loan was December 9, 2015.

33. Gottdiener never paid back Nir or Ofer.



34. Upon information and belief, Defendant Gottdiener took out financing for the remaining funds needed for the purchase price of the Properties.

35. On or about March 11, 2015, Fort Hamilton finalized the purchase of the Properties from 2600 Holdings, LLC and 5200 Holdings, LLC for approximately \$5,000,000. The deed was recorded on March 24, 2015.

B. The Operating Agreement for the Company

36. On or about February 4, 2016, Ofer, Nir, Gottdiener, and Brand entered into an operating agreement for Fort Hamilton (the “Operating Agreement”).

37. Pursuant to the terms of Section 6 of the Operating Agreement, the David Plaintiffs contributed approximately \$1,500,000 as a capital contribution to Fort Hamilton.

38. Gottdiener did not make a capital contribution.

39. The Operating Agreement further provides that Nir, Ofer, Gottdiener, and Brand are the sole members of Fort Hamilton. Their membership interests in Fort Hamilton are as follows: Ofer and Nir, collectively, have 47.5%, Gottdiener has 47.5%, and Brand has 5%. Gottdiener is Fort Hamilton’s sole Managing Member.

40. The Properties are Fort Hamilton’s sole assets.

41. Until October 2017, Fort Hamilton owned the Properties.

C. The Purpose of the Company

42. As set forth in Section 3 of the Operating Agreement, the “Purpose” of the Company is: “to purchase and manage real property.”

43. Section 16 of the Operating Agreement provides that “each of the Members represents, warrants and agrees that the Member is acquiring the interest in the [Company] for



the Member's own account as an investment and not with a view to the sale or distribution thereof."

44. Accordingly, the sale of the Properties is not in the ordinary course of the Company's business or necessary or appropriate to accomplish the purpose of the Company as set forth in Sections 3 and 16 of the Operating Agreement.

D. The Company's Allocations and Distributions

45. Section 8 of the Operating Agreement provides that all net profits, net losses and each item of income, gain, loss deduction or credit will be allocated in proportion to the Member's Percentage Interests.

E. The Members of the Company Do Not Have the Power to Authorize the Sale of the Property

46. No provision of the Operating Agreement gives any member, including the managing member, the right or power to authorize the sale of the property.

47. Moreover, pursuant to New York Liability Law § 402(d), a majority of the members must consent to a sale of all of the assets of the Company.

48. Members also need prior written consent in order to transfer, assign, pledge, hypothecate, or dispose of any or all portions of the Company in accordance with Section 12 of the Operating Agreement.

49. Accordingly, no member, including the managing member, may transfer or sell the Properties of the Company without consent of the other members.

F. The Managing Member's Authority and Duties

50. Pursuant to the first paragraph of the Operating Agreement, Gottdiener was the managing member of the Company.

51. Pursuant to Section 9 of the Operating Agreement, Gottdiener controlled and managed the Company's finances and the allocation of funds.

52. As a part of his role as managing member, Gottdiener was required to furnish a balance sheet at the end of each quarter of a profit and loss statement for the Company.

53. Section 11 of the Operating Agreement provides that the "business and affairs of the [Company] shall be conducted and managed by the Managing Member in accordance with this Agreement and the laws of New York."

54. Section 11 also provides that "[t]he Managing Member shall have responsibility for the day-to-day management of the business and affairs of the Limited Liability Company." The Managing Member has the authority to execute instruments and bind the Company.

55. Further, as set forth in Section 11, "except as expressly provided elsewhere in this Agreement, any decisions which are to be made by the Members, rather than the Managing Member...shall be made by the affirmative vote or consent of Members holding a majority of the Members' Percentage Interests."

56. Section 11 does not provide the managing member with the power to sell all or substantially all of the assets of the Company.

57. Absent consent from the other members of the Company, the managing member cannot sell all of the assets of the Company.

G. Defendant's Conversion of the Company's Distributions and Unauthorized Sale of All of The Company's Assets

58. Upon information and belief, according to New York's Automated City Register Information System ("ACRIS"), on or about October 3, 2017, without notice or explanation to Fort Hamilton or the members of Fort Hamilton, and in violation of the Operating Agreement,

Defendant Gottdiener caused Fort Hamilton to transfer the deed to Hamilton FT, without the members of Fort Hamilton's requisite consent. According to ACRIS, the deed was recorded on October 25, 2017.

59. Upon information and belief, according to ACRIS, the recorded October 3, 2017 deed states that the purchase price of the Properties was \$9,350,000. Notably, neither Fort Hamilton nor the David Plaintiffs received any of the proceeds from the sale of the Properties.

60. Upon information and belief, Gottdiener sold the Properties without any notice to the other members of Fort Hamilton or without a commercial real estate broker to properly market the Properties because he struck a secret side deal with Defendants under which Gottdiener will still be involved with the Properties or given benefits from the eventual development and resale thereof, the proceeds from the rents and leases on the Properties, or benefits in connection with another project. This explains the reason as to why the Plaintiffs did not receive any of the proceeds of the sale of the Properties and why Gottdiener consummated the sale without Plaintiffs' consultation or authorization in violation of the Operating Agreement and in breach of the duties he owed to Plaintiffs.

61. Upon information and belief, each of the Defendants knew about and participated in the secret side deal to deprive Plaintiffs of the Properties and monies lawfully belonging to Plaintiffs, including agreeing to give benefits to Gottdiener in connection with the transference of the Properties and the benefits derived therefrom to Defendants.

62. The Defendants stripped Fort Hamilton of the Properties, the sole asset, with the intent to defraud Plaintiffs.

63. The sale of the Properties was not an arms-length transaction because Defendants struck a fraudulent side deal, Fort Hamilton did not intend to convey the Properties to Defendants, and Plaintiffs were not aware of any sale of the Properties at the time.

64. Defendants are not bona fide purchasers.

65. Despite paying \$1,500,000 in consideration for the purchase of the Properties and an interest in the Company owning the Properties, the David Plaintiffs were excluded from the proceeds of the sale of Properties.

66. The sale of the Properties is void *ab initio* because it was not validly authorized by the members of Fort Hamilton, was performed in violation of the Operating Agreement, and was fraudulently conveyed in furtherance of a fraudulent side deal, or, alternatively, because it was consummated without requisite consent and constitutes an *ultra vires* act.

67. The sale of the Properties left Fort Hamilton without any assets and as an empty shell.

68. The sale of the Properties defeats the sole purpose of Fort Hamilton, which is to own and operate the Properties of its namesake.

69. In addition to his blatant and egregious fraudulent misconduct in selling the Properties without the requisite consent or authorization, Defendant Gottdiener also improperly and without notice or explanation to Fort Hamilton converted *all* the proceeds from the sale of the Properties, if in fact any proceeds were given to Gottdiener, which demonstrates the scale of Gottdiener's conversion and the severity of the Defendants' fraudulent scheme.

70. Neither the Company nor the members of the Company received any proceeds or distributions from the sale of the Properties.

71. Indeed, not only did Defendant Gottdiener fail to distribute any of the proceeds from the sale of the Properties to the members of Fort Hamilton, but Gottdiener also failed to provide any records, books of account, or information with regard to the sale of the Properties to the members.

72. On or about February 2018, Nir requested access to the books and records of the Company and for the Properties from Gottdiener. Gottdiener failed to provide access to Nir.

73. The wrongful actions of Gottdiener have already caused substantial injury and damages to the Company and the individual plaintiffs.

### **FIRST CAUSE OF ACTION**

(Direct Claim for A Declaratory Judgment Against Defendants)

74. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

75. Defendant Gottdiener transferred the Properties, which are the sole assets belonging to Fort Hamilton, to Defendants Hamilton FT, Klueber, Moshe, Jake, Acier, and Zabrowsky in violation of the Operating Agreement, without Nir and Ofer's requisite consent, without fair consideration, and with actual intent to harm the David Plaintiffs.

76. A ripe and justiciable controversy exists between the parties as to whether the Properties were unlawfully and without authorization sold and transferred to Defendants.

77. Since the sale of the Properties, the Defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky continue to execute and incur mortgages on the Properties and assign the leases and rents thereof in derogation of Plaintiffs' rights.

78. There is a substantial risk that the Defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky may continue to incur more debt on the Properties and sell the Properties.

79. The David Plaintiffs have no adequate remedy at law.

80. The David Plaintiffs are entitled to a judgment under CPLR 3001 declaring that the sale and deed of the Properties to Defendants should be declared, in equity and good conscience, void *ab initio* and be rescinded because the sale was (i) not validly authorized by Fort Hamilton and was fraudulently conveyed, and was performed in violation of the Operating Agreement, or (ii) constitutes an *ultra vires* act.

### **SECOND CAUSE OF ACTION**

(Derivative Claim for a Declaratory Judgment Against Defendants)

81. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

82. Gottdiener transferred the Properties, which are the sole assets belonging to Fort Hamilton, to Defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky in violation of the Operating Agreement, without Nir and Ofer's requisite consent, without fair consideration, and with actual intent to harm Plaintiff Fort Hamilton.

83. A ripe and justiciable controversy exists between the parties as to the right of Gottdiener to sell the Properties to Defendants without majority consent of Fort Hamilton's members, leave the Company assetless, and in violation of the Operating Agreement.

84. The derivative Plaintiff – Fort Hamilton – has no adequate remedy at law.

85. Since the sale of the Properties, the Defendants continue to execute and incur mortgages on the Properties and assign the leases and rents thereof in derogation of Plaintiff's rights.

86. There is a substantial risk that the Defendants may continue to incur more debt on the Properties or sell the Properties.

87. Fort Hamilton is entitled to a judgment under CPLR 3001 declaring that the sale and deed of the Properties to Defendants should be declared, in equity and good conscience, void *ab initio* and be rescinded because the sale was (i) not validly authorized by Fort Hamilton and was fraudulently conveyed, and was performed in violation of the Operating Agreement, or (ii) constitutes an *ultra vires* act.

### **THIRD CAUSE OF ACTION**

(Direct Injunctive Relief Against Defendants)

88. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

89. The David Plaintiffs will succeed on the merits of their claims herein, including but not limited to, that: (a) Gottdiener has breached the Operating Agreement, (b) Gottdiener must account to Plaintiffs Ofer and Nir, (c) Gottdiener breached his fiduciary duties, (d) Gottdiener unlawfully sold the Properties to Klueber, Moshe, Jake, Acier, Hamilton FT and Zabrowsky, (e) Gottdiener struck a side deal to benefit from the unlawful sale of the Properties to the exclusion of Plaintiffs, and (f) Gottdiener has wrongfully converted distributions from the members of the Company, diverting at least \$9,350,000.

90. Ofer and Nir, directly, are entitled to protections to prevent Defendants from transferring or encumbering the Properties just like Gottdiener did beforehand by unlawfully



selling the Properties and encumbering the Properties in a secret side deal amongst Defendants and just like defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky are continuing to do by encumbering the Properties with mortgages.

91. Unless Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky are restrained from further encumbering and selling the Properties, Plaintiffs will suffer irreparable harm.

92. Plaintiffs Ofer and Nir have no adequate remedy at law.

93. A balancing of the equities favors Fort Hamilton's members.

94. By virtue of the foregoing, Plaintiffs are entitled to a preliminary and permanent injunction.

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

(Derivative Injunctive Relief Against Defendants)

95. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

96. Fort Hamilton will succeed on the merits of its claims herein, including but not limited to, that: Gottdiener unlawfully sold the Properties to Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky in a secret side deal, breached his fiduciary owed to the Company, left the Company without any assets or cash, and converted funds from the Company.

97. Fort Hamilton is entitled to protections to prevent Defendants from transferring or encumbering the Properties just like Gottdiener did beforehand by unlawfully selling the Properties and encumbering the Properties in a secret side deal amongst Defendants and just like defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky are continuing to do by encumbering the Properties with mortgages.

98. The Defendants currently possess the Properties and revenues that belong to Fort Hamilton.

99. Unless Gottdiener, Acier, Klueber, Moshe, Jake, Hamilton FT, and Zabrowsky are restrained from further encumbering and selling the Properties, Fort Hamilton will suffer irreparable harm.

100. The Company has no adequate remedy at law.

101. A balancing of the equities favors Fort Hamilton.

102. By virtue of the foregoing, Fort Hamilton is entitled to a preliminary and permanent injunction.

#### **FIFTH CAUSE OF ACTION**

(Derivative Claim for Breach of Fiduciary Duty Against Gottdiener)

103. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

104. As managing member of Fort Hamilton, Gottdiener, at all relevant times, owed fiduciary obligations to Fort Hamilton. By reason of their fiduciary relationship, Gottdiener owed Fort Hamilton the highest obligations of good faith, fair dealing, loyalty and due care and a duty to not engage in grossly negligent conduct, intentional misconduct, or a knowing violation of law.

105. As managing member of Fort Hamilton, Gottdiener is in a position of superior knowledge and has a duty to disclose to Gottdiener all material facts relating to the operation and control of Fort Hamilton.

106. As managing member of Fort Hamilton, Gottdiener had a duty to conduct himself in good faith, not engage in grossly negligent conduct, intentional misconduct, or a knowing

violation of law, and conduct himself in accordance with his fiduciary responsibilities to Fort Hamilton.

107. The conduct of Gottdiener, including, but not limited to, the conduct described herein, constitutes blatant breaches of his fiduciary obligations to Fort Hamilton including, at a minimum, bad faith, grossly negligent misconduct, intentional misconduct, and knowing violations of law.

108. Gottdiener's conduct described in more detail herein that constitutes fiduciary violations includes, but is not limited to, his: (i) misappropriation of revenues belonging to Fort Hamilton for his own personal benefit; (ii) withholding and concealing information regarding Fort Hamilton's finances, including, but not limited to, Fort Hamilton's proceeds from the sale of the Properties from the members of Fort Hamilton in an effort to control the amount of distributions paid out to Fort Hamilton's members so that he could retain for himself all monies to which the Company was entitled; (iii) selling all of the assets of Fort Hamilton without consent of the majority of the other members of Fort Hamilton; (iv) engaging in self-dealing; and (v) continuing to derive financial benefits from the Properties.

109. As a direct and proximate result of Gottdiener's fiduciary violations, Fort Hamilton has been damaged in an amount to be determined at trial, but in no event less than \$9,350,000, which includes, but is not limited to, disgorgement of the revenues Gottdiener took from Fort Hamilton during the period of his breaches of fiduciary duty.

110. Moreover, due to the willful, wanton and criminal nature of Gottdiener's conduct, Fort Hamilton is entitled to punitive damages in an amount which shall be proven at trial, but in no event is less than \$5 million.

#### **SIXTH CAUSE OF ACTION**

(Direct Claim for Breach of Fiduciary Duty Against Gottdiener)

111. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

112. As a member and managing member of Fort Hamilton, Gottdiener, at all relevant times, owed fiduciary obligations to Fort Hamilton's members. By reason of their fiduciary relationship, Gottdiener owed the members the highest obligations of good faith, fair dealing, loyalty and due care and to not engage in grossly negligent conduct, intentional misconduct, or a knowing violation of law.

113. As a member and managing member of Fort Hamilton, Gottdiener is in a position of superior knowledge and has a duty to disclose to Fort Hamilton's members all material facts relating to the operation and control of Fort Hamilton.

114. As a member and managing member of Fort Hamilton, Gottdiener had a duty to conduct himself in good faith and in accordance with his fiduciary responsibilities to Fort Hamilton's members and to not engage in grossly negligent conduct, intentional misconduct, or a knowing violation of law.

115. The conduct of Gottdiener, including, but not limited to, the conduct described herein, constitutes blatant breaches of his fiduciary obligations to Fort Hamilton's members, including, at a minimum, bad faith, grossly negligent misconduct, intentional misconduct, and knowing violations of law.

116. Gottdiener's conduct described in more detail herein that constitutes fiduciary violations includes, but is not limited to, his: (i) misappropriation of revenues and distributions belonging to the members of Fort Hamilton for his own personal benefit; (ii) withholding and concealing information regarding Fort Hamilton's finances, including, but not limited to, Fort

Hamilton's proceeds from the sale of the Properties from the members of Fort Hamilton in an effort to control the amount of distributions paid out to Fort Hamilton's members so that he could retain for himself all monies to which the other members of Fort Hamilton were entitled; (iii) selling all of the assets of Fort Hamilton without consent of the majority of the other members of Fort Hamilton; (iv) engaging in self-dealing; and (v) continuing to derive financial benefits from the Properties.

117. As a direct and proximate result of Gottdiener's fiduciary violations, the David Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than \$2,066,250, which includes, but is not limited to, disgorgement of the distributions paid to Gottdiener during the period of his breaches of fiduciary duty.

118. Moreover, due to the willful, wanton and criminal nature of Gottdiener's conduct, the David Plaintiffs are entitled to punitive damages in an amount which shall be proven at trial, but in no event is less than \$5 million.

**SEVENTH CAUSE OF ACTION**  
(Breach of Contract Against Gottdiener)

119. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

120. Defendant Gottdiener entered into the Operating Agreement with the David Plaintiffs.

121. The David Plaintiffs gave \$1,500,000 in consideration of the Operating Agreement.

122. Pursuant to the terms of the Operating Agreement, Gottdiener was to manage and operate Fort Hamilton, including the Properties.

123. Gottdiener breached the Operating Agreement by unlawfully transferring all of the assets and good will of Fort Hamilton, the Properties, in violation of the Operating Agreement and converting the proceeds of the sale of the Properties and revenues of Fort Hamilton that would have been distributed to Plaintiffs pursuant to the Operating Agreement.

124. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial, but believe to be no less than \$1,500,000.

**EIGHTH CAUSE OF ACTION**

(Derivative Claim for Conversion Against Defendants)

125. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

126. Defendant Gottdiener intentionally converted and siphoned the funds from Fort Hamilton.

127. Defendants intentionally and wrongfully misappropriated and converted the sole assets belonging to Fort Hamilton – the Properties.

128. Defendants engaged in an unauthorized interference with Fort Hamilton's dominion and control over its assets and revenues to the exclusion of Fort Hamilton.

129. Defendants' conduct was purposeful, malicious, and at minimum, reckless. Their unlawful actions were undertaken without regard for the rights and interests of Fort Hamilton.

130. As a direct and proximate result of Defendants' conduct alleged herein, Fort Hamilton has been damaged in an amount to be determined at trial, but in no event less than \$9,350,000 million.

131. Moreover, due to the willful, wanton and criminal nature of Defendants' conduct, Fort Hamilton is entitled to punitive damages in an amount which shall be proven at trial, but in no event is less than \$5 million.

**NINTH CAUSE OF ACTION**  
(Direct Claim for Conversion Against Defendants)

132. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

133. Defendants wrongfully exercised dominion and control over Fort Hamilton's members' Properties by wrongfully causing Fort Hamilton to sell the Properties and be without any assets and diluting the Plaintiffs' interest in Fort Hamilton so as to be worthless.

134. In addition, Defendant Gottdiener converted the distributions of Fort Hamilton Properties.

135. Defendants' conduct was purposeful, malicious, and at minimum, reckless. Their unlawful actions were undertaken without regard for the rights and interests of the members.

136. As a direct and proximate result of Defendants' conduct alleged herein, the David Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than \$2,066,250.

137. Moreover, due to the willful, wanton and criminal nature of Defendants' conduct, the David Plaintiffs are entitled to punitive damages in an amount which shall be proven at trial, but in no event is less than \$5 million.

**TENTH CAUSE OF ACTION**  
(Derivative Unjust Enrichment in the Alternative Against Gottdiener)

138. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.



139. As detailed herein, Gottdeiner enriched himself by (i) misappropriating revenues belonging to Fort Hamilton for his own personal benefit, including the benefits derived from the Properties, and (ii) misappropriating the Properties belonging to Fort Hamilton.

140. Gottdiener's unjust enrichment is at the expense of Fort Hamilton.

141. The circumstances are such that in equity and good conscience, Gottdiener should not be permitted to keep, and should pay over to Fort Hamilton, any and all monies and property that he has wrongfully appropriated.

142. By reason of the foregoing, Fort Hamilton has been damaged in an amount to be determined at trial, but in no event less than \$9,350,000.

#### **ELEVENTH CAUSE OF ACTION**

(David Plaintiffs' Unjust Enrichment in the Alternative Against Gottdiener)

143. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

144. As detailed herein, Gottdeiner enriched himself by (i) misappropriating distributions belonging to the members of Fort Hamilton for his own personal benefit; (ii) retaining for himself monies to which other members were entitled; and (iii) misappropriating the Properties belonging to Fort Hamilton, leaving the company without any assets or cash and thereby diluting the members' interest.

145. Gottdiener's unjust enrichment is at the expense of the David Plaintiffs.

146. The circumstances are such that in equity and good conscience, Gottdiener should not be permitted to keep, and should pay over to the David Plaintiffs, any and all monies and property that he has wrongfully appropriated.

147. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than \$3,566,250.

**TWELFTH CAUSE OF ACTION**  
(Claim for an Accounting Against Gottdiener)

148. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

149. The David Plaintiffs have the right to access the books and records of Fort Hamilton, including all of the financial information set forth therein, especially in light of Gottdiener's gross misconduct and breaches of fiduciary duty detailed herein.

150. Gottdiener, as managing member of Fort Hamilton, has maintained and continues to possess the books and records of Fort Hamilton and has not provided the David Plaintiffs the full access to such books and records to which they are lawfully entitled under the New York Limited Liability Company Law and common law.

151. Because of Gottdiener's continued failure to disclose and afford the David Plaintiffs full access to the books and records of Fort Hamilton, the David Plaintiffs have been deprived of the knowledge of the financial status of Fort Hamilton.

152. The information regarding the financial status of Fort Hamilton has been deliberately withheld from the David Plaintiffs by Gottdiener.

153. Gottdiener, as a member and managing member of Fort Hamilton, has at all relevant times owed fiduciary obligations to the David Plaintiffs.

154. Gottdiener has a duty to account, has failed to do so despite repeated demands from the other members, and has still not rendered a full accounting of the financial status and operations of Fort Hamilton in accordance with the New York Limited Liability Company Law.

155. As a result of the foregoing, the David Plaintiffs have suffered and will continue to suffer irreparable harm and injury.

156. Plaintiffs have no adequate remedy at law.

**THIRTEENTH CAUSE OF ACTION**

(Violation Of New York's Limited Liability Company Law § 402(d)(2) Against Gottdiener)

157. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

158. Section 402(d)(2) of New York's Limited Liability Law states as follows.

(d) Except as provided in the operating agreement, whether or not a limited liability company is managed by the members or by one or more managers, the vote of at least a majority in interest of the members entitled to vote thereon shall be required to:

\* \* \*

(2) approve the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited liability company;

159. Gottdiener unlawfully approved the transfer of all or substantially all of the assets of Fort Hamilton, a limited liability company, to Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky without a vote first having been taken by at least a majority in interest of the members of Fort Hamilton entitled to vote on the transfer.

160. As a result of the foregoing, Gottdiener violated § 402(d)(2) of New York's Limited Liability Corporation Law.

161. By reason of the aforesaid, Plaintiffs have been damaged in an amount to be determined at trial, but believed to be no less than \$9,350,000.

**FOURTEENTH CAUSE OF ACTION**

(Tortious Interference with Contract Asserted Directly Against Defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky)

162. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

163. The Operating Agreement is a valid and binding contract.

164. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky were aware of the Operating Agreement and Fort Hamilton's ongoing development of the Properties and ownership of the Properties.

165. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky intentionally and wrongfully interfered with the Operating Agreement by purchasing the Properties without lawful consent from the members of Fort Hamilton, which they knew was required.

166. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky's improper conduct as aforesaid induced Gottdiener to breach the Operating Agreement.

167. But for Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky's improper conduct, Gottdiener would not have breached the Operating Agreement.

168. Accordingly, Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than \$5 million.

#### **FIFTEENTH CAUSE OF ACTION**

(Aiding and Abetting Breach of Fiduciary Duty Against Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky)

169. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

170. Defendant Gottdiener owed a fiduciary duty to Plaintiffs as a member and as managing member of Fort Hamilton.

171. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky were aware that Gottdiener owed a fiduciary duty to Plaintiffs.

172. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky intentionally and wrongfully interfered with Gottdiener's fiduciary duty to Plaintiffs by, *inter alia*, purchasing the Properties without lawful consent from the members of Fort Hamilton, which they knew was required, buying the Properties without a realtor, and striking a side deal with Gottdiener so that he would continue to receive benefits from the Properties to the exclusion of Plaintiffs.

173. Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky's improper conduct as aforesaid induced Gottdiener to breach his fiduciary duties..

174. But for Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky's improper conduct, Gottdiener would not have breached his fiduciary duties.

175. Accordingly, Plaintiffs have been damaged in an amount to be determined at trial, but in no event less than \$5 million.

**SIXTEENTH CAUSE OF ACTION**  
(Fraud Against Defendants)

176. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

177. On or about September 2014, Defendant Gottdiener fraudulently induced the David Plaintiffs to provide \$1,500,000 to help finance the purchase of the Properties, which Gottdiener represented that he would develop and manage, and then distribute the profits that accrued on the Properties.

178. In reliance on Defendant Gottdiener's representations, the David Plaintiffs provided \$1,500,000 and formed Fort Hamilton. The purchase of the Properties occurred on or about March 2015.

179. Upon information and belief, Defendant Gottdiener never had the intention of distributing profits from the Properties to Plaintiffs or owning the Properties in equal interest with Plaintiffs.

180. Rather, upon information and belief, Defendant Gottdiener planned on using the David Plaintiffs' money to buy the Properties and then transfer the Properties to Defendants in a fraudulent scheme in which Gottdiener would receive a larger share of the profits and Defendants would receive the Properties.

181. Unbeknownst to Plaintiffs, and upon information and belief, in October 2017, Defendant Gottdiener struck a side deal with Defendants Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky in which Gottdiener agreed to sell the Properties to Defendants and as a part of the deal, Gottdiener received benefits and a greater profit from the Properties.

182. On or about October 2017, unbeknownst to Plaintiffs, and upon information and belief, Defendant Gottdiener unlawfully sold the Properties to the Defendants in a fraudulent scheme to defraud Plaintiffs out of their monies and assets.

183. By virtue of the foregoing, the David Plaintiffs have been damaged and are entitled to recover at least the sum of \$6 million, plus such additional damages as maybe proven at trial.

#### **SEVENTEENTH CAUSE OF ACTION**

(Quiet Title and Determine Plaintiffs' Interest in the Properties and to Vacate the Deed Purporting to Convey the Subject Properties to Defendants Hamilton FT, Klueber, Moshe, Jake, Acier Holdings, and Zabrowsky)

184. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

185. This cause of action is brought, among other things, pursuant to RPAPL Article 15 to quiet title to the Properties (Block 5302, Lot 44 and Block 5302, Lot 44).

186. The defendants Gottdiener, Hamilton FT, Acier, Klueber, Moshe, Jake, and Zabrowsky are known and are not infants, mentally retarded, mentally ill or an alcohol abuser.

187. Based on the March 11, 2015 deed, which was recorded on March 24, 2015, Plaintiffs have an interest in the Properties as defined in RPAPL 1511 and 1515.

188. Plaintiffs seek to vacate a deed dated October 3, 2017 and recorded on October 25, 2017 purporting to convey title to the Properties from Fort Hamilton's member, Gottdiener, to Hamilton FT on the grounds that the transfer of the Properties was unauthorized and the deed was a fraudulent conveyance not intended to convey title but solely as an instrument of fraud.

189. At no time did the Plaintiffs authorize the transfer of the Properties or intend to convey or transfer to any entity or person(s) any ownership interest in the Properties. The Plaintiffs have not received any consideration from the transfer of the Properties.

190. Defendants Hamilton FT, Klueber, Moshe, Jake, Zabrowsky, and Acier never acquired a bona fide interest in the Properties because there was no intent to convey title by Plaintiffs.

191. The sale of the Properties from Gottdiener, who was not authorized to sell the Properties, to Hamilton FT, Zabrowsky, Klueber, Moshe, Jake, and Acier was not an arms-length transaction as demonstrated above.

192. The deed conveying the Properties to defendant Hamilton FT acts as a cloud on Plaintiffs' title to and interest in the Properties.

193. No personal claim is made against any defendant other than a defendant who shall assert a claim adverse to the claims of Plaintiffs set forth above.



194. Any judgment in this action will not affect a person not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise could afterward become entitled to a beneficial estate or interest in the Properties involved herein.

**EIGHTEENTH CAUSE OF ACTION**

(Constructive Trust)

195. Each and every allegation in the preceding paragraphs is repeated and re-alleged as if fully set forth herein.

196. Defendant Gottdiener promised the David Plaintiffs that if they made a \$1,500,000 a capital contribution to Fort Hamilton for the purchase of the Properties, then the Properties would be developed and managed by Defendant Gottdiener and the proceeds from the rents and leases would be distributed to the David Plaintiffs in accordance with their membership interest.

197. Relying upon the foregoing promises, the David Plaintiffs contributed \$1,500,000 for the purchase of the Properties and the formation of the Company.

198. The Properties were transferred to Defendants Hamilton FT, Klueber, Moshe, Jake, Zabrowsky, and Acier under such circumstances that these defendants may not, in equity, retain any legal or beneficial interest in the Properties.

199. As a result, Plaintiffs respectfully request the imposition of a constructive trust on the Properties in favor of Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request judgment:

- (a) On the First Cause of Action, a declaratory judgment as set forth above;
- (b) On the Second Cause of Action, a declaratory judgment as set forth above;

- (c) On the Third Cause of Action, a permanent injunction;
- (d) On the Fourth Cause of Action, a permanent injunction;
- (e) On the Fifth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$9,350,000 million, and punitive damages in an amount to be determined at trial, but in no event less than \$5,00,000;
- (f) On the Sixth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$2,066,250 and punitive damages in an amount to be determined at trial, but in no event less than \$5,00,000;
- (g) On the Seventh Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$1,500,000 million;
- (h) On the Eighth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$9,350,000 million, and punitive damages in an amount to be determined at trial, but in no event less than \$5,00,000 million;
- (i) On the Ninth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$2,066,250, and punitive damages in an amount to be determined at trial, but in no event less than \$5,00,000;
- (j) On the Tenth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$9,350,000 million;
- (k) On their Eleventh Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$3,566,250;
- (l) On their Twelfth Cause of Action, an accounting;
- (m) On their Thirteenth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$9,350,000 million;

(n) On their Fourteenth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$5,00,000 million;

(o) On their Fifteenth Cause of Action, compensatory damages in an amount to be determined at trial, but in no event less than \$5,000,000 million;

(p) On their Sixteenth Cause of Action, damages in an amount to be determined at trial, but in no event less than \$6,000,00 million;

(q) On their Seventeenth Cause of Action, an order to quiet title, that the deed dated October 3, 2017 purporting to convey title of the Properties be deemed to be fraudulent and vacated, that Plaintiffs be adjudged and determined to hold an undivided interest in the Properties pursuant to the deed, dated March 4, 2015, and that Defendants and every person or entity claiming an interest in the Properties by and through said defendants, except for Plaintiffs, be barred from all claims to any estate or interest in the Properties described in this Complaint adverse to or in derogation of Plaintiffs' interest in the Properties;

(r) On their Eighteenth Cause of Action, a constructive trust;

(s) Awarding Plaintiffs their costs and reasonable attorney's fees; and

(t) For such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 3, 2020

HERRICK, FEINSTEIN LLP

By: /s/ Avery S. Mehlman

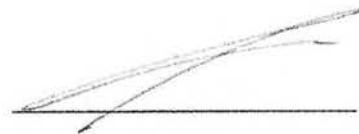
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VERIFICATION

I, Nir David, an individual physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, hereby affirm under the penalties of perjuries under the laws of New York, which may include a fine or imprisonment, that:

I am an individually named Plaintiff and a current member of 3449-3461 Fort Hamilton LLC, the derivative Plaintiff in the above-referenced action. I have read the foregoing Complaint and know that all of the material allegations set forth therein are true and are within my personal knowledge, except as to matters alleged on information and belief, and as to those matters I believe them to be true.

Dated: <sup>February</sup>~~January~~ 3, 2020

A handwritten signature in dark ink, appearing to read 'Nir David', written over a horizontal line.

Nir David