



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LELA GOREN, an individual,)
)
) Plaintiff,) C.A. No. _____
)
 v.)
)
)
)
) EXTELL NEW YORK REGIONAL)
) CENTER, a Delaware limited liability)
) company,)
) Defendant.)

**VERIFIED COMPLAINT PURSUANT TO 6 DEL. C. § 18-305
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff, **LELA GOREN** (“**Plaintiff**”), by and through undersigned counsel, sues Defendant **EXTELL NEW YORK REGIONAL CENTER LLC**, a Delaware limited liability company (the “**Regional Center**” or “**Defendant**”) and alleges as follows:

NATURE OF THE ACTION

1. This action, brought pursuant to 6 *Del. C.* § 18-305, seeks relief in the form of an order compelling the Regional Center to make available to the Plaintiff, for inspection and copying, books and records as demanded by Plaintiff in her four demand letters.

2. Despite repeated efforts and demand letters, Defendant has failed to provide Plaintiff with any access to the books and records of the Regional Center to allow Plaintiff to evaluate the status of her investment. Defendant’s refusal

contravenes the Limited Liability Company Agreement of Extell New York Regional Center LCC (the “Operating Agreement”) and Delaware law.

3. Further, just days ago, and in violation of federal law, Defendant belatedly produced a Form K-1 (“K-1”) to Plaintiff which demonstrates Plaintiff’s interest generated \$1,650,000.00 in taxable income. Plaintiff was at all times prior to the receipt of the K-1 told by Defendant’s Managing Member, Gary Barnett, that the Regional Center had no available funds or profits. The tardily produced K-1 creates immediate, and unplanned for, tax liability including penalties and accrued interest.

4. Plaintiff further has reason to believe Barnett has been using the Regional Center’s funds to lend money to his other businesses at below market or zero (0) percent interest. As set forth below, Plaintiff submits that Defendant, through Barnett, has deliberately concealed information to which Plaintiff is entitled.

PARTIES, JURISDICTION, & VENUE

5. Plaintiff, LELA GOREN, is an individual residing in New York, NY. Plaintiff is a Member of the Regional Center, owning at least twenty (20) percent interest therein. Plaintiff may own more, however, she has been prevented from accessing corporate records so she cannot determine her full ownership interest.

6. Defendant, EXTELL NEW YORK REGIONAL CENTER LLC, is a Delaware limited liability company with its principal place of business at 805 Third Avenue, 7th Floor, New York, NY 10022. The Regional Center's registered agent for service is the Corporation Trust Company, which is located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

7. Non-party GARY BARNETT is an individual residing in New York County, New York. Barnett is a real estate investor with over thirty (30) years of experience in New York City real-estate specializing in the development of ultra-luxury buildings. At all material times, Barnett has been the sole Manager of the Regional Center, he owns at least a sixty-five (65) percent interest therein.

8. This Court has jurisdiction over the Regional Center, a Delaware limited liability company.

9. Venue is proper in the Court of Chancery pursuant to 6 *Del. C.* § 18-305, which vests this Court with exclusive authority to determine entitlement to information sought under that statute. *See* 6 *Del. C.* § 18-305 (f).

10. All preconditions to this suit have been waived, excused, performed or have otherwise occurred, including compliance with 6 *Del. C.* § 18-305, and the below claims are ripe.

GENERAL ALLEGATIONS

A. Background Regarding the Regional Center and Plaintiff's Investment

11. In 2010, Plaintiff approached Barnett with the idea of establishing a regional center in New York City to participate in the EB-5 Program.

12. The EB-5 Program, administered by the Department of Homeland Security's United States Citizenship and Immigration Services ("USCIS") stimulates the U.S. economy through job creation and capital investment by foreign investors. EB-5 investors can make investments into "regional centers"- specially approved private entities organized to promote economic development in specific geographic areas and industries.

13. After several discussions, Plaintiff and Barnett agreed to proceed with the proposed business venture and formed Extell New York Regional Center, LLC with the purpose of (i) holding a license to undertake EB-5 programs with USCIS, and in turn (ii) granting licenses to eligible projects which could utilize the EB-5 program and (iii) raising funds for the development of EB-5 projects as authorized under the EB-5 program. A true and correct copy of the Operating Agreement is attached as **Exhibit A**. Operating Agreement at 1.1.

14. The Regional Center had three Members, Barnett, Plaintiff, a third member. The Members agreed that Barnett would serve as the Managing Member of the Regional Center. *Id.* at p. 3. The third member sold his interest in 2017. It is unclear who bought that interest.

15. As more specifically set forth in the Operating Agreement, Barnett's responsibilities as Manager included, but were not limited to, managing the financial resources of the Regional Center. *Id.* at 2.1 and Article VI.

16. Barnett has held this position since November 29, 2010 and has, since at least that date, been exclusively responsible for overseeing the financial activities of the Regional Center, maintaining its bank accounts, generally approving and making expenditures, and executing agreements and documents on behalf of the Regional Center.

17. The remaining members of the Regional Center, including Plaintiff, do not have, and have not had, routine and customary access to the Regional Center's financial records, management agreements, agent agreements, broker agreements, or complete copies of all of the projects undertaken by the Regional Center.

18. During the course of the existence of the Regional Center, the Regional Center has been responsible for placing well over \$500 million worth of EB-5 funds in multiple projects for substantial development and redevelopment in Manhattan, New York. As a result, the entity has had substantial sums of money throughout its existence and should be extremely profitable. However, given that Barnett is the sole managing member and is given substantial and exclusive authority by way of the Operating Agreement and given that Barnett has

continuously and routinely refused to give his partners financial information, Plaintiff has no way of knowing what funds are presently under the control of the Regional Center, and whether or not distributions have or should have been paid.

19. Plaintiff has never received a distribution which appears contrary to the recently received K-1, described more fully in the introductory paragraph above, which indicates that her twenty-percent interest generated over \$1.6 million in taxable income in 2017. Again, the Regional Center delivered the K-1 significantly after the deadline required under federal law. It took Ms. Goren and her tax accountants by surprise and left her with an unexplained tax liability in excess of \$600,000.00 including penalties and interest.

20. Over the course of the past eighteen months, Plaintiff has engaged Barnett in several phone conversations and email exchanges with the specific purpose of inquiring into why distributions had not been paid, what the financial condition of the Regional Center is and what funds the Regional Center has either in its bank accounts or has advanced or loaned to other entities and upon which rates.

21. Upon information and belief, and as admitted by Barnett in conversations with the Plaintiff, the Regional Center has made loans to other entities that Barnett owns and controls that have nothing to do with the Regional Center. Those loans have been made at zero or nominal interest rates. That is likely

a breach of fiduciary duty to the Regional Center as well as to Plaintiff, particularly because it appears now that the Regional Center has been profitable and is generating taxable income to her but has not distributed one dollar to her.

22. Further, Barnett has engaged in discussions with Plaintiff whereby he has suggested he may be willing to “lend” the Plaintiff money or make a contingent distribution, however, Plaintiff would be obligated to return those funds upon his demand. The Operating Agreement does not provide for such nor require such.

23. In sum, Plaintiff believes that Barnett is utilizing the entity for his own self-serving purposes to the specific detriment of the Plaintiff and is breaching his fiduciary duties to her and to the entity.

B. The Demand is Served

24. On July 20, 2018, Plaintiff sent a letter to Barnett (“Demand 1” attached hereto as **Exhibit B**) requesting, among other things, a distribution from the Regional Center and “to have her accountants review the books and records of the Company to ensure she is receiving accurate financial information from the Company.” Exhibit B. At that time, Barnett represented that the Regional Center was sitting on over \$10 million in available funds.

25. On July 27, 2018, Barnett responded by email stating “On numerous occasions we have provided [Plaintiff] with all records. In [sic] times we have responded to duplicate requests, within reason we will continue to do so.”

26. Despite Barnett’s assertion, neither Plaintiff, nor her accountants, were given the opportunity to inspect the books and records of the Regional Center.

27. On October 4, 2018, Plaintiff sent two additional demand letters to Barnett in his capacity as the Managing Member of the Regional Center that reiterated the unaddressed portions of Demand 1 and the necessity of making certain documents and explanations available to Plaintiff. (“Demand 2” and “Demand 3” attached hereto as **Exhibit C** and **Exhibit D**, respectively).

28. In Demand 2, Plaintiff made specific demands pursuant to the Operating Agreement 8.2 for production of various financial statements, tax returns, and contractual agreements to which the Regional Center was a party. *See* Exhibit C. Specifically, the Operating Agreement states:

Books and Records. The books and records of the Company shall be maintained at the principal office of the Company. Each Member (or such Member’s designated agent or representative) shall have the right during ordinary business hours and upon reasonable notice to inspect and copy (at such Member’s own expense) all books and records of the Company (other than those containing trade secrets or similar confidential information) for any purpose reasonably related to the Member’s Interest.

Operating Agreement at 8.2.

29. The Operating Agreement also defines “Interest” as “all of a Member’s rights and interests in the Company in his or its capacity as a Member, all as provided in the Certificate, this Agreement and the Act [the Delaware Limited Liability Company Act].” Operating Agreement at 2.1.

30. In Demand 3, Plaintiff requested an explanation as to why she was charged with income but had not received the corresponding distribution. *See* Exhibit D.

31. Most recently, on October 12, 2018, the undersigned sent a demand letter to Barnett pursuant to 6 *Del. C.* § 18-305 (“Demand 4” attached hereto as **Exhibit E**), along with a Power of Attorney executed by Plaintiff, which incorporated the three prior demand letters requesting copies of certain books and records relative to Plaintiff’s ownership interest.

32. As stated throughout the four demand letters Plaintiff sent Barnett (collectively the “Demand Letters”), Plaintiff sought and continues to seek full information regarding the status of the business and financial condition of the Regional Center. Such information and access is necessary for Plaintiff to: (a) understand why distributions have not been made to Plaintiff when distributions have been allocated to her; (b) ensure that Plaintiff is receiving accurate financial information from the Regional Center; and (c) to determine what her ownership percentage is after the sale of third member’s interest.

33. Understanding the basis for these decisions, or lack thereof, as well as the financial status of the Regional Center, is reasonably related to Plaintiff's interest as a Member and significant stakeholder in the Regional Center.

COUNT I
(Demand for Inspection Pursuant to 6 *Del. C.* § 18-305)

34. Plaintiff realleges the allegations of the foregoing as if fully set forth herein.

35. Plaintiff is a member of the Regional Center and has complied with the provisions of 6 *Del. C.* § 18-305 relating to the form and manner of making a demand to inspect, and make copies and extracts from, the books and records identified in the Demand Letters.

36. Pursuant to 6 *Del. C.* § 18-305, and as set forth in the Demand Letters, Plaintiff is entitled to inspect and copy the documents requested for proper purposes, and the documents identified are reasonably related to Plaintiff's interests as a Member of the Regional Center.

37. Further, Plaintiff's right to inspect the books and records of the Regional Center under the Operating Agreement is nearly identical to Plaintiff's statutory right to the same under 6 *Del. C.* § 18-305.

38. Neither the Regional Center nor Barnett has provided Plaintiff with adequate information from which Plaintiff could reasonably ascertain (1) the status of her investment; (2) why no distributions have been made to Plaintiff despite the

2017 K-1 reflecting that she has received such distributions;(3) her ownership interest; and (4) whether Barnett and the Regional Center are fulfilling their contractual and statutory obligations to Plaintiff.

39. To date, the Regional Center has failed to produce adequate books and records for inspections, thereby precipitating this action.

40. For these reasons, Plaintiff requests access to specific categories of books and records relating to the Regional Center's distributions and its ability to make such distributions in light of the Regional Center's overall financial health and current investments and obligations.

41. Defendant's failure to provide any meaningful response, let alone a fulsome response, to the Demand Letters is in violation of 6 *Del. C.* § 18-305, the Operating Agreement, and relevant case law and entitles Plaintiff to the relief set forth herein.

WHEREFORE, Plaintiff, LELA GOREN, respectfully requests this Court enter a judgment compelling Defendant EXTELL NEW YORK REGIONAL CENTER LLC, a Delaware limited liability company, to immediately permit the inspection and copying of their books and records as set forth in the Demand Letters and granting Plaintiff such other relief this Court deems appropriate, including costs, expenses, and reasonable attorney's fees incurred in connection with this action.

SAUL EWING ARNSTEIN & LEHR LLP

/s/Elizabeth S. Fenton

Elizabeth S. Fenton (#5563)

1201 North Market Street

Suite 2300

Wilmington, DE 19801

(302) 421-6800

Elizabeth.Fenton@saul.com

Attorneys for Plaintiffs

Of Counsel

Phillip M. Hudson III (*pro hac vice admission pending*)

SAUL EWING ARNSTEIN & LEHR LLP

Florida Bar No. 518743

200 South Biscayne Blvd., Suite 3600

Miami, Florida 33131-2395

(305) 428-4500

pmhudson@saul.com

Dated: October 24, 2018