

NAME SEARCHED: Neptune, LLC

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Prepared by: Shanu Gujaria
Research Analyst

Date:06/16/2017

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11602687	<u>Not Alerted</u>	KYC 1790748	 Neptune, LLC	Country: VIRGIN ISLANDS, U.S.
11602692	<u>Not Alerted</u>	KYC 1790748	 Neptune, LLC	Country: UNITED STATES

PCR:

C20170637909090 Neptune, LLC 6201215544 NCA customised Closed - No Hit 16/06/2017

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BIS RESULTS

Negative Media:

The Santa Fe New Mexican (New Mexico)

Distributed by McClatchy-Tribune Business News

September 9, 2014 Tuesday

King donors' address linked to sex offender

BYLINE: Steve Terrell, The Santa Fe New Mexican

SECTION: STATE AND REGIONAL NEWS

LENGTH: 383 words

Sept. 09--Democratic gubernatorial candidate Gary King has received more than \$35,000 in campaign contributions from an address in the U.S. Virgin Islands that also is listed as

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King donors' address linked to sex offender The Santa Fe New Mexican (New Mexico)
September 9, 2014 Tuesday

the address of a convicted sex offender who years ago bought property near Stanley from King's family.

Jeffrey Epstein is listed in the New York state sex offender registry as currently residing at 6100 Red Hook Quarter B3, St. Thomas Virgin Islands. He was convicted in 2008 of soliciting sex from girls as young as 14. Police said Epstein had sex with five teenagers he hired to give him massages at his Florida home.

More than \$30,000 in contributions listed in King's latest campaign finance report, filed Monday, came from several businesses using Epstein's address. These include \$10,200 from JEJE LLC; \$5,200 from Maple Inc.; and \$5,000 each from FT Real Estate, Laurel Inc. and Nautilus Inc. Earlier this year, King received another contribution from a business at the same address -- \$5,200 from Neptune LLC.

A spokesman for the King campaign said Monday, "If anything is found to be improper about any contribution, they will be returned or donated to charity."

If so, it wouldn't be the first time King returned campaign money linked to Epstein.

In 2006, following Epstein's arrest, Democratic politicians from Bill Richardson down to the Santa Fe County sheriff returned Epstein campaign contributions. King gave back \$15,000 that an Epstein company called The Zorro Trust had contributed to his campaign for attorney general.

At the time, King said, "I don't think I've ever met him personally. He knows other members of my family better."

Epstein had purchased his 10,000-acre Zorro Ranch in Stanley from King's father, former Gov. Bruce King, in 1993.

Then-Gov. Bill Richardson donated \$50,000 in Epstein campaign contributions to charity.

Epstein's 23,000-square-foot hilltop mansion, which was twice the size of the second largest home in Santa Fe County, was thought at that time to be the biggest house in the state.

Contact Steve Terrell at [REDACTED] Read his political blog at www.santafenewmexican.com/news/blogs/politics.

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JOURNAL-CODE: SF

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King donors' address linked to sex offender The Santa Fe New Mexican (New Mexico)
September 9, 2014 Tuesday

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Non-Negative Media:

The Santa Fe New Mexican (New Mexico)

Distributed by McClatchy-Tribune Business News

July 4, 2014 Friday

Reports show Martinez still has lopsided lead in race for campaign cash

BYLINE: Steve Terrell, The Santa Fe New Mexican

SECTION: NATIONAL POLITICAL NEWS

LENGTH: 977 words

July 04--Gov. Susana Martinez's campaign has more than 37 times more money in the bank than her Democratic opponent, Gary King, according to campaign finance reports filed Thursday.

According to the reports, filed with the Secretary of State's Office, the incumbent Republican governor raised more than \$869,000 in the past month and spent \$860,054, which left her with more than \$4.3 million in cash on hand.

King, who won the five-person Democratic primary in early June, raised \$320,665 -- of which \$200,000 came from his own pocket. He spent a little over \$280,000, mostly on two television commercials, which left him with slightly more than \$116,000 in the bank.

While the person with the most money doesn't always win the election, the lopsided figures give Martinez a huge advantage for carrying her message to voters. And such a wide spread could discourage large out-of-state donors from contributing to King. The head of the Democratic Governors Association already has said that group won't be spending money in New Mexico.

The television battle has been intense since the primary, with the Martinez campaign as well as the Republican Governors Association releasing ads bashing King, who is the state attorney general and the son of a former governor.

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Reports show Martinez still has lopsided lead in race for campaign cash The Santa Fe
New Mexican (New Mexico) July 4, 2014 Friday

According to Martinez's reports, the campaign bought television and radio time totaling \$475,327. The campaign also paid consultant Jay McCleskey's company more than \$64,000 to produce the ads.

In addition, a report filed Thursday by RGA New Mexico PAC, a political action committee of the Republican Governors Association, shows that group spent a total of \$571,290 on ads attacking King. That's \$12,650 to produce the spots and \$548,040 for buying the TV time.

King paid Canal Partners Media, a Georgia company, \$200,000 to produce and place his ads.

As has been the case in past Martinez reports, a large share of her money came from Texas. Eleven of her 15 largest contributors were from the Lone Star State.

New Mexico election law limits individual campaign contributions to \$5,200 for the primary and \$5,200 for the general election. So this is the last report in this cycle in which contributors could give as much as \$10,400 -- as long as \$5,200 of it was made on or before June 3.

Martinez's largest contributors all contributed on that date.

Those who gave \$10,400 were the Republican National Committee; Associations Inc of Dallas, a media services company; Noble Royalties, an oil and gas royalties company of Addison, Texas; Compass Royalty Management of Addison; Jay Adair of Dallas; Marcus Hiles, Chairman & CEO of Western Rim/Mansions Custom Homes in Grand Prairie, Texas, and his wife, Nancy Hiles, who listed her occupation as homemaker; George Ryan of Dallas, CEO of Ryan Separate Partnership, which is involved in real estate; the National Shooting Sports Foundation of Newton, Conn.; and Diane Wilsey, a San Francisco socialite and philanthropist.

Martinez also had several \$10,000 contributors: Lee Roy Mitchell of Dallas, founder of Cinemark Theaters; Eloisa Hendric, an educator in El Paso; the Border Livestock Co. of El Paso; someone listed as "Director of Mural Technologies" of El Paso; and Edgar Medina, an account executive in Glendale, Ariz.

Many of the top contributors to Martinez's campaign also contributed to Susana PAC, a separate political committee run by the governor's political team. Among those contributors were Hendric, Medina and the Border Livestock Co. All gave \$10,000 to Susana PAC.

The PAC raised \$70,811, spent \$20,764 and has \$120,814 cash on hand. Susana PAC contributed \$5,200 to Susan Riedel, the Republican candidate for attorney general; \$2,700 to Secretary of State Diana Duran; and \$2,575 to GOP Land Commissioner candidate Aubrey Dunn Jr. In 2012, there was a rift between the governor and Dunn because she didn't support him in his Senate race against Democrat Phil Griego. Apparently, that wound has healed.

King had two \$10,400 donors, rancher Ed Healy and his wife, Trudy Healy, of Taos. However, their contribution was made June 25, after the deadline. Ken Ortiz, chief of staff for the Secretary of State's Office, said Thursday, "If someone made two contributions of \$5,200 after the primary, that would be \$5,200 over the general election limit."

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Reports show Martinez still has lopsided lead in race for campaign cash The Santa Fe New Mexican (New Mexico) July 4, 2014 Friday

King campaign manager Keith Breitbach told The Associated Press on Thursday that he thinks the contributions are permissible because \$5,200 from each went for retirement of King's debt from the primary election. King has more than \$535,000 in unpaid campaign debt.

King's \$5,200 contributors included retired publisher Alan Webber of Santa Fe, who came in second to King in the primary.

Others who gave King \$5,200 were Pojoaque Gaming Inc.; the Buffalo Thunder Resort & Casino in Pojoaque Pueblo; Amelia Carson of Santa Fe; Bill King of Moriarty; HBRK Associates, a New York investment company; Neptune LLC, a Virgin Islands investment company; and Darren Indyke, a New York lawyer.

King's report shows that the campaign paid Steve Verzwyvelt – his former campaign manager who only lasted two days – \$7,538. Verzwyvelt was fired after a right-wing publication discovered several juvenile tweets that some women found offensive.

Webber reported raising \$41,263 in the last days of the primary. He spent \$140,471 since the last report, leaving just over \$71,00 in the bank. He still has \$150,000 in unpaid campaign debt, but that is from loans from himself and his wife.

Another also-ran, Lawrence Rael, raised \$14,520 since the last report, spent \$95,911 and has \$28,094. Rael has \$176,950 in unpaid debt.

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April 1, 2014 Tuesday

United States Courts Opinions: Supreme Court of New York: Neary v Burns

LENGTH: 6047 words

DATELINE: Albany

Supreme Court of New York has issued the following order:

[*1]

Neary v Burns

2014 NY Slip Op 24083

Decided on March 28, 2014

Supreme Court, Kings County

Demarest, J.

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on March 28, 2014

Supreme Court, Kings County

Thomas J. Neary and Salvatore Benevento, Plaintiffs,
against

Arthur Burns and 2784 West 15th Street, LLC, Defendants.

6290/2011

Attorneys for Plaintiff:

Thomas Torto, Esq.

419 Park Avenue South, Suite 406

New York, NY 10016

Attorney for Defendants:

Michele Forzley, Esq.

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5405 Tuckerman Lane #231

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Carolyn E. Demarest, J.

In this action by plaintiffs Thomas J. Neary (Neary) and Salvatore Benevento (Benevento) (collectively, plaintiffs) against defendants 2784 West 15th Street, LLC (2784 LLC) and Arthur Burns (Burns), Burns moves for an order, pursuant to CPLR 3211, dismissing plaintiffs' complaint in its entirety, and awarding him full reimbursement of his legal fees and costs.

BACKGROUND

Salvatore Judice (Mr. Judice) was the owner of two parcels of real property. One of these parcels is located at 2776, 2778, and 2784 West 15th Street, in Brooklyn (Block 8996, Lots 89, 91, and 92) (the 2784 premises), and the other parcel is located at 363-367 Neptune Avenue, in Brooklyn (the Neptune Avenue premises). The Neptune Avenue premises consists of two buildings with six units in each of them. When Mr. Judice died in 1973, he left the 2784 premises and the Neptune Avenue premises to his five children, i.e., Grace Burns (Grace), Anna Neary (Anna), Lucy Judice (Lucy), John E. Judice (John), and Julia J. Benevento (Julia), and, by subsequent deeds, both of these premises were conveyed to them as tenants in common. Plaintiffs Neary and Benevento have resided virtually their entire lives in residential apartments in the building at 367 Neptune Avenue within the Neptune Avenue premises as rent-stabilized tenants. Anna died in 1987, and she left her estate to her husband, Thomas J. Neary, Sr. (Thomas), who died on August 2, 2004. Thomas' estate passed to plaintiff Thomas Neary, Salvatore Neary (Salvatore), and Mary Ann Peraccio (Mary Ann), who thereby inherited Thomas' ownership interest both in the 2784 premises and the Neptune Avenue premises.

In 2006, the family members that held interests in the 2784 premises and the Neptune Avenue premises agreed to form two limited liability companies (LLCs), i.e., 2784 LLC and 363-367 Neptune Avenue, LLC (Neptune LLC), to which their respective interests in these properties would be transferred, with Ray McRory, Esq. acting as their attorney. On November 10, 2006, the Operating Agreement of 2784 LLC was executed by its initial members, who were listed as: Grace (by Burns, as her attorney-in-fact), Julia (by Benevento, as her attorney-in-fact), Neary, Salvatore, and Mary Ann. An almost identical Operating Agreement of Neptune LLC was also executed by these members on the same date. The members conveyed their interests in the 2784 premises to 2784 LLC and their interests in the Neptune Avenue premises to Neptune LLC. Pursuant to the Operating Agreements, Burns was named the manager of both LLCs.

Thereafter, John died on March 28, 2007 and his estate passed to Carmel Salerno, Patricia Judice, Joanne Judice Rafaella, and Salvatore Judice (Judice). The Estate of John [*2]conveyed its interests in the 2784 premises and the Neptune Avenue premises to the two LLCs. Lucy Judice died without having children, and her estate conveyed its interest in the 2784 premises and the Neptune Avenue premises to the two LLCs. To reflect these changes, on November 1, 2007, an Amended and Restated Operating Agreement for 2784 LLC was executed by all of the initial members, and by the Estate of John (by Judice, as the executor), as a new member. Schedule A to 2784 LLC's Operating Agreement

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United States Courts Opinions: Supreme Court of New York: Neary v Burns US Official
News April 1, 2014 Tuesday

(annexed as exhibit 2 to Burns' motion papers) lists the voting percentage interests of its members as being: 44.8% for the Estate of John, 18.4% for Grace, 18.4% for Julia, and 18.4% for the Neary Group, consisting of three listed members, i.e., Neary, Salvatore, and Mary Ann. At some time prior to 2011, Julia died, and her estate passed to her two sons, Benevento and Anthony Bevent (Anthony), in equal shares, pursuant to a will which also named them as co-executors.

In April 2009, members of **Neptune LLC** were requested to vote on a proposal to sell the Neptune Avenue premises. Benevento (on behalf of the Estate of Julia) and Neary voted no to this proposal. By a letter dated April 21, 2009, the members of **Neptune LLC** were informed that on April 20, 2009, 73.3% of the **Neptune LLC's** membership had voted in favor of this proposal, and that, as a result, Burns was authorized to sell the Neptune Avenue premises at the highest and best price possible and to take any necessary steps to do so, including vacating all tenants from such premises.

In September 2009, Burns, on behalf of 2784 LLC, executed a purchase agreement to sell the 2784 premises to M & A Realty Services, LLC for a sales price of \$1,050,000. In 2010, the 2784 premises were sold with the purchase price for this sale paid in cash and by a purchase money mortgage. Prior to the sale, 2784 LLC's members signed a Certificate of Members of 2784 LLC Resolution to Sell Real Property (the Certificate) in accordance with section 3.4 of the Operating Agreement, which required that the manager have prior written approval of a majority vote of all members in order to sell the 2784 premises. The Certificate was signed by the Estate of John (by Judice), Grace (by Burns, as her attorney-in-fact), the Estate of Julia (by Anthony), and the Neary Group (by Mary Ann, as the authorized representative), and reflected their respective interests in 2784 LLC of 44.8% for the Estate of John, 18.4% for Grace, 18.4% for the Estate of Julia, and 18.4% collectively for the Neary Group.

Using the funds obtained from this sale of the 2784 LLC premises, Burns, as the manager of 2784 LLC, gave a mortgage and loan from it to **Neptune LLC** for \$250,000 at five percent interest with a mortgage on the Neptune Avenue premises to be paid when these premises are sold. These monies were allegedly used to buy out the non-family tenants of the Neptune Avenue premises so as to have them vacate their apartments there.

On August 13, 2010, an action was filed by **Neptune LLC** against Neary, Benevento, Carmel Salerno (Carmel), and the Estate of Julia (363-367 Neptune Avenue, LLC v Neary, Sup Ct, Kings County, index No. 9282/10) (the Neptune Avenue action) for a judgment requiring Neary, Benevento, and Carmel to vacate their apartments, requiring [*3]the Estate of Julia to take action to remove Neary, Benevento, and Carmel from such apartments, and awarding damages in the sum of \$108,000 against Neary, \$216,000 against Benevento, and \$324,000 against Carmel due to their failure to vacate. In the Neptune Avenue action, Neary and Benevento asserted that Burns had harassed them, refused to make repairs to the building, and denied them essential services in an effort to make the building uninhabitable so that they would be forced to vacate it. **Neptune LLC**, in that action, contended that it was entitled to sell and vacate the Neptune Avenue premises pursuant to the Operating Agreement for **Neptune LLC**. By a decision and order dated December 15, 2010, Justice Mark I. Partnow denied a motion by **Neptune LLC** to require Neary, Benevento, and Carmel to vacate the Neptune Avenue premises, finding that while

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Neptune LLC could elect to dissolve and sell the premises pursuant to the majority vote of its members, it could not evict Neary, Benevento, and Carmel and was required to sell the Neptune Avenue premises subject to their rent-stabilized leases.

In December 2010, Burns resigned as the manager of 2784 LLC, and Judice is now its current manager. Burns claims that he and now Judice have been distributing 2784 LLC funds from the sale of the 2784 premises pro rata to the members after enough cash is accumulated and obligations paid, and that plaintiffs admit that they received distributions as members. The Neptune Avenue premises have not yet been sold and Benevento and Neary remain in occupancy as tenants there.

On March 18, 2011, plaintiffs filed the instant action, which initially named 2784 LLC and Burns, along with McRory and McRory, PLLC and Raymond McRory, Esq. (collectively, the McRory defendants), as defendants. On May 2, 2011, plaintiffs served a complaint, and, on May 16, 2011, plaintiffs served an amended verified complaint as of right pursuant to CPLR 3025 (a). Plaintiffs' amended complaint alleged that Burns, acting on behalf of 2784 LLC and his own personal interests, unilaterally and improperly diverted funds belonging to 2784 LLC for purposes unrelated to it, including making payments in excess of \$200,000 to buy out the tenants who resided in the building at the Neptune Avenue premises, and making payments of legal fees to the McRory defendants unrelated to 2784 LLC. It further alleged that Burns, acting on behalf of 2784 LLC and his own personal interests, unilaterally and improperly withheld from the net proceeds realized from the sale of the 2784 premises distributions due to them because they had not vacated their rent-stabilized apartments at the Neptune Avenue premises. Specifically, plaintiffs alleged that Burns withheld the sum of approximately \$40,000 (as of the date of the amended complaint) in partial distributions due to them from the sale of the 2784 premises. Plaintiffs asserted that Burns, as the manager of 2784 LLC, owed them a fiduciary duty as members of 2784 LLC.

Plaintiffs' amended complaint alleged three causes of action. Plaintiffs' first cause of action against Burns and 2784 LLC sought an accounting of the affairs and monies of 2784 LLC. Plaintiffs' second cause of action against Burns alleged that Burns diverted monies belonging to 2784 LLC and withheld distributions due to them from the sale of [*4]the 2784 premises, which constituted a breach of his fiduciary duties to them. It sought a judgment surcharging Burns in the amounts which are determined to be improperly diverted, converted, and/or misappropriated. Plaintiffs' third cause of action against the McRory defendants sought a judgment requiring them to disgorge all legal fees paid to them by 2784 LLC which were unrelated to 2784 LLC.

On September 15, 2011, Burns served an answer to plaintiffs' amended complaint, which denied its material allegations and raised four affirmative defenses. Burns' first affirmative defense alleged that plaintiffs' amended complaint fails to state a cause of action. Burns' second affirmative defense alleged that the court should not proceed in the absence of persons who should be parties. Burns' third affirmative defense alleged that Benevento has no standing and is not a proper party to this action as he is a co-executor acting without authority in relation to the Estate of Julia, who was the member of 2784 LLC, and that Neary has no standing and is not a proper party to this action as he is a member of a group called the Neary Group that is the member of 2784 LLC. Burns' third affirmative

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defense further alleged that plaintiffs' amended complaint should be dismissed for failure to join indispensable parties. Burns' fourth affirmative defense alleged that the court lacks subject matter jurisdiction over plaintiffs' claims.

Following discussions with the attorneys for the McRory defendants and limited document production by them, plaintiffs, by a Stipulation of Discontinuance dated January 27, 2012, discontinued this action as against the McRory defendants. On February 23, 2012, Grace (who, as noted above, was Burns' mother and a member of 2784 LLC) died at the age of 99 years.

By notice of motion dated March 6, 2013, plaintiffs moved for a default judgment, pursuant to CPLR 3215, against 2784 LLC. On April 4, 2013, plaintiffs withdrew that motion and extended the time for 2784 LLC to serve an answer to their amended complaint in exchange for its production of bank statements for its checking account, which 2784 LLC produced in or about the end of May 2013. 2784 LLC has not yet interposed an answer to plaintiffs' amended complaint.

On June 28, 2013, Burns produced some documents in response to a February 25, 2013 notice to produce for discovery and inspection which was served by plaintiffs. Plaintiffs assert that their review of 2784 LLC's bank statements and other documents produced in this action have revealed that they have direct claims against Burns and 2784 LLC for the alleged wrongful withholding from them of over \$80,000 in distributions due to them from the net sale proceeds from the 2784 premises.

On September 11, 2013, plaintiffs moved for leave to serve an amended summons and second amended verified complaint. Plaintiffs sought to amend the summons and first amended complaint to delete the McRory defendants from the caption and to remove the cause of action asserted as against them to reflect their voluntary discontinuance of all claims against them. Plaintiffs further sought to amend the first amended complaint in order to limit it to direct claims against 2784 LLC and Burns solely for wrongfully [*5]withholding from them over \$80,000 in distributions due to them from the net sale proceeds from the 2784 premises.

Plaintiffs' second amended verified complaint (annexed as exhibit A to plaintiffs' motion papers in motion sequence number 2) alleges that Neary is a member of 2784 LLC, having a 6.133% ownership interest therein. It further alleges that Benevento has a 9.2% beneficial interest in 2784 LLC through the Estate of Julia, who was a member of 2784 LLC, having a 18.4% ownership interest therein, and that Benevento was and is the co-executor of the Estate of Julia and is entitled to 50% of Julia's estate.

Plaintiffs' second amended complaint sets forth that on January 20, 2010, 2784 LLC, under the sole and exclusive management of Burns, sold the 2784 premises to M & A Realty Services, LLC for the sum of \$1,050,000. It alleges that as of January 22, 2010, the sum of \$544,018.29 was available for distribution to 2784 LLC members from the net proceeds of the sale of the 2784 premises, and that, as of March 9, 2010, distributions of the net proceeds from the sale of the 2784 premises were made to 2784 LLC members, including distributions paid directly to Neary and Benevento, as members. It asserts that Burns, in breach of independent fiduciary duties he owed to Neary and Benevento in their own, individual capacities, unilaterally and wrongfully withheld from them their fair share of

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News April 1, 2014 Tuesday

distributions due to them from the net proceeds of this sale in violation of the Operating Agreement and applicable Limited Liability Company Law. Specifically, it alleges that Burns withheld from these sale proceeds the sum of \$35,745.83 from Neary and the sum of \$44,831.58 from Benevento.

Plaintiffs' second amended complaint alleges three causes of action. Plaintiffs' first cause of action against 2784 LLC alleges that 2784 LLC is in possession and control of the funds wrongfully withheld from them by Burns from their share of distributions of the net sale proceeds of the 2784 premises in violation of the Operating Agreement and applicable law, and that they have been damaged in the total sum of \$80,577.41, plus interest from March 9, 2010. Plaintiffs' second cause of action alleges a direct claim by Neary against Burns, which asserts that Burns owed an independent fiduciary duty to Neary, as a member of 2784 with a 6.133% ownership interest, that Burns wrongfully withheld the sum of \$35,745.83 from his share of distributions from the net proceeds of the sale of the 2784 premises, and that he is entitled to a judgment in this sum. Plaintiffs' third cause of action alleges a direct claim by Benevento against Burns, which asserts that Burns owed an independent fiduciary duty to Benevento as a member of 2784 LLC with a 9.2% ownership interest and/or as the holder of a 9.2% beneficial interest in 2784 LLC through the Estate of Julia, that Burns wrongfully withheld the sum of \$44,831.58 from his share of distributions from the net proceeds of the sale of the 2784 premises, and that he is entitled to a judgment in this sum.

On October 24, 2013, Burns filed his instant motion for an order dismissing plaintiffs' amended verified complaint. In his motion papers, Burns opposed plaintiffs' [*6] motion to amend and sought an order denying plaintiffs' motion.[FN1] 2784 LLC has not submitted any papers with respect to Burns' motion, and it took no position at oral argument

In support of their motion to amend, plaintiffs maintained that their proposed amendment was meritorious since they were entitled to their full share of distributions from these sale proceeds and that the withholding of over \$80,000 from their distributions was wrongful and improper. Moreover, no prejudice was demonstrated by Burns with respect to the proposed amendment since it simply streamlines plaintiffs' amended complaint and does not assert any new facts or causes of action against Burns. In addition, there could be no prejudice to 2784 LLC since, as noted above, it has not as yet served an answer in this action, and prejudice to warrant denial of leave to amend requires some indication that the defendants were hindered in the preparation of their case or were prevented from taking some measure in support of their position (see *McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]; *Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). Furthermore, while there was a two-year delay by plaintiffs in seeking such leave, discovery is ongoing, and depositions have not yet been held (see *Rosicki, Rosicki & Assoc., P.C. v Cochems*, 59 AD3d 512, 514 [2d Dept 2009]).

Thus, since a motion for leave to amend a complaint should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit (see CPLR 3025 [b]; *Aurora Loan Servs., LLC v Thomas*, 70 AD3d 986, 987 [2d Dept 2010]; *Lucido v Mancuso*, 49 AD3d 220, 222 [2d Dept 2008], appeal withdrawn 13 NY3d 813 [2009]), and, here, the proposed amendment was not palpably insufficient or patently devoid of merit and there

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was also no showing of prejudice or surprise resulting directly from plaintiffs' delay in seeking leave, the court, at oral argument held on November 20, 2013, granted plaintiffs' motion for leave to file their second amended verified complaint. While Burns' motion was originally directed as against plaintiffs' first amended complaint, since the court has granted plaintiffs' motion to amend their first amended complaint during the pendency of Burns' motion, the court will address this motion as against plaintiffs' second amended complaint (see 49 W. 12 Tenants Corp. v Seidenberg, 6 AD3d 243, 243 [1st Dept 2004]; Livadiotakis v Tzitzikalakis, 302 AD2d 369, 370 [2d Dept 2003]; Sage Realty Corp. v Proskauer Rose, 251 AD2d 35, 38 [1st Dept 1998]).

DISCUSSION

In support of his instant motion, Burns argues that this action must be dismissed based upon plaintiffs' lack of standing to sue. CPLR 3211 (a) (3) provides for dismissal [*7]of an action where "the party asserting the cause of action has not legal capacity to sue." CPLR 3211(a) (3) also embraces the ground of the lack of standing to sue, and this statute is, therefore, available to support a motion to dismiss on this ground (see Hecht v Andover Assocs. Mgt. Corp., 2014 NY Slip Op 0063, *2 [2d Dept 2014]).

Burns, in arguing that plaintiffs lack standing to sue, relies upon the third affirmative defense in his answer to the first amended complaint and contends that plaintiffs are not proper parties and lack standing to sue 2784 LLC and him, as its former manager, because they are allegedly not members of 2784 LLC in their individual capacities.

Burns argues that Neary is not a proper party and lacks standing to sue because the member of 2784 LLC is the Neary Group, as opposed to Neary. He points to Schedule A of the Operating Agreement (exhibit 2 to his motion papers), which lists the Neary Group as consisting of three members with a 18.4% voting percentage interest, and the footnote to that Schedule which states that the three Nearys (Neary, Salvatore, and Mary Ann) have each contributed 100% of their respective undivided interest as tenants in common in the 2784 premises to 2784 LLC, and that "[t]he Neary Group owns an 18.4% Member Interest as a group," and "has appointed Mary Ann . . . to represent them in voting their total 18.4% Voting Percentage Interest until otherwise notified in writing by them."

Burns' argument must be rejected. The membership interest of the Nearys was referred to as the Neary Group simply because their interest in the 2784 premises derived from Anna and thereafter passed to Neary and his two siblings, which formed the Neary Group. The mere fact that Neary permitted Mary Ann to vote the collective 18.4% of the Neary Group does not negate Neary's status as an individual member of 2784 LLC in his own individual right with a 6.1333% (one-third of 18.4%) ownership interest. Indeed, Schedule A of the Operating Agreement lists Neary separately as a "Member" and sets forth his residence address and social security number. In fact, Neary was an initial member of 2784 LLC at the time of its formation in 2006, and he signed the initial Operating Agreement and the Amended and Restated Operating Agreement as an "Initial Member" (see exhibit A to plaintiffs' opposition papers). Additionally, Neary, by an e-mail dated February 24, 2010 (exhibit C to plaintiffs' opposition papers), gave Burns written notice of his intent to vote his own 6.1333% membership interest separately. Thus, Neary has established that he is, in fact, an individual member of 2784 LLC and entitled to maintain this action in his own right without the joinder of the other members of the Neary Group.

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United States Courts Opinions: Supreme Court of New York: Neary v Burns US Official
News April 1, 2014 Tuesday

Burns further asserts that Benevento is not a member of 2784 LLC, but, rather, the member is the Estate of Julia. He argues that Benevento cannot claim a payment allegedly due to the Estate of Julia. He states that while Benevento is a co-executor of the Estate of Julia, he is not acting on behalf of the Estate with his brother, Anthony, who is the co-executor.

This argument by Burns is unavailing since Benevento is not making a claim on [*8]behalf of the Estate of Julia, but in his own right as the holder of a beneficial interest of 9.2% of 2784 LLC. Benevento does not seek to recover sums due to the Estate of Julia. Rather, he seeks to recover distributions from the sale of the 2784 premises owed to him individually which, he claims, Burns wrongfully withheld from him by making deductions to his share of such sale proceeds because he resides as a rent-stabilized tenant at the Neptune Avenue premises. This claim belongs to Benevento and is not shared by Anthony, the other beneficiary and the co-executor of the Estate of Julia, who is not a tenant at the Neptune Avenue premises and received his full share of such proceeds without any deductions. Thus, Benevento, and not the Estate of Julia, is the real party in interest in this litigation. Moreover, it is undisputed that Benevento is the transferee of one-half of the interest held by Julia, and, thus, the holder of a "beneficial interest" in 2784 LLC. Such a beneficial interest has been recognized as conferring standing upon a party to bring a derivative action on behalf of a corporation pursuant to Business Corporation Law § 626 (a) (see *Bernfeld v Kurilenko*, 91 AD3d 893, 894 [2d Dept 2012]; *Shui Kam Chan v Louis*, 303 AD2d 151, 152 [1st Dept 2003]), which has been held applicable to limited liability companies (see *Tzolis v Wolff*, 10 NY3d 100, 121 [2008]). While this is not a derivative action, this beneficial interest likewise furnishes a basis for Benevento's individual claims against 2784 LLC and Burns, and the fact that Benevento obtained his interest through the Estate of Julia does not deprive him of standing in this action (see *Bernfeld*, 91 AD3d at 894).

Furthermore, Burns previously recognized and acknowledged both Neary and Benevento as members of 2784 LLC. An e-mail by Burns dated February 9, 2009 (exhibit B to plaintiffs' opposition papers) stated that "the three Nearys . . . are direct owners" of 2784 LLC. An e-mail by Burns dated February 22, 2010 (exhibit 6 to Burns' motion papers) regarding distributions sent to Neary and Benevento inquired as to "[h]ow do the Nearys want their checks" and whether they wanted "[o]ne to Mary Ann or 1/3 to each sib[ling]." Burns, in this e-mail, further inquired as to how he should distribute Julia's funds, noting that the checks would have to be made out to her Estate, and he asked whether he should issue two checks, or one each with the co-executor's name also on the check. He additionally stated, in this e-mail, that he "only want[ed] to hear from members," that "[t]he Nearys should elect if they want to vote as a group or individually," and that the Beneventos will have to decide themselves." By an e-mail dated February 24, 2010 (exhibit C to plaintiffs' opposition papers), Neary responded that he wanted the check issued to him.

Significantly, plaintiffs point out that Burns has already issued separate checks to them in payment of their distributions of the net sale proceeds, and that they are now simply complaining that they did not receive the full amount due to them. Burns, in paragraph 17 of his attorney's affirmation in support of his motion, admits that plaintiffs have "received distributions." Thus, by such distributions, Burns has acknowledged Neary's membership

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United States Courts Opinions: Supreme Court of New York: Neary v Burns US Official
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interest and Benevento's beneficial membership in 2784 LLC and [*9]their rights to receive such distributions.

Notably, in the December 15, 2010 decision and order in the Neptune Avenue action, Justice Partnow previously acknowledged that Neary is a member of Neptune LLC and that Benevento has a beneficial interest in Neptune LLC. Burns, in his attorney's affirmation, has admitted that both Neptune LLC and 2784 LLC "have identical members with only a slight difference in percentage ownership." Therefore, it follows that Neary is a member of 2784 LLC in his own right in the same way that he is a member of Neptune LLC, and that Benevento holds a beneficial interest in 2784 LLC in his own right in the same way that he holds a beneficial interest in Neptune LLC.

Thus, Neary and Benevento do not lack standing to maintain this action. Dismissal of this action, pursuant to CPLR 3211 (a) (3), must, therefore, be denied.

Burns further contends that plaintiffs have failed to join the other members of 2784 LLC and that, therefore, this action must be dismissed, pursuant to CPLR 3211 (a) (10), which provides for the granting of dismissal of a claim against a party based upon the ground that "the court should not proceed in the absence of a person who should be a party."

This contention by Burns is devoid of merit since plaintiffs' second amended complaint asserts direct claims by plaintiffs to recover for distinct injuries that they individually sustained by Burns' alleged wrongful withholding of their proportionate share of distributions of the net proceeds from the sale of the 2784 premises. Plaintiffs are thus alleging claims based upon the breach of a duty owed directly to them, independent of any duty owed to 2784 LLC or any of its other members (see generally *Abrams v Donati*, 66 NY2d 951, 953 [1985], rearg denied 67 NY2d 758 [1986]; *Behrens v Metropolitan Opera Assn., Inc.*, 18 AD3d 47, 50 [1st Dept 2005]; *Lawrence Ins. Group, Inc. v KPMG Peat Marwick LLP*, 5 AD3d 918, 919 [3rd Dept 2004]). Plaintiffs do not seek to recover any sums that may be due to the other members of 2784 LLC or for any damage to 2784 LLC. Plaintiffs' claims relate only to their own direct claims as against Burns and 2784 LLC and, as a result, do not require the joinder of the other members of 2784 LLC. Consequently, dismissal of plaintiffs' action for failure to join necessary parties must be denied.

Burns also contends that this action must be dismissed, pursuant to CPLR 3211 (a) (7), based upon plaintiffs' failure to state a cause of action. "It is well settled that, as a general rule, on a motion to dismiss the complaint for failure to state a cause of action under CPLR 3211 (a) (7), the complaint must be construed in the light most favorable to the plaintiff" (*Gruen v County of Suffolk*, 187 AD2d 560, 562 [2d Dept 1992]; see also *Rosen v Watermill Dev. Corp.*, 1 AD3d 424, 425 [2d Dept 2003]), and the pleading is to be afforded a liberal construction (CPLR 3026). The court must also accept the facts as alleged in the complaint and submissions in opposition to the motion as true and accord the plaintiff "the benefit of every possible favorable inference" (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; see also *Thomas v LaSalle Bank N.A.*, 79 [*10]AD3d 1015, 1017 [2d Dept 2010]). The court, in accepting the facts alleged in the complaint to be true, must "determine only whether the facts alleged fit within any cognizable legal theory" (*Ruffino v New York City Tr. Auth.*, 55 AD3d 817, 818 [2d Dept 2008], quoting *Morris v Morris*, 306 AD2d 449, 451 [2d Dept 2003]; see also *Hurrell-Harring v State of New York*, 15 NY3d 8, 20 [2010]; *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570-571 [2005]).

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Burns argues that plaintiffs have failed to state a cause of action because there was no wrongdoing by him. Burns' attorney asserts that Burns sent e-mails discussing at length that 2784 LLC would give a loan to Neptune LLC and that this loan was authorized by the members. She further asserts that there is no damage to any member because the \$250,000 loaned by 2784 LLC is earning interest at five percent and is secured by the real estate, and that when the Neptune Avenue premises are sold, the mortgage will be paid to 2784 LLC with interest and all of the members of both 2784 LLC and Neptune LLC will receive their pro rata shares. She also states that plaintiffs received payments at the same time and "in pro rata amounts as the other members."

The second amended complaint, however, does not challenge the \$250,000 loan made by 2784 LLC to Neptune LLC and does not allege that the sale of the 2784 premises was unauthorized. Rather, plaintiffs assert that Burns wrongfully deprived them of their fair share of the distributions from the net proceeds of the sale of these premises. Specifically, plaintiffs contend that Burns unilaterally and wrongfully withheld sums from their individual distributions because of their refusal to vacate their rent-stabilized apartments at the Neptune Avenue premises. Plaintiffs have annexed a letter by Burns dated March 9, 2010 (exhibit E to plaintiffs' opposition papers), which establishes that Burns, referring to Benevento and Neary's apartments at the Neptune Avenue premises, unilaterally deducted from their individual distributions of the net sale proceeds of the 2784 premises that were issued by 2784 LLC in March 2010, amounts for "disparate benefits" that Burns claims they received by virtue of their rent-stabilized tenancies at the Neptune Avenue premises. This letter shows that in contrast to the distributions to plaintiffs, these sums were not deducted from the distributions received by the other two Neary members (Salvatore and Mary Ann), Anthony (Benevento's brother), or Grace, who were paid their distributions in full.

Burns further argues that he should be absolved from liability pursuant to article 4.5 of the Operating Agreement (exhibit 7 to Burns' motion papers), which provides as follows:

"A Manager shall not be personally liable to the Company or its Members for damages for any breach of duty as a Manager, except for any matter in respect to which such Manager shall be liable by reason that, in addition to any and all other requirements for such liability, there shall have been a judgment or other final adjudication adverse to such [*11]Manager that establishes that such Manager's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that such Manager personally gained in fact a financial profit or other advantage to which such Manager was not legally entitled or that with respect to a distribution the subject of Section 508 of the [Limited Liability Company Law], such Manager's acts were not performed in accordance with Section 409 of the [Limited Liability Company Law] . . ."

Limited Liability Company Law § 508 refers to limitations on distributions to members. Limited Liability Company Law § 409 (a) provides that "[a] manager shall perform his or her duties as a manager, including his or her duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances."

Burns contends that he did not act in bad faith or engage in intentional misconduct. However, plaintiffs' allegations, which must be deemed true for purposes of this motion,

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sufficiently allege such bad faith, asserting that Burns acted "maliciously, wrongfully, and unlawfully," and in breach of his fiduciary duties. Thus, despite Burns' attorney's argument that Burns acted properly, questions of fact are raised as to this issue.

Burns additionally argues that he is entitled to be indemnified and reimbursed for the expenses which he has incurred related to this litigation pursuant to article 4.7 of the Operating Agreement (exhibit 7 to Burns' motion papers), which provides that "[t]he Company shall indemnify and hold harmless each Manager and the Members from and against all claims and demands to the maximum extent permitted under the [Limited Liability Company Law]."

Burns requests that his motion "serve as a cross claim" against 2784 LLC for his legal fees and indemnification pursuant to article 4.7 of the Operating Agreement. Such a request is procedurally improper. Burns has not yet interposed an answer to plaintiffs' second amended complaint nor did he include a cross claim against 2784 LLC for indemnification in his answer to plaintiffs' first amended complaint. Moreover, there has been no final adjudication on the issue of whether Burns breached his duties under the Operating Agreement, and such a finding would defeat his claim for indemnification pursuant to Limited Liability Company Law § 420, which provides as follows:

"Subject to the standards and restrictions, if any, set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless, and advance expenses to, any member, manager or other person, or any testator or intestate of such member, manager or other person, from and against any and all claims and demands [*12]whatsoever; provided, however, that no indemnification may be made to or on behalf of any member, manager or other person if a judgment or other final adjudication adverse to such member, manager or other person establishes (a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled."

Consequently, Burns' request for indemnification and reimbursement under the Operating Agreement must be denied as premature (see Limited Liability Company Law § 420).

CONCLUSION

Accordingly, Burns' motion is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

Footnotes

Footnote 1: Subsequent to oral argument, the court received a purported "reply" to Burns' motion to dismiss which included further opposition to plaintiffs' proposed amendment to their amended complaint. These papers have been rejected by the court and have not been considered (see CPLR 2214 [b], [c]).

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United States Courts Opinions: Supreme Court of New York: Neary v Burns US Official
News April 1, 2014 Tuesday

For further information please visit: <http://www.nycourts.gov/>

LOAD-DATE: April 2, 2014

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Newswire

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Public Records:

1 OF 4 RECORD(S)

Comprehensive Business Report

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Search Terms - company(Neptune, LLC) tin(45-4093384) radius(15)

Executives - Current (7)	Incorporation/SOS (3)	Operations/Sites (12)	Sales (0)
Licenses (1)	URLs (1)	Real Property - Current (1)	Real Property - Prior (7)
MVRs - Current (0)	MVRs - Prior (0)	Watercraft - Current (0)	Watercraft - Prior (0)
Aircraft - Current (0)	Aircraft - Prior (0)	Bankruptcy Filings (0)	Judgments & Liens Filings (0)
UCC Filings (5)	Executives - Prior (3)	Registered Agents (3)	Name Variations (6)
Possible Employees (1)	Person Associates (1)	Business Associates (5)	TINs (3)
Possible Connected Business (45)	Parent Company (0)	Industry Information (1)	
View All Sources (131)			

Business Summary

Name	Address	Phone
NEPTUNE, LLC	608 S 19th St West Des Moines, IA 50265-5505 Polk County	813-645-6815 ✓ (Most Recent Listing) 01/01/2014 - 06/13/2017 Ⓟ (Business)
LexID	Established	TIN
0001-0323-9036	1968 (49 Years in Business)	42-1610539

At a Glance

Real Property	1	UCC Debtor	3
Personal Property	0	Bankruptcy	0

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Secured Assets	0	Judgments/Liens	0
Executives	7	Foreclosure/Notice of Default	0

Name Variations - 6 name variations found

NO.	NAME
1.	NEPTUNE, LLC
2.	NEPTUNE CYCLERY
3.	NEPTUNE CYCLERY AND NEPTUNE LOUNGE
4.	NEPTUNE HOLDING CORP
5.	NEPTUNE HOLDINGS CORP
6.	NEPTUNE LOUNGE INC

TINs - 3 TINs found

NO.	TIN	NAME
1.	42-1610539	NEPTUNE CYCLERY INC NEPTUNE LLC
2.	59-1230185	NEPTUNE LOUNGE INC
3.	59-3260260	NEPTUNE NEPTUNE CYCLERY INC NEPTUNE HOLDINGS CORP NEPTUNE LOUNGE

Business Profile**Executives: Current - 7 executive(s) found**

NO.	NAME	TITLE
1.	Bowen, Katherine H Associated with Other Companies Deceased	PRESIDENT (03/31/2008 - 12/05/2016)
2.	Callison, Wesley D	- MEMBER (03/31/2008 - 04/27/2016) - MANAGER (12/01/2003)
3.	Charpie, David S Moderate Risk Associated with Other Companies	- SECRETARY (03/31/2008 - 04/27/2016) - PRINCIPAL
4.	Griffis, Jesse G	VICE PRESIDENT (12/14/1982 - 12/05/2016)
5.	Mchose, Richard R	MEMBER (01/24/2014 - 04/27/2016)
6.	Moore, Aixa Associated with Other Companies	- MEMBER (03/31/2008 - 04/27/2016) - MANAGER (12/01/2003)
7.	Mullally, Edward R Moderate Risk	- PRESIDENT (03/31/2008 - 04/27/2016) - OWNER (02/1998)

Incorporation/SOS (2 active, 1 other)

NO.	NAME	FILING TYPE	STATUS	FILING DATE	FILING NO.	STATE
1.	NEPTUNE, LLC	LIMITED LIABILITY CORPORATION	ACTIVE	12/01/2003	L0300005020 1	FL

Additional Details

Business Type: LIMITED LIABILITY CORPORATION
 Business Status: ACTIVE
 For Profit: Unknown
 Foreign/Domestic: Domestic

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Origin: State of FL						
2.	NEPTUNE HOLDINGS CORP.	CORPORATION-BUSINESS	ACTIVE	08/01/1994	P9400005715 3	FL
Additional Details Business Type: CORPORATION-BUSINESS Business Status: ACTIVE For Profit: Yes Foreign/Domestic: Domestic Origin: State of FL						
3.	NEPTUNE LOUNGE INC	CORPORATION-BUSINESS	INACTIVE	12/10/1968	338721	FL
Additional Details Business Type: CORPORATION-BUSINESS Business Status: INACTIVE For Profit: Yes Foreign/Domestic: Domestic Origin: State of FL						

OperatingLocations - Showing 12 location(s)

NO.	ADDRESS	METRO AREA	PHONE
1.	10522 Scott Mill Rd Jacksonville, FL 32257-6263 Duval County	Jacksonville, FL	
2.	103 Atlantic Blvd Neptune Beach, FL 32266-5251 Duval County	Jacksonville, FL	
3.	6601 Blackfin Way Apollo Beach, FL 33572-3029 Hillsborough County	Tampa-St. Petersburg- Clearwater, FL	727-943-5805 ✔ (Most Recent Listing) 07/01/2013 - 06/13/2017 Ⓟ (Business) 813-645-6815 ✔ (Most Recent Listing) 01/01/2014 - 06/13/2017 Ⓟ (Business)
4.	1112 Neptune Dr Ruskin, FL 33570-2768 Hillsborough County	Tampa-St. Petersburg- Clearwater, FL	
5.	13 S Safford Ave Tarpon Springs, FL 34689-3456 Pinellas County	Tampa-St. Petersburg- Clearwater, FL	727-943-5805 ✔ (Most Recent Listing) 07/01/2013 - 06/13/2017 Ⓟ (Business) 727-943-5713 ☎ (Phone De-Listed in Electronic Directory Assistance) 813-943-5805
6.	1721 Sunset Dr Tarpon Springs, FL 34689-2239 Pinellas County	Tampa-St. Petersburg- Clearwater, FL	
7.	232 Butler Dr Satsuma, FL 32189-2103	PUTNAM COUNTY	

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	Putnam County		
8.	445-26 Sr 13 445 27 N Jacksonville, FL 32259 St. Johns County	Jacksonville, FL	
9.	445-26 Sr 13 445-27 N Jacksonville, FL 32259 St. Johns County	Jacksonville, FL	
10.	24168 140th St Spirit Lake, IA 51360-7045 Dickinson County	DICKINSON COUNTY	
11.	608 S 19th St West Des Moines, IA 50265-5505 Polk County	Des Moines, IA	
12.	Rr 1 Cambridge, IA 50046 Story County	STORY COUNTY	

Sales - 0 record(s) found

Parent Company - 0 record(s) found

Industry Information

SIC		NAIC	
3751	Motorcycles, Bicycles, And Parts	336991	Motorcycle, Bicycle, and Parts Manufacturing
5813	Drinking Places	45111	Sporting Goods Stores
5941	Sporting Goods And Bicycle Shops	451110	Sporting Goods Stores
7699	Repair Services, Nec	722410	Drinking Places (Alcoholic Beverages)
9999	Nonclassifiable Establishments		
Industry Description: BICYCLES REPAIR			
Business Description: MOTORCYCLES, BICYCLES & PARTS			

Licenses - 1 licenses found

NO.	LICENSE NO.	DESCRIPTION	ISSUER	ISSUED/EXPIRED
1.	BEV6209000		FL	Expired: 09/30/2004

URLs - 1 URLs found

THENEPTUNELOUNGE.COM

Bankruptcy (0 active, 0 closed)

Judgments/Liens (0 filings)

UCC Filings (5 debtor, 0 creditor)

NO.	ROLE	STATUS	ORIG. FILING DATE	ORIG. FILE NUMBER	JURISDICTION	FILE TYPE
1.	Debtor	Active	12/02/1996	960000252858	FL	Initial Filing
Filing Office Information						
SECRETARY OF STATE/UCC DIVISION State Capitol						

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Tallahassee, FL 32314 Filing 1 Filing Number: 960000252858 Filing Date: 12/02/1996 Filing Type: INITIAL FILING Debtor 1 NEPTUNE CYCLERY AND NEPTUNE LOUNGE 13 S Safford Ave Tarpon Springs, FL 34689-3456 Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635 Collateral ACCOUNT(S) AND PROCEEDS;BUILDING MATERIALS AND PROCEEDS;FIXTURES AND PROCEEDS;COMMUNICATIONS EQUIPMENT AND PROCEEDS;INVENTORY AND PROCEEDS;BUILDING(S) AND PROCEEDS;TIMBER AND PROCEEDS;FARM PRODUCTS/CROPS AND PROCEEDS;OIL, GAS AND MINERALS AND PROCEEDS;CONTRACT RIGHTS AND PROCEEDS;MACHINERY AND PROCEEDS;EQUIPMENT AND PROCEEDS						
2.	Debtor	Active	11/22/1996	960000245697	FL	Continuation
Filing Office Information SECRETARY OF STATE/UCC DIVISION State Capitol Tallahassee, FL 32314 Filing 2 Filing Number: 200100146806 Filing Date: 07/03/2001 Filing Type: CONTINUATION Debtor 1 Cyclery, Neptune 13 S Safford Ave Tarpon Springs, FL 34689-3456 Secured Party Info 1 IFS FUNDING CORP 801 W Madison St Waterloo, WI 53594-1379 Filing 1 Filing Number: 960000245697 Filing Date: 11/22/1996 Filing Type: INITIAL FILING Debtor 1						

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DB-SDNY-0022545
EFTA_00170271

EFTA01296905

<p>Cyclery, Neptune 13 S Safford Ave Tarpon Springs, FL 34689-3456</p> <p>Secured Party Info 1 IFS FUNDING CORP. 801 W Madison St Waterloo, WI 53594-1379</p> <p>Collateral INVENTORY INCLUDING PROCEEDS AND PRODUCTS</p>						
3.	Debtor	Active	10/28/1996	960000227777	FL	Initial Filing
<p>Filing Office Information SECRETARY OF STATE/UCC DIVISION State Capitol Tallahassee, FL 32314</p> <p>Filing 1 Filing Number: 960000227777 Filing Date: 10/28/1996 Filing Type: INITIAL FILING</p> <p>Debtor 1 NEPTUNE CYCLERY AND NEPTUNE LOUNGE 13 S Safford Ave Tarpon Springs, FL 34689-3456</p> <p>Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635</p> <p>Collateral INVENTORY INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;MACHINERY INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS</p>						
4.	Debtor	Closed	12/03/1996	960000252858	FL	Termination
<p>Filing Office Information SECRETARY OF STATE/UCC DIVISION State Capitol Tallahassee, FL 32314</p> <p>Filing 2 Filing Number: 200190658175 Filing Date: 12/28/2001 Filing Type: TERMINATION</p>						

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<p>Debtor 1 Cyclery, Neptune 13 S Safford Ave Tarpon Springs, FL 34689-3456</p> <p>Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635</p> <p>Filing 1 Filing Number: 200100127822 Filing Date: 06/11/2001 Filing Type: CONTINUATION</p> <p>Debtor 1 NEPTUNE CYCLERY AND NEPTUNE LOUNGE 13 S Safford Ave Tarpon Springs, FL 34689-3456</p> <p>Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635</p>						
5.	Debtor	Closed	10/30/1996	960000227777	FL	Termination
<p>Filing Office Information SECRETARY OF STATE/UCC DIVISION State Capitol Tallahassee, FL 32314</p> <p>Filing 2 Filing Number: 200190658183 Filing Date: 12/28/2001 Filing Type: TERMINATION</p> <p>Debtor 1 Cyclery, Neptune 13 S Safford Ave Tarpon Springs, FL 34689-3456</p> <p>Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635</p> <p>Filing 1 Filing Number: 200100125404 Filing Date: 06/08/2001 Filing Type: CONTINUATION</p> <p>Debtor 1 Cyclery, Neptune</p>						

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13 S Safford Ave Tarpon Springs, FL 34689-3456 Secured Party Info 1 MERCANTILE BANK 28100 Us Highway 19 N Clearwater, FL 33761-2635		
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Real Property (1 current, 7 prior)

NO.	ADDRESS	STATUS	PURCHASE PRICE	SALE PRICE	STATE
1.	1110 Neptune Dr Ruskin, FL 33570-2768 Hillsborough County Source: B	Current	\$622,000.00		FL
<p>Owner 1 Information LEHIGH CLAY PROPERTIES LTD 608 S 19th St West Des Moines, IA 50265-5505 Polk County</p> <p>Legal Information Parcel Number: U123218ZZZ000001094400 Assessment Year: 2016 Recording Date: 12/02/2003 Document Type: ASSESSOR Assessed Value: \$641,575.00 Market Land Value: \$285,079.00 Total Market Value: \$643,533.00 Type of Address: SINGLE FAMILY RESIDENTIAL</p>					
2.	FL Hillsborough County Source: B	Prior			FL
<p>Owner 1 Information NEPTUNE LLC 6601 Blackfin Way Apollo Beach, FL 33572-3029 Hillsborough County</p> <p>Seller 1 Information Farrington, Michael 6520 Santiago Ct Apollo Beach, FL 33572-2112 Hillsborough County</p> <p>Seller 2 Information Farrington, Mike 6520 Santiago Ct Apollo Beach, FL 33572-2112 Hillsborough County</p>					

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Legal Information

Recording Date: 01/11/2006
 Document Type: DEED

Mortgage 1 Information

Recording Date: 01/11/2006
 Contract Date: 12/21/2005
 Description: CORRECTION DEED

Mortgage 2 Information

Recording Date: 09/24/2004
 Contract Date: 08/31/2004
 Loan Amount: \$145,000.00
 Lender Name: MICHAEL FARRINGTON
 Description: WARRANTY DEED

3.	1007 Neptune Dr Ruskin, FL 33570-2706 Hillsborough County Source: B	Prior			FL
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Owner 1 Information

NEPTUNE LLC
 608 S 19th St
 West Des Moines, IA 50265-5505
 Polk County

Legal Information

Parcel Number: U123218ZZZ000001093800
 Assessment Year: 2008
 Recording Date: 12/21/2005
 Document Type: ASSESSOR
 Assessed Value: \$92,045.00
 Market Land Value: \$39,960.00
 Total Market Value: \$92,045.00
 Type of Address: SINGLE FAMILY RESIDENTIAL

4.	Ruskin, FL 33570 Hillsborough County Source: B	Prior			FL
----	--	-------	--	--	----

Owner 1 Information

NEPTUNE LLC
 608 S 19th St
 West Des Moines, IA 50265-5505
 Polk County

Legal Information

Parcel Number: U123218ZZZ000001093700
 Assessment Year: 2009
 Recording Date: 12/21/2005
 Document Type: ASSESSOR
 Assessed Value: \$74,025.00

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Market Land Value: \$74,025.00 Total Market Value: \$74,025.00 Type of Address: VACANT (GENERAL)					
5.	1016 Neptune Dr Ruskin, FL 33570-2705 Hillsborough County Source: B	Prior		\$622,000.00	FL
<p>Owner 1 Information LEHIGH CLAY PROPERTIES LIMITED 608 S 19th St West Des Moines, IA 50265-5505 Polk County</p> <p>Legal Information Parcel Number: U123218ZZZ000001094400 Assessment Year: 2008 Sale Price: \$622,000.00 Recording Date: 12/02/2003 Document Type: ASSESSOR Assessed Value: \$951,246.00 Market Land Value: \$540,100.00 Total Market Value: \$951,246.00 Type of Address: MOBILE HOME</p>					
6.	FL Pinellas County Source: B	Prior			FL
<p>Owner 1 Information NEPTUNE HOLDINGS CORPORATION 1721 Sunset Dr Tarpon Springs, FL 34689-2239 Pinellas County</p> <p>Legal Information Recording Date: 01/04/1995 Document Type: DEED</p> <p>Mortgage 1 Information Recording Date: 01/04/1995 Contract Date: 11/08/1994</p>					
7.	13 Safford Ave Tarpon Springs, FL 34689 Pinellas County Source: B	Prior		\$100,000.00	FL
<p>Owner 1 Information NEPTUNE HOLDINGS CORP 1721 Sunset Dr Tarpon Springs, FL 34689-2239 Pinellas County</p>					

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Legal Information

Parcel Number: 12-27-15-77778-401-0150
 Assessment Year: 2016
 Sale Price: \$100,000.00
 Recording Date: 09/02/1994
 Document Type: ASSESSOR
 Assessed Value: \$187,000.00
 Market Land Value: \$44,545.00
 Total Market Value: \$187,000.00
 Type of Address: SHOPPING CENTER (NEIGHBORHOOD - STRIP)

8.	13 Safford Ave FL Pinellas County Source: B	Prior			FL
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Owner 1 Information

NEPTUNE HOLDINGS CORPORATION
 1721 Sunset Dr
 Tarpon Springs, FL 34689-2239
 Pinellas County

Legal Information

Parcel Number: 12-27-15-77778-401-0150
 Assessment Year: 2008
 Document Type: ASSESSOR
 Assessed Value: \$185,000.00
 Market Land Value: \$48,100.00
 Total Market Value: \$185,000.00
 Type of Address: SHOPPING CENTER (NEIGHBORHOOD - STRIP)

Personal Property (0 current, 0 prior)**Associates****Executives: Prior - 3 prior executive(s) found**

NO.	NAME	TITLE
1.	Callison, Wesley D	OFFICER
2.	Halva, Loren  Moderate Risk  Associated with Other Companies  Deceased	MEMBER (03/31/2008 - 01/30/2009)
3.	Pearey, Elwin	MEMBER (03/31/2008 - 01/30/2009)

Registered Agents - 3 registered agent(s) found

NO.	NAME	ADDRESS	STATE	DATE(S)
1.	Bowen, Katherine H		Florida	12/14/1982 - 12/05/2016
2.	Callison, Wesley D		Florida	12/05/2016

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3.	Charpie, David S	[REDACTED]	Florida	09/27/1995 - 12/05/2016
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Possible Employees - 0 current, 1 prior employees found

NO.	NAME	ADDRESS	STATUS	DATE(S)
1.	Callison, D MANAGER	[REDACTED]	Prior	12/01/2003

Person Associates - 1 other person associates found

NO.	NAME	ADDRESS	ROLE
1.	Farrington, Michael  Moderate Risk	[REDACTED]	Real Property

Possible Connected Business - 45 businesses found

NO.	NAME	ADDRESS
1.	NEP TUEN RECORDS	1501 S Dale Mabry Hwy Tampa, FL 33629-5837 Hillsborough County
2.	NEPTUNE	Tampa, FL
3.	NEPTUNE	160 Live Oak Woods Ct Deltona, FL 32725-8926
4.	NEPTUNE	2088 Central Ave Fort Myers, FL 33901-3917 Lee County
5.	NEPTUNE	2310 Estero Blvd Fort Myers Beach, FL 33931-3221 Lee County
6.	NEPTUNE	4401 Westown Pkwy Ste 226 West Des Moines, IA 50266-6721
7.	NEPTUNE	782750 O/S Hwy Islamorada, FL 33036 Monroe County
8.	NEPTUNE	796 NW 57th St Fort Lauderdale, FL 33309-2825 Broward County
9.	NEPTUNE	850 NW 155th Ln Apt 301 Miami, FL 33169-6166 Miami-Dade County
10.	NEPTUNE 1 LLC	PO Box 25177 Miami, FL 33102-5177 Miami-Dade County
11.	NEPTUNE CORP	PO Box 398570 Miami Beach, FL 33239-8570 Miami-Dade County
12.	NEPTUNE CORP	1058 SE Port St Lucie Blvd Port Saint Lucie, FL 34952-5377 St. Lucie County
13.	NEPTUNE CORP	1910 SE Port St Lucie Blvd Port Saint Lucie, FL 34952-5581 St. Lucie County
14.	NEPTUNE CORP	610 SW Bayshore Blvd Port Saint Lucie, FL 34983-1864 St. Lucie County
15.	NEPTUNE CORPORATION	139 N County Rd Palm Beach, FL 33480-3908

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		Palm Beach County
16.	NEPTUNE CORPORATION OF THE TRE	1058 SE Port St Lucie Blvd Port Saint Lucie, FL 34952-5377 St. Lucie County
17.	NEPTUNE ENTERPRISES, INC.	PO Box 6446 Key West, FL 33041-6446 Monroe County
18.	NEPTUNE HOLDING CO INC	PO Box 1938 Marco Island, FL 34146-1938 Collier County
19.	NEPTUNE HOLDING CORP	2887 SW 69th Ct Miami, FL 33155-2816 Miami-Dade County
20.	NEPTUNE HOLDING CORP.	3950 SW 136th Ave Miramar, FL 33027-2746 Broward County
21.	NEPTUNE HOLDINGS	420 Lincoln Rd Ste 245 Miami Beach, FL 33139-3035 Miami-Dade County
22.	NEPTUNE HOLDINGS LLC	1921 Trade Center Way Ste 1 Naples, FL 34109-6600 Collier County
23.	NEPTUNE INC	12250 Hammock Creek Way Fort Myers, FL 33905-6247 Lee County
24.	NEPTUNE INC	17320 NW 80th Ave Hialeah, FL 33015-3835 Miami-Dade County
25.	NEPTUNE INC	3536 NE 168th St Apt 407 North Miami Beach, FL 33160-3576 Miami-Dade County
26.	NEPTUNE LIMITED, INC.	1217 Cape Coral Pkwy E Cape Coral, FL 33904-9604 Lee County
27.	NEPTUNE LLC	PO Box 237237 Cocoa, FL 32923-7237 Brevard County
28.	NEPTUNE LLC	1016 Neptune Dr Ruskin, FL 33570-2705 Hillsborough County
29.	NEPTUNE LLC	1016 Neptune Dr Apt 10 Ruskin, FL 33570-2705 Hillsborough County
30.	NEPTUNE LLC	358 El Brillo Way Palm Beach, FL 33480-4730 Palm Beach County
31.	NEPTUNE LLC	405 2nd St S Ste C Safety Harbor, FL 34695-4054 Pinellas County
32.	NEPTUNE LOUNGE	PO Box 578 New Smyrna Beach, FL 32170-0578 Volusia County
33.	NEPTUNE LOUNGE INC	PO Box 122 Atlantic Beach, FL 32233 Duval County
34.	NEPTUNE LOUNGE INC	PO Box 122 Neptune Beach, FL 32266 Duval County
35.	NEPTUNE LOUNGE INC	109 11th St Atlantic Beach, FL 32233-5751

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		Duval County
36.	NEPTUNE LOUNGE INC	109 11th St Neptune Beach, FL 32266-3374 Duval County
37.	NEPTUNE LOUNGE LLC	918 Railroad Avenue A Avon Park, FL 33825 Highlands County
38.	NEPTUNE LTD.	1543 SW 2nd St Miami, FL 33135-2106 Miami-Dade County
39.	NEPTUNE PC	3061 NE 11th Ave Pompano Beach, FL 33064-6315 Broward County
40.	NEPTUNE STEAK HOUSE AND LOUNGE	515 N Ridgewood Ave Edgewater, FL 32132-1621 Volusia County
41.	NEPTUNE'S INVESTMENT HOLDING C	5640 Taylor Rd Ste 5 Naples, FL 34109-2300 Collier County
42.	NEPTUNE, INC.	PO Box 5153 Hialeah, FL 33014-1153 Miami-Dade County
43.	THE NEPTUNE	1515 Broadway Fort Myers, FL 33901-3014
44.	THE NEPTUNE CORPORATION	407 Lincoln Rd Miami Beach, FL 33139-3020 Miami-Dade County
45.	ZEHM BROS. CONSTRUCTION INC.	380 Rivertown Dr Ste 200 Woodbury, MN 55125-7744 Washington County

Business Associates - 5 business associates found

NO.	NAME	ADDRESS	ROLE
1.	IFS FUNDING CORP	801 W Madison St Waterloo, WI 53594-1379 Jefferson County	UCC
2.	INTREPID FINANCIAL SERVICES	801 W Madison St Waterloo, WI 53594-1379 Jefferson County	UCC
3.	LEHIGH CLAY PROPERTIES LTD	1110 Neptune Dr Ruskin, FL 33570-2768 Hillsborough County	Real Property
4.	LEHIGH CLAY PROPERTIES LTD	608 S 19th St West Des Moines, IA 50265-5505 Polk County	Real Property
5.	MERCANTILE BANK	28100 Us Highway 19 N Clearwater, FL 33761-2635 Pinellas County	UCC

Sources

All Sources	131 Source Documents
Real Property	93 Source Documents
Corporate Filings	3 Source Documents
UCC	5 Source Documents
Government Agency	1 Source Documents
Other Directories	16 Source Documents
Telco	8 Source Documents
Experian FEIN	3 Source Documents

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EFTA01296914

Experian	2 Source Documents
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Key:

-  High Risk Indicator. These symbols may prompt you to investigate further.
-  Moderate Risk Indicator. These symbols may prompt you to investigate further.
-  General Information Indicator. These symbols inform you that additional information is provided.
-  The most recent telephone listing as reported by Electronic Directory Assistance.
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2 OF 4 RECORD(S)

Comprehensive Business Report

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Search Terms - company(Neptune, LLC) tin(45-4093384) radius(15)

- | | | | |
|---------------------------------|------------------------|-----------------------------|-------------------------------|
| Executives - Current (0) | Incorporation/SOS (0) | Operations/Sites (1) | Sales (0) |
| Licenses (0) | URLs (0) | Real Property - Current (0) | Real Property - Prior (0) |
| MVRs - Current (0) | MVRs - Prior (0) | Watercraft - Current (0) | Watercraft - Prior (0) |
| Aircraft - Current (0) | Aircraft - Prior (0) | Bankruptcy Filings (0) | Judgments & Liens Filings (0) |
| UCC Filings (1) | Executives - Prior (0) | Registered Agents (0) | Name Variations (1) |
| Possible Employees (0) | Person Associates (0) | Business Associates (1) | TINs (0) |
| Possible Connected Business (4) | Parent Company (0) | Industry Information (0) | |
| View All Sources (2) | | | |

Business Summary

Name	Address	Phone
NEPTUNE, LLC  (No recent public filings on file)	2700 S Ashland Ave Green Bay, WI 54304-5303 Brown County	
LexID	Established	TIN
0001-0353-4766	2006 (11 Years in Business)	

At a Glance

Real Property	0	UCC Debtor	0
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Personal Property	0	Bankruptcy	0
Secured Assets	0	Judgments/Liens	0
Executives	0	Foreclosure/Notice of Default	0

Name Variations - 1 name variations found

NO.	NAME
1.	NEPTUNE, LLC

TINs - 0 TINs found**Business Profile****Executives: Current - 0 executive(s) found****Incorporation/SOS (0 active, 0 other)****OperatingLocations - Showing 1 location(s)**

NO.	ADDRESS	METRO AREA	PHONE
1.	2700 S Ashland Ave Green Bay, WI 54304-5303 Brown County	Green Bay, WI	

Sales - 0 record(s) found**Parent Company - 0 record(s) found****Industry Information - no information found****Licenses - 0 licenses found****URLs - 0 URLs found****Bankruptcy (0 active, 0 closed)****Judgments/Liens (0 filings)****UCC Filings (1 debtor, 0 creditor)**

NO.	ROLE	STATUS	ORIG. FILING DATE	ORIG. FILE NUMBER	JURISDICTION	FILE TYPE
1.	Debtor	Closed	01/06/2003	030000304209	WI	Termination
Filing Office Information SECRETARY OF STATE/UCC DIVISION 30 W Mifflin Madison, WI 53702 Filing 2 Filing Number: 040013506318 Filing Date: 08/24/2004 Filing Type: TERMINATION Debtor 1 NEPTUNE, LLC 2700 S Ashland Ave Green Bay, WI 54304-5303						

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<p>Secured Party Info 1 ASSOCIATED BANK, NATIONAL ASSOCIATION 200 N Adams St Green Bay, WI 54301-5142</p> <p>Filing 1 Filing Number: 030000304209 Filing Date: 01/06/2003 Filing Type: INITIAL FILING Expiration: 01/06/2008</p> <p>Debtor 1 NEPTUNE, LLC 2700 S Ashland Ave Green Bay, WI 54304-5303</p> <p>Secured Party Info 1 ASSOCIATED BANK, NATIONAL ASSOCIATION 200 N Adams St Green Bay, WI 54301-5142</p> <p>Collateral FIXTURES ALL INCLUDING PROCEEDS AND PRODUCTS;COMPUTER EQUIPMENT ALL INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER ALL INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT ALL INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) ALL INCLUDING PROCEEDS AND PRODUCTS;INVENTORY ALL INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) ALL INCLUDING PROCEEDS AND PRODUCTS</p>		
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Real Property (0 current, 0 prior)

Personal Property (0 current, 0 prior)

Associates

Executives: Prior - 0 prior executive(s) found

Registered Agents - 0 registered agent(s) found

Possible Employees - 0 current, 0 prior employees found

Person Associates - 0 other person associates found

Possible Connected Business - 4 businesses found

NO.	NAME	ADDRESS
1.	NEPTUNE	928 Mason St Rhineland, WI 54501-2323 Oneida County
2.	NEPTUNE LLC	Car Villa Subdivision Lot 13 Sturgeon Bay, WI 54235

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		Door County
3.	NEPTUNE LLC	2101 Lake Point Dr Apt 2 Madison, WI 53713-3705
4.	NEPTUNE, LLC	PO Box 11971 Green Bay, WI 54307-1971 Brown County

Business Associates - 1 business associates found

NO.	NAME	ADDRESS	ROLE
1.	ASSOCIATED BANK, NATIONAL ASSOCIATION	200 N Adams St Green Bay, WI 54301-5142 Brown County	UCC

Sources

All Sources	2 Source Documents
UCC	1 Source Documents
Other Directories	1 Source Documents

Key:

-  High Risk Indicator. These symbols may prompt you to investigate further.
-  Moderate Risk Indicator. These symbols may prompt you to investigate further.
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Comprehensive Business Report

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Search Terms - company(Neptune, LLC) tin(45-4093384) radius(15)

Executives - Current (0)	Incorporation/SOS (1)	Operations/Sites (1)	Sales (0)
Licenses (0)	URLs (0)	Real Property - Current (0)	Real Property - Prior (0)
MVRs - Current (0)	MVRs - Prior (0)	Watercraft - Current (0)	Watercraft - Prior (0)
Aircraft - Current (0)	Aircraft - Prior (0)	Bankruptcy Filings (0)	Judgments & Liens Filings (0)

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UCC Filings (1)
Possible Employees (1)
Possible Connected
Business (6)
View All Sources (6)

Executives - Prior (0)
Person Associates (0)
Parent Company (0)

Registered Agents (1)
Business Associates (4)
Industry Information (0)

Name Variations (1)
TINs (0)

Business Summary

Name	Address	Phone
NEPTUNE, LLC	2142 NW Robin Hood St Corvallis, OR 97330-1153 Benton County	
LexID	Established	TIN
0001-0357-4248	2011 (6 Years in Business)	

At a Glance

Real Property	0	UCC Debtor	1
Personal Property	0	Bankruptcy	0
Secured Assets	0	Judgments/Liens	0
Executives	0	Foreclosure/Notice of Default	0

Name Variations - 1 name variations found

NO.	NAME
1.	NEPTUNE, LLC

TINs - 0 TINs found

Business Profile

Executives: Current - 0 executive(s) found

Incorporation/SOS (0 active, 1 other)

NO.	NAME	FILING TYPE	STATUS	FILING DATE	FILING NO.	STATE
1.	NEPTUNE, LLC	LIMITED LIABILITY CORPORATION	INACTIVE	05/19/2011	77332097	OR

Additional Details

Business Type: LIMITED LIABILITY CORPORATION
Business Status: INACTIVE
Filing Type: CURRENT ENTITY NAME
For Profit: Unknown
Foreign/Domestic: Domestic
Origin: State of OR

Filing History (most recent two years)

Filing Date	Description
07/19/2013	ADMINISTRATIVE DISSOLUTION

OperatingLocations - Showing 1 location(s)

NO.	ADDRESS	METRO AREA	PHONE
1.	2142 NW Robin Hood St Corvallis, OR 97330-1153 Benton County	Corvallis, OR	

Sales - 0 record(s) found

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Parent Company - 0 record(s) found

Industry Information - no information found

Licenses - 0 licenses found

URLs - 0 URLs found

Bankruptcy (0 active, 0 closed)

Judgments/Liens (0 filings)

UCC Filings (1 debtor, 0 creditor)

NO.	ROLE	STATUS	ORIG. FILING DATE	ORIG. FILE NUMBER	JURISDICTION	FILE TYPE
1.	Debtor	Active	09/15/2011	89002575	OR	Continuation
<p>Filing Office Information SECRETARY OF STATE/UCC DIVISION 143 State Capitol Salem, OR 97310</p> <p>Filing 2 Filing Number: 89002575-1 Filing Date: 08/29/2016 Filing Type: CONTINUATION Expiration: 09/15/2021</p> <p>Debtor 1 BULJAM 2, LLC 2925 43rd Ave SE Albany, OR 97322-6315</p> <p>Secured Party Info 1 OSU FEDERAL CREDIT UNION 1980 NW 9th St Corvallis, OR 97330-2179</p> <p>Filing 1 Filing Number: 89002575 Filing Date: 09/15/2011 Filing Type: INITIAL FILING Expiration: 09/15/2016</p> <p>Debtor 1 BULJAM 2, LLC 2925 43rd Ave SE Albany, OR 97322-6315</p> <p>Secured Party Info 1 OSU FEDERAL CREDIT UNION 1980 NW 9th St</p>						

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EFTA01296920

Corvallis, OR 97330-2179		
Collateral FIXTURES AND PROCEEDS;GENERAL INTANGIBLE(S) AND PROCEEDS;ACCOUNT(S) AND PROCEEDS		

Real Property (0 current, 0 prior)**Personal Property (0 current, 0 prior)****Associates****Executives: Prior - 0 prior executive(s) found****Registered Agents - 1 registered agent(s) found**

NO.	NAME	ADDRESS	STATE	DATE(S)
1.	Cole, Darin F		Oregon	05/19/2011 - 06/05/2017

Possible Employees - 1 current, 0 prior employees found

NO.	NAME	ADDRESS	STATUS	DATE(S)
1.	Cole, Darin F MANAGER		Current	05/10/2012 - 06/06/2016

Person Associates - 0 other person associates found**Possible Connected Business - 6 businesses found**

NO.	NAME	ADDRESS
1.	NEPTUNE	PO Box 18076 Portland, OR 97218-0076 Multnomah County
2.	NEPTUNE	212 NE 20th Portland, OR 97232 Multnomah County
3.	NEPTUNE AND CO INC	3425 Chevy Chase St Eugene, OR 97401-8011 Lane County
4.	NEPTUNE LLC	2337 SE Taggart St Portland, OR 97202-1268 Multnomah County
5.	NEPTUNE LLC	621 SW Morrison St Ste 1440 Portland, OR 97205-3811
6.	NEPTUNE LLC	7250 NE Avalon Dr Corvallis, OR 97330-9431 Benton County

Business Associates - 4 business associates found

NO.	NAME	ADDRESS	ROLE
1.	BULJAM 2, LLC	2925 43rd Ave SE Albany, OR 97322-6315 Linn County	UCC

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2.	CLPWARRANTON LLC	PO Box 1583 Corvallis, OR 97339-1583 Benton County	UCC
3.	OSU FEDERAL CREDIT UNION	1980 NW 9th St Corvallis, OR 97330-2179 Benton County	UCC
4.	SUNSET RIVER LLC	PO Box 1583 Corvallis, OR 97339-1583 Benton County	UCC

Sources

All Sources	6 Source Documents
Corporate Filings	1 Source Documents
UCC	1 Source Documents
Other Directories	3 Source Documents
Experian	1 Source Documents

Key:

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-  Moderate Risk Indicator. These symbols may prompt you to investigate further.
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Comprehensive Business Report

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Search Terms - company(Neptune, LLC) tin(45-4093384) radius(15)

Executives - Current (0)	Incorporation/SOS (1)	Operations/Sites (3)	Sales (0)
Licenses (0)	URLs (0)	Real Property - Current (0)	Real Property - Prior (0)
MVRs - Current (0)	MVRs - Prior (0)	Watercraft - Current (0)	Watercraft - Prior (0)
Aircraft - Current (0)	Aircraft - Prior (0)	Bankruptcy Filings (0)	Judgments & Liens Filings (0)
UCC Filings (0)	Executives - Prior (1)	Registered Agents (0)	Name Variations (4)
Possible Employees (1)	Person Associates (0)	Business Associates (0)	TINs (2)

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Possible Connected
Business (5)
View All Sources (11)

Parent Company (0)

Industry Information (1)

Business Summary

Name	Address	Phone
NEPTUNE, LLC  (No recent public filings on file)	PO Box 11971 Green Bay, WI 54307-1971 Brown County	920-822-8552  (Phone De-Listed in Electronic Directory Assistance)
LexID	Established	TIN
0001-0305-1554	2001 (16 Years in Business)	39-2007435

At a Glance

Real Property	0	UCC Debtor	0
Personal Property	0	Bankruptcy	0
Secured Assets	0	Judgments/Liens	0
Executives	0	Foreclosure/Notice of Default	0

Name Variations - 4 name variations found

NO.	NAME
1.	NEPTUNE, LLC
2.	GREAT LAKES COMMUNITY LLC
3.	NEPTUNES CHARITABLE FOUNDATION INC
4.	NEPTUNES NIMROD SKIN DIVING CLUB INC

TINs - 2 TINs found

NO.	TIN	NAME
1.	39-2007435	GREAT LAKES COMMUNITY LLC NEPTUNE LLC NEPTUNES NIMROD SKIN DIVING CLUB INC
2.	39-2029146	NEPTUNES CHARITABLE FOUNDATION INC

Business Profile

Executives: Current - 0 executive(s) found

Incorporation/SOS (0 active, 1 other)

NO.	NAME	FILING TYPE	STATUS	FILING DATE	FILING NO.	STATE
1.	NEPTUNE'S CHARITABLE FOUNDATION INC	CORPORATION-NON FOR PROFIT	N/A	06/08/2001	N028538	

Additional Details

Business Type: CORPORATION-NON FOR PROFIT
Business Status: N/A
Filing Type: SOS Filing
Expiration: 06/30/2002
For Profit: Unknown
Origin: Other Business Filing

Operating Locations - Showing 3 location(s)

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NO.	ADDRESS	METRO AREA	PHONE
1.	PO Box 10893 Green Bay, WI 54307-0893 Brown County	Green Bay, WI	
2.	PO Box 11971 Green Bay, WI 54307-1971 Brown County	Green Bay, WI	
3.	879 Woodstock Ln Pulaski, WI 54162-9696 Oconto County	OCONTO COUNTY	920-822-8552  (Phone De-Listed in Electronic Directory Assistance)

Sales - 0 record(s) found

Parent Company - 0 record(s) found

Industry Information

SIC	NAIC
8399	Social Services, Nec
9999	Nonclassifiable Establishments
Industry Description: CHARITABLE ORGANIZATION;PUBLIC FOUNDATIONS	
Business Description:	

Licenses - 0 licenses found

URLs - 0 URLs found

Bankruptcy (0 active, 0 closed)

Judgments/Liens (0 filings)

UCC Filings (0 debtor, 0 creditor)

Real Property (0 current, 0 prior)

Personal Property (0 current, 0 prior)

Associates

Executives: Prior - 1 prior executive(s) found

NO.	NAME	TITLE
1.	Nighorn, Wayne  Associated with Other Companies	OFFICER

Registered Agents - 0 registered agent(s) found

Possible Employees - 0 current, 1 prior employees found

NO.	NAME	ADDRESS	STATUS	DATE(S)
1.	Maurina, Tod K N/A	PO Box 11971 Green Bay, WI 54307-1971	Prior	06/08/2001 - 07/05/2001

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Person Associates - 0 other person associates found**Possible Connected Business - 5 businesses found**

NO.	NAME	ADDRESS
1.	NEPTUNE	928 Mason St Rhineland, WI 54501-2323 Oneida County
2.	NEPTUNE LLC	Car Villa Subdivision Lot 13 Sturgeon Bay, WI 54235 Door County
3.	NEPTUNE LLC	2101 Lake Point Dr Apt 2 Madison, WI 53713-3705
4.	NEPTUNE'S CHARITABLE FOUNDATIO	126 Schmitz Dr Forestville, WI 54213-9650
5.	NEPTUNE, LLC	2700 S Ashland Ave Green Bay, WI 54304-5303 Brown County

Business Associates - 0 business associates found**Sources**

All Sources	11 Source Documents
Government Agency	5 Source Documents
Other Directories	4 Source Documents
Experian FEIN	2 Source Documents

Key:

-  High Risk Indicator. These symbols may prompt you to investigate further.
-  Moderate Risk Indicator. These symbols may prompt you to investigate further.
-  General Information Indicator. These symbols inform you that additional information is provided.
-  The most recent telephone listing as reported by Electronic Directory Assistance.
-  Wireless Phone Indicator. These symbols indicate a cell phone number.
-  Residential Phone Indicator. These symbols indicate a residential phone number.
-  Business Phone Indicator. These symbols indicate a business phone number.
-  Shared Phone Indicator. These symbols indicate the phone number may be shared between wireless and landline service.
-  FAX Indicator. These symbols indicate a FAX number.
-  Government Phone Indicator. These symbols indicate a government phone number.

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March 25, 2017

NEPTUNE, LLC

608 S 19TH ST
(registered address)
WEST DES MOINES, IA 502655505
USA

COUNTY: POLK
REGION: NORTH AMERICA

***** COMMUNICATIONS *****

CABLE TELEX: 0NNNNANP

***** COMPANY IDENTIFIERS *****

DUNS: 07-481-6395

***** COMPANY INFORMATION *****

FOUNDED: 2014

EMPLOYEES HERE: 6 - Estimate
EMPLOYEES TOTAL: 6 - Estimate

COMPANY TYPE: Private

***** EXECUTIVES *****

CEO:

AIXA MOORE, PRINCIPAL

***** DESCRIPTION *****

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UNDETERMINED

***** MARKET AND INDUSTRY *****

SIC CODES:

9999 - Nonclassified establishment

LOAD-DATE: May 6, 2017**LEGAL RESULTS:****Court Cases:**

**Thomas J. Neary et al., Plaintiffs, v Arthur Burns et al.,
Defendants.**

6290/2011

SUPREME COURT OF NEW YORK, KINGS COUNTY

**44 Misc. 3d 280; 982 N.Y.S.2d 868; 2014 N.Y. Misc. LEXIS 1404;
2014 NY Slip Op 24083**

March 28, 2014

PRIOR HISTORY: 363-367 *Neptune Ave., LLC v Neary*, 30 Misc 3d 779, 917 NYS2d 544, 2010 N.Y. Misc. LEXIS 6327 (2010)

CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-Plaintiffs' claims against a former building manager and a limited liability company (LLC), arising from the sale of property and disputed distribution of proceeds held by the LLC, survived challenge by a motion to dismiss because they had standing to sue, as they were members of the LLC in their individual capacities because they each held an ownership interest in the LLC; [2]-A holder of a beneficial interest, as a beneficiary of the estate of a deceased LLC interest holder, had standing under Business Corporation Law § 626(a), which was applicable to the LLC; [3]-Allegations of the former manager's conduct were sufficient to state claims under Limited Liability Company Law §§ 508 and 409(a) because they asserted that he engaged in bad faith and intentional misconduct.

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44 Misc. 3d 280, *, 982 N.Y.S.2d 868, **;
2014 N.Y. Misc. LEXIS 1404, ***; 2014 NY Slip Op 24083

OUTCOME: Motion to dismiss denied.

CORE TERMS: manager, cause of action, wrongfully withheld, net proceeds, tenant, beneficial interest, owed, co-executor's, bad faith, indemnification, individual member, rent-stabilized, apartments, vacate, fair share, sale proceeds, fiduciary duty, amend, ownership interest, affirmative defenses, email, died, unilaterally, withholding, membership, standing to sue, sale of real property, final adjudication, individually, withheld

LexisNexis(R) Headnotes

Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings > Leave of Court

[HN1] A motion for leave to amend a complaint should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit. CPLR 3025(b).

Civil Procedure > Justiciability > Standing > General Overview
Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss

[HN2] CPLR 3211(a)(3) provides for dismissal of an action where the party asserting the cause of action has not legal capacity to sue. Rule 3211(a)(3) also embraces the ground of the lack of standing to sue, and this statute is, therefore, available to support a motion to dismiss on this ground.

Business & Corporate Law > Corporations > Shareholders > Actions Against Corporations > Standing > General Overview
Business & Corporate Law > Limited Liability Companies > Members & Other Constituents

Civil Procedure > Justiciability > Standing > General Overview

[HN3] A beneficial interest has been recognized as conferring standing upon a party to bring a derivative action on behalf of a corporation pursuant to Business Corporation Law § 626(a), which has been held applicable to limited liability companies.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > Parties > Joinder > General Overview

[HN4] CPLR 3211(a)(10) provides for the granting of dismissal of a claim against a party based upon the ground that "the court should not proceed in the absence of a person who should be a party."

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Failures to State Claims

Civil Procedure > Pleading & Practice > Pleadings > Rule Application & Interpretation

[HN5] It is well settled that, as a general rule, on a motion to dismiss the complaint for failure to state a cause of action under CPLR 3211(a)(7), the complaint must be construed

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in the light most favorable to the plaintiff and the pleading is to be afforded a liberal construction (CPLR 3026). The court must also accept the facts as alleged in the complaint and submissions in opposition to the motion as true and accord the plaintiff the benefit of every possible favorable inference. The court, in accepting the facts alleged in the complaint to be true, must determine only whether the facts alleged fit within any cognizable legal theory.

Business & Corporate Law > Limited Liability Companies > Members & Other Constituents

[HN6] Limited Liability Company Law § 508 refers to limitations on distributions to members.

Business & Corporate Law > Limited Liability Companies > Management Duties & Liabilities

[HN7] See Limited Liability Company Law § 409(a).

Business & Corporate Law > Limited Liability Companies > Management Duties & Liabilities

[HN8] See Limited Liability Company Law § 420.

HEADNOTES

Parties--Standing--Individual with Interest in Limited Liability Company as Part of Group

1. Plaintiff, an individual who was listed in defendant limited liability company's operating agreement as a member of a group that had a single percentage ownership and voting interest, had standing to bring an action against the company and its manager based on allegations that they wrongfully withheld from him his fair share of distributions of the net proceeds of the sale of real property owned by the company. The group, consisting of plaintiff and his two siblings, was referred to as such simply because their interest in the premises derived from their mother. That fact did not negate plaintiff's status as an individual member of the company with an ownership interest equal to one third of the group's percentage interest. Plaintiff was listed as a member in a schedule of the operating agreement, was an initial member of the company at the time of its formation and signed the initial operating agreement. In addition, plaintiff had notified defendant manager that he intended to vote his own membership interest separately from the group. Defendant manager had also previously recognized plaintiff as an individual member in writings and had issued separate checks to him in payment of distributions. Thus, plaintiff established that he was an individual member of the company and entitled to maintain the action in his own right without joinder of the other group members.

Parties--Standing--Individual with Interest in Limited Liability Company as Co-Executor and Beneficiary of Estate

2. Plaintiff, an individual who was the co-executor and a beneficiary of his mother's estate, which was listed as a member of defendant limited liability company in its operating agreement, had standing to bring an action against the company and its manager based

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on allegations that they wrongfully withheld from him his fair share of distributions of the net proceeds of the sale of real property owned by the company. Plaintiff did not seek to recover sums due to the estate, but instead sought to recover distributions owed to him individually, which he claimed were wrongfully withheld because he resided as a rent-stabilized tenant at a building owned by another company with the same members. The claim belonged to plaintiff alone and was not shared by his brother, the other co-executor and beneficiary of the estate, who was not a tenant at the premises. Moreover, plaintiff was the transferee of one half of the interest held by his mother and was thus the holder of a beneficial interest, which furnished a basis for plaintiff's individual claims against defendants. Defendant manager had also previously recognized plaintiff as an individual member in writings and had issued separate checks to him in payment of distributions.

Parties--Necessary Parties--Action against Limited Liability Company and its Manager--Failure to Join Other Members of Company

3. Plaintiff limited liability company members' action alleging that defendants, the company and its manager, wrongfully withheld from them their fair share of distributions of the net proceeds of the sale of real property owned by the company was not subject to dismissal based on plaintiffs' failure to join all other members of the company (CPLR 3211 [a] [10]). Plaintiffs asserted direct claims to recover for distinct injuries that they individually sustained by defendant manager's alleged wrongful conduct, and were thus alleging claims based upon the breach of duty owed directly to them, independent of any duty owed to the company or any of its other members. Nor did plaintiffs seek to recover any sums that might be due to the other members or for any damage to the company. Thus, plaintiffs' claims did not require the joinder of the other company members.

Pleading--Sufficiency of Pleading--Action against Limited Liability Company and its Manager--Wrongful Withholding of Distributions

4. Plaintiffs, individual members of a limited liability company, who alleged that defendant, the company's manager, wrongfully withheld from them their fair share of distributions of the net proceeds of the sale of real property owned by the company, sufficiently stated a cause of action for breach of fiduciary duty. Specifically, plaintiffs contended, as established by a letter from defendant, that defendant unilaterally and wrongfully withheld sums from their individual distributions because of their refusal to vacate their rent-stabilized apartments in premises owned by another limited liability company with the same members and which sums were not withheld from other members. Under the company's operating agreement, which referred to Limited Liability Company Law § 409 (a)'s good faith requirement in a manager's performance of his or her duties, a company manager is liable for "acts or omissions [that] were in bad faith or involved intentional misconduct or a knowing violation of law." Given plaintiffs' assertions that defendant acted "maliciously, wrongfully, and unlawfully," questions of fact existed as to the issue of whether defendant acted in bad faith.

Indemnity--When Claim for Indemnification Available--Indemnification Provision in Limited Liability Company Operating Agreement--Bad Faith Acts by Company Manager

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5. In an action by plaintiffs, individual members of a limited liability company, alleging that defendant, the company's manager, wrongfully withheld from them their fair share of distributions of the net proceeds of the sale of real property owned by the company, defendant's request for indemnification and reimbursement from defendant company under the operating agreement was denied as premature. Under the terms of the operating agreement, the company would "indemnify and hold harmless each Manager and the Members from and against all claims and demands to the maximum extent permitted under the" Limited Liability Company Law. Section 420 of the Limited Liability Company Law, however, provides that "no indemnification may be made . . . if a judgment or other final adjudication adverse to [a] . . . manager . . . establishes (a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated." Here, the issue of whether defendant manager acted in bad faith in withholding funds from plaintiffs was awaiting final adjudication.

COUNSEL: [***1] *Michele Forzley*, North Bethesda, Maryland, for defendants.

Thomas Torto, New York City, for plaintiffs

JUDGES: Carolyn E. Demarest, J.

OPINION BY: Carolyn E. Demarest

OPINION

[*282] [**870] Carolyn E. Demarest, J.

In this action by plaintiffs Thomas J. Neary (Neary) and Salvatore Benevento (Benevento) (collectively, plaintiffs) against defendants 2784 West 15th Street, LLC (2784 LLC) and Arthur Burns (Burns), Burns moves for an order, pursuant to CPLR 3211, dismissing plaintiffs' complaint in its entirety, and awarding him full reimbursement of his legal fees and costs.

Background

Salvatore Judice (Mr. Judice) was the owner of two parcels of real property. One of these parcels is located at 2776, 2778, and 2784 West 15th Street, in Brooklyn (block 8996, lots 89, 91, 92) (the 2784 premises), and the other parcel is located at 363-367 Neptune Avenue, in Brooklyn (the Neptune Avenue premises). [*283] The Neptune Avenue premises consists of two buildings with six units in each of them. When Mr. Judice died in 1973, he left the 2784 premises and the Neptune Avenue premises to his five children, i.e., Grace Burns (Grace), Anna Neary (Anna), Lucy Judice (Lucy), John E. Judice (John), and Julia J. Benevento (Julia), and, by subsequent deeds, [***2] both of these premises were conveyed to them as tenants in common. Plaintiffs Neary and Benevento have resided virtually their entire lives in residential apartments in the building at 367 Neptune Avenue within the Neptune Avenue premises as rent-stabilized tenants. Anna died in 1987, and she left her estate to her husband, Thomas J. Neary, Sr. (Thomas), who died on August 2, 2004. Thomas' estate passed to plaintiff Thomas Neary, Salvatore Neary (Salvatore), and

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Mary Ann Peraccio (Mary Ann), who thereby inherited Thomas' ownership interest both in the 2784 premises and the Neptune Avenue premises.

In 2006, the family members that held interests in the 2784 premises and the Neptune Avenue premises agreed to form two limited liability companies (LLCs), i.e., 2784 LLC and 363-367 Neptune Avenue, LLC (**Neptune LLC**), to which their respective interests in these properties would be transferred, with Ray McRory, Esq. acting as their attorney. On November 10, 2006, the operating agreement of 2784 LLC was executed by its initial members, who were listed as: Grace (by Burns, as her attorney-in-fact), Julia (by Benevento, as her attorney-in-fact), Neary, Salvatore, and Mary Ann. An almost identical *****3** operating agreement of **Neptune LLC** was also executed by these members on the same date. The members conveyed their interests in the 2784 premises to 2784 LLC and their interests in the Neptune Avenue premises to **Neptune LLC**. Pursuant to the operating agreements, Burns was named the manager of both LLCs.

Thereafter, John died on March 28, 2007 and his estate passed to Carmel Salerno, Patricia Judice, Joanne Judice Rafaella, and Salvatore Judice (Judice). The estate of John conveyed its interests in the 2784 premises and the Neptune Avenue premises ****871** to the two LLCs. Lucy Judice died without having children, and her estate conveyed its interest in the 2784 premises and the Neptune Avenue premises to the two LLCs. To reflect these changes, on November 1, 2007, an amended and restated operating agreement for 2784 LLC was executed by all of the initial members, and by the estate of John (by Judice, as the executor), as a new member. Schedule A to 2784 LLC's operating agreement (annexed as exhibit 2 to Burns' motion ***284** papers) lists the voting percentage interests of its members as being: 44.8% for the estate of John, 18.4% for Grace, 18.4% for Julia, and 18.4% for the Neary group, consisting *****4** of three listed members, i.e., Neary, Salvatore, and Mary Ann. At some time prior to 2011, Julia died, and her estate passed to her two sons, Benevento and Anthony Benevento (Anthony), in equal shares, pursuant to a will which also named them as co-executors.

In April 2009, members of **Neptune LLC** were requested to vote on a proposal to sell the Neptune Avenue premises. Benevento (on behalf of the estate of Julia) and Neary voted no to this proposal. By a letter dated April 21, 2009, the members of **Neptune LLC** were informed that on April 20, 2009, 73.3% of the **Neptune LLC's** membership had voted in favor of this proposal, and that, as a result, Burns was authorized to sell the Neptune Avenue premises at the highest and best price possible and to take any necessary steps to do so, including vacating all tenants from such premises.

In September 2009, Burns, on behalf of 2784 LLC, executed a purchase agreement to sell the 2784 premises to M & A Realty Services, LLC for a sales price of \$1,050,000. In 2010, the 2784 premises were sold with the purchase price for this sale paid in cash and by a purchase money mortgage. Prior to the sale, 2784 LLC's members signed a Certificate of Members of 2784 *****5** LLC Resolution to Sell Real Property (the certificate) in accordance with section 3.4 of the operating agreement, which required that the manager have prior written approval of a majority vote of all members in order to sell the 2784 premises. The certificate was signed by the estate of John (by Judice), Grace (by Burns, as her attorney-in-fact), the estate of Julia (by Anthony), and the Neary group (by Mary Ann, as the authorized representative), and reflected their respective interests in 2784 LLC

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of 44.8% for the estate of John, 18.4% for Grace, 18.4% for the estate of Julia, and 18.4% collectively for the Neary group.

Using the funds obtained from this sale of the 2784 LLC premises, Burns, as the manager of 2784 LLC, gave a mortgage and loan from it to Neptune LLC for \$250,000 at five percent interest with a mortgage on the Neptune Avenue premises to be paid when these premises are sold. These monies were allegedly used to buy out the non-family tenants of the Neptune Avenue premises so as to have them vacate their apartments there.

On August 13, 2010, an action was filed by Neptune LLC against Neary, Benevento, Carmel Salerno (Carmel), and the estate of Julia (363-367 Neptune Avenue, LLC v Neary, Sup Ct, [*285] Kings County, index No. 9282/10, 30 Misc. 3d 779, 917 NYS2d 544) [***6] (the Neptune Avenue action) for a judgment requiring Neary, Benevento, and Carmel to vacate their apartments, requiring the estate of Julia to take action to remove Neary, Benevento, and Carmel from such apartments, and awarding damages in the sum of \$108,000 against Neary, \$216,000 against Benevento, and \$324,000 against Carmel due to their failure to vacate. In the Neptune Avenue action, Neary and Benevento asserted that Burns had harassed them, refused to make repairs to the building, and [**872] denied them essential services in an effort to make the building uninhabitable so that they would be forced to vacate it. Neptune LLC, in that action, contended that it was entitled to sell and vacate the Neptune Avenue premises pursuant to the operating agreement for Neptune LLC. By a decision and order dated December 15, 2010, Justice Mark I. Partnow denied a motion by Neptune LLC to require Neary, Benevento, and Carmel to vacate the Neptune Avenue premises, finding that while Neptune LLC could elect to dissolve and sell the premises pursuant to the majority vote of its members, it could not evict Neary, Benevento, and Carmel and was required [***7] to sell the Neptune Avenue premises subject to their rent-stabilized leases.

In December 2010, Burns resigned as the manager of 2784 LLC, and Judice is now its current manager. Burns claims that he and now Judice have been distributing 2784 LLC funds from the sale of the 2784 premises pro rata to the members after enough cash is accumulated and obligations paid, and that plaintiffs admit that they received distributions as members. The Neptune Avenue premises have not yet been sold and Benevento and Neary remain in occupancy as tenants there.

On March 18, 2011, plaintiffs filed the instant action, which initially named 2784 LLC and Burns, along with McRory and McRory, PLLC and Raymond McRory, Esq. (collectively, the McRory defendants), as defendants. On May 2, 2011, plaintiffs served a complaint, and, on May 16, 2011, plaintiffs served an amended verified complaint as of right pursuant to CPLR 3025 (a). Plaintiffs' amended complaint alleged that Burns, acting on behalf of 2784 LLC and his [*286] own personal interests, unilaterally and improperly diverted funds belonging to 2784 LLC for purposes unrelated to it, including making payments in excess of \$200,000 to buy out the tenants who resided [***8] in the building at the Neptune Avenue premises, and making payments of legal fees to the McRory defendants unrelated to 2784 LLC. It further alleged that Burns, acting on behalf of 2784 LLC and his own personal interests, unilaterally and improperly withheld from the net proceeds realized from the sale of the 2784 premises distributions due to them because they had not vacated their rent-stabilized apartments at the Neptune Avenue premises. Specifically, plaintiffs alleged

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that Burns withheld the sum of approximately \$40,000 (as of the date of the amended complaint) in partial distributions due to them from the sale of the 2784 premises. Plaintiffs asserted that Burns, as the manager of 2784 LLC, owed them a fiduciary duty as members of 2784 LLC.

Plaintiffs' amended complaint alleged three causes of action. Plaintiffs' first cause of action against Burns and 2784 LLC sought an accounting of the affairs and monies of 2784 LLC. Plaintiffs' second cause of action against Burns alleged that Burns diverted monies belonging to 2784 LLC and withheld distributions due to them from the sale of the 2784 premises, which constituted a breach of his fiduciary duties to them. It sought a judgment [***9] surcharging Burns in the amounts which are determined to be improperly diverted, converted, and/or misappropriated. Plaintiffs' third cause of action against the McRory defendants sought a judgment requiring them to disgorge all legal fees paid to them by 2784 LLC which were unrelated to 2784 LLC.

On September 15, 2011, Burns served an answer to plaintiffs' amended complaint, which denied its material allegations and raised four affirmative defenses. Burns' first affirmative defense alleged that plaintiffs' amended complaint fails to state a cause of action. Burns' second affirmative [**873] defense alleged that the court should not proceed in the absence of persons who should be parties. Burns' third affirmative defense alleged that Benevento has no standing and is not a proper party to this action as he is a co-executor acting without authority in relation to the estate of Julia, who was the member of 2784 LLC, and that Neary has no standing and is not a proper party to this action as he is a member of a group called the Neary group that is the member of 2784 LLC. Burns' third affirmative defense further alleged that plaintiffs' amended complaint should be dismissed for failure to join indispensable [***10] parties. Burns' fourth affirmative defense alleged that the court lacks subject matter jurisdiction over plaintiffs' claims.

Following discussions with the attorneys for the McRory defendants and limited document production by them, plaintiffs, by a stipulation of discontinuance dated January 27, 2012, [**287] discontinued this action as against the McRory defendants. On February 23, 2012, Grace (who, as noted above, was Burns' mother and a member of 2784 LLC) died at the age of 99 years.

By notice of motion dated March 6, 2013, plaintiffs moved for a default judgment, pursuant to CPLR 3215, against 2784 LLC. On April 4, 2013, plaintiffs withdrew that motion and extended the time for 2784 LLC to serve an answer to their amended complaint in exchange for its production of bank statements for its checking account, which 2784 LLC produced in or about the end of May 2013. 2784 LLC has not yet interposed an answer to plaintiffs' amended complaint.

On June 28, 2013, Burns produced some documents in response to a February 25, 2013 notice to produce for discovery and inspection which was served by plaintiffs. Plaintiffs assert that their review of 2784 LLC's bank statements and other documents produced [***11] in this action have revealed that they have direct claims against Burns and 2784 LLC for the alleged wrongful withholding from them of over \$80,000 in distributions due to them from the net sale proceeds from the 2784 premises.

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On September 11, 2013, plaintiffs moved for leave to serve an amended summons and second amended verified complaint. Plaintiffs sought to amend the summons and first amended complaint to delete the McRory defendants from the caption and to remove the cause of action asserted as against them to reflect their voluntary discontinuance of all claims against them. Plaintiffs further sought to amend the first amended complaint in order to limit it to direct claims against 2784 LLC and Burns solely for wrongfully withholding from them over \$80,000 in distributions due to them from the net sale proceeds from the 2784 premises.

Plaintiffs' second amended verified complaint (annexed as exhibit A to plaintiffs' motion papers in motion sequence No. 2) alleges that Neary is a member of 2784 LLC, having a 6.133% ownership interest therein. It further alleges that Benevento has a 9.2% beneficial interest in 2784 LLC through the estate of Julia, who was a member of 2784 LLC, [***12] having an 18.4% ownership interest therein, and that Benevento was and is the co-executor of the estate of Julia and is entitled to 50% of Julia's estate.

Plaintiffs' second amended complaint sets forth that on January 20, 2010, 2784 LLC, under the sole and exclusive management of Burns, sold the 2784 premises to M & A Realty Services, LLC for the sum of \$1,050,000. It alleges that as of [**288] January 22, 2010, the sum of \$544,018.29 was available for distribution to 2784 LLC members from the net proceeds of the sale of the 2784 premises, and that, as of March [**874] 9, 2010, distributions of the net proceeds from the sale of the 2784 premises were made to 2784 LLC members, including distributions paid directly to Neary and Benevento, as members. It asserts that Burns, in breach of independent fiduciary duties he owed to Neary and Benevento in their own, individual capacities, unilaterally and wrongfully withheld from them their fair share of distributions due to them from the net proceeds of this sale in violation of the operating agreement and applicable Limited Liability Company Law. Specifically, it alleges that Burns withheld from these sale proceeds the sum of \$35,745.83 from Neary and the [***13] sum of \$44,831.58 from Benevento.

Plaintiffs' second amended complaint alleges three causes of action. Plaintiffs' first cause of action against 2784 LLC alleges that 2784 LLC is in possession and control of the funds wrongfully withheld from them by Burns from their share of distributions of the net sale proceeds of the 2784 premises in violation of the operating agreement and applicable law, and that they have been damaged in the total sum of \$80,577.41, plus interest from March 9, 2010. Plaintiffs' second cause of action alleges a direct claim by Neary against Burns, which asserts that Burns owed an independent fiduciary duty to Neary, as a member of 2784 LLC with a 6.133% ownership interest, that Burns wrongfully withheld the sum of \$35,745.83 from his share of distributions from the net proceeds of the sale of the 2784 premises, and that he is entitled to a judgment in this sum. Plaintiffs' third cause of action alleges a direct claim by Benevento against Burns, which asserts that Burns owed an independent fiduciary duty to Benevento as a member of 2784 LLC with a 9.2% ownership interest and/or as the holder of a 9.2% beneficial interest in 2784 LLC through the estate of Julia, that [***14] Burns wrongfully withheld the sum of \$44,831.58 from his share of distributions from the net proceeds of the sale of the 2784 premises, and that he is entitled to a judgment in this sum.

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On October 24, 2013, Burns filed his instant motion for an order dismissing plaintiffs' amended verified complaint. In his motion papers, Burns opposed plaintiffs' motion to amend and sought an order denying plaintiffs' motion. 2784 LLC has not [*289] submitted any papers with respect to Burns' motion, and it took no position at oral argument.

* Subsequent to oral argument, the court received a purported "reply" to Burns' motion to dismiss which included further opposition to plaintiffs' proposed amendment to their amended complaint. These papers have been rejected by the court and have not been considered (see CPLR 2214 [b], [c]).

In support of their motion to amend, plaintiffs maintained that their proposed amendment was meritorious since they were entitled to their full share of distributions from these sale proceeds and that the withholding of over \$80,000 from their distributions was wrongful and improper. Moreover, no prejudice was demonstrated by Burns with respect to the proposed amendment since it simply [***15] streamlines plaintiffs' amended complaint and does not assert any new facts or causes of action against Burns. In addition, there could be no prejudice to 2784 LLC since, as noted above, it has not as yet served an answer in this action, and prejudice to warrant denial of leave to amend requires some indication that the defendants were hindered in the preparation of their case or were prevented from taking some measure in support of their position (see *McGhee v Odell*, 96 AD3d 449, 450, 946 NYS2d 134 [1st Dept 2012]; *Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504, 925 NYS2d 51 [***875] [1st Dept 2011]). Furthermore, while there was a two-year delay by plaintiffs in seeking such leave, discovery is ongoing, and depositions have not yet been held (see *Rosicki, Rosicki & Assoc., P.C. v Cochems*, 59 AD3d 512, 514, 873 NYS2d 184 [2d Dept 2009]).

Thus, since [HN1] a motion for leave to amend a complaint should be freely granted, absent prejudice or surprise directly resulting from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit (see CPLR 3025 [b]; *Aurora Loan Servs., LLC v Thomas*, 70 AD3d 986, 987, 897 NYS2d 140 [2d Dept 2010]; *Lucido v Mancuso*, 49 AD3d 220, 222, 851 NYS2d 238 [2d Dept 2008], *appeal withdrawn* [***16] 12 NY3d 813, 908 NE2d 928, 881 NYS2d 20 [2009]), and, here, the proposed amendment was not palpably insufficient or patently devoid of merit and there was also no showing of prejudice or surprise resulting directly from plaintiffs' delay in seeking leave, the court, at oral argument held on November 20, 2013, granted plaintiffs' motion for leave to file their second amended verified complaint. While Burns' motion was originally directed as against plaintiffs' first amended complaint, since the court has granted plaintiffs' motion to amend their first amended complaint during the pendency of Burns' motion, the court will address this motion as against plaintiffs' second amended complaint (see *49 W. 12 Tenants Corp. v Seidenberg*, 6 AD3d 243, 243, 774 NYS2d 339 [1st Dept 2004]; *Livadiotakis v. Tzitzikalakis*, [*290] 302 AD2d 369, 370, 753 NYS2d 898 [2d Dept 2003]; *Sage Realty Corp. v Proskauer Rose*, 251 AD2d 35, 38, 675 NYS2d 14 [1st Dept 1998]).

Discussion

In support of his instant motion, Burns argues that this action must be dismissed based upon plaintiffs' lack of standing to sue. [HN2] CPLR 3211 (a) (3) provides for dismissal of

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an action where "the party asserting the cause of action has not legal capacity to sue." CPLR 3211(a) (3) also embraces the ground of the lack [***17] of standing to sue, and this statute is, therefore, available to support a motion to dismiss on this ground (*see Hecht v Andover Assocs. Mgt. Corp.*, 114 AD3d 638, 979 NYS2d 650, 2014 NY Slip Op 632 [2d Dept 2014]).

Burns, in arguing that plaintiffs lack standing to sue, relies upon the third affirmative defense in his answer to the first amended complaint and contends that plaintiffs are not proper parties and lack standing to sue 2784 LLC and him, as its former manager, because they are allegedly not members of 2784 LLC in their individual capacities.

Burns argues that Neary is not a proper party and lacks standing to sue because the member of 2784 LLC is the Neary group, as opposed to Neary. He points to schedule A of the operating agreement (exhibit 2 to his motion papers), which lists the Neary group as consisting of three members with an 18.4% voting percentage interest, and the footnote to that schedule which states that the three Nearys (Neary, Salvatore, and Mary Ann) have each contributed 100% of their respective undivided interest as tenants in common in the 2784 premises to 2784 LLC, and that "[t]he Neary Group owns an 18.4% Member Interest as a group," and "has appointed Mary Ann . . . to represent [***18] them in voting their total 18.4% Voting Percentage Interest until otherwise notified in writing by them."

[1] Burns' argument must be rejected. The membership interest of the Nearys was referred to as the Neary group simply because their interest in the 2784 premises derived from Anna and thereafter passed to Neary and his two siblings, which [**876] formed the Neary group. The mere fact that Neary permitted Mary Ann to vote the collective 18.4% of the Neary group does not negate Neary's status as an individual member of 2784 LLC in his own individual right with a 6.133% (one third of 18.4%) ownership interest. Indeed, schedule A of the operating agreement lists Neary separately as a "Member" and sets forth his residence, address and Social Security number. In fact, Neary was an initial member of 2784 LLC at the time of its formation [**291] in 2006, and he signed the initial operating agreement and the amended and restated operating agreement as an "Initial Member" (*see* exhibit A to plaintiffs' opposition papers). Additionally, Neary, by an email dated February 24, 2010 (exhibit C to plaintiffs' opposition papers), gave Burns written notice of his intent to vote his own 6.133% membership interest separately. [***19] Thus, Neary has established that he is, in fact, an individual member of 2784 LLC and entitled to maintain this action in his own right without the joinder of the other members of the Neary group.

Burns further asserts that Benevento is not a member of 2784 LLC, but, rather, the member is the estate of Julia. He argues that Benevento cannot claim a payment allegedly due to the estate of Julia. He states that while Benevento is a co-executor of the estate of Julia, he is not acting on behalf of the estate with his brother, Anthony, who is the co-executor.

[2] This argument by Burns is unavailing since Benevento is not making a claim on behalf of the estate of Julia, but in his own right as the holder of a beneficial interest of 9.2% of 2784 LLC. Benevento does not seek to recover sums due to the estate of Julia. Rather, he seeks to recover distributions from the sale of the 2784 premises owed to him individually which, he claims, Burns wrongfully withheld from him by making deductions to his share of

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such sale proceeds because he resides as a rent-stabilized tenant at the Neptune Avenue premises. This claim belongs to Benevento and is not shared by Anthony, the other beneficiary and the [***20] co-executor of the estate of Julia, who is not a tenant at the Neptune Avenue premises and received his full share of such proceeds without any deductions. Thus, Benevento, and not the estate of Julia, is the real party in interest in this litigation.

Moreover, it is undisputed that Benevento is the transferee of one half of the interest held by Julia, and, thus, the holder of a "beneficial interest" in 2784 LLC. Such [HN3] a beneficial interest has been recognized as conferring standing upon a party to bring a derivative action on behalf of a corporation pursuant to Business Corporation Law § 626 (a) (see *Bernfeld v Kurilenko*, 91 AD3d 893, 894, 937 NYS2d 314 [2d Dept 2012]; *Shui Kam Chan v Louis*, 303 AD2d 151, 152, 756 NYS2d 534 [1st Dept 2003]), which has been held applicable to limited liability companies (see *Tzolis v Wolff*, 10 NY3d 100, 121, 884 NE2d 1005, 855 NYS2d 6 [2008]). While this is not a derivative action, this beneficial interest likewise furnishes a basis for Benevento's individual claims against 2784 LLC and Burns, and the fact that [*292] Benevento obtained his interest through the estate of Julia does not deprive him of standing in this action (see *Bernfeld*, 91 AD3d at 894).

Furthermore, Burns previously recognized and acknowledged both [***21] Neary and Benevento as members of 2784 LLC. An email by Burns dated February 9, 2009 (exhibit B to plaintiffs' opposition papers) stated that "the three Nearys . . . are direct owners" of 2784 LLC. An email by Burns dated February 22, 2010 (exhibit 6 to Burns' motion papers) regarding distributions sent to Neary and Benevento inquired [***877] as to "[h]ow do the Nearys want their checks" and whether they wanted "[o]ne to Mary Ann or 1/3 to each sib[ling]." Burns, in this email, further inquired as to how he should distribute Julia's funds, noting that the checks would have to be made out to her estate, and he asked whether he should issue two checks, or one each with the co-executor's name also on the check. He additionally stated, in this email, that he "only want[ed] to hear from members," that "[t]he Nearys should elect if they want to vote as a group or individually," and that the Beneventos will have to "decide themselves." By an email dated February 24, 2010 (exhibit C to plaintiffs' opposition papers), Neary responded that he wanted the check issued to him.

Significantly, plaintiffs point out that Burns has already issued separate checks to them in payment of their distributions of [***22] the net sale proceeds, and that they are now simply complaining that they did not receive the full amount due to them. Burns, in paragraph 17 of his attorney's affirmation in support of his motion, admits that plaintiffs have "received distributions." Thus, by such distributions, Burns has acknowledged Neary's membership interest and Benevento's beneficial membership in 2784 LLC and their rights to receive such distributions.

Notably, in the December 15, 2010 decision and order in the Neptune Avenue action, Justice Partnow previously acknowledged that Neary is a member of Neptune LLC and that Benevento has a beneficial interest in Neptune LLC. Burns, in his attorney's affirmation, has admitted that both Neptune LLC and 2784 LLC "have identical members with only a slight difference in percentage ownership." Therefore, it follows that Neary is a member of 2784 LLC in his own right in the same way that he is a member of Neptune

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LLC, and that Benevento holds a beneficial interest in 2784 LLC in his own right in the same way that he holds a beneficial interest in **Neptune LLC**.

[*293] Thus, Neary and Benevento do not lack standing to maintain this action. Dismissal of this action, pursuant to CPLR 3211 (a) (3), **[***23]** must, therefore, be denied.

Burns further contends that plaintiffs have failed to join the other members of 2784 LLC and that, therefore, this action must be dismissed, pursuant to [HN4] CPLR 3211 (a) (10), which provides for the granting of dismissal of a claim against a party based upon the ground that "the court should not proceed in the absence of a person who should be a party."

[3] This contention by Burns is devoid of merit since plaintiffs' second amended complaint asserts direct claims by plaintiffs to recover for distinct injuries that they individually sustained by Burns' alleged wrongful withholding of their proportionate share of distributions of the net proceeds from the sale of the 2784 premises. Plaintiffs are thus alleging claims based upon the breach of a duty owed directly to them, independent of any duty owed to 2784 LLC or any of its other members (*see generally Abrams v Donati*, 66 NY2d 951, 953, 489 NE2d 751, 498 NYS2d 782 [1985], *rearg denied* 67 NY2d 758, 490 NE2d 1234, 500 NYS2d 1028 [1986]; *Behrens v Metropolitan Opera Assn., Inc.*, 18 AD3d 47, 50, 794 NYS2d 301 [1st Dept 2005]; *Lawrence Ins. Group, Inc. v KPMG Peat Marwick LLP*, 5 AD3d 918, 919, 773 NYS2d 164 [3d Dept 2004]). Plaintiffs do not seek to recover any sums that may be due to the other members of **[***24]** 2784 LLC or for any damage to 2784 LLC. Plaintiffs' claims relate only to their own direct claims as against Burns and 2784 LLC and, as a result, do not require the joinder of the other members of 2784 LLC. Consequently, **[**878]** dismissal of plaintiffs' action for failure to join necessary parties must be denied.

Burns also contends that this action must be dismissed, pursuant to CPLR 3211 (a) (7), based upon plaintiffs' failure to state a cause of action. [HN5] "It is well settled that, as a general rule, on a motion to dismiss the complaint for failure to state a cause of action under CPLR 3211 (a) (7), the complaint must be construed in the light most favorable to the plaintiff" (*Gruen v County of Suffolk*, 187 AD2d 560, 562, 590 NYS2d 217 [2d Dept 1992]; *see also Rosen v Watermill Dev. Corp.*, 1 AD3d 424, 425, 768 NYS2d 474 [2d Dept 2003]), and the pleading is to be afforded a liberal construction (CPLR 3026). The court must also accept the facts as alleged in the complaint and submissions in opposition to the motion as true and accord the plaintiff "the benefit of every possible favorable inference" (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414, 754 NE2d 184, 729 NYS2d 425 [2001]; *see also Thomas v LaSalle Bank N.A.*, 79 AD3d 1015, 1017, 913 NYS2d 742 [2d Dept 2010]). **[***25]** The court, in accepting the facts **[*294]** alleged in the complaint to be true, must "determine only whether the facts alleged fit within any cognizable legal theory" (*Ruffino v New York City Tr. Auth.*, 55 AD3d 817, 818, 865 NYS2d 667 [2d Dept 2008], quoting *Morris v Morris*, 306 AD2d 449, 451, 763 NYS2d 622 [2d Dept 2003]; *see also Hurrell-Harring v State of New York*, 15 NY3d 8, 20, 930 NE2d 217, 904 NYS2d 296 [2010]; *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570-571, 841 NE2d 742, 807 NYS2d 583 [2005]).

Burns argues that plaintiffs have failed to state a cause of action because there was no wrongdoing by him. Burns' attorney asserts that Burns sent emails discussing at length

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that 2784 LLC would give a loan to **Neptune LLC** and that this loan was authorized by the members. She further asserts that there is no damage to any member because the \$250,000 loaned by 2784 LLC is earning interest at five percent and is secured by the real estate, and that when the Neptune Avenue premises are sold, the mortgage will be paid to 2784 LLC with interest and all of the members of both 2784 LLC and **Neptune LLC** will receive their pro rata shares. She also states that plaintiffs received payments at the same time and "in pro rata amounts as the other members."

The second amended **[***26]** complaint, however, does not challenge the \$250,000 loan made by 2784 LLC to **Neptune LLC** and does not allege that the sale of the 2784 premises was unauthorized. Rather, plaintiffs assert that Burns wrongfully deprived them of their fair share of the distributions from the net proceeds of the sale of these premises. Specifically, plaintiffs contend that Burns unilaterally and wrongfully withheld sums from their individual distributions because of their refusal to vacate their rent-stabilized apartments at the Neptune Avenue premises. Plaintiffs have annexed a letter by Burns dated March 9, 2010 (exhibit E to plaintiffs' opposition papers), which establishes that Burns, referring to Benevento's and Neary's apartments at the Neptune Avenue premises, unilaterally deducted from their individual distributions of the net sale proceeds of the 2784 premises that were issued by 2784 LLC in March 2010, amounts for "disparate benefits" that Burns claims they received by virtue of their rent-stabilized tenancies at the Neptune Avenue premises. This letter shows that in contrast to the distributions to plaintiffs, these sums were not deducted from the distributions received by the other two Neary **[***27]** members (Salvatore and Mary Ann), Anthony (Benevento's brother), **[**879]** or Grace, who were paid their distributions in full.

[*295] Burns further argues that he should be absolved from liability pursuant to article 4.5 of the operating agreement (exhibit 7 to Burns' motion papers), which provides as follows:

"A Manager shall not be personally liable to the Company or its Members for damages for any breach of duty as a Manager, except for any matter in respect to which such Manager shall be liable by reason that, in addition to any and all other requirements for such liability, there shall have been a judgment or other final adjudication adverse to such Manager that establishes that such Manager's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that such Manager personally gained in fact a financial profit or other advantage to which such Manager was not legally entitled or that with respect to a distribution the subject of Section 508 of the [Limited Liability Company Law], such Manager's acts were not performed in accordance with Section 409 of the [Limited Liability Company Law]."

[HN6] Limited Liability Company Law § 508 refers to limitations **[***28]** on distributions to members. Limited Liability Company Law § 409 (a) provides that [HN7] "[a] manager shall perform his or her duties as a manager, including his or her duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances."

[4] Burns contends that he did not act in bad faith or engage in intentional misconduct. However, plaintiffs' allegations, which must be deemed true for purposes of this motion, sufficiently allege such bad faith, asserting that Burns acted "maliciously, wrongfully, and unlawfully," and in breach of his fiduciary duties. Thus, despite Burns' attorney's argument that Burns acted properly, questions of fact are raised as to this issue.

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Burns additionally argues that he is entitled to be indemnified and reimbursed for the expenses which he has incurred related to this litigation pursuant to article 4.7 of the operating agreement (exhibit 7 to Burns' motion papers), which provides that "[t]he Company shall indemnify and hold harmless each Manager and the Members from and against all claims and demands to the maximum extent permitted under the [Limited Liability [***29] Company Law]."

[5] Burns requests that his motion "serve as a cross claim" against 2784 LLC for his legal fees and indemnification [*296] pursuant to article 4.7 of the operating agreement. Such a request is procedurally improper. Burns has not yet interposed an answer to plaintiffs' second amended complaint nor did he include a cross claim against 2784 LLC for indemnification in his answer to plaintiffs' first amended complaint. Moreover, there has been no final adjudication on the issue of whether Burns breached his duties under the operating agreement, and such a finding would defeat his claim for indemnification pursuant to Limited Liability Company Law § 420, which provides as follows:

[HN8] "Subject to the standards and restrictions, if any, set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless, and advance expenses to, any member, manager or other person, or any testator or intestate of such member, manager or other person, from and against any and all claims and demands whatsoever; provided, however, that no indemnification may be made to or on behalf of any member, manager or other person if a [**880] judgment or other final [***30] adjudication adverse to such member, manager or other person establishes (a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled."

Consequently, Burns' request for indemnification and reimbursement under the operating agreement must be denied as premature (see Limited Liability Company Law § 420).

Conclusion

Accordingly, Burns' motion is denied in its entirety.

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CIVIL SUITS FROM NEW JERSEY
SUPERIOR COURT

Defendant: GEORGE GROSSOS; NEPTUNE LLC

Defendant Address: GEORGE GROSSOS

Plaintiff: CHOI KYUNGKON

Number: L00568215

Vendor Number: SC-56820000-2015

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CIVIL SUITS FROM NEW JERSEYSUPERIOR COURT

Date: 6/16/2015

Filing Type: CIVIL SUIT

Case Type: CIVIL NEW FILING

County Filed: BERGEN

Place Filed: NEW JERSEY SUPERIOR COURT, LAW DIVISION, SPECIAL CIVIL PART

Description: SUITS UNDER \$ 7,500.00

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CIVIL SUITS FROM MARYLAND
MARYLAND DISTRICT COURT

Defendant: DANIELLE LONGCHAMPS; CHECKER CAB ASSOCIATION INC; M T A;
LINDA M BOWMAN; GOODS DEBORAH; EMERGE INC; DEL WOOD KITCHENS;
CANDIS MOLDEN; LATOYA M BRANCH; IMECKA T JONES; SHELLEY NELSON; TIKIA
B D WRIGHT; MARK POWELL

Defendant Address: DANIELLE LONGCHAMPS

[REDACTED]

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CIVIL SUITS FROM MARYLANDMARYLAND DISTRICT COURT

DANIELLE LONGCHAMPS

Plaintiff: KNIGHT DRAKE; JOHNSON AUDWIN; ALIEL MISHAEL ELOHIM; PARKER KIM; MIDLAND FUNDING LLC; FIELDS CARL; CHESAPEAKE PLYWOOD LLC; HUGHLEY GREGORY; RENT A CENTER; BAIL FINANCE INC; NEPTUNE LLC BY SINGER REALTY INC; AM PROPERTY MANAGEMENT LLC

Number: 010100053252015

Vendor Number: DS-10100053-2015-DI

Date: 3/16/2015

Filing Type: CIVIL SUIT

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CIVIL SUITS FROM MARYLANDMARYLAND DISTRICT COURT

Case Type: CIVIL NEW FILING

County Filed: BALT CITY

Place Filed: MARYLAND DISTRICT COURT

Description: CIVIL SUITS

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