

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

BOWERY RESIDENTS' COMMITTEE, INC.,

Index No. 650677/2011

Plaintiff,

**VERIFIED AMENDED COMPLAINT**

- against -

THE LAPES GROUP, INC., 317 ALADDIN  
HOTEL CORP. and ALAN LAPES,

Defendants.

Plaintiff Bowery Residents' Committee, Inc. ("BRC"), by its undersigned counsel, Arnold & Porter LLP, in accordance with the order of this Court dated July 13, 2011 (Hon. Bernard Fried, J.), submits the following Verified Amended Complaint against Defendants The Lapes Group, Inc. ("Lapes Group"), 317 Aladdin Hotel Corp. and Alan Lapes:

**PARTIES**

1. Bowery Residents' Committee, Inc. is a New York not-for-profit corporation located at 324 Lafayette Street, 8<sup>th</sup> Floor, New York, New York, 10012.
2. The Lapes Group, Inc. is a New York corporation located at 317 West 45<sup>th</sup> Street, New York, New York 10036. It has been dissolved and has existed in an inactive status since January 26, 2011.
3. 317 Aladdin Hotel Corp. is a New York corporation located at 230 West 54<sup>th</sup> Street, New York, New York 10019.
4. Alan Lapes is an individual domiciled in New Jersey. He is owner and president of The Lapes Group, Inc.

## JURISDICTION AND VENUE

5. This Court has personal jurisdiction over the Defendants the Lapes Group and 317 Aladdin Hotel Corp. under N.Y. Civil Practice Law and Rules § 301, because both are domestic corporations.

6. This Court has personal jurisdiction over the Defendant Alan Lapes under N.Y. Civil Practice Law and Rules § 301, because he is and has been doing business in New York.

7. Venue is proper under N.Y. Civil Practice Law and Rules §503(a), because, among other things, BRC resides in New York County.

## FACTUAL ALLEGATIONS

### **A. The Social Services Contract**

8. The Lapes Group has an agreement or arrangement with New York City Department of Homeless Services (“DHS”) under which it operates a temporary shelter for homeless couples at the Lapes Group Longacre Hotel (“Longacre Hotel”) at 317 West 45<sup>th</sup> Street, New York, New York 10012.

9. Under this agreement, DHS requires that certain social services be provided to the couples living at the facility.

10. The Lapes Group, through its owner and president Alan Lapes, initiated discussions with BRC about creating a sub-contracting relationship pursuant to which BRC would provide the required social services in exchange for payment from the Lapes Group.

11. On July 9, 2007, the Lapes Group and BRC entered a written agreement (the “Social Services Contract”) under which BRC agreed to provide the social services required by DHS to the homeless couples at the Longacre Hotel. A true and correct copy of that contract is attached hereto as Exhibit A.

12. In exchange, the Lapes Group agreed to pay BRC \$984,952 per year, in monthly installments of \$82,079.

13. Alan Lapes personally negotiated the terms of the Social Services Contract and struck the deal with BRC. Alan Lapes personally signed the Social Services Contract on behalf of the Lapes Group, of which he was both owner and president.

14. At all times since July 9, 2007, BRC met its obligations under the Social Services Contract.

15. For some time, BRC received payment for the services that it was providing to homeless couples under the Social Services Contract. These payments were always made through an entity called 317 Aladdin Hotel Corp., rather than through the Lapes Group or through Alan Lapes himself.

16. On information and belief, 317 Aladdin Hotel Corp. assumed or was assigned the Lapes Group's obligation to make payment to BRC under the Social Services Contract.

17. Paragraph 13 of the Social Services Contract states:

"Neither Party may assign this Agreement without the prior written consent of the other, except that either Party may, without the other's consent, assign this Agreement to any entity that owns that Party in whole or in part, or is owned by such Party in whole or in part, provided, however, that Party agrees to remain bound by its duties and obligations hereunder."

On information and belief, and based on this provision, 317 Aladdin Hotel Corp. either is owned, in whole or in part, by Alan Lapes or the Lapes Group, or owns, in whole or in part, the Lapes Group.

18. Beginning in September 2009, however, 317 Aladdin Hotel Corp. ceased making payments to BRC, even though such payments were required to be made by the Lapes Group

under the Social Services Contract. Neither Alan Lapes nor the Lapes Group made the required payment for September 2009 or for any month thereafter.

19. Beginning in September 2009, BRC made repeated demands for payment of the money owed by the Lapes Group. Prior to filing the present lawsuit, for example, BRC made demands by means of an e-mail dated January 10, 2011 and by means of a demand letter dated February 17, 2011. A true and correct copy of the February 17, 2011 letter is attached hereto as Exhibit B.

20. By mutual agreement between BRC and Alan Lapes, BRC provided its last services under the Social Services Contract on March 15, 2011 and thereafter vacated the Longacre Hotel.

21. Based on its non-payment beginning in September 2009 and continuing through March 15, 2011, the Lapes Group owes a total of \$1,514,489.94 to BRC under the Social Services Contract.

**B. The Lapes Group's Dissolution**

22. On January 26, 2011, while the Social Services Contract was still in effect, the Lapes Group went into "inactive" status and was dissolved. According to the New York State Department of State's Division of Corporations, the Lapes Group's inactive status occurred through "Dissolution by Proclamation/Annulment of Authority." Attached as Exhibit C is a true and correct copy of entity information related to the Lapes Group, which we downloaded from the website of the New York State Department of State, Division of Corporations.

23. On information and belief, the Lapes Group's dissolution was a result of its failure to pay required corporate franchise taxes.

24. After the Lapes Group was dissolved on January 26, 2011, Alan Lapes continued to conduct business with BRC personally, as he had done prior to January 26, 2011.

Specifically, he continued to shelter homeless couples at the Longacre Hotel. He also continued to coordinate with BRC and to allow BRC to do its work under the Social Services Contract.

25. After January 26, 2011, Alan Lapes also continued to receive payments from DHS for providing shelter and services to the couples staying at the Longacre Hotel.

26. However, at no time did the Lapes Group, 317 Aladdin Hotel Corp., or any other entity resume making payments to BRC as required under the Social Services Contract.

27. Therefore, Alan Lapes, who had previously been an officer of the Lapes Group, personally incurred debts to BRC while continuing the Lapes Group's business under the Social Services Contract, after the corporate entity Lapes Group had been dissolved.

**C. Alan Lapes' Domination and Control of the Lapes Group Prior to its Dissolution**

28. Beginning with the earliest preliminary discussions between the Lapes Group and BRC regarding homeless services at the Longacre Hotel, Alan Lapes has, at all times, completely dominated and controlled the Lapes Group. By ignoring corporate formalities and failing to maintain distinctions between the Lapes Group's affairs, his other entities' affairs, and his personal affairs, Alan Lapes lost the protections afforded by the corporate form. The Lapes Group ceased to have any legitimate separate identity, apart from Alan Lapes himself.

29. Alan Lapes personally managed all aspects of performance under the Social Services Contract. On matters of substance and policy (as compared to day-to-day operations), BRC dealt solely with Alan Lapes.

30. In his dealings with BRC, Alan Lapes never conducted business through the use of resources that could be identified as belonging to the Lapes Group, as opposed to belonging to Alan Lapes personally.

31. Alan Lapes generally placed and received phone calls related to his work with BRC using a personal cell phone, rather than using a business telephone or a Lapes Group phone number. In the same way, he generally conducted e-mail correspondence using a personal e-mail address, rather than a Lapes Group address. He also generally worked out of his personal automobile, rather than using a Lapes Group office.

32. Throughout his dealings with the Lapes Group, Alan Lapes failed to keep proper books and records of the assets, liabilities and transactions of the Lapes Group, as described more fully below.

33. On many occasions, vendors and contractors arrived to the Longacre Hotel or to other Lapes-owned sites seeking payment from Alan Lapes. Some of these vendors had performed work related to the Alan Lapes' business at the Longacre Hotel, while other vendors had performed services at other properties owned or managed by Alan Lapes. Lapes consistently failed to pay such vendors on time or paid them different amounts than the vendors claimed they were owed. Arguments and altercations between vendors and Alan Lapes were a frequent occurrence during BRC's work at the Longacre Hotel.

34. Alan Lapes generally paid such vendors and contractors, if at all, in an ad hoc, disorganized fashion. When an unpaid vendor or contractor came by the Longacre Hotel, or other Lapes Group facilities, to complain about not having been paid, Mr. Lapes frequently made the payments by pulling bills out of a large wad of cash that he kept on his person. Although Alan Lapes managed his various properties and contracts through multiple different entities, he

failed to differentiate which property the payments related to or which entity owed payment. Instead, Mr. Lapes would simply peel bills off of the wad of cash in his pocket and hand them out. In this way, Alan Lapes consistently evidenced a failure to keep accurate records and a failure to distinguish between the various entities through which he managed the properties and projects with which he was involved.

35. Further evidence that Mr. Lapes failed to maintain proper books and records and otherwise observe proper corporate formalities is shown by the fact that he paid BRC, for the time that he did pay, out of an entity known as 317 Aladdin Hotel Corp., which is not a party to the Social Services Contract. Alan Lapes thus intermixed funds controlled by the Lapes Group with funds of 317 Aladdin Hotel Corp.

36. Further demonstration that Mr. Lapes failed to maintain appropriate separations between the various entities through which he worked is shown by the fact that Lapes sought to justify breaching the Social Services Contract by making reference to a dispute between BRC and a different entity that Mr. Lapes apparently controlled, concerning an unrelated project at a different location. There was effectively no distinction between Alan Lapes' personal interests and the interests of the Lapes Group.

37. In the foregoing way, Alan Lapes conducted his business with BRC without any regard for corporate formalities applicable to the Lapes Group and without taking any steps that would have indicated that performance under the Social Services Contract was by the Lapes Group, rather than by Alan Lapes personally.

**AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH  
OF CONTRACT AGAINST DEFENDANTS THE LAPES GROUP,  
317 ALADDIN HOTEL CORP. AND ALAN LAPES**

38. BRC repeats and realleges each and every allegation contained above as if the same were set forth at length herein.

39. The Lapes Group breached the Social Services Contract, beginning in September 2009, by failing to make the payments to BRC that are required under that contract.

40. On information and belief, 317 Aladdin Hotel Corp., which apparently assumed the Lapes Group's obligations under the Social Services Contract, beginning in September 2009, breached its obligations by failing to make the payments to BRC that are required under that contract.

41. After the Lapes Group was dissolved on January 26, 2011, Alan Lapes assumed personal obligations under the Social Services Contract when he continued to conduct business with BRC personally.

42. Throughout the Lapes Group's dealings with BRC, Alan Lapes has, at all times, completely dominated and controlled the Lapes Group. By ignoring corporate formalities, failing to keep proper books and records, and failing to maintain distinctions between the Lapes Group's affairs, other entities' affairs, and his personal affairs, Alan Lapes lost the protections afforded by the corporate form.

43. Mr. Lapes' domination of the Lapes Group was used to commit a wrong against BRC. Alan Lapes caused the Lapes Group and 317 Aladdin Hotel Corp. to withhold payments required in the Social Services Contract, then allowed the Lapes Group to be dissolved.

44. As a result, BRC is entitled to money damages in the amount owed under the Social Services Contract, which is a total of \$1,514,489.94.



**AS AND FOR A SECOND CAUSE OF ACTION FOR UNJUST ENRICHMENT  
AGAINST DEFENDANT ALAN LAPES**

45. BRC repeats and re-alleges each and every allegation contained above as if the same were set forth at length herein.

46. The Lapes Group's arrangement or contract with DHS specifically included an amount that both DHS and Alan Lapes understood was to be paid to the entity providing services to the homeless couples residing at the Longacre Hotel. That entity was BRC.

47. Instead of making the payments to BRC that were contemplated in his contract or arrangement with DHS, Alan Lapes caused the Lapes Group and 317 Aladdin Hotel Corp. to withhold payments, starting in September 2009, which resulted in an unjust benefit to him personally.

48. As a result of his domination and control over the Lapes Group and his wrongful failure to remit DHS funds or otherwise make payment to BRC, Alan Lapes was personally unjustly enriched and should be required to pay damages in the amount that was owed to BRC under the Social Services Contract, a total of \$1,514,489.94.

**RELIEF SOUGHT**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against the Lapes Group, 317 Aladdin Hotel Corp. and Alan Lapes, as follows:

- a) Awarding money damages to BRC in the amount of \$1,514,489.94, with interest on such amount as allowed by law from September 2009 until paid;
- b) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 29, 2011

ARNOLD & PORTER LLP

By:           /s/ Richard P. Swanson            
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