

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

-----X
SPIROS MILONAS,

Plaintiff,

-- against --

ANTONIA KOTOVOS MILONAS,

Defendant.
-----X

Index No. _____

Date Summons & Complaint filed:
June 11, 2017

Plaintiff designates New York
County as the place of trial

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's attorney(s) within 20 days of the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be entered against you by default for the relief demanded in the Complaint.

The basis of the venue designated is CPLR § 503(a), based upon the residence of the Defendant.

Dated: New York, New York
June 11, 2017

Yours, etc.,

JUDD BURSTEIN, P.C.

By: /s/ Judd Burstein
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To: ANTONIA KOTOVOS MILONAS

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

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SPIROS MILONAS,

Index No. _____

Plaintiff,

-- against --

COMPLAINT

ANTONIA KOTOVOS MILONAS,

Defendant.
-----X

Plaintiff Spiros Milonas (“Plaintiff” or “Spiros”), by his attorneys, Judd Burstein, P.C., as and for his Complaint against Defendant Antonia Kotovos Milonas (“Antonia”) alleges as follows:

PARTIES

1. Spiros, age 88, is a resident of New York County. He is the husband of Antonia.
2. Antonia, age 62, is a resident of New York County, where she resides with Spiros.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

3. This is a business dispute between a still-married couple concerning the development of a condominium located at 40 East 72nd Street in New York County (“72nd Street Building”).
4. Spiros and Antonia each own 50% of Axia Realty LLC (“Axia” or “Company”), the owner of the 72nd Street Building.
5. Axia was formed to purchase and develop the 72nd Street Building as a luxury condominium apartment building.

6. On November 10, 2010, Spiros and Antonia entered into two inter-related agreements: (a) an Amended and Restated Operating Agreement for Axia (“Axia Agreement”), and (b) an Amendment and Restatement of Prenuptial Agreement (“Prenup”).

7. The Axia Agreement designates Spiros and Antonia as the Managers of Axia.

8. The Axia Agreement provides that the purpose of Axia is, *inter alia*, to “acquire, sell, lease and manage [the 72nd Street Building] ..., and to engage in all other matters incidental or related thereto.”

9. Section 4(e) of the Axia Agreement requires unanimous consent by Spiros and Antonia to (a) “the incurrence, issuance, assumption, guarantee or refinancing of any debt by the Company,” or “the sale, transfer, lease, sublease, license or other disposition by the Company to a third party of any material property or asset, real, personal or mixed (including leasehold interests and intangible assets).”

10. Section 5 of the Axia Agreement provides:

If the Managers cannot agree on a determination which requires their unanimous consent and they become “deadlocked”, a referee will be called upon to resolve the dispute. Both Managers will follow the decision of such referee. Unless otherwise agreed by the Managers, John Kapioltas will be the referee....

11. The Prenup provides:

The entire development of the 72nd Street Building shall be financed by debt or equity.

* * *

All determinations regarding the development of the 72nd Street Building, including, without limitation, the financing of the property, renovation, improvement, maintenance, and the decision whether to rent, sell or otherwise dispose of any part of the 72nd Street Building shall be made jointly by ANTONIA and SPIROS....

If ANTONIA and SPIROS cannot agree about any determination regarding the development of the 72nd Street Building, John Kapioltas ... will resolve the dispute....

ANTONIA and SPIROS agree that all determinations regarding the development of the 72nd Street Building, including, without limitation, the financing of the property, renovation, improvement, maintenance, and the decision whether to rent, sell or otherwise dispose of any part of the 72nd Street Building, shall be made in accordance with [the Prenup], and that ANTONIA and SPIROS shall take no action, including, without limitation, as a manager or member of Axia LLC (or any entity related to Axia LLC), that in any way conflicts with this Section, including, without limitation, the exercise of any right, whether arising from statute, the by-laws or the operating agreement of Axia LLC (or any entity related to Axia LLC) or otherwise, that ANTONIA or SPIROS may have as a manager or member of Axia LLC (or any entity related to Axia LLC) with respect to the voting or management of Axia LLC (or any entity related to Axia LLC). ANTONIA and SPIROS hereby knowingly and voluntarily waive any rights they may have, statutorily or otherwise, arising from their membership in Axia LLC to the extent that those rights are more expansive than, or otherwise vary from, the rights provided for by this Agreement. It is further understood that the Axia LLC Operating Agreement shall include provisions consistent with the terms of this Agreement so as to effectuate those terms.

12. Axia was unable to secure primary bank financing for the total cost of developing the 72nd Street Building, and therefore needed to find an additional source of funding. That funding came (at a lower interest rate than had been offered by independent third party offers for mezzanine financing) from two companies – Levant Partners U.S., L.P. (“Levant”) and Phoenix Capital Finance, Ltd. (“Phoenix”) – owned by trusts of which Spiros and his two daughters are beneficiaries. In addition, borrowing from Levant and Phoenix saved Axia hundreds of thousands of dollars in mortgage recording fees because neither Phoenix nor Levant demanded a security interest in the 72nd Street Building – something that any third-party lender would have required as a condition of lending Axia money.

13. Initially, Antonia agreed to financing by Phoenix, signing two promissory notes from Axia to Phoenix: (a) an August 22, 2011 promissory note in the amount of \$2,226,549 and (b)

an October 6, 2015 promissory note in the amount of \$500,000. Indeed, since, pursuant to the Prenup, only debt can be used to develop the 72nd Street Building unless Antonia or Spiros presents a written equity proposal (which Antonia never presented), the development of the 72nd Street Building could not have proceeded without borrowing money either from Levant and Phoenix, or from a lender at a higher cost to Axia.

14. However, even though there was no other way to develop the 72nd Street Building, Antonia refused to sign any additional promissory notes obligating Axia to repay the loans from Phoenix and Levant. In total, (a) Levant lent Axia \$6.2 million between February 4, 2016 and August 17, 2016 pursuant to a grid promissory note dated February 4, 2016, and (b) Phoenix lent Axia \$2,230,000 pursuant to promissory notes dated October 27, 2015, October 28, 2015, and December 22, 2015 (collectively, “Levant/Phoenix Notes”).

15. In retrospect, Antonia’s reason for refusing to sign the additional promissory notes to Levant and Phoenix is obvious.

16. The Prenup provides for three categories of property: (a) “Separate Property,” (b) “Marital Property,” and (c) “Special Property.” The 72nd Street Building was denominated as “Special Property.” This was very significant because, under the Prenup, if Spiros predeceases Antonia, she receives Spiros’s share of all Marital Property free and clear of any debt, which must be satisfied out of Spiros’s Estate. However, there is no such obligation regarding Special Property, which Antonia would receive subject to all outstanding debt.

17. In November of 2013, Antonia, who routinely yells and acts abusively towards Spiros, bullied Spiros, who was then 84 years old, to sign an amendment to the Prenup which transmuted the 72nd Street Building from Special Property into Marital Property. This means that

if Spiros predeceases Antonia, she will receive sole ownership, through Axia, of the 72nd Street Building free and clear of all debts, and Spiros's Estate will be responsible for all the monies owed by Axia to Levant and Phoenix. This result is extremely important to Antonia because she is obsessed with ensuring that Spiros's two daughters, as well as his three grandchildren, inherit as little as possible from their elderly father. Given their 27-year age difference, Antonia is disgracefully just waiting for Spiros to die. In anticipation of that day, she is doing all that she can – by threats, abuse, and undue influence – to grab as much money for herself through frustrating Spiros's wishes for his children and grandchildren.

18. From October of 2015 to date, Spiros has consistently asked Antonia to sign the Levant/Phoenix Notes, but she has refused to do so.

19. The parties' dispute came to a head in May of 2017 because of the imminent closing on sales of three of the apartments in the 72nd Street Building for a total of \$32.3 million. Not only was Antonia refusing to sign the Levant/Phoenix Notes, she was also refusing to provide executed copies of the closing documents for the three sales.

20. At this point, as provided in both the Axia Agreement and the Prenup, Spiros brought the dispute to John Kapioltas. After considering Spiros's request, as well as Antonia's counsel's response, Mr. Kapioltas sent a letter to Spiros and Antonia on May 18, 2017 directing Antonia to sign both the closing documents for the sales of the three apartments and all the Levant/Phoenix Notes.

21. Initially, Antonia refused to comply with any part of Mr. Kapioltas's direction. Finally, after a threatening letter sent by Spiros's counsel to Antonia's counsel, Antonia executed

the closing documents for the sales of the three apartments. However, she has continued to refuse to sign the Levant/Phoenix Notes.

22. Thereafter, Antonia, through threats and abuse (including instructing her housekeeper to pack all of Spiros's belongings so that she could throw her elderly husband out of their home), momentarily secured Spiros's agreement not to repay even the promissory notes to Phoenix which Antonia had signed from the approximately \$4.3 million in net proceeds that will be left from the third of the three apartment sales after paying off the debt owed to Deutsche Bank, which holds a first lien on the 72nd Street Building. Instead, Antonia secured Spiros's signature on a document directing Axia's attorneys to deliver the check for the excess \$4.3 million from the closing on the third apartment to her home, as opposed to Spiros's offices at 1790 Broadway, New York, New York 10019, which is the address listed as Axia's place of business in both the Axia Agreement and on the New York Secretary of State's website. She then opened a new bank account for Axia which, in violation of the Axia Agreement and the Prenup, permitted her to remove money from the account on her signature alone, and **listed her cell phone number as the contact for any communications from the bank about the account.**

23. Confident that she had successfully bullied Spiros into burdening his Estate with the cost of developing the 72nd Street Building so that she could receive it free and clear as some type of ugly reward for having tortured Spiros in the last years of his life, Antonia happily flew off to Europe. She announced her plan to stay there for several weeks.

24. However, free of her abuse, Spiros changed his mind and directed Axia's attorneys to deliver the check to Axia's offices. On June 7, 2017, Axia's attorneys informed counsel for

Spiros and Antonia that, given the conflicting instructions they had received, they were going to deliver the check to Axia's offices.

25. On June 10, 2017, Antonia called Spiros, and, screaming at him, stated that she was returning to New York on June 11, 2017 to "stop the sale" of the third apartment.

26. This action follows.

FIRST CAUSE OF ACTION

(Specific Performance)

27. Spiros repeats and realleges the allegations set forth above in Paragraphs 1-26 as if fully restated herein.

28. Spiros has substantially performed his obligations under both the Axia Agreement and the Prenup.

29. Spiros is ready, willing, and able to perform those obligations not yet performed under both the Axia Agreement and the Prenup.

30. If Antonia is not required to sign the Levant/Phoenix Notes, Spiros will suffer irreparable injury because, if he dies before Antonia signs the Levant/Phoenix Notes, Antonia will take the position that Spiros's Estate is responsible for their payment, thereby depriving Spiros of the opportunity to live out his life knowing that he has provided for his children and grandchildren as he wishes.

31. Spiros is therefore entitled to specific performance of the Prenup in the form of an Order directing Antonia to execute the Levant/Phoenix Notes.

SECOND CAUSE OF ACTION

(Liquidated Damages)

32. Spiros repeats and realleges the allegations set forth above in Paragraphs 1-26 as if fully restated herein.

33. Section XX(C)(1)(b) of the Prenup provides that if “ANTONIA ... in any way, directly or indirectly, (i) challenges the validity of this Agreement, or any provision hereof..., then ANTONIA ... shall ... pay from her Separate Property to SPIROS, or his estate, as the case may be, as liquidated damages, and not as a penalty, the sum of five million dollars (\$5,000,000)....”

34. By refusing to follow John Kapioltas’s direction that she execute the Levant/Phoenix Notes, Antonia has challenged the validity of Section III(C)(4) of the Prenup, entitling Spiros to \$5,000,000 in liquidated damages.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty)

35. Spiros repeats and realleges the allegations set forth above in Paragraphs 1-26 as if fully restated herein.

36. Because of the Axia Agreement and the fact that she is Spiros’s wife, Antonia is Spiros’s fiduciary.

37. Antonia has breached her fiduciary duty to Spiros.

38. Antonia has acted in bad faith.

39. Spiros has been damaged thereby in an amount to be determined by the Court.

40. In addition, because her conduct has been willful, wanton, malicious and, indeed, evil, Antonia should be required to pay Spiros punitive damages in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands Judgment as follows:

- A. An Order of specific performance of the Prenup directing Antonia to execute the Levant/Phoenix Notes;
- B. An award of liquidated damages in the amount of \$5,000,000;
- C. An award of damages and punitive damages arising from Antonia's breach of fiduciary duty;
- D. An award of Plaintiff's costs, expenses and reasonable attorneys' fees pursuant to XX(B) of the Prenup; and
- E. An award of such other and further relief to the extent deemed just and proper by the Court.

Dated: New York, New York
June 11, 2017

JUDD BURSTEIN, P.C.

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