Revka LLC v Levy
2025 NY Slip Op 31448(U)
April 21, 2025
Supreme Court, New York County
Docket Number: Index No. 655547/2023
Judge: Shahabuddeen A. Ally
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SHAHABUDDEEN A. ALLY** **PART 16M**
Justice

REVKA LLC, in its own capacity and as a member of PRINCIPESSA SOHO LLC and in the right of and on behalf of PRINCIPESSA SOHO LLC,

Plaintiff,

-against-

COBI LEVY and ACT 2 HOSPITALITY RG GROUP, LLC,

Defendants.

INDEX NO.	**655547/2023**
MOTION DATE	**12/7/2023**
MOTION SEQ. NOS.	**001**

DECISION & ORDER

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 1) to/for **INJUNCTION/RESTRAINING ORDER**: 2-21, 25-28, 31-41, 69-78

Currently before the Court for decision is Motion Sequence No. 1. By this motion, brought by proposed order to show cause ("OSC") filed on November 3, 2023, plaintiff REVKA LLC ("Revka") seeks an order, pursuant to CPLR § 6301, entering a preliminary injunction against defendant COBI LEVY ("Levy"):

1. restraining Levy from acting as Manager of Principessa Soho LLC ("Soho");
2. compelling Levy to turn over all keys, access codes, passwords, and books and records regarding Soho to Revka;
3. compelling Levy to arrange for his removal as signatory of all of Soho's bank accounts and the authorization of Revka as a signatory;
4. compelling Levy to notify all of Soho's employees, accountants, attorneys, utilities, and vendors of his removal as Manager of Soho and his replacement by Revka; and
5. compelling Levy to coordinate all arrangements concerning his removal and replacement as Manager with Revka.

(NYSCEF Doc. 26) The Court signed the proposed OSC on November 13, 2023, and in doing so entered a temporary restraining order ("TRO") against Levy enjoining him from making, or

causing to be made, any payments or disbursements from the bank accounts of Soho without Revka's written approval. (*Id.*) The TRO was subsequently modified to exclude "ordinary business transactions for the operation of the business." (*Id.* Doc. 89) To date, the modified TRO remains in effect.

Levy filed opposition to the motion on December 6, 2023. (*See id.* Docs. 69-78) The signed OSC did not permit a reply. (*Id.* Doc. 26)

For the reasons discussed below, Revka's motion for a preliminary injunction is **DENIED**, and the TRO is vacated.

I. BACKGROUND

This dispute revolves around the Little Prince restaurant located in downtown Manhattan. Little Prince was founded by Levy and six of his friend in 2013. (Aff. of Cobi Levy in Opp. to Prelim. Inj. Mot., sworn to on Dec. 6, 2023 ("Levy 12/6/23 Aff.") (NYSCEF Doc. 70), ¶ 9) Levy—who has owned and successfully managed multiple restaurants throughout New York City since 2008 and has consulted on the restaurant business for hotel and real estate developers—developed Little Prince's name, design, and menus and manages every aspect of the restaurant. (*See id.* ¶¶ 6-10) Soho was used as the vehicle to divide ownership of Little Prince among Levy and the other founders, to wit, Soho owns Little Prince and each of the founders were granted membership interests in Soho. (*Id.* ¶ 10)

In 2015, after Levy had been managing Little Prince successfully for two years, Levy met Salim Assa ("Assa"). (*Id.* ¶ 11) At the time, Assa was co-owner of a midtown Manhattan restaurant named Butter, which was suffering financially. (*Id.*) Assa's business is not managing restaurants; rather, it is owning and renting properties. (*See id.* ¶ 12) In other words, he is a landlord. (*Id.*) When Assa offered Levy the opportunity to manage Butter, Levy took the opportunity and turned the restaurant around, making it profitable. (*Id.* ¶ 11) Assa was pleased with Levy's success at Butter, and, at Assa' request, Levy remained the third-party manager of that restaurant until 2021. (*Id.* ¶ 13)

Based on Levy's turnaround of Butter, Assa approached Levy about investing in restaurants that Levy himself owned and operated. (*Id.*) Subsequently, in 2018, Assa and Levy started a new restaurant named Lola Taverna near Little Prince in downtown Manhattan. (*Id.* ¶ 14)

Concurrently, Assa expressed his interest to Levy in purchasing an ownership interest in Little Prince. (*Id.* ¶ 15)

In September 2018, Assa and Levy reached a deal for Assa to take a stake in Little Prince. (*See* Aff. of Cobi Levy in Supp. of Mot. to Vacate TRO, sworn to on Nov. 20, 2023 ("Levy 11/20/23 Aff.") (NYSCEF Doc. 35), ¶¶ 6-7) The deal was structured so that one of Little Prince's original investors, Jeffrey Chodorow, would cash out his 38% interest in Soho and Assa would come in as a new investor. (*See id.* ¶ 7; Levy 12/6/23 Aff. ¶¶ 16-17) Chodorow sought to cash out not only his interest in Soho but also his interest in another restaurant named Babu Ji. (*See* Levy 11/20/23 Aff. ¶ 7; Levy 12/6/23 Aff. ¶ 16) Levy agreed to purchase both interests from Chodorow, agreeing to pay $250,000 for Chodorow's stake in Soho. (Levy 11/20/23 Aff. ¶ 5; *id.*, Ex. A (NYSCEF Doc. 36); Levy 12/6/23 Aff. ¶ 16) Assa, in turn, agreed to purchase those interests from Levy. (*See* Levy 11/20/23 Aff. ¶ 7; *id.*, Ex. B (NYSCEF Doc. 37); Levy 12/6/23 Aff. ¶ 17) As to the 38% interest in Soho, however, Assa agreed to pay only $201,000, rather than the $250,000 that Levy had paid. (Levy 11/20/23 Aff. ¶ 8; *id.*, Ex. B; Levy 12/6/23 Aff. ¶ 17)

The deal was formalized in a written Purchase Agreement and Warranties (the "Purchase Agreement") executed on or about September 27, 2018, between Levy and PR LLC ("PR"), a company affiliated with and controlled by Assa. (Levy 11/20/23 Aff. ¶ 6; *id.*, Ex. B) As to the purchase price, the Purchase Agreement provided:

> In consideration of and in exchange for the sale, assignment, transfer and conveyance of the 100% Member Interest in accordance with the terms and conditions herein, [PR] agrees to pay [Levy] $201,000.00 for the interests in the Principessa restaurant [*i.e.*, Little Prince] and $365,000.00 for the interests in the Babu Ji restaurant, for a total Purchase Price in the amount of $566,000.0 as follows:
>
> a. $365,000.00 paid to [Levy] on the date of execution herewith; and,
>
> b. $201,000.00 (less a $100,000 Buyer's Credit from [Levy] to [PR]) paid to [Levy] within six (6) months of the execution herewith.

(*Id.*, Ex. B ¶ 2) Assa and Levy intended to combine the 38% interest in Soho purchased from Chodorow with Levy's own 13% interest, resulting in a combined 51% interest in Soho that would then be transferred to a company managed by Assa and co-owned by Levy and PR. (Levy 12/6/23 Aff. ¶ 17; Levy 11/20/23 Aff. ¶ 7 n.1; *see also* Levy 11/20/23 Aff. ¶ 12) This intent is reflected in paragraph 3 of the Purchase Agreement, which provides:

(a) It is understood and agreed, that regardless of the structure or entities ultimately utilized for ownership of the Acquisition Interests, that the percentage sharing between [PR] and [Levy] in the ownership shall be as follows:

. . . .

(2) For the net 50.16% member interest acquired in the [Little Prince] restaurant, 80% [PR] and 20% [Levy].

(Levy 11/20/23 Aff., Ex. B ¶ 3(a)(2)) The company through which Levy and PR would control the combined 51% interest in Soho is Revka. (Levy 12/6/23 Aff. ¶ 17) Under their plans, Levy would remain Soho's manager. (*Id.*)

Allegedly in reliance on PR's obligation to pay for the 38% interest in Soho within six months, Levy executed an Amended and Restated Operating Agreement for Soho (the "Operating Agreement") on the same day that he executed the Purchase Agreement. (Levy 11/20/23 Aff. ¶ 10; Affirm. in Supp. of Mot. for Prelim. Inj. & TRO, dated Nov. 3, 2023 ("Assa 11/3/23 Affirm.") (NYSCEF Doc. 4), Ex. A (NYSCEF Doc. 5)) The Operating Agreement designates Levy as Soho's Manager and lists Revka as a Member owning a 51% interest in the company. (Assa 11/3/23 Affirm., Ex. A at pp. 19-20)

Eventually Levy's and Assa's relationship deteriorated. In 2021, Assa, unilaterally and allegedly without authorization, withdrew $500,000 from Lola Taverna's bank account, resulting in Levy commencing a lawsuit against Assa seeking return of those funds to the restaurant. (Levy 12/6/23 Aff. ¶ 27) Assa, through his affiliates, subsequently commenced multiple lawsuits against Levy concerning Lola Taverna and Little Prince, including a special proceeding seeking court-ordered access to Soho's books and records that also happens to be pending before the undersigned. *Revka LLC v. Principessa Soho LLC*, Index No. 652026/2023 (N.Y. Sup. Ct. N.Y. Cnty.) (the "B&R Action").

In the instant action, commenced by Summons and Complaint filed on November 3, 2023, Revka alleges that Levy engaged in misconduct with regard to Soho and Revka. Specifically, Revka alleges that, in May 2023, Levy caused Soho to pay a distribution of $25,500 to himself and defendant ACT 2 HOSPITALITY RG GROUP, LLC ("Act 2 Group"; and, together with Levy, the "Levy Parties"), despite neither being a Member of Soho, that should instead have been paid to Revka as the owner of 51% interest in Soho. (Compl., dated Nov. 3, 2023 (NYSCEF Doc. 2), ¶¶ 10-11) Levy also allegedly caused Soho to make an unauthorized payment of $50,000 to Charles

Blackburn, a Member of Soho. (*Id.* ¶ 14) Finally, Levy allegedly "stonewalled" Revka's access to Soho's books and records, despite Revka's right to such information under the Operating Agreement and New York law, leading to Revka filing the B&R Action. (*Id.* ¶ 16) After gaining access to Soho's books and records—but, according to Revka, not *complete* access—Revka claims that it first discovered Levy's payments of $25,500 in distributions to himself and $50,000 to Blackburn. (*See id.* ¶¶ 12-13, 17-18) This is also when Revka allegedly discovered that Levy had previously lied about these payments, to conceal them from Revka. (*See id.* ¶¶ 13-15) Revka, based on these allegations, asserts seven causes of action—some both on behalf of itself as well as derivatively on behalf of Soho—for breach of contract, conversion, breach of fiduciary duty, unjust enrichment, and breach of duty of loyalty, and it seeks an award of both compensatory and punitive money damages. (*See id.* ¶¶ 20-53)

Revka also asserts an eighth cause of action for a preliminary and permanent injunction to, among other things, remove Levy as Soho's Manager. (*See id.* ¶¶ 54-62) In support of this cause of action, Revka relies on Section 5.1.3 of the Operating Agreement providing that a "Manager, or any or all Co-Managers then acting, may be removed for cause due to the uncured negligence or willful misconduct of the Manager or Co-Managers, upon the prior written consent of the Majority In Interest of the Members." (*Id.* ¶ 55 (quoting Assa 11/3/23 Affirm., Ex. A § 5.1.3); Assa Affirm. ¶ 5 (same)) According to Revka, it exercised its rights under Section 5.1.3 as the owner of 51% of the total Membership Interests in Soho (and thus as the Majority In Interest of the Members of Soho) by consenting to Levy 's removal as Manager in a written Consent of Majority In Interest Member of Principessa Soho LLC to Removal and Replacement of Manager, dated October 16, 2023 (the "Removal Consent"). (Compl. ¶ 56; Assa 11/3/23 Affirm., Ex. B (NYSCEF Doc. 6); *see also id.* ¶¶ 6-8) The Removal Consent claims that Levy's removal was based on his "uncured negligence and willful misconduct as set forth in the attached letter of Revka LLC dated October 16, 2023." (Assa 11/3/23 Affirm., Ex. B; *see also* Compl. ¶ 56; Assa 11/3/23 Affirm. ¶ 8) The referenced letter (the "Removal Letter"), delivered to Levy by email and Federal Express, set forth Levy's allegedly uncured negligence and willful misconduct:

> **(a)** Although Revka, in multiple written communications with Mr. Levy, sought to inspect and copy Soho's books, records, and financial information, as expressly authorized by both the Agreement and New York Limited Liability Company Law § 1102(b), Mr. Levy refused to permit such an inspection, forcing Revka to commence a special proceeding

entitled *Revka LLC v. Principessa Soho LLC and Cobi Levy*, index no. 652026/2023 (Sup.Ct.N.Y.Co.) (the "Special Proceeding"), in which both respondents defaulted.

Although the court in the Special Proceeding issued an order dated June 9, 2023 (the "Order", Exhibit A) directing Mr. Levy and [Soho] to make all of [Soho's] books, records, and financial information available to Revka, and Revka issued a letter to Mr. Levy dated August 1, 2023 demanding compliance with the Order (Exhibit B), intentionally failed to comply with the Order, to wit:

(i) Most of the bank statements provided to Revka which listed checks (all of statements for 2022 and 2023) did not have copies of the cancelled checks;

(ii) No copies of contracts, agreements, billings, invoices or other documents for which the payments and checks were made were provided to Revka;

(iii) Mr. Levy provided no disclosure of other bank accounts opened, used or terminated other than [Soho's] checking account, although the documents that were produced disclosed transfers with a variety of other accounts; [Soho's] bank statements for August 2020, September 2020 and April 2022 refer to transactions with account nos. '[redacted]0058", '[redacted]7885", '[redacted]5714", '[redacted]0893" and '[redacted]1514" (see Exhibit C).

(iv) Although Revka was granted access to [Soho's] Restaurant365 online software, many of the important accounts were "blocked" and Revka could not enter or view any of those items; and

(v) Mr. Levy provided virtually no information as to the calculation and payment of distributions by [Soho]; there was only a single page containing an email exchange in May 2023 about distributions that had been paid (Exhibit D).

(b) Mr. Levy failed to comply with Revka's demand dated July 18, 2023 concerning distributions and loans by [Soho] (Exhibit E) and has breached the [Operating] Agreement and other legal duties, to wit:

(vii) [*sic*] Mr. Levy has diverted a distribution owed to Revka into his own pocket. According to his own email dated May 24, 2023, as Manager he authorized the payment of $50,000 in distributions to the members of [Soho], but although distributions were paid to all of the other members, no distribution was paid to Revka, even though Revka owns 51% of the membership interests. Instead, Mr. Levy directed a distribution payment of $25,500 (51% of the total) himself and Act 2 Hospitality Group LLC, an entity he controls, even though neither he nor that entity are members of [Soho] (see Exhibit D). Moreover, not only did Mr. Levy conceal this payment from Revka, but also, Mr. Levy expressly lied about these distributions when asked about them. After multiple inquiries by Revka as to whether [Soho] had paid distributions, Mr. Levy, in a responsive email dated June 22, 2023, explicitly stated that it had not.

(vii) Mr. Levy has not provided a full accounting of the distributions made by [Soho] or the loans made by [Soho], including unauthorized loans to Mr. Levy and his affiliates;

(viii) Neither Mr. Levy nor his affiliates have repaid any of [the] unauthorized loans made to them;

(ix) Mr. Levy has provided no explanation as to why $50,000 was paid by [Soho] to Charles Blackburn, a member of [Soho] (see bank statement dated September 2020 and account detail dated May 1, 2021 to September 26, 2023, attached as Exhibit F).

(c) Mr. Levy has failed for multiple years to propose annual budgets for [Soho] and obtain the Members' approval of those budgets as required by Sections 5.1.1.16 and 5.1.2.2 of the [Operating] Agreement;

(d) Mr. Levy as ignored the requirement of Section 8.4 of the [Operating] Agreement that within seventy five (75) days after the end of each taxable year of [Soho], he has to cause to be sent to each Member a complete accounting of the affairs of [Soho] for the taxable year then ended and tax information concerning [Soho] which is necessary for preparing the Member's income tax returns for that year

(Assa 11/3/23 Affirm., Ex. C (NYSCEF Doc. 7) at 1-3; Assa 11/3/23 Affirm. ¶ 10; Compl. ¶ 57) The Removal Letter also demanded that Levy cooperate in transitioning the management of Soho to Revka, whom the Removal Consent appointed as replacement Manager:

> Accordingly, as set forth in the accompanying consent, Mr. Levy has been removed as Manager of [Soho] and replaced as Manager by Revka. Revka hereby demands that Mr. Levy surrender the management of [Soho] to it, including turning over all keys, access codes, passwords, books and records, and to arrange for his removal as signatory of all bank accounts and the authorization of the replacement Manager as signatory, and to notify all employees, accountants, attorneys, utilities and vendors, as may be helpful or necessary, of his removal and of the replacement Manager. All such arrangements for Mr. Levy's removal and replacement shall be coordinated with Revka and shall be made immediately, without delay.

(Assa 11/3/23 Affirm., Ex. C at 3-4; Assa 11/3/23 Affirm. ¶ 12; Compl. ¶ 58)

Despite the Removal Consent and Removal Letter, Levy has continued to act as Soho's Manager and has not taken any of the actions demanded by Revka to facilitate the turnover of Soho's management to Revka. (Compl. ¶ 59; Assa 11/3/23 Affirm. ¶¶ 13, 15) As relief under the eighth cause of action, therefore, Revka seeks an injunction identical to the injunction sought by the instant motion, including restraining Levy from continuing to act as Soho's Manager. (*Compare* Compl. ¶ 62, *with* NYSCEF Doc. 26)

Levy does not deny that he has continued to act as Soho's Manager. Indeed, he disputes that Revka has any basis to remove him. With regard to his alleged "stonewalling" of Revka's access to Soho's books and records, Levy contends that Assa (and thus Revka) was provided with access to the books and records through Soho's Restaurant365 account in April 2021, and that where any gaps may have existed in that system, Levy offered to obtain and provide the requested information. (*See* Levy 11/20/23 Aff. ¶¶ 26-31; Levy 12/6/23 Aff. ¶¶ 33-36; Aff. of Eric Messrie, sworn to on Dec. 4, 2023 ("Messrie Aff.") (NYSCEF Doc. 62)) As to the $50,000 payment from Soho to Blackburn, Levy claims that it was toward what he owed Blackburn for what Levy borrowed from him to pay Chodorow for his 38% interest in Soho and that Assa was made aware of this reason for the payment. (Levy 12/6/23 Aff. ¶ 32)

More fundamentally, Levy alleges that Revka does not actually own an interest in Soho because, despite Levy's many entreaties to Assa, PR never fulfilled the terms of the Purchase Agreement by paying the full amount owed for the 38% interest in Soho. (*See* Levy 11/20/23 Aff. ¶¶ 7, 12-23; Levy 12/6/23 Aff. ¶¶ 18-21, 30-31) Thus, Levy argues, Revka is not a Member of Soho and, as a result, was not entitled to distributions, to access Soho's books and records, or to consent to Levy's removal as Manager. (*See* Levy 11/20/23 Aff. ¶¶ 7, 12-23; Levy 12/6/23 Aff. ¶¶ 18-21, 30-31) Levy also argues that the $50,000 payment to Blackburn would not have been necessary if PR had fulfilled its side of the bargain and paid Levy as required under the Purchase Agreement. (*See* Levy 12/6/23 Aff. ¶ 32)

In response to Levy's claim that he was never paid the full amount due under the Purchase Agreement, Revka does not deny that full payment was never *directly* made to Levy. Instead, Revka claims that Levy and Assa agreed to satisfy that debt through Assa's capital contribution of $116,000 (in addition to an initial capital contribution of $500,000) to Lola Taverna to allow it to pay its bills after a delay in that restaurant's renovation caused it to miss a valuable spring and summer season. (Affirm. in Opp. to Mot. by Def. Cobi Levy to Vacate the TRO Issued by this Court, dated Dec. 6, 2023 ("Assa 12/6/23 Affirm.") (NYSCEF Doc. 79), ¶¶ 10-12; *see also id.*, Exs. A-B (NYSCEF Docs. 80-81))[1]

[1] Levy expressly informs the Court that he is relying not only on the papers that he submits in connection with the instant motion, but also certain papers that he previously submitted in connection with other motions in this action, specifically including his papers submitted in support of Motion Sequence 2, wherein Levy sought to vacate the TRO entered against him. (Affirm. of Ihsan Dogramaci, dated Dec. 6, 2023 (NYSCEF Doc. 78), ¶ 2; Levy 12/6/23 Aff. ¶¶ 3-4)

Assa has also offered additional reasons why Levy's claim that Revka is not a Member of Soho should be rejected. *First*, Assa points out that Levy executed the Operating Agreement, which expressly states that Revka is a 51% owner of Soho, and that he has never sought to reform or amend the Operating Agreement or to invoke the default provision therein based upon nonsatisfaction of the Purchase Agreement. (Assa 12/6/23 Affirm. ¶ 13 at 5) *Second*, Levy was designated Soho's "Tax Matters Member" under the Operating Agreement, making him responsible for preparing and filing Soho's tax returns and for ensuring their accuracy. (*Id.* ¶ 13 at 5-6) Soho's federal income tax returns for 2020 and 2021 and Revka's K-1 for 2019 state that Revka is a 51% owner of Soho. (*Id.* ¶ 13 at 6; *id.*, Exs. C-E (NYSCEF Docs. 82-84)) *Third*, Levy permitted Assa (and thus Revka) to view Soho's confidential financial information, including by defaulting in the B&R Action, and to be involved in business and other managerial decisions concerning Soho's operations, including supervising the preparation and submission of Soho's two successful applications for Paycheck Protection Program loans during the COVID-19 pandemic, none of which would have been appropriate if Revka was not a Member of Soho. (*See id.* ¶ 13 at 6-8; *id.* Exs. F-G (NYSCEF Docs. 85-86))

Levy does not deny that Soho made federal tax filings in 2020 and 2021 reporting that Revka was a 51% owner of Soho, but he states that Soho used Assa's accountant, Allan Don, to make those filings, that they were incorrect, and that they were to Levy's detriment. (Levy 12/6/23 Aff. ¶ 23) Levy asserts that he caused Soho's federal income tax filing for 2022 to be "corrected" such that Revka is no longer reported as owning 51% of Soho. (*Id.* ¶ 24; *id.*, Ex. G (NYSCEF Doc. 71))

II. Discussion

"The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005) (citing CPLR § 6301). The existence of triable issues of fact does not require the denial of a preliminary injunction when the movant meets its burden of establishing that the three prerequisites for injunctive

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Levy raises the issue of PR's alleged failure to pay the full amount owed under the Purchase Agreement in opposition to the instant motion, but, as previously noted, the signed OSC did not afford Revka an opportunity to submit reply papers. Because Revka responds to Levy's claim in its papers in opposition to Motion Sequence 2 (*see* NYSCEF Docs. 79-87), the Court considers those papers here.

relief have been met. CPLR 6312(c); *Bell & Co, P.C. v. Rosen*, 114 A.D.3d 411, 411 (1st Dep't 2014). Whether to grant or deny a preliminary injunction "is committed to the sound discretion of the motion court." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 (1st Dep't 2019) (citing *Doe v. Axelrod*, 73 N.Y.2d 748 (1988)).

A. Likelihood of Success on the Merits

To establish a likelihood of success on the merits, the movant must make a *prima facie* showing of a reasonable probability of success. *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep't 2016).

Revka's success in this case depends initially on whether it is, in fact, a Member of Soho. To demonstrate a reasonable probability of success here, then, Revka must demonstrate that PR satisfied the terms of the Purchase Agreement or that it otherwise has a separate, valid defense to Levy's allegations that PR failed to pay the full amount owed to Levy for the 38% interest in Soho. On the record before the Court on this motion, Revka has not adequately demonstrated that the Purchase Agreement was satisfied. Importantly, Revka does not deny that neither Assa nor PR ever *directly* paid Levy what he was owed. To that extent, at least, Levy's allegations are undisputed. Instead, Revka claims that PR satisfied its obligation to Levy *indirectly*, through Assa's capital contributions to Lola Taverna, a separate business. The problem, however, lies in proof: Revka offers none, besides a self-serving affidavit from Assa claiming that he and Levy had come to such an alternative agreement. But the parties have shown their ability to document their agreements. And, here, Revka offers neither a contract nor any other form of documentary proof of the alleged alternative agreement such as emails, letters, or other communications. Thus, Revka's answer to Levy's allegations is simply to insist that the Court take Assa's word that PR satisfied its obligations to Levy under the Purchase Agreement through alternative means. This is not enough.

Revka's contention that the doctrine of res judicata bars Levy's claim that Revka is not a Member of Soho is also unavailing. As the Court held in the B&R Action, the Court's issuance of an order against Soho on default in that action "does *not* allow for the application of res judicata to the disputed issue of whether [Revka] is a member/owner of Soho." *Revka LLC v. Principessa Soho LLC*, 85 Misc. 3d 1228(A), at *5 (N.Y. Sup. Ct. N.Y. Cnty. Mar. 5, 2025) (Ally, J.) (citing *Rojas v. Romanoff*, 186 A.D.3d 103, 109 (1st Dep't 2020)).

Nevertheless, although Revka has failed to demonstrate a reasonable probability of success of those grounds, it *has* demonstrated a reasonable probability of success on the ground of waiver. The ultimate goal of Levy's allegations is clearly rescission of the Purchase Agreement, in whole or in part. The Levy Parties in fact sought such relief on the second cause of action for fraud alleged in their Counterclaims and Third-Party Complaint, which the Court recently dismissed in a Decision and Order dated March 26, 2025 (NYSCEF Doc. 160). Even if the Levy Parties can achieve rescission through a remaining affirmative defense, however, New York courts have consistently found that a party waives rescission when they fail for an extended period of time to take action after becoming aware of the alleged grounds for rescission and continue to accept the benefits of the contract or act as if the contract were effective. *See, e.g., Glatt v. Mariner Partners, Inc.*, 63 A.D.3d 428, 430 (1st Dep't 2009) (holding that rescission claim waived because of a "delay of nearly four years before seeking to rescind the contract"); *Adrian Family Partners I, L.P. v. ExxonMobil Corp.*, 61 A.D.3d 901, 903 (2d Dep't 2009) ("Moreover, the plaintiff waived its right to seek rescission of the December 2000 agreement by failing to promptly seek rescission after accepting the benefits of that agreement."); *R & A Food Servs. v. Halmar Equities*, 278 A.D.2d 398, 398 (2000) (holding that plaintiff's failure to commence lawsuit or take any other action to rescind lease without one year waived claim); *Smalls v. Eichner*, 69 Misc. 3d 134(A), at *1 (N.Y. App. Term Oct. 30, 2020) (holding that delay of four years in seeking rescission of contract after discovering fraud was "manifestly untimely"); *Slomin's, Inc. v. Trerotola*, 25 Misc. 3d 140(A), at *2 (N.Y. App. Term Dec. 1, 2009) (holding that defendant's "conduct in waiting some 4 ½ years before raising the issues presented herein, and then doing so only in response to the instant law suit, constitutes a waiver of any claim" for rescission); *Fisk Bldg. Assocs. L.L.C. v. Integrity Title Agency, Inc.*, 6 Misc. 3d 1017(A), at *6 (N.Y. Sup. Ct. N.Y. Cnty. Jan. 6, 2005) (holding that delay of one year waived ability to seek rescission of agreement).

Here, Levy was due payment pursuant to the Purchase Agreement on or about March 27, 2019, but the Levy Parties only sought rescission of the agreement for the first time *more than four years* later *in this action*, when they filed their Counterclaims and Third-Party Complaint on December 16, 2023. (*See* NYSCEF Doc. 91) Revka has sufficiently demonstrated that, for almost all of that intervening time, the Levy Parties acted as if Revka were in fact a Member of Soho, among other things, consulting with Revka on business decisions and allowing Revka access to Soho's books and records. Under the law, if Levy believed that PR had failed to satisfy its obligations

under the Purchase Agreement with respect to the 38% interest in Soho, rendering that part of the agreement void for lack of consideration, it was incumbent upon Levy to seek to rescind that part of the agreement promptly without undue delay. By all appearances based on the evidence put forward by Revka, Levy failed to do so.

Turning next to the grounds for Levy's removal from the Manager position asserted in the Removal Letter, initially the Court finds that Revka is unlikely to prevail on its claim that Levy has denied it access to Soho's books and records in violation of the Operating Agreement and New York law. The evidence that the Levy Parties present here in opposition to the motion satisfies the Court that Revka (through Assa) has been offered essentially unfettered access to Soho's books, records, and financial information since April 2021, more than two years *before* the Removal Letter was sent in October 2023. (Messrie Aff. ¶ 10) Indeed, in the B&R Action, the Court denied Revka's motion for contempt based on essentially the same evidence. *See Revka*, 85 Misc. 3d 1228(A) at *5-9.

But Revka *has* shown that it is likely to prevail on its claims regarding the $25,500 distribution and $50,000 payment to Blackburn. Levy's only defense to the distribution is that Revka is not a Member of Soho, and thus is not entitled to distributions, due to PR's failure to satisfy the Purchase Agreement. (Levy 12/6/23 Aff. ¶¶ 30-31; Defs.' Mem. of Law in Opp. to Pl.'s Prelim. Inj. Mot., dated Dec. 6, 2023 ("Opp.") (NYSCEF Doc. 69), at 8) But, as already discussed herein, that defense is likely to fail. As for the payment to Blackburn, Levy asserts that he "borrowed" the money from Soho to pay Blackburn for the money that Levy borrowed from him to pay Chodorow for his 38% interest in Soho, and that Assa had been made aware of the reason for the payment. (Levy 12/6/23 Aff. ¶ 32; Opp. at 8) This explanation, however, only begs the underlying legal question of whether "borrowing" $50,000 from Soho to pay Levy's personal debt is authorized. Levy does not attempt to answer that question. Even if Levy and not Revka is the 51% owner of Soho—and, again, Levy seems likely to lose that argument—Levy offers nothing in the way of citation to a provision of the Operating Agreement or of New York law permitting him to use Soho's funds for personal expenditures, regardless of the reason or need for the personal expenditure.

Even though technically superfluous in light of the foregoing, the Court also notes that Levy does not deny Revka's accusation that he has failed to comply with his duties as Manager

under Sections 5.1.1.16, 5.1.2.2, and 8.4 of the Operating Agreement to propose and obtain approval of annual budgets for Soho and to provide Members with a complete accounting of Soho's affairs for each taxable year.

B. Irreparable Injury

"As a general rule . . . [an] injunction will not be granted if the plaintiff has an adequate remedy at law." David D. Siegel, *New York Practice* § 328 (6th ed. 2024). Where monetary damages will adequately remedy the injury, for example, there is no irreparable harm. *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434-35 (1st Dep't 2019); *Walsh v. Design Concepts*, 221 A.D.2d 454, 455 (2d Dep't 1995).

Upon review of the parties' submissions, the Court concludes that Revka has failed to demonstrate that it would suffer imminent irreparable harm should its requested injunction not be issued. Initially, as the Court has already determined herein and in the B&R Action, Revka has been given access to Soho's books and records in accordance with this Court's order. Therefore, Levy's remaining as Soho's Manager until final resolution of this action would not cause Revka irreparable harm with respect to its alleged right to access Soho's financial information. Levy remains subject to the Court's order in the B&R Action, so already Levy must continue to provide Revka with the same level of access during the pendency of this action or be in contempt of the Court.

Further, even if Levy has in fact failed to carry out his duties under Sections 5.1.1.16, 5.1.2.2, and 8.4 of the Operating Agreement, Revka fails to articulate how such failures have and will continue to cause it irreparable harm. The Court will not engage in guesswork on Revka's behalf.

Moreover, Revka does not allege or provide any proof that, before the TRO was entered, Levy caused Soho to make any improper payments other than the $25,500 distribution to the Levy Parties and the $50,000 payment to Blackburn. In other words, Revka does not allege and offer proof that Levy was engaging in systematic looting of Soho's resources. Nor does Revka allege that Levy was or is managing Little Prince poorly, such that his remaining in the position of Manager of the restaurant would imminently lead to its failure. To the contrary, the only evidence before the Court suggests that Levy is a major reason for any success that the restaurant might be enjoying. At the crux of Revka's complaints of harm, therefore, are the $25,500 distribution and

the $50,000 payment. Presuming both were in fact improper, monetary relief would be entirely sufficient to remedy them.

Revka relies solely on *1650 Realty Associates, LLC v. Golden Touch Management, Inc.*, 101 A.D.3d 1016 (2d Dep't 2012). There, the Second Department concluded that the trial court providently exercised its discretion when it enjoined the defendants, management companies and their principals who had been managing the plaintiffs' properties pursuant to contract, "from transferring any assets or monies belonging to the [plaintiffs] with the written consent of . . . the [plaintiffs'] managing member, and from making any payments from the [plaintiffs'] funds to [defendants] or their principals, or anyone on their behalf." *Id.* at 1018. The Second Department concluded the same with respect to the trial court's subsequent "clarification" of its previous order that enjoined the defendants from managing the plaintiffs' properties. *Id.* But, contrary to Revka's contention, this case does not mandate the same result here. There is no discussion in the Second Department's decision in *1650 Realty Associates* of the evidence presented or the arguments made by the parties at any level. As the analysis for granting or denying a preliminary injunction is fact and case specific and subject to significant court discretion, *1650 Realty Associates* does not establish—and does not purport to establish—a rule that irreparable harm exists *per se* in every case in which the party to be enjoined is operating in a managerial role. The unique facts of each case still matter.

Here, in the exercise of its discretion based on the evidence and arguments presented, the Court determines that Revka has not adequately demonstrated that it will suffer irreparable harm absent its requested relief.

C. Balance of the Equities

The "balancing of the equities" prong of the preliminary-injunction analysis "requires the court to look to the relative prejudice to each party accruing from a grant or denial of the requested relief." *Suttongate Holdings Ltd. v. Laconm Mgmt. N.V.*, 159 A.D.3d 514, 515 (1st Dep't 2018). Here, as is often the case, the irreparable-harm and balance-of-the-equities prongs are tied closely together. If the injunction is denied, Revka will not be Soho's Manager for at least the duration of this action; instead, Levy will continue acting as Manager. In other words, the status quo will be maintained. The only apparent harm that Revka will suffer from that state of affairs, however, is only potentially monetary. Again, Revka simply does not explain how Levy remaining as

Manager during the interim will cause Revka or Soho irreparable harm. So, if Revka or Soho will not suffer irreparable harm by the status quo being maintained, it cannot be said that the equities surrounding the denial of the injunction weigh strongly in Revka's favor. By contrast, if the injunction is granted and Levy is removed as Manager and forced to facilitate transition of control to Revka, Levy will lose his position in the company that he founded and the restaurant business that he built and maintained successfully over many years. As it pertains to Revka and Levy, then, the Court concludes that the balance of the equities favors Levy.

Furthermore, an injunction is equitable relief; thus, in the exercise of its equitable powers, the Court may consider the potential impact of granting the injunction not just on Levy himself but also on Soho and Little Prince. *See DNA Controlled Inspection Ltd. v. CNS Inspection Srvs., LLC*, No. 655834/2020, 2020 WL 7316032, at *1 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 7, 2020) (considering potential harm to third parties from imposition of requested preliminary injunction under balance-of-the-equities prong); *Jenkins v. Am. Inst. of Architects*, No. 106978/2006, 2006 WL 8087750, at *2 (N.Y. Sup. Ct. N.Y. Cnty. June 8, 2006) (same). If Levy is replaced as Manager by Revka, the individual who founded, planned, designed, and managed Little Prince successfully from inception, and who has decades of experience successfully managing other restaurants in New York City, would be replaced with an entity controlled by an individual with no relevant experience and no successful track record of managing restaurants who does not dispute either that lack of experience or that he has not even set foot in Little Prince in years. (Levy 12/6/23 Aff. ¶¶ 6-8, 25-26; *see also* Aff. of Jamie Greenwald, sworn to on Dec. 6, 2023 (NYSCEF Doc. 72), ¶¶ 7, 9) In other words, Little Prince would lose what appears to be its driving force in exchange for an inexperienced and apparently disinterested investor—an investor, furthermore, that no other Member of Soho would care to see in the position of Manager. (*See* Affirm. of Charles Blackburn, dated Dec. 6, 2023 (NYSCEF Doc. 73); Affirm. of Arran Yentob, dated Dec. 5, 2023 (NYSCEF Doc. 74); Aff. of Andrew Levitas, sworn to on Dec. 6, 2023 (NYSCEF Doc. 75); Aff. of David Reuben, sworn to on Dec. 4, 2023 (NYSCEF Doc. 76); Aff. of Simon Gluck, sworn to on Dec. 6, 2023 (NYSCEF Doc. 77)) The disruption that the removal of Levy as Manager could have on Little Prince's operations, and the consequences that that may in turn have on Little Prince's employees, is evident. Thus, the equities, insofar as they concern the effect that Levy's removal as Manager might have on Soho and Little Prince, favor denial of the injunction.

In sum, the Court concludes that the balance of the equities in this case weigh in favor of Levy and denying the injunction.

D. Nature of the Relief Requested

"[A] mandatory preliminary injunction (one mandating specific conduct), by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted only in 'unusual' situations, where the granting of the relief is essential to maintain the status quo pending trial of the action." *Second on Second Café, Inc. v. Hing Sing Trading, Inc.*, 66 A.D.3d 255, 264-65 (1st Dep't 2009) (internal quotation marks and citation omitted). Additionally, it is well settled that, "[a]bsent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment." *Emanuel Mizrahi, DDS, P.C. v. Angela Andretta, DMD, P.C.*, 170 A.D.3d 1120, 1123 (2d Dep't 2019) (internal quotation marks and citation omitted);

Here, the preliminary injunction that Revka seeks is both mandatory in nature (to the extent that it would require Levy to take certain affirmative steps to transition management of Soho to Revka) and identical to the final relief sought. Yet Revka points to no unusual or extraordinary circumstances justifying the imposition of such an injunction, which would not operate to maintain the status quo pending trial but would instead entirely upend it while giving Revka everything that it asked for with respect to its eighth cause of action. Because "the record in this case lacks evidence establishing, among other things, irreparable harm or extraordinary circumstances warranting a preliminary injunction that would, in effect, depart from the status quo and grant the plaintiff its ultimate relief," *Emanuel Mizrahi, DDS, P.C.*, 170 A.D.3d at 1124, the Court must deny the requested injunction.[2]

The Court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by the parties was not addressed by the Court, it is hereby denied.

Accordingly, it is hereby:

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[2] The Court notes that, under the facts of this case as currently presented, the parameters of the TRO currently in place strike the Court as proper parameters for any preliminary injunction. But Revka did not request that the TRO be converted to a preliminary injunction, and the Court is not in the business of providing unrequested extraordinary relief.

ORDERED that Revka's motion (Seq. No. 1) for a preliminary injunction is **DENIED**; and it is further

ORDERED that the TRO entered by the Court's orders dated November 13, 2023 (NYSCEF Doc. 26), and December 7, 2023 (NYSCEF Doc. 89), is **VACATED and DISSOLVED**; and it is further

ORDERED that Revka shall serve a copy of this Decision and Order upon the Levy Parties and upon the Clerk of the General Clerk's Office with notice of entry within twenty (20) days thereof; and it is further

ORDERED that service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (Revised August 15, 2019);[3] and it is further

ORDERED that any requested relief not expressly addressed herein has been considered and is denied; and it is further

ORDERED that the Clerk shall mark Motion Sequence No. 1 decided in all court records.

This constitutes the decision and order of the Court.

April 21, 2025
DATE

SHAHABUDDEEN A. ALLY, A.J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION		
MOTION (SEQ. 1):	[ ] GRANTED	[X] DENIED	[ ] GRANTED IN PART	[ ] OTHER
CHECK IF APPROPRIATE:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	[ ] STAY CASE
	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE

[3] The protocols are available at https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf.