

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 2587970

Book Page CIVIL

No. Pages: 29

Instrument: COMPLAINT

Control #: 202012301017

Index #: E2020010270

Date: 12/30/2020

Time: 4:08:05 PM

Return To:
KEVIN SCOTT COOMAN
25 East Main Street
Suite 400
Rochester, NY 14614

Renfro, Pamela
Renfro-Herrald Hospitality, LLC

Herrald, Angela
Steitz, David
Herrald-Steitz Properties, LLC

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PAMELA RENFRO, individually, and
derivatively on behalf of

RENFRO-HERRALD HOSPITALITY, LLC,

Plaintiff,

vs.

ANGELA HERRALD,
DAVID STEITZ and
HERRALD-STEITZ PROPERTIES, LLC,

Defendants.

COMPLAINT

Index No.:

Plaintiff, complaining by her attorneys, McConville, Considine, Cooman & Morin, P.C., alleges the following:

1. This is a civil action for breach of contract, breach of fiduciary duty, and defamation commenced by plaintiff Pamela Renfro (“Renfro”) against defendants, arising out of a joint venture to own and operate the historic real property at 11 West Church Street, Village of Fairport, New York as an inn for lodging and events, known as The Inn on Church. Renfro also brings this action derivatively on behalf of plaintiff Renfro-Herrald Hospitality LLC for the damages caused to it by defendants.

PARTIES

2. Plaintiff Renfro is an individual residing within the Village of Fairport, Monroe County, New York.

3. Defendant Angela Herrald (“Herrald”) is an individual residing within the Village of Fairport, Monroe County, New York.

4. Defendant David Steitz (“Steitz”) is an individual residing within the Village of Fairport, Monroe County, New York.

5. At all times herein mentioned, Herrald and Steitz were married to one another as husband and wife.

6. Derivative plaintiff Renfro-Herrald Hospitality, LLC (“Hospitality LLC”) is a New York limited liability company created by Articles of Organization filed on or about February 11, 2016.

7. Renfro and Herrald are and have been at all times mentioned herein the only members of Hospitality LLC.

8. Defendant Herrald-Steitz Properties, LLC (“Properties LLC”) is a New York limited liability company created by Articles of Organization filed on or about February 11, 2016.

9. Upon information and belief, Herrald and Steitz are and have been at all times mentioned herein the only members of Properties LLC.

FACTS

A. Background

10. Until on or about December 1, 2020, Renfro, Herrald and their families were neighbors living in houses almost across the street from each other in the Village of Fairport.

11. In or about the fall of 2015, Renfro and Herrald identified 11 West Church Street in the Village of Fairport, New York (the “Property”) as real estate listed for sale.

12. The Property, also known as the Newman-Dean House and Barn, is a historic residence (the “House”) and outlying structure (the “Barn”) which was designated by the Fairport Historic Preservation Commission as a landmark property in 2011. <https://www.perintonhistoricalsociety.org/history/preservation/newman-dean-house-a-barn>.

13. Renfro and Herrald discussed the potential for acquiring the Property, investing in and renovating it, and then after acquiring the necessary governmental approvals, operating it as an inn for overnight lodging and events.

B. Formation of the Joint Venture

14. Renfro, Herrald and Steitz decided to enter into a joint venture for the acquisition of the Property, its renovation, obtaining of necessary permits, and operation of the Property as a guest inn and event space (the “Joint Venture”).

15. The Joint Venture Inn involved multiple legal and financial steps taken in collaboration by Renfro, Herrald and Steitz.

16. On November 5, 2015, Herrald and Steitz, and Eva Steitz (Steitz’s mother) took title to the Property by a recorded deed from the seller, paying \$285,000.

17. On the same date, the Property was mortgaged by Herrald, Steitz and Eva Steitz at an 80% loan to value ratio to CNB Mortgage Company (the “Lender”) for \$228,000.

18. Upon information and belief, Herrald and Steitz represented to the Lender that the Property would not be owner-occupied as their own residence, but rather that the Property would be utilized as a commercial enterprise – an inn (the “Inn”).

19. Renfro, Herrald and Steitz memorialized the essential contract terms of their Joint Venture to create and operate the Inn in a written business plan (the “Business Plan”).

20. The text of the Business Plan was drafted primarily by Herrald, with the financial projections portion of the Business Plan drafted primarily by Renfro.

21. The Business Plan went through several drafts and iterations, culminating in a final version dated March 14, 2016.

22. Under the Business Plan, the participants in the Joint Venture were stated to be Renfro, Herrald, Steitz, Hospitality LLC and Properties, LLC (collectively, the “Joint Venture Participants”).

23. Under the Business Plan, the name of the Joint Venture was “The Inn on Church in the Historic Newman-Dean House.”

24. The Joint Venture Participants were all represented by the same legal counsel, Mark M. Campanella (“Joint Venture Counsel”), with respect to the necessary legal steps to effectuate the Joint Venture.

25. The Joint Venture structure adopted by the Joint Venture Participants in order to create and operate the Inn was the formation of two separate LLCs – one to hold title to the Property (*i.e.*, Properties LLC) and a separate LLC (*i.e.*, Hospitality LLC) to operate the Inn at the Property.

26. Joint Venture Counsel created and then filed the Articles of Organization for both LLCs with the New York Secretary of State simultaneously on February 11, 2016.

27. As one portion of her capital contribution to the Joint Venture, Renfro personally paid Joint Venture Counsel for his legal services and advances for the creation of one of the two Joint Venture entities, Hospitality LLC.

28. On April 16, 2016, Joint Venture Counsel filed a deed with the Monroe County Clerk transferring the Property from Herrald, Steitz and Eva Steitz into Properties LLC. The deed is recorded at Book 11615, Page 575.

29. Under the Joint Venture agreement memorialized in the Business Plan, Hospitality LLC, as the operating entity of the Inn, was to rent the Property from Properties LLC on a long term basis, paying monthly rent sufficient to cover the cost of the monthly mortgage payment to the Lender, plus the taxes and insurance on the Property.

30. Payment of rent by Hospitality LLC to Properties LLC was to commence once the renovation of the Property was completed, a certificate of occupancy was obtained, all governmental approvals were obtained for operation of the Inn, and paying guests arrived.

C. Investments in the Joint Venture

31. The Joint Venture Participants made financial and in-kind contributions to the Joint Venture to fund the renovations of the Property and start-up costs for the Inn operation (“Start-Up Contributions”).

32. Under the Business Plan, the Joint Venture was owned in equal shares: 50% by Renfro, and 50% by Herrald and Steitz, irrespective of the amount and character of their Start-Up Contributions.

33. The Start-Up Contributions made by Herrald and Steitz to the Joint Venture included:

- a. the Property deeded into Properties, LLC;
- b. the carrying costs of the Property from November 2015 through November 2016, until Hospitality LLC had cash flow from paying guests and was able to begin rent payments;
- c. multiple pieces of furniture;
- d. expertise in design and furnishing the rooms at the Property;
- e. research and drafting of the text of the Business Plan and presentation of it to funding sources and governmental entities; and
- f. supervision of the renovations of the Property.

34. The Start-Up Contributions made by Renfro to the Joint Venture included:

- a. cash payment in 2015 and 2016 of the architect’s costs for the plans and specifications needed for the renovation of the Property, totaling \$3,772;

- b. cash payment in February 2016 of a portion of the Joint Venture Counsel's legal fees and advances in connection with the formation of one of the Joint Venture entities, totaling \$1,467;
- c. cash payment of \$3,008 in February 2017 to the plumber for work performed in the Property renovation;
- d. cash contributions of \$39,150 from April 2016 through December 2016, which were deposited for the Joint Venture in the Hospitality LLC checking account at Fairport Savings Bank, which subsequently became part of Evans Bank ("FSB/Evans");
- e. expertise and background in hospitality, business administration, finance, and fundraising;
- f. drafting of the financial projections of the Business Plan and presentation of it to funding sources and governmental entities;
- g. supervision of the renovations of the Property; and
- h. marketing of the Inn and its day-to-day operational management.

35. Renfro's cash contributions were funded by liquidating her retirement accounts. As part of her commitment to the Joint Venture, Renfro also elected to take Social Security early so that she had a source of personal income until the cash flow from the Inn allowed her to take monthly compensation.

36. In August 2016, personal friends of Renfro, Robin and James Drago, loaned Hospitality LLC and Renfro \$10,000 in support of renovation expenses for the Joint Venture, which was memorialized in a promissory note ("Drago Loan").

37. Herral approved and consented to the Drago Loan.

38. The \$10,000 proceeds of the Drago Loan were deposited to the Hospitality LLC checking account on August 19, 2016.

39. The proceeds of the Drago Loan were paid out by Hospitality LLC toward the renovation costs for the Property during August through October 2016.

40. In addition to the cash contributed by Renfro and the Drago Loan, Renfro and Herralld jointly engaged in a Kickstarter campaign to raise additional cash necessary to fund the renovation of the Property and start-up costs for the Inn operation.

41. As part of the Kickstarter campaign, the Joint Venture Participants solicited contributions from members of the general public, who were told by way of the Kickstarter webpage, promotional video, press releases, media articles and word of mouth that:

a. “Last fall we bought the Newman-Dean House in order to open the Inn on Church;” and

b. the contributed funds would be used for the completion of necessary renovations to the Property “so that we can open this fall with 4 beautiful guest rooms in this historic Fairport landmark”.

42. The Kickstarter campaign raised \$46,409.00 from 131 contributors by October 2016.

43. The net proceeds of \$42,670.08 (\$46,409 minus Kickstarter fees) from the Kickstarter campaign were deposited to the Hospitality LLC checking account on October 3, 2016.

44. Of the Kickstarter campaign funds raised, \$10,000 was contributed by Renfro’s sister.

45. All the Kickstarter contributions were deposited to the Hospitality LLC checking account, and disbursed toward the costs of renovations of the Property and start-up expenses for the Inn operation.

46. From early 2016 through November 2016, the Joint Venture Participants engaged in substantial renovations to the Property to enable the Property to serve as the Inn, which included:

- a. substantial new electrical wiring;
- b. reconfiguration of back stairwell, walls, and archways;
- c. excavation and replacement of sanitary sewer lines in the basement;
- d. plumbing upgrades;
- e. construction of three new bathrooms and renovation of an existing bathroom;
- f. wall repair and painting throughout the Property;
- g. floor repair and restoration; and
- h. general cleaning.

47. During the period from the start of the Joint Venture until December 2016, Herral, Steitz and Properties LLC contributed funding to the Joint Venture by paying the mortgage on the Property, the property taxes imposed by the governmental entities, and the insurance premiums to insure the Property.

48. The Joint Venture Participants applied to the Village of Fairport for a special use permit to operate the Inn.

49. The Village of Fairport granted a special use permit for the operation of the House and Barn as the Inn on December 2, 2016.

50. Upon completion of the renovations to the House, the Joint Venture Participants applied to the Village of Fairport for a certificate of occupancy for the Property.

51. The Village of Fairport granted a certificate of occupancy for the Property on December 2, 2016.

52. The Inn opened for guests in December 2016.

**D. Financial Relationship of Hospitality LLC and Properties LLC
in the Joint Venture: Payment of Property Mortgage, Taxes and Insurance**

53. Under the provisions of the Business Plan for the Joint Venture, Hospitality LLC was to have a long-term lease arrangement with Properties LLC to operate the Inn for the benefit of the Joint Venture and its owners.

54. The profits to be obtained by the Joint Venture Participants from the Joint Venture were to be in the form of: (1) accretions to the value of and equity in the Property; and (2) the positive cash flow from the Inn operation.

55. The long-term lease arrangement was required in order to justify the permanent improvements being made to the House and Barn on the Property, which were substantially financed by cash contributed from Renfro, the Kickstarter investors, the Drago and FSB/Evans Bank loans being repaid over time, and the cash flow from the Inn business.

56. When the Inn began operating in December 2016, Hospitality LLC assumed sole responsibility for payment of the Lender's mortgage, the property taxes and insurance premiums on the Property.

57. From December 2016 through December 2019, Hospitality LLC paid directly to the Lender a payment of \$1,450.00 per month to cover the mortgage payment on the Property, except for January 2017 when the payment made was \$1,350.

58. From January 2020 through October 2020, Hospitality LLC paid directly to the Lender an increased payment of \$1,900 per month (with the exception of April 2020 when a payment of \$1,450 was made), which was in excess of the monthly mortgage payment on the Property.

59. Herrald, Steitz and Properties LLC have refused to disclose to Renfro and Hospitality LLC why the monthly payment was raised from \$1,450 per month to \$1,900 per month.

60. The result of the monthly payments made by Hospitality LLC to the Lender with respect to the mortgage on the Property has been a substantial increase in the equity in the Property, as each mortgage payment resulted in a reduction of the original \$228,000 mortgage debt on the Property owed to the Lender.

61. From December 2016 through November 2020, Hospitality LLC made direct payments of all:

- a. property taxes on the Property imposed by all governmental entities;
- b. property and casualty insurance premiums on the Property; and
- c. the fees of a property tax negotiator to lower the tax assessment on the

Property.

**E. Financial Relationship of Hospitality LLC and Properties LLC
in the Joint Venture: Payment for Property Capital Improvements**

62. At various times from January 2016 through November 2020, Hospitality LLC, not Properties LLC, paid for capital improvements to the Property. These capital improvements included:

- a. construction in 2016 of a 42 foot long board fence along the east side of the Property at a cost of \$2,675;

b. removal of large trees and stump grinding near the Barn and House in July 2017 at a cost of \$2,634.60;

c. upgrades to the electrical system in the Barn, at a cost of \$7,484.78; and

d. replacement of the roof on the Barn following a damaging wind storm in March 2017.

63. The Barn roof replacement was paid for by Hospitality LLC, not Properties LLC, in 2017 by using:

a. Erie Niagara insurance proceeds of \$5,600; and

b. \$1,000 of Hospitality LLC cash flow from operations.

64. On July 5, 2018, the Joint Venture Participants applied to the Village of Fairport for a special use permit to renovate, improve and use the Barn at the Property as an event space that would allow public gatherings of up to 49 people (the "Application").

65. The Application was signed and submitted by all the Joint Venture Participants.

66. In August 2018, the Joint Venture Participants applied to the Village of Fairport for a building permit for the Barn renovations and improvements, which were to include the addition of exterior stairs to access the second floor of the Barn and the conversion of the second floor into event space.

67. Professional services were required in support of the Application, the requested building permit, and the Barn renovation, including a drainage study prepared by BME Associates, and architectural services by Charles Smith.

68. Hospitality LLC, not Properties LLC, paid BME Associates \$607.55 for the drainage study of the Property.

69. Hospitality LLC, not Properties, LLC, paid Charles Smith \$1,406.52 for the architectural services.

70. At the Village of Fairport Planning Board meeting on September 4, 2018, two of the Joint Venture Participants, Renfro and Steitz, appeared in support of the Application.

71. The Village of Fairport Planning Board approved the Application, modifying the site plan to allow use of the Barn as event space, and clearing the way for reissuance of the modified special use permit for the Inn by the Village of Fairport Board of Trustees.

72. On October 9, 2018, the Village of Fairport Board of Trustees approved the Application, and reissued the special use permit for the operation of the Inn, including the use of the Barn on the Property as event space.

73. The Barn was renovated and improved, enhancing the value of the Property and the Joint Venture.

74. The cost for the professional services and construction costs for the renovation of the Barn were paid for by Hospitality LLC, not Property LLC, by using:

a. proceeds of a \$15,700 line of credit loan from FSB/Evans disbursed to Hospitality LLC on April 25, 2018;

b. proceeds of a \$5,000 commercial term loan from FSB/Evans disbursed to Hospitality LLC on or about February 1, 2019 (the two loans, collectively, "FSB/Evans Loans") ;

and

c. cash flow from Hospitality LLC's operation of the Inn.

75. The result of the payments made by Hospitality LLC for capital improvements from December 2016 through November 2020 was an increase in the value of the Property.

F. Operating Agreement for Hospitality LLC

76. Renfro and Herrald signed an Operating Agreement for Hospitality LLC in or about March 2016 prepared by Joint Venture Counsel.

77. The Operating Agreement provided that Renfro and Herrald each had a 50% member interest in Hospitality LLC.

78. Hospitality LLC became the business operating entity for the Inn, within the context of the Joint Venture as a whole.

79. Under Section 4.2 of the Operating Agreement, Renfro was allocated 100% of the profits and losses of Hospitality LLC.

80. Pursuant to Section 5.1(c) of the Operating Agreement, the Business Plan for the Joint Venture, and their course of conduct, the Joint Venture Participants delegated to Renfro the authority to conduct the day-to-day operations of Hospitality LLC, subject to the reservation of unanimous consent by the Hospitality LLC members for certain denominated actions under Section 5.3.

81. Pursuant to Section 9.2 of the Operating Agreement, Renfro was designated as the Tax Matters Partner for Hospitality LLC.

82. Pursuant to Section 5.5 of the Operating Agreement, Herrald was obligated to take all actions necessary or appropriate for the accomplishment of the Hospitality LLC's purpose as the operating entity for the Inn.

83. Pursuant to Section 5.3(b) of the Operating Agreement, Herrald was forbidden to "take any action which would make it impossible to carry on the ordinary business of accomplish the purposes of" Hospitality LLC.

G. Success of the Joint Venture

84. From December 2016 through November 30, 2020, the Inn accommodated guests and events, resulting in increased revenues year over year in 2017, 2018 and 2019.

85. At the beginning of 2020, projected revenues from lodging guests and events to be held at the Inn were in excess of those attained for 2019.

86. During the 2017 through 2020, Renfro devoted her time and attention to the successful operation of the Inn business. This included building collaborative networking arrangements with area businesses, organizations and colleges designed to enhance the Inn's visibility and increase its revenues, including:

- a. other local Fairport/Perinton vendors;
- b. a near-by AirBNB in the Village of Fairport ("B&B"): (1) to which guest referrals were made when the Inn was full and/or could not accommodate guests; (2) from which guest referrals were received when the B&B could not accommodate guests; and (3) cooperative rentals when both the Inn and the B&B were needed in order to accommodate the size of a particular group;
- c. other hotels and lodgings, including Woodcliff, Hilton Garden Inn, Pittsford's Canal Lamp Inn, Fairport/Perinton's Twenty Woodlawn B7B, for exchange of referrals and courtesies;
- d. the Fairport – Perinton Chamber of Commerce, from whom the Inn operation received the "Business of the Month" Award in December 2018;
- e. the Fairport-Perinton Merchants Association; and
- f. the Fairport-Perinton Partnership;

g. Nazareth College and St. John Fisher College in order to obtain listing as a preferred lodging site; and

h. Visit Rochester.

87. As a result of the Inn's success and positive cash flow, payments were made by Hospitality LLC: (1) on the Property mortgage through November 2020; (2) to the governmental entities for property taxes imposed on the Property; and (3) for insurance premiums insuring both the Property and the operation of the Inn by Hospitality LLC.

88. As a result of the Inn's success and positive cash flow, Hospitality LLC made the payments and the capital improvements to the Property as previously described, in reliance on the expected long-term operation of the Inn business, and the contractual agreements made by Herral, Steitz and Properties LLC with respect to the Joint Venture.

89. Because of the successful operation of the Inn by Hospitality LLC, and the payments made and the capital improvements paid for by Hospitality LLC as previously described, the fair market value of and equity in the Property increased.

90. The increase in the value of and equity in the Property resulted in an increased value of the Joint Venture and its assets for the Joint Venture Participants.

**H. Destruction of the Joint Venture and Inn Business
by Herral, Steitz and Properties LLC**

91. In addition to their other employments and interests, Herral and Steitz conduct a business/hobby of repurposing and refinishing furniture, and general woodworking.

92. Since the fall of 2015, Herral and Steitz have conducted their business/hobby primarily in the Barn at the Property.

93. Herrald and Steitz have never paid rent to Hospitality LLC for their use of the Barn, and never paid for utilities consumed during their conduct of the business/hobby in the Barn from January 2017 through November 2020.

94. In or about the spring of 2020, Herrald and Steitz determined that their home at 35 George Street in the Village of Fairport was no longer adequate for their family, which consists of themselves and four minor children still residing at home.

95. Herrald and Steitz decided that they wanted to move their family into the larger accommodations at the House.

96. Herrald and Steitz' decision to move their family into the House necessarily required that Hospitality LLC would no longer operate the House as the Inn, and the Joint Venture would have to be abandoned and liquidated.

97. Herrald and Steitz decided that they no longer wanted the Barn to be used for events at the Inn, and instead would be used exclusively for their own business/hobby and family use.

98. Herrald and Steitz initiated a plan to dissolve the Joint Venture and prevent ongoing operation of the Inn so that they could move their family into the House, and have exclusive use of the Barn at the Property.

99. This plan by Herrald and Steitz was undertaken intentionally and in bad faith, and in derogation of their contractual and fiduciary duties to Renfro and Hospitality LLC.

100. In the spring of 2020, Herrald, Steitz and Renfro applied for an EIDL loan under the CARES Act to ensure that the Joint Venture would have adequate cash to sustain the Inn operation through any reduction of business caused by the pandemic.

101. The Small Business Administration approved the requested EIDL loan for \$47,200.

102. Despite the approval of the EIDL loan, Herrald and Steitz refused to accept and consummate it.

103. Beginning in or about the spring of 2020 and continuing through the late summer of 2020, Herrald and Steitz initiated conversations with Renfro, arguing that because of the pandemic, the Inn was not profitable, did not have adequate revenue and should be discontinued.

104. At the time these conversations occurred, the Inn:

- a. still had advance bookings for both overnight lodging and future events;
- b. a positive cash balance at each month end;
- c. was paying the mortgage on the Property, real property taxes, insurance, utilities and other expenses of the Joint Venture as those expenses came due; and
- d. new opportunities were emerging for marketing and use of the Inn due to travel restrictions for New York residents and the interest of lodging guests in booking “whole house” and longer-term stays.

105. Herrald and Steitz’ principal reasons for insisting on Inn closure were their desire to move their family into the House and to have the Barn for their sole and exclusive use for their business/hobby.

106. In their conversations, Renfro advised Herrald and Steitz that if they no longer wished to be part of the Joint Venture and were going to prematurely terminate it, then they were either going to have to buy out Renfro’s interest in the Joint Venture, or allow the Property to be sold so that Renfro could continue to operate the Inn.

107. Herrald and Steitz asserted that the Property was not saleable, and refused to consider any option other than the cessation of the Joint Venture and the Inn operation, so that they could obtain the Property for their sole and exclusive use.

108. On or about August 27, 2020, Herrald and Steitz told Renfro not to accept any additional reservations after November 1, 2020.

109. On September 28, 2020, Properties LLC issued to Hospitality LLC a document which it captioned as “Notice of Termination of Monthly Tenancy”, which advised that “we are terminating your month-to-month tenancy, effective October 31, 2020 (the “Notice”).

110. The Notice was signed by Steitz, with the approval of Herrald.

111. At the time the Notice was issued, Herrald was still a 50% member of Hospitality LLC, and a signatory of the Hospitality LLC Operating Agreement.

I. Herrald and Steitz’ Refusal to Accept a Sale of the Property

112. Faced with the directive not to accept additional reservations and the Notice issued by Steitz, Herrald and Properties LLC, and the assertion of Herrald and Steitz that the Property was not saleable, Renfro initiated conversations with knowledgeable community consultants and investors about the Inn business, and the potential sale of the Property.

113. A sale of the Property to a third party would have enabled:

- a. all the Joint Venture Participants to cash out their investments in the Joint Venture;
- b. accommodate the desire of Herrald and Steitz to no longer be part of the Joint Venture and the operation of the Inn;
- c. allow for the Property to be used for the Inn, if the new owner were willing to participate in that activity; and
- d. allow for Renfro to continue to be part of the Inn operation.

114. As a result of Renfro's efforts, on October 7, 2020, Quatro Real Estate and Joseph F. Burkart IV ("Buyers") presented a letter of intent to Herrald, Steitz and Properties LLC to purchase the Property for \$355,000 ("First Offer").

115. Herrald, Steitz and Properties LLC refused to consider the First Offer.

116. On October 22, 2020, Herrald, Steitz and Properties LLC were advised through their legal counsel that the Buyers were willing to increase their offer to purchase the Property for \$390,000 ("Second Offer").

117. Herrald, Steitz and Properties LLC refused to consider the Second Offer.

**J. Eviction of Hospitality LLC, Destruction of the Joint Venture
and Defendants' Appropriation of Property**

118. At the time the Notice was received, Hospitality LLC still had cash in the bank, was current with respect to the Joint Venture's financial obligations, and had advance bookings for lodging and events for the next year, including projected revenue for the month of November 2020.

119. On November 4, 2020, with the approval of Herrald and Steitz, Properties LLC filed a Notice of Petition and Petition in Perinton Town Court seeking the forcible eviction of Hospitality from the Property, and possession of the Property for Properties LLC (the "Petition").

120. The Petition alleged and verified under oath that the eviction was "not sought by reason of non-payment due to COVID-19."

121. At the time the Petition was issued, Herrald was still a 50% member of Hospitality LLC, and a signatory of the Hospitality Operating Agreement.

122. In the face of the Petition and Herrald's complicity in the eviction, Renfro and Hospitality vacated the Property on November 30, 2020.

123. In November 2020, Herrald and Steitz listed their home at 35 George Street for sale, and accepted an offer to sell it within one week of the listing.

124. Herrald and Steitz took sole possession of the Property on December 1, 2020, and shortly thereafter moved their family into the Property.

125. When Herrald and Steitz took sole possession and moved into the Property in December 2020, they recaptured and appropriated to themselves substantially all of the in-kind contributions of furniture and furnishings they had originally made to the Joint Venture, which they had valued at over \$21,000.

126. When Herrald and Steitz took sole possession and moved into the Property in December 2020, they appropriated and obtained for their personal use all of the goods and inventory at the Inn, including beds, mattresses, linens, towels, and kitchen equipment, among other tangible personal property. These goods and inventory had been purchased by Hospitality LLC and funded by the Inn's revenue, Renfro's cash capital contributions, and Kickstarter contributions to the Joint Venture.

127. When Hospitality LLC vacated the Property on November 30, 2020, Hospitality LLC had paid with respect to the Property:

- a. all of the real property taxes for 2020 levied by Monroe County in the amount of \$3,977.88;
- b. all of the real property taxes for the fiscal year June 2020 through May 2021 levied by the Village of Fairport in the amount of \$2,562.37; and
- c. \$5,139.54 of the total real property taxes of \$7,709.31 for the fiscal year July 2020 through June 2021 levied on behalf of the Fairport Central School District.

128. Because of the eviction forced by defendants, Hospitality LLC had overpaid real property taxes of \$3,540.02 with respect to the period of time it was in possession and operating the Inn through November 30, 2020.

K. Communication of Inn Closure

129. On or about November 27, 2020, and before Hospitality LLC and Renfro had vacated the Property, Herrald emailed some of the Inn guests who still held advance reservations for stays at the Inn, and stated that she was mailing to them a refund of the deposits they had made to secure their future reservations (the “Communication”).

130. Refunds of deposits to guests for future lodging and to customers for the value of Inn gift certificates that remain unused are necessitated solely because Herrald, Steitz and Properties LLC decided to prevent further operation of the Inn.

131. Herrald sent refund checks to some of the guests whose advance reservations were cancelled, using personal funds from the joint bank account of Herrald and Steitz.

132. Herrald’s Communication and the refunds that she and Steitz issued were made without advance notice to, and without the consent of either Renfro or Hospitality LLC.

133. Herrald has not accounted to Hospitality LLC and Renfro with respect to the refunds she and Steitz made, even though Renfro is the Tax Partner of Hospitality LLC, and has primary responsibility for the accounting functions of Hospitality LLC, and preparation of the tax returns of the entity.

134. In the Communication, Herrald stated in part:

The pandemic unfortunately is greatly affecting the hospitality industry as well as small businesses. *We are unable to survive it.*

(emphasis added)

135. The first sentence of the Communication stated in paragraph 134 was true but misleading.

136. The pandemic was not affecting the Inn as a small guest facility in the same way and to the same extent as it was affecting larger hotel and lodging enterprises, and in fact created new rental opportunities for which a facility like the Inn was suited.

137. The second sentence of the Communication stated in italics in paragraph 134 is false.

138. The second sentence of the Communication stated in italics in paragraph 134 was and is defamatory to Renfro, who the recipients of the Communication knew to be the innkeeper and primary agent for the Inn operation.

**FIRST CAUSE OF ACTION
BREACH OF JOINT VENTURE AGREEMENT**

139. Plaintiff Renfro repeats and realleges as though fully set forth herein the allegations in paragraphs 2 through 138.

140. Defendants actions as described constitute a breach of their obligations and commitments they made under the Joint Venture agreement as reflected in the Business Plan, the course of conduct of the Joint Venture Participants, and the obligation of good faith and fair dealing in contractual arrangements.

141. By reason of defendants' breach of the Joint Venture agreement, Renfro has suffered damages.

**SECOND CAUSE OF ACTION
BREACH OF JOINT VENTURE FIDUCIARY DUTIES**

142. Plaintiff Renfro repeats and realleges as though fully set forth herein the allegations in paragraphs 2 through 138.

143. Defendants' actions as described constitute a breach of their fiduciary obligations to Renfro as a Joint Venture Participant.

144. By reason of defendants' breach of fiduciary duties under the Joint Venture, Renfro has suffered damages.

**THIRD CAUSE OF ACTION
BREACH OF CONTRACT BY HERRALD: HOSPITALITY LLC OPERATING AGREEMENT**

145. Plaintiff Renfro repeats and realleges as though fully set forth herein the allegations in paragraphs 2 through 138.

146. Herrald's actions as described constitute a breach of her contractual obligations under the express terms of the Hospitality LLC Operating Agreement, and the implied covenant of good faith and fair dealing.

147. Herrald's actions as described were deliberate, willful, and taken in bad faith.

148. By reason of Herrald's breach of contract, Renfro has suffered damages.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT**

149. Plaintiff Renfro repeats and realleges as though fully set forth herein the allegations in paragraphs 2 through 138.

150. Defendants' actions as described constitute unjust enrichment of themselves to the direct financial detriment of Renfro.

151. By reason of defendants' unjust enrichment, Renfro has suffered damages.

**FIFTH CAUSE OF ACTION
DEFAMATION BY HERRALD**

152. Plaintiff Renfro repeats and realleges as though fully set forth herein the allegations in paragraphs 2 through 138.

153. Herralld's Communication as described constituted a published libel of Renfro with respect to her business interests and reputation in the community.

154. By reason of Herralld's defamation, Renfro has suffered damages to her reputation as a business person in the community.

**SIXTH CAUSE OF ACTION
DERIVATIVE CLAIM ON BEHALF OF HOSPITALITY LLC**

155. Plaintiff Renfro, as the *de facto* managing member of Hospitality LCC, repeats and reallages as though fully set forth herein the allegations of paragraphs 2 through 138.

156. Herralld's actions as described constitute a breach of her contractual obligations and fiduciary duties to Hospitality LLC under the Operating Agreement.

157. Herralld's breach of her contractual obligations and fiduciary duties has prevented the continued operation of the Inn by Hospitality LLC, resulting in lost revenue and lost profits.

158. Defendants' actions as described, including their eviction of Hospitality LLC from the Property and seizure of Hospitality LLC's inventory, furniture and furnishings, constitute unjust enrichment of themselves to the detriment of Hospitality LLC.

159. As result of defendants' unjust enrichment, Hospitality LLC has suffered damages, including lost revenue, lost profits, lost personal property, overpayment of real property taxes, and loss of community recognition and reputation.

160. Any demand that Hospitality LLC take action for itself against defendants would be a futile act because Herralld owns a 50% member interest in Hospitality LLC and would prevent the initiation of this cause of action by the entity itself.

WHEREFORE, plaintiffs demand judgment against defendants Angela Herralld, David Steitz and Herralld-Steitz Properties, LLC on each of the foregoing causes of action as follows:

- (1) On the First Cause of Action:

- a. an order directing liquidation and sale of all the assets of the Joint Venture, including the Property;
- b. an accounting by Herral, Steitz and Properties LLC for the assets of the Joint Venture, including the Property, that they have possessed and seized for their sole benefit;
- c. equitable distribution of the proceeds of the liquidation and sale of the Joint Venture assets among the Joint Venture Participants, after satisfaction of all liens, liabilities and obligations of the Joint Venture;
- d. indemnity of Renfro by defendants with respect to the Drago Loan and FSB/Evans Loan;
- e. alternatively, compensatory damages from defendants, jointly and severally, for Renfro's equitable share of Joint Venture assets to which she is entitled, but which were seized and misappropriated by defendants;

(2) On the Second Cause of Action:

- a. an order directing liquidation and sale of all the assets of the Joint Venture, including the Property;
- b. an accounting by Herral, Steitz and Properties LLC for the assets of the Joint Venture, including the Property, that they have possessed and seized for their sole benefit;
- c. equitable distribution of the proceeds of the liquidation and sale of the Joint Venture assets among the Joint Venture Participants, after satisfaction of all liens, liabilities and obligations of the Joint Venture;
- d. indemnity of Renfro by defendants with respect to the Drago Loan and FSB/Evans Loan;

e. alternatively, compensatory damages from defendants, jointly and severally, for Renfro's equitable share of Joint Venture assets to which she is entitled, but which were seized and misappropriated by defendants;

(3) On the Third Cause of Action:

a. compensatory damages from Herral for the value and future profits of the Inn business destroyed and prevented by Herral's breach of contract, and any liability incurred by Renfro on the Drago Loan and the FSB/Evans Loan;

(4) On the Fourth Cause of Action:

a. compensatory damages from defendants, jointly and severally, for the unjust enrichment they obtained at Renfro's expense and to her detriment;

(5) On the Fifth Cause of Action:

a. compensatory damages from Herral for injury to Renfro's business and community reputation;

(6) On the Sixth Cause of Action:

a. compensatory damages for all the losses suffered by Hospitality, including all debts and obligations owed to third parties by reason of defendants' conduct; with all such compensatory damages to be determined in a fair, adequate and equitable amount by the trier of fact, together with appropriate statutory interest, the costs and disbursements of this action and such other, further or different relief as, to the court, may seem just and proper.

Dated: December 23, 2020

McCONVILLE, CONSIDINE,
COOMAN & MORIN, P.C.
Attorneys for plaintiff Renfro and
Derivative Plaintiff Hospitality LLC



Kevin S. Cooman
25 East Main Street
Rochester, New York 14614
Telephone: (585) 546-2500

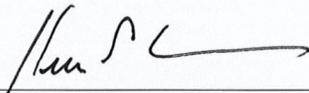
VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

I, Pamela Renfro, being duly sworn, depose and say that I am the plaintiff in the within action; that I have read the foregoing Complaint and knows the contents thereof; that the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.


Pamela Renfro

Sworn to before me this 23rd
day of December, 2020.


Notary Public

Kevin S. Cooman
Notary Public, State of New York
Qualified in Monroe County
Commission Expires April 30, 2023