

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

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THE POINT 128, LLC,

Plaintiff,

Index No.:

**SUMMONS**

-against-

JOANNE CHOI, WILLIAM CHOI, KENNETH TAM,  
MZ GLOBAL, LLC, and 8<sup>th</sup> AVE ENT LLC.

Defendants.

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**TO THE ABOVE NAMED DEFENDANTS:**

**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, upon WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for Plaintiffs within 20 days of the service of this Summons, exclusive of the date 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); and in the case of your failure to appear or answer, judgment will be taken against you in default for the relief demanded in the Complaint.

This is an action seeking monetary damages for defendants' breach of contract, and, as to defendant Joanne Choi, breach of fiduciary duty.

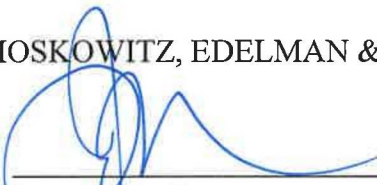
The relief sought herein is judgment over and against said Defendants, together with the costs and disbursements including reasonable attorneys' fees incurred herein.

Dated: New York, New York  
May 9, 2019

Yours,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:



Larry Lum, Esq.  
Attorneys for Plaintiff  
150 East 42nd Street  
New York, New York 10017-5639  
Tel.: (212) 490-3000  
File No.: 19052.00209

To:

**VIA PERSONAL SERVICE:**

Joanne Choi  
185 Canal Street  
New York, NY 10013

William Choi  
185 Canal Street  
New York, NY 10013

Kenneth Tam  
217 Grand Street—6<sup>th</sup> Floor  
New York, NY 10013

MZ Global, LLC  
Bilu Manzella  
3480 Ivy Drive  
Murrysville, PA 15668

8<sup>th</sup> Avenue ENT LLC  
Raymond Yung  
217 Grand St.—6<sup>th</sup> Floor  
New York, NY 10013

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

-----X  
THE POINT 128, LLC,

Plaintiff,

Index No.:

**VERIFIED COMPLAINT**

-against-

JOANNE CHOI, WILLIAM CHOI, KENNETH TAM,  
MZ GLOBAL, LLC, and 8<sup>th</sup> AVE ENT LLC.

Defendants.  
-----X

Plaintiff THE POINT 128, LLC (hereinafter “Company”), by their attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, complaining of the defendants JOANNE CHOI, WILLIAM CHOI, KENNETH TAM, MZ GLOBAL, LLC, AND 8<sup>th</sup> AVE ENT, LLC, (hereinafter, “defendants”), upon information and belief, allege as follows:

**NATURE OF THE ACTION**

1. The Company is a New York Limited Liability Company formed in 2010 for the purpose of owning, developing, marketing, and leasing a five-story commercial property and parking area located at 20-07 127<sup>th</sup> Street, College Point, New York (the “Property”). Defendants are minority members and collectively hold a 12.916% membership interest in the Company. A copy of the Operating Agreement (the “Agreement”) is attached hereto as **Exhibit “A”**. Defendants are also members of Hotel De Point, LLC (“Hotel”), which is a commercial lessee of the Company for purposes of operating a hotel at the Property.

2. This action arises out of defendants’ breach of the Agreement by virtue of their willful disregard of the specified procedures necessary to duly effectuate a sale of their proprietary interest in the Company. Instead, defendants have filed a suit seeking purely to extract a buyout of their interests at an exorbitant, highly inflated and unreasonable valuation

under the guise of a derivative action against the plaintiffs. The wrongful and improper actions of the defendants have resulted in the Company incurring legal and other expenses necessary to respond to the defendants' cynical and exaggerated claims, a distraction and interruption of the Company's ordinary and regular business operations, as well as damage to the Company's goodwill and reputation by virtue of the baseless claims and false accusations made by the defendants.

3. Within the first two years after construction of the property was completed, Defendants apparently realized that the Company was not as prosperous or successful as desired. Defendants then sought as early as October 1, 2013, and continued through as recently as the weeks leading up to their filing of dubious derivative claims, to sell their interests in the Company by presenting highly inflated values of their combined interests in both the Hotel and the Company as the basis for their demands to be bought out.

4. The Defendants' attempts to value their interests in the Company by including their interest in the Hotel as part of their sale price is illogical and unreasonable, and their actions to force such an unreasonable sale constitutes a material breach of the Agreement.

5. After realizing that the unreasonable valuation of their interests in the Company would not be tolerated or accepted, Defendants brought an unwarranted and meritless proceeding against the Company for judicial dissolution in 2016, which was then discontinued voluntarily.

6. Defendants then filed suit alleging, *inter alia*, derivative claims against the Company in a thinly veiled and cynical attempt to extort a buyout for an amount far in excess of the fair market value of their actual interests in the Company. (A copy of the complaint in the previous lawsuit is attached hereto as **Exhibit "B"**). The Defendants' lawsuit has caused and continues to cause financial harm and operational disruption to the Company and its other

Members, and Defendants actions are in violation of the prescribed steps for the sale of their interests in the Agreement.

7. The conclusory and accusatory claims in Defendants' lawsuit disregard the actual circumstances confronting the Company at all relevant times. The Defendants also gloss over the fact that the tenure of Defendant, Joanne Choi, as a Board Member, encompassed the relevant time period alleged in their own complaint (2015-2016), when a purported breach of fiduciary duty on the part of the Board is summarily asserted by the Defendants. Defendant, Joanne Choi, breached her fiduciary duty to the Company to the extent that she has been motivated by her own pecuniary interests at all relevant times. Defendant, Joanne Choi's blatantly improper efforts to have her—and her husband's—interests bought out at an unreasonable and unwarranted price since 2013, encompasses the time during which she served as a Board Member. Her actions were therefore not in the best interests of the Company and she breached her fiduciary duty to the Company and its Members.

#### THE PARTIES

8. Defendants Joanne Choi ("J. Choi") and William Choi ("W. Choi") reside in the State of New York and hold a 2.916% ownership interest in the Company, and a 10% ownership interest in the adjacent Hotel. J. Choi was previously a member of the Company's Board from November 22, 2015 to November 22, 2016.

9. Defendant Kenneth Tam ("Tam") is an individual residing in the State of New York and holds a 5% ownership interest in the Company, and a 7.5% interest in the Hotel.

10. Defendant MZ Global, LLC ("MZ") is a limited liability company duly organized under the laws of the State of Pennsylvania and holds a .833% ownership interest in the Company.

11. Defendant 8<sup>th</sup> Ave ENT LLC (“8<sup>th</sup> Ave”) is a limited liability company duly organized under the laws of the State of New York and holds a 4.167% ownership interest in the Company. The sole member of 8<sup>th</sup> Ave. is Raymond Yung, who owns a 5% share of the Hotel through his corporation Grand Audio Acoustics Corp.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to CPLR 301 and 302(a) in that upon information and belief all individuals are residents of the State of New York, the Company is a New York corporation, Defendants have transacted business and committed tortious acts within the State of New York, and the events giving rise to this action arose in the State of New York.

13. Venue in the County of New York is proper pursuant to CPLR 503(a) and 509.

### **BACKGROUND FACTS**

14. Plaintiff repeats, reiterates, and re-alleges each and every allegation numbered “1” through “13,” with the same force and effect as if more fully set forth at length herein.

15. When it was formed in 2010, the Company’s management was vested exclusively within Global Vision Development, Corp. (“GVD”), a single member entity solely owned and controlled by Raymond Chan (“Chan”), the developer of the Property and a former member of the Company.

16. In or about the spring of 2013, after the Property was operational for approximately one year, the occupancy rate was only 60% and several of the tenants’ businesses were not as successful as contemplated by Chan in his development plan. In fact, the supermarket business which was an integral tenant at the Property, Kam Man (which used three different companies to sign the lease with the Company: (1) Farm Market at The Point LLC; (2)

Bistro at The Point LLC; and (3) Kam Man Café LLC), had given notice that it intended to vacate and exercise its three month termination rights under the lease.

17. A material condition of the mortgage for the Property hinged on Kam Man remaining a functional tenant at the Property; the Company was given a default notice in or around November, 2013 by its mortgagee, The East West Bank. As a result of the loan default, timely efforts had to be undertaken to obtain alternative financing. Given the time sensitive nature of having to secure new financing, financial incentives were announced for any Member who was successful in obtaining a suitable lender on competitive terms. Alternative financing was ultimately secured through the Bank of China through the efforts of Wellman Wu, who was eligible for and received a financial incentive for obtaining the substitute lender.

18. Efforts were also made by the Members to remove GVD and Chan from the management of the Property because of the circumstances leading to the loan default, as well as other improvement opportunities for the management at the Property. At the Company's annual meeting on October 27, 2013, the members voted to amend the Operating Agreement to create a management Board ("Board") comprising five annually elected members. Of the current board members, Louis Lin ("Lin") and Jing Zhong ("Jing") were elected to the first Board. This amendment replaced GVD (and effectively Chan) as managing agent with the five annually elected Board members.

19. After taking over management, the Board faced various issues, especially ensuring that the supermarket space remained operational as the development plan hinged on foot traffic being generated by regular shoppers and patrons visiting the supermarket and then flowing into the other businesses on the Property. With Kam Man's departure, however, there were no bona fide alternative supermarket operators willing to lease at the Property. In order to

benefit the Company, and in a good faith effort to continue with the implementation of the development plan, several of the Members were determined to invest their own monies to start a supermarket business that assumed the Kam Man leasehold and purchased the remaining supermarket inventory and assets. Ultimately, the supermarket space was not a viable enterprise and unable to be profitable. Fortunately, an alternative tenant—a Karaoke Club—was eventually secured to lease the space and that tenant remains to-date.

20. The problem was further exacerbated at the time the Board took over the management responsibility because the vacancies made it more difficult to procure new tenants, as prospective tenants were concerned by the vacancies and their impact on foot traffic on the Property. The Board therefore had to contend with achieving and maintaining the minimum monthly rent collection thresholds required by the new mortgagee, Bank of China. In sum, as of late 2013, there were significant financial challenges facing the Board; its efforts were therefore focused on and directed toward sustaining the viability of the Company, while the Defendants were conversely looking to unload their interests in the Company at highly inflated and egregiously unreasonable valuations.

21. As mentioned previously, the Company was placed in the unenviable position of having to refinance its mortgage with East West Bank, who called in the mortgage loan when it learned that Kam Man was vacating the Property and no longer operating the magnet store on site. On March 25, 2014, as an incentive to all members to help the Company obtain refinancing, the Board passed a resolution to incentivize any member who could arrange a lender to issue the mortgage loan by initiating and negotiating a loan that met certain criterion—the lead members of the Board at the time who decided to issue the incentive were disqualified from receiving the commission incentive.



22. In July 2014, the Company refinanced the loan with the Bank of China, upon terms more favorable than the terms for the prior loan with East West Bank. Since Wellman Wu a current Board Member, was not a member of the Board at the time, the Company agreed to pay him the incentive commission.

23. At the 2015 annual meeting held on November 22, 2015, the issue of rent delinquency persisted due to limited revenue-generating foot traffic. While six new leases had been signed, three other tenants were unable to stay in business, including the supermarket that tried to assume Kam Man's role as the magnet tenant. The Board discussed several ways to resolve the issue, as all prior efforts to line up a bona fide alternative supermarket operator had failed.

24. At that time, a prospective tenant was interested in the space occupied by the supermarket's sub-tenant, and trying to negotiate the sub-lease terms. The Board discussed how it would be beneficial if the Company would be in a better position to increase the lease price and fill the space much faster than if it waited for the tenant to negotiate a sublease.

25. A solution was proposed, where the Company would demand that the supermarket tenant immediately relinquish its lease and possession to the Company, and in exchange, the Company would forgive all rental obligations. The consensus was that the proposed solution served the Company's best interest by increasing the Company's bargaining power and giving the Company the ability to fill the space quickly. As such, a vote was held, and a majority of the members voted in favor of the solution.

26. In 2016, as a result of continued underperformance of the property, Bank of China contacted the Company regarding the status of the Company's mortgage. The bank was concerned with the Company's cash flow and its failure to maintain the Debt Service Coverage

Ratio ("DSCR"), requiring the Company to maintain annual operating income of no less than 125% of the annual payments due.

27. Bank of China advised that the Company needed to increase their annual operating income, and that in the interim, a cash reserve equal to the DSCR amount had to be maintained. The Board was notified that it had two days to deposit a cash reserve for the DSCR, which was \$420,000. Due to the short deadline, the Board had limited options. A capital call required 30 business days' notice pursuant to the Agreement, and therefore, was not feasible.

28. Rather than defaulting on the loan, the Board, consisting of Daniel Cai, Lin, Wellman Wu, Jing Zhong, and J. Choi, circulated a resolution authorizing the Company to borrow \$420,000 from Cai, Lin, and Wu, at 6% interest, to be paid back when the company had sufficient cash flow. Only one Board member—J. Choi—voted against the loan, which would have resulted in an immediate default of the mortgage loan if Defendant J. Choi's vote prevailed, and which decision in and of itself, constitutes a breach of fiduciary duty to the Company.

29. Rather than have the Company default, Cai, Lin, and Wu loaned the necessary money to meet the Bank's DSCR requirements to the Company, and it was deposited into the Company's account. This transaction saved the Company, kept the mortgage loan in good standing, which loan terms are more favorable than the prior mortgage with East West Bank, and clearly served the Company's best interests.

**AS AND FOR A FIRST CAUSE OF ACTION****(Breach of Contract)**

30. Plaintiff repeats, reiterates, and re-alleges as part of this cause of action each and every allegation numbered "1" through "29," with the same force and effect as if more fully set forth at length herein.

31. The Operating Agreement constitutes a valid and enforceable contract among the parties herein.

32. Article III, Section 3.3 of the Agreement governs the sale of membership interest.

33. Article IV, Section 4.7 of the Agreement governs objections of members to decisions or acts related to the management and conduct of affairs of the Company.

34. Article IV, Section 4.4 of the Agreement restricts members from taking any acts in contravention of the Agreement.

35. Article VIII, Section 8.1 restricts members from selling their interest in the Company without the consent of the other members.

36. Knowing they could not obtain a value they had hoped for if they sold their shares pursuant to method prescribed in the Operating Agreement, or that a majority of the members would object to the sale, the defendants herein brought a meritless petition of dissolution against the Company.

37. The Defendants discontinued their petition of dissolution, without prejudice, ostensibly to get an appraisal of the property. The appraisal was reportedly performed on September 6, 2017 but it reinforces the valuations quoted in a letter sent by Defendant J. Choi and her husband W. Choi as early as 2013. Oddly, the 2017 appraisal is addressed to and evidently prepared on behalf of the Hotel.

38. In an effort to misrepresent the value of their interest in the Company and to improperly obtain a price substantially higher than the actual worth of their ownership interest in the Company, the Defendants herein ultimately directed the appraiser to add the value of the Hotel to the appraisal of The Point 128, LLC.

39. Throughout their efforts to dispose of their shares, the Defendants herein did not follow the procedures set forth in section 3.3 of the Operating Agreement and instead have sought to improperly leverage a buyout on unreasonable terms through the pursuit of a thinly veiled derivative action, thereby breaching the Operating Agreement.

40. The Defendants herein did not follow Section 4.7 of the Agreement when objecting to acts taken on behalf of the company throughout the years 2015 through 2018.

41. By maintaining its baseless lawsuit against the Company, the Defendants herein have acted in contravention of the Agreement, unjustifiably damaging the financial interests and disrupting the business operations of the Company and all the other Members.

42. The Defendants have assumed liability for any such breaches under the terms of the Operating Agreement.

43. The Company has been injured in an amount to be proven at trial, but believed to be not less than \$3,000,000.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Breach of Fiduciary Duty—Joanne Choi)**

44. Plaintiff repeats, reiterates, and re-alleges as part of this cause of action each and every allegation numbered “1” through “43,” with the same force and effect as if more fully set forth at length herein.

45. Plaintiff J. Choi was previously a member of the Company's Board from November 22, 2015 to November 22, 2016.

46. As a Company Board member, Defendant J. Choi owed fiduciary duties of care, loyalty, and good faith and fair dealing to the Company pursuant to her status as a member of the Board.

47. As a Company Board member, J. Choi disregarded her obligations to the Company itself and solely looked out for her own pecuniary interests, in her self-serving Board vote for the Company to default its Bank of China loan, and in her efforts since 2013 to present, to improperly obtain a price substantially higher than the actual worth of her and her husband's ownership interest in the Company. Bringing about a baseless litigation, solely in an effort to force a buyout higher than market value, Defendant J. Choi has caused and fully intends to cause financial damage to the Company, and has hindered the ability of the Company to conduct its day-to-day operations in an orderly and proper manner.

48. The Company suffered actual injury as a direct, foreseeable, and proximate result of Defendant J. Choi's breach of her fiduciary duty.

49. The Company is entitled to recover compensatory damages for Defendant J. Choi's breach of fiduciary duty in an amount to be determined at trial, but which is believed to be not less than \$3,000,000.

**WHEREFORE**, plaintiff respectfully requests that judgment be entered as follows:

- (i) On the first Cause of Action, a direct claim against all defendants for breach of the Operating Agreement, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$3,000,000;

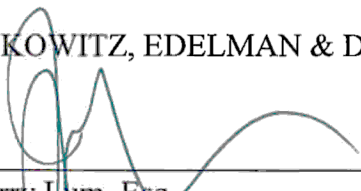
- (ii) On the Second Cause of Action, breach of fiduciary duty, for compensatory damages in an amount to be determined at trial, but which is believed to be not less than \$3,000,000;
- (iii) With respect to the claims asserted herein, awarding plaintiff attorneys' fees, costs and disbursements incurred in this action;
- (iv) Granting pre-judgment interest on all sums awarded at the rate prescribed by law; and
- (v) Granting such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 9, 2019

Yours,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:



\_\_\_\_\_  
Larry Lum, Esq.  
Attorneys for Plaintiff  
150 East 42nd Street  
New York, New York 10017-5639  
Tel.: (212) 490-3000  
File No.: 19052.00209

To:

**VIA PERSONAL SERVICE:**

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Raymond Yung  
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New York, NY 10013

VERIFICATION

STATE OF NEW YORK     )  
   ) ss.:  
 COUNTY OF NEW YORK    )

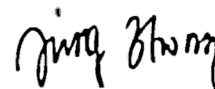
JING ZHONG, being duly sworn, deposes and says:

I am a current board member of The Point 128, LLC and am fully familiar with the facts and circumstances contained herein. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to deponent's own knowledge, except as to matters stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: personal knowledge.

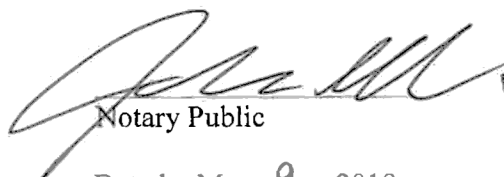
The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York  
 May 9, 2019



Jing Zhong

Sworn to before me this  
9 th day of May, 2019.



Notary Public

Dated—May 9, 2019

JOSHUA CASH  
 NOTARY PUBLIC, State of New York  
 No. 02CA0175668  
 Qualified in New York County  
 Commission Expires: Oct. 15, 2019