

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

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**RAM GUPTA, as shareholder of E.J.'S BUCKET  
BUDDIES, INC., a domestic Corporation,**

**Petitioner,**

**In Matter of Dissolution of:**

**E.J.'S BUCKET BUDDIES, INC., a domestic Corporation,**

**Respondent, and**

**For an Accounting from:**

**MICHAEL BESEN,**

**Co-Respondent.**

**VERIFIED  
PETITION**

**Index No.:**

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The petition of Ram Gupta, a holder of 25% of the voting shares of E.J. Bucket Buddies, Inc., by his attorneys, Coritsidis & Lambros, PLLC, respectfully alleges as follows:

**I. NATURE OF ACTION**

1. This is a petition for dissolution of E.J. Bucket Buddies, Inc. ("E.J Inc.") pursuant to BCL § 1104(c), on the grounds that (i) the directors have failed to hold an annual meeting for at least two consecutive annual meeting dates, and therefore failed to elect directors as called for in the Business Corporation Law; (ii) there is internal dissension between and among the three factions of shareholders holding 100% of the voting stock who are so divided that they are unable or unwilling to elect directors as called for in Business Corporation Law §§ 701 and 703; (iii) the internal dissension among shareholders and failure (or willful refusal) to elect directors has made the lawful and responsible management of the corporation's affairs impossible since the votes required for major and critical decisions by the board (and/or shareholders) cannot be obtained; (iv) as a result of the intractable and internal dissension among shareholders holding 100% of the voting stock who are so

divided to elect directors or otherwise reach a consensus required for major and critical decisions, dissolution would be beneficial to the shareholders. In addition, this petition seeks, upon dissolution, an order liquidating its business, assets and affairs, including the real property known as 945 Columbus Avenue, New York, N.Y., and 947 Columbus Avenue, New York, N.Y., with the sale proceeds to be distributed to the shareholders by a court appointed receiver. Furthermore, Petitioner seeks an accounting of E.J. Bucket Buddies, Inc.'s transactions and of the monies disbursed and received by respondent Michael Besen (either personally as chief executive officer and/or as the controlling member and manager of New York City Management LLC, E.J. Bucket Buddies, Inc.'s managing agent), who is in control of and has custody of the books, records and financial accounts of E.J. Bucket Buddies, Inc., to enable a full and complete settlement of the accounts of the shareholders.

2. For the past several years, as more fully set forth below, the shareholders of E.J Inc. have been deadlocked on fundamental issues of significance to the operation of the corporation, particularly with regard to the management, operation, and disposition of its primary asset: real property known as 945 Columbus Avenue, New York, N.Y., and 947 Columbus Avenue, New York, N.Y. ("945 & 947 Columbus Ave" or the "Subject Property"). The deadlock has been exacerbated by respondent Michael Besen ("Besen") being the Company's president and owner of the Subject Property's management company, New York City Management LLC. Besen was not responsive to requests for discussions or meetings (relenting on rare occasions only after delays and accommodations) electing instead to communicate through his counsel.

3. As a result, the directors have failed to hold an annual meeting and elect directors for at least two consecutive annual meeting dates, contrary to the Business Corporation Law and E.J. Inc.'s By-Laws.
4. The disagreements among the shareholders are so pervasive that no further meaningful business can be conducted by E.J Inc.
5. In fact, the shareholders holding 75% of E.J. Inc.'s voting stock are embroiled in cross law suits alleging financial improprieties and deadlock in companies they, but not Petitioner, are involved.
6. Absent dissolution of E.J Inc., management decisions that would benefit the company are unlikely to be made, since the shareholders communicate largely through attorneys and have not held a board meeting (or elected board members for many years), if ever.
7. Accordingly, given the inability to reach agreement or to conduct further business in the corporation's current form, the corporation is in a state of deadlock.
8. The liquidation of the corporation and the sale of its assets would, therefore, be in the best interests of the corporation and would best protect the interests of the shareholders.
9. The dissolution of the corporation will not be injurious to the parties or to the public, and a judicial dissolution will resolve the intractable disagreement between the shareholders and will not adversely affect any legitimate right of any person or entity.

## **II. THE PARTIES AND PRIMARY ASSET OF E.J.'S BUCKET BUDDIES, INC.**

10. Plaintiff Ram Gupta ("Gupta") is a resident of the State of New Jersey, whose offices are located at 2123 Williamsbridge Road, 2<sup>nd</sup> Floor, Bronx, New York 10461.
11. E.J. Bucket Buddies, Inc. ("E.J. Inc.") is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business at c/o Besen

& Associates, 1301 Avenue of the Americas, 21<sup>st</sup> Floor, New York, N.Y. 10016 (the “Besen HQ”). Attached hereto as Exhibit 1 is a copy of the Certificate of Incorporation of E.J. Inc. Attached hereto as Exhibit 2 is a copy of the By-Laws of E.J. Inc. (hereinafter referred to as the “By-Laws”).

12. E.J. Inc.’s primary asset, 945 & 947 Columbus Ave, was purchased on or about January 30, 1995.

13. E.J. Inc. has issued all of the shares of stock which have been authorized.

14. E.J. Inc.’ shareholders and their respective Interests<sup>1</sup> are and have been at all relevant times, herein the “(E.J. Shareholders”):

- |                  |       |
|------------------|-------|
| a. Michael Besen | 37.5% |
| b. Amit Doshi    | 37.5% |
| c. Ram Gupta     | 25%   |

15. Upon information and belief, there is no written and executed shareholders agreement for the E.J. Shareholders.

#### **Non-Parties Relevant to this Proceeding**

16. Michael Besen is a licensed real estate broker with his principal place of business at Besen H.Q.

17. Besen & Associates Inc. (“Besen Inc.”) is a New York Corporation engaged in the business of commercial real estate brokerage, and has a place of business at Besen HQ.

18. Amit Doshi (“Doshi”) is and was at all relevant times herein, a Partner<sup>2</sup> with Besen in Besen Inc., a licensed real estate salesperson with Besen Inc. and shared Besen H.Q. as his

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<sup>1</sup> Interests”, as used herein may refer to any type of equity interests in an entity, e.g. ownership of membership interests or shares of stock.

<sup>2</sup> “Partner (s)” shall generically denote herein any type of equity interest owner, e.g., ownership of a partnership m Interests or shares of stock.

principal place of business, until in or about July of 2018 when Doshi left Besen Inc. and joined Meridian Investment Sales.

19. New York City Management LLC ("NYC Management") is a New York Corporation engaged in the business of real estate management, having a place of business at Besen HQ, and is an affiliate of Besen Inc.
20. Besen Capital LLC a/k/a Besen Capital a/k/a Besen Capital Financing Services is a Besen & Associates Inc. affiliate New York Limited Liability Company, which is in the mortgage brokerage business and maintains its principal offices at Besen HQ ("Besen Capital").
21. NYC Management has been E.J. Inc.'s managing agent and manager of 945 & 947 Columbus Ave since its acquisition.
22. Gupta owns a fifty (50%) percent Interest in, and Besen and Doshi each own a twenty five (25%) percent Interest in Brighton Owners LLC, a New Jersey limited liability company (the "Jersey Affiliate") which owns 320-330 Dodd St., West Orange, New Jersey (the "Jersey Property"), a commercial property managed by Gupta's management company.
23. In addition, each of Besen, Doshi and Gupta own one third (1/3) of the Interests in 624 & 655, LLC, a New York limited liability company, having a place of business at c/o Besen & Associates, 1301 Avenue of the Americas, 21<sup>st</sup> Floor, New York, N.Y. 10016 (the "Besen HQ"), whose primary asset is the real property located at 624 East 220<sup>th</sup> Street, Bronx, N.Y. and 655 East 223<sup>rd</sup> Street, Bronx, N.Y. ("624 & 655 E 220 Bx."), which were purchased on or about January 10, 2005.
24. In addition, each of Besen, Doshi and Gupta own one third (1/3) of the Interests in 292 East 166 LLC, a domestic limited liability company, having a place of business at the

Besen HQ, whose primary asset is the real property located at 292 East 166<sup>th</sup> Street, Bronx, N.Y., purchased on or about August 7, 2001 (hereinafter, the 166 St. Bx. Property and 624 & 655 E 220 Bx. shall collectively be referred to as the “Bronx Properties”).

25. Hereinafter, the Bronx Properties, Jersey Property, and Subject Property, i.e. 945 & 947 Columbus Ave., shall collectively be referred to as the “Shared Properties.”

26. Hereinafter, Besen, Doshi, and Gupta, respectively as the holders of all of the Interests in Jersey Affiliate, 624 & 655, LLC, 292 East 166 LLC and E.J. Inc. (the “Shared Companies”), shall be referred to collectively as the “Principals.”

27. Upon information and belief, at all relevant times Doshi and Besen were and are Partners in other real estate investments wherein Gupta is not a Partner (see ¶¶52 through 68, *infra*).

28. Gupta has been real estate professional for decades, owns Interests in companies other than the Shared Companies which own commercial and residential properties other than the Shared Properties and is qualified to appraise real estate values.

### **III. THE PRINCIPALS’ UNANIMOUS DESIRE TO END THEIR ASSOCIATION**

29. On or about January 27, 2017, Eliot H. Zuckerman, Esq. of Smith, Gambrell & Russell, LLP (“Besen’s Counsel”) wrote to Gupta and Doshi, in Besen’s behalf, proposing *inter alia* the ultimate dissolution of Deft. Owners, as follows (the “Besen 1/27/17 Letter”):

*“I am writing this letter at the request and on behalf of Michael Besen. Michael has advised me that the three of you are principals of the entities of the entities that own the six referenced properties (“Properties”), that one or both of you have expressed an interest to him that the Properties be somehow exchanged/divided so that each of the three of you will own your own property(ies)(except to the extent that the two of you may wish to have co-ownership interests in any of the Properties), and that he, Michael, is now prepared to proceed to effect that division/exchange of the Properties. As you both know, the first step in this process is for each of the three of you to estimate the current market value of each of the Properties after which the three of you will need to discuss and*

*determine how best to separate the Properties into groups and effect the exchange.*" (Attached as Exhibit 3 is a copy of the Besen 1/27/17 Letter).

30. The Besen 1/27/17 Letter proposed that the Principals exchange their respective common Interests in 624 & 655, LLC, 292 East 166 LLC, E.J. Inc. and Jersey Affiliate (the "Shared Entities") and perforce their respective Shared Properties so that ultimately, each of the Principals would own One Hundred Percent (100%) of the Interests in one or more of the Shared Properties (a "Barter and Swap").
31. On or about February 10, 2017 (the "2/10/17 Gupta Response"), Plaintiffs' counsel Michael N. Coritsidis, Esq. of Coritsidis & Lambros, PLLC ("Gupta's Counsel"), responded in behalf of Pltf. Gupta to Besen's Counsel, requesting that Besen and/or NYC Management (generally, "Besen & Managing Agent") provide specified information relating to the Shared Properties, to assist in estimating their current values.
32. Over a month after the 2/10/17 Gupta Response, Besen & Managing Agent provided incomplete documentation relating to the Shared Properties (the "Document Production").
33. Between March and the summer of 2017, Gupta sought, through Counsel, to meet with Besen, without success.
34. On October 12, 2017 Gupta's Counsel wrote to Besen's Counsel (the "Gupta 10/12/17 Letter to Meet", see Exhibit 4 annexed hereto),:

*"[Y]our client... Besen, invited Mr. Gupta and Mr. Amit Doshi to work together to disengage themselves as co-owners of the limited liability companies and their respective properties [and] each Member would ultimately own one or more of the properties, exclusively, at least with regards to any of the other Members. Following my clients' dissatisfaction with content, review and follow up of the due diligence materials and process....I informed you of Mr. Gupta's preference; and followed up a couple of times to determine whether your client had a response to my client's proposal. I also requested that a meeting of the Members and counsel should be arranged. No response from your client was forthcoming. My client needs to move forward with the disengagement of the Members, and that the Properties be marketed for sale. Let me know [o]f any of dates which are good for you and your client to meet, certainly on or prior to the 24th of*

October.

*If a meeting is not arranged by next week, my client will be compelled to notice a meeting of the various entities' Members of so that proposals can be presented to the assembled Members; and if approved, implemented.*

*I look forward to hearing from you."*

35. Though Besen's counsel confirmed on October 18, 2017 that Besen had received and forwarded the Gupta 10/12/17 Letter to Meet to Besen, no response was made by Besen (see Exhibit 5, E-mail from Besen's counsel).

36. On or about November 30, 2017, Gupta, through his counsel, served upon Besen and his counsel a letter containing a Demand for the Call of a Special Meeting and Notices of a Meeting of the Shared Companies' Principals, including the below ("Petitioner's Demand", see Exhibit 6):

*" Pursuant to the documents set forth below (the "Notices/Demand"), a signed copy of each of which is attached hereto, Mr. Gupta is, inter alia, calling a meeting of the Companies at 381 Park Avenue South, Suite 1515, New York, New York, 10016, on December 11, 2017, commencing at 6:00 PM (please read each document carefully):*

- 1. That certain Demand for the Call of a Special Meeting to Elect a Board Of Directors of E.J.'S Bucket Buddies, Inc., a New York Corporation (the "Corporation") Pursuant to New York Consolidated Laws, Business Corporation Law §603 (the "E.J.'S BB Demand") and Notice of Meeting and Demand for the Attendance of Shareholders to Address the Shareholders' Agenda, Set Forth Below (the "E.J.'S BB Notice of Meeting");*
- 2. That certain Notice of Meeting to the Members of 292 East 166 LLC (the "292 Notice of Meeting");*
- 3. That certain Notice of Meeting to the Members of 624 & 655 LLC (the "624 & 655 Notice of Meeting"); and*
- 4. That certain Notice of Meeting to the Members of Brighton Owners LLC (the "Brighton Notice of Meeting")"*

37. A majority of the Principals (including a majority of voting stock in E.J. Inc.) consented to the requested meeting, when Doshi signed his consent to the demand for the meeting (see Exhibit 7 annexed hereto).

38. Besen later agreed to the meeting if it was adjourned to December 20, 2017, to which



Gupta and Doshi agreed (see Exhibit 8 annexed hereto).

39. Prior to the meeting, Besen and NYC Management sent management reports to each of the Principals, to assist their determination of the Shared Properties' value (the "Principals' Appraisals").
40. At the 12/20/17 meeting (the "Special Meeting") a majority of the Principals agreed they wanted to aggressively market the Shared Properties for sale by professionals (a "Free Market Sale") and terminate their associations; while Besen demanded a Barter and Swap.
41. The Principals agreed to adjourn the meeting, review the information provided and return with their Principals' Appraisals and select the manner of sale and dissolution.
42. On or about January 16, 2018, each of the Principals simultaneously sent his respective Principal's Appraisal to the others.
43. On February 2, 2018, Gupta's counsel wrote the other Principals' counsel [See Exhibit 9] that either a Principal buys at or near the appraised value or accepts a Free Market Sale:

*"We spoke a couple of weeks ago shortly after the respective members' valuations were releases. Mr. Amit Doshi's numbers were materially higher for Columbus Avenue -- (19% or almost \$3 million more—more than our clients) and 233/220<sup>th</sup> Street Bronx (20-31.5% or up to \$3.8-5 million more—more than our clients). I suggested if Amit's faith in his numbers is real, there is no reason for us not to 'splash' them for sale ASAP. You said you would take this your client. I haven't heard anything... [M]y client was prepared to keep an open mind about the members 'swapping' Properties among themselves. However, unless Michael or Amit are buyers at Amit's valuations or close to them—there is nowhere to go with them among us. Let's resolve this next week. We may have all the information we will ever need to make the decisions."*

44. Besen continued to hold out and on February 27, 2018, Doshi's counsel wrote the other two, saying that Besen accept the majorities Free Market Sale or dissolve, i.e.:

*"to agree to put the properties on the market and sell them" or else, proceed with a dissolution, or as counsel put it: sell the Properties and that barring that: "we are back to point one when [Gupta's Counsel] first sent out notices, and we will need to follow through*

on that route”. [See Exhibit 10].

45. Besen’s Counsel’s responded to Doshi’s Counsel on March 1, 2018 demanding a Barter and Swap, while opposing a Free Market Sale of the Buildings, citing tax savings:

*“The goal is to do an exchange, which can be accomplished as soon as the three principals agree on a valuation on all of the properties. The valuations are close enough that the goal should be accomplished when they next meet or speak. An exchange should be tax free except to the extent cash is received to cover any difference in values. After the exchange is done, each of the parties may do whatever they wish with the propert(ies) they end up with. A buyout by one partner of another is not a sensible alternative since it requires the purchaser to come up with more cash and it requires the seller to pay more taxes. [Annexed hereto as Exhibit 11 is a copy of Besen’s Counsel’s 3/1/18 Response].*

46. Still, neither Gupta nor Doshi desired Besen’s Barter which would force one or both of Gupta and Doshi to keep one or more Shared Properties.

47. In desperation, Besen caused his counsel to send the other Principals’ counsel a March 9<sup>th</sup>, 2018 letter resurrecting an “April 18, 2016... memo to the partners alerting them to the ‘desperate need’ for work at the [624 & 655 223 St. Bx] building....”, which was put off at the time because “the company did not have sufficient funds to perform ... the required work.” The letter went on to add that:

*“Recently, a serious violation was placed against the property... by reason of the condition of the parapets. Though the company fortunately now has some funds available to commence the work, it is quite possible that more funds will be needed and that the members may need to contribute accordingly.” (“Besen’s 3-9-18 Letter”, see Exhibit 12).*

48. Testing the sincerity of Besen’s 3-19-18 Letter declaring a “desperate situation” that would require “more funds...that the members need to contribute”, Gupta offered to take 100% of 624 & 655 223 St., Bx. and assume its alleged “desperate needs” at a discount (the “Gupta’s 624 & 655 Offer”) , in exchange for Gupta’s Interests in all the other the Shared Properties.

49. Though Besen’s Counsel responded to Gupta’s Counsel on April 9, 2018 saying he would

discuss the offer with his client (see Exhibit 15), Besen did not accept Gupta's 624 & 655 Offer nor did he make any counter offer.

50. Besen's 3-9-18 Desperate Situation Letter was a ploy to induce Doshi and Gupta to Barter and Swap 624 & 655 St., Bx. at a discounted value.

51. To date, other than Gupta's discarded 624 & 655 Offer, no Principal has acceded to Besen's Barter and Swap; Besen refuses to go along with a Free Market Sale; and Besen and Managing Agent continue to collect fees managing the Shared Properties.

**IV. DOSHI'S AND BESEN'S TERMINATION OF THEIR BUSINESS  
RELATIONSHIP AND LITIGATION BETWEEN AND AMONG BESEN, DOSHI AND  
THEIR RESPECTIVE PROXIES AND AFFILIATES**

**Law Suit Besen vs. Doshi**

52. On June 4, 2018 Besen commenced an action against Doshi in the Supreme Court of the State of New York, New York County, Index No. 652691/2018, entitled (the "Besen v. Doshi Action"), Michael Besen, individually and derivatively, On behalf of 223 West 20 LLC, East 116<sup>th</sup> LLC, 42 Mulberry LLC, 1320 Fulton Avenue Management Corp., 2721 Health LLC, 34447 Equities Inc., and Besen & Associates Inc. v. Doshi, et. al., alleging:

*"Besen encouraged Doshi to focus his efforts on real estate sales, and in the process trusted Doshi.... Unfortunately, the trust that Michael Besen had in Amit Doshi turned out to be misplaced....Doshi violated virtually every duty that New York law imposes upon a fiduciary. Indeed, Doshi not only violated his own fiduciary duty – which he personally owed to Besen – Doshi further aided and abetted the breach of clear fiduciary duties that others owed to the companies and to Besen. And as a real estate sales agent, Doshi also violated the duties he owed the licensed broker of record – Michael Besen. [See Besen Complaint Page 4, ¶¶ 12 and 13 and Page 5, ¶ 15, annexed hereto as Exhibit 13].*

a. *Notwithstanding those clear duties ... accountants uncovered a scheme, undertaken by Doshi, through which Doshi misappropriated and converted \$800,000..., converting those funds from Besen & Associates and ... to purchase*

*for a leasehold on a commercial building located at 417 Lafayette Street, New York, New York. [Besen Complaint Page 7, ¶¶ 23 and 24].*

- b. *In or around the spring of 2016 ... Besen & Associates accountants uncovered a[n] ... unexplained transfer ... Doshi misappropriated and converted ... \$650,000 for his own personal use .... [Complaint Page 8, ¶ 30].*
- c. *“on ... October 11, 2016, Doshi misappropriated an additional \$450,000”. [Besen Complaint Page 9, ¶ 33 and 34].*

53. The Besen v. Doshi Action proffered the following excerpted causes of action, demanding dissolution of the entities in which Besen partnered with Doshi [Emphasis Added]:

**“Eighth Cause of Action - With Respect to 223 West 20 LLC**

*(For Judicial Dissolution Pursuant to LLC Law § 702)*

- *The company’s management has become so dysfunctional and divided, and its business purpose so thwarted, that it is no longer practicable to operate business.*
- *The company should be dissolved because there is deeply-rooted dissention and distrust between Besen & Doshi. [Emphasis Added].*
- *Further, Besen’s mistrust of Doshi has made it impossible for Besen to continue to operate any business with Doshi. [Besen Complaint Pages 31 and 32, ¶¶ 181, 182 and 185].*

**Ninth Cause of Action - With Respect to East 116<sup>th</sup> LLC**

*(For Judicial Dissolution Pursuant to LLC Law § 702)*

- *Because of the distrust and hostility between Besen and Doshi, the company’s management has become so dysfunctional and divided, and its business purpose so thwarted, that it is no longer practicable to operate business. [Emphasis Added].*
- *Further, Besen’s mistrust of Doshi has made it impossible for Besen to continue to operate any business with Doshi. [Emphasis Added]. [Besen Complaint Pages 32 and 33, ¶¶ 194 and 198].*

**Eleventh Cause of Action - With Respect to 42 Mulberry LLC**

*(For Judicial Dissolution Pursuant to LLC Law § 702)*

- *The company’s management has become so dysfunctional and divided, and its business purpose so thwarted, that it is no longer practicable to operate the business.*
- *The company should be dissolved because there is deeply-rooted dissention and distrust between Besen on one hand, and Doshi and Farhadian, on the other. [Emphasis Added].*
- *Further, Besen’s mistrust of Doshi and Farhadian has made it impossible for Besen to continue to operate any business with Doshi and Farhadian. [Emphasis Added]. [Besen Complaint Page 34, ¶ 208, 209 and 212].*

54. Besen's repeated assertions that management of Doshi's and his real estate Partnerships have "become dysfunctional", that their business purposes have been "thwarted" and that Besen's mistrust of Doshi makes it "impossible" to operate any business with Doshi, is prima facie evidence of the same dysfunction, thwarting of purpose and right to dissolution in this instant proceeding to dissolve E.J. Inc. too, since Doshi and Besen hold a majority of the voting Interests in E.J. Inc. (and owners of the Bronx Properties, too).
55. Besen's status as president and managing agent of E.J. Inc. and 945 & 947 Columbus Ave, created a clear conflict of interest with Gupta, inasmuch as Besen, to promote his own agenda, intentionally withheld his motivations and serious allegations against his 'partner' Doshi from Gupta, and at Gupta's expense. Not only did Besen not inform Gupta of Doshi's alleged dishonesty and conversion of funds, but Besen had his Counsel suggest in the Besen 1/27/17 Letter (see Exhibit 3) that Gupta could partner with Doshi, i.e. *"the two of you may wish to have co-ownership interests in any of the Properties."*
56. Besen did not disclose his allegations against Doshi to Gupta, but tried, instead, to foist his nemesis Doshi on Gupta, so Besen could walk away owning his parcel(s) 100%.<sup>3</sup>

**Doshi's Foreclosure Action against a Property Owned by Doshi, Besen and a Third Party**

57. Doshi, likewise, had earlier commenced a litigation against 94-16 34 Road LLC ("94-16 LLC"), a New York Limited Liability Company, owned by Besen, Doshi and one Robert Farhadian ("Farhadian"), which 94-16 LLC owned its eponymous Queens property, 94-16 34<sup>th</sup> Rd., Jackson Heights, New York (the "94-16 Property").

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<sup>3</sup> So it is absolutely clear, the foregoing in no way suggests that Gupta has any evidence or knowledge whether Besen's allegations against Doshi were or are true.

58. Astoria Federal Savings and Loan Association held a note and loan made to 94-16 LLC secured by a mortgage on the 94-16 Property, which matured on October 1, 2017 (the “Ast. Fed. Mortgage”).
59. Doshi and Farhadian owned Jackson Partners LLC, a New York Limited Liability Company, which purchased the Ast. Fed. Mortgage and commenced an action in the Supreme Court of the State of New York, County of Queens, entitled Jackson Partners LLC v. 94-16 34 Road LLC, et. al., Index No. 715767/2017 to foreclose the Ast. Fed. Mortgage (referred to herein as the “*Doshi’ v. ‘Besen’ Foreclosure*”).
60. On January 8, 2018, Besen moved to intervene in the ‘*Doshi’ v. ‘Besen’ Foreclosure*, alleging Doshi’s and Farhadian’s breach of their fiduciary duties to Besen, and Doshi’s and Farhadian’s underhandedness in purchasing and foreclosing the Ast. Fed. Mortgage.
61. Doshi and Farhadian opposed Besen’s allegations averring that Besen was fully aware of the Ast. Fed. Mortgage purchase, which was permitted by their operating agreement;
62. An affirmation in support submitted by Plaintiff/Mortgagee’s counsel, Sandeep Chatrath, Esq. (See Exhibit 14 annexed hereto, cited SC: Pg./¶) encapsulated Farhadian’s and Doshi’s chief defenses, as follows:
- Farhadian and Doshi arranged the Ast. Fed. Mortgage’s extension, but Besen refused to accept it; thus compelling Farhadian and Doshi to purchase the Ast. Fed. Mortgage to avoid a default and the accrual of default interest. SC: Pg. 3 ¶ 8.
  - Farhadian and Doshi offered their pro rata share of the monies needed to buy Astoria Federal’s mortgage and avoid default. Despite a written demand by Farhadian and a follow-up email by Farhadian’s lawyer to Besen’s lawyer on September 26, 2017, Besen refused to permit the extension or to pay his share to purchase the Astoria Federal Loan. Thus Farhadian and Doshi were forced to each pay 50% of the loan due to Astoria Federal. SC: Pg. 3 ¶¶ 7 & 9.
  - If Besen would pay his share, the litigation would be rendered moot. SC: Pg. 4 ¶ 14.

63. Farhadian's and Doshi's allegations are not alien to Gupta's experience. Besen's refusal of a mortgage extension so as to compel a refinancing (probably by his mortgage brokerage company, see ¶ 20, above); dovetails with Besen's willingness to force the Principals to dissolution and litigation, rather than accede to the majority's call for a Free Market Sale.
64. Ultimately, the Court in the *'Doshi' v. 'Besen' Foreclosure* denied Besen's motion to intervene; and vacated a previously granted TRO to allow the foreclosure to proceed.
65. The situation with E.J. Inc. and 945 & 947 Columbus Ave. is indisputably dysfunctional and self-serving for Besen, who has avoided and delayed any discussions or action which would benefit the majority of the Principals; while continuing to collect management fees.
66. Doshi never informed Gupta of the *'Doshi v. Besen'* case'; and upon information and belief Doshi was pursuing his own undisclosed motivations which contributed to the dysfunctionality of the Shared Properties' ownership.
67. It bears noting that Doshi was long aware of Besen's serious and detailed allegations against him by Besen, yet Doshi never disclosed them to Gupta, suggesting that Doshi too was pursuing his own undisclosed strategies which contributed to the dysfunctionality of the Shared Properties' and Entities' ownership.
68. Doshi's allegations in *Doshi v. Besen* reflect that he accedes to Besen's position that any partnership involving the two of them is dysfunctional, toxic and must be avoided. The continued existence of the Shared Entities and Shared Properties can only perpetuate self-serving motivations, derelictions of fiduciary duties and a dysfunctional and toxic business and management environment for all the Principals.

**V. The Properties have not Been Economically Productive and  
Have Been Barely Profitable if at All**

69. The Properties have not been highly profitable, and certainly have not produced any

income remotely commensurate with their respective values.

70. The Principals' Appraisals appraised the market value of the NYC Buildings plus the Jersey Property; and the Principals' total equity, as follows:

	<u>Appraised Value</u>	<u>Average Value</u>	<u>Mortgage Owed.</u>	<u>Equity (1/3)</u>
GUPTA:	\$10,789,000			\$2,692,910
DOSHI:	13,500,000			\$2,692,910
BESEN	9,250,000			\$2,692,910
	\$33,539,000/ 3 = \$11,179,666.67 [minus] \$3,640,937.00 = \$8,078,730.00			

71. Besen & Managing Agent distributed \$12,750 in 2016 and \$23,250 in 2017. Thus the return on equity in 2017 was less than 1%, i.e. .86% and about half that in 2016.

72. The above fractional rates of return are not only miniscule on their face or compared to sophisticated investments; but miniscule even so when compared to the common, FDIC insured deposits. At a time when National Averages still show rates of 1 year CD's at .88% and Money Market Accounts at .21%, risk and effort free deposits are readily available at much higher annual rates, with Banks baring a safety and soundness rating of at least 4 out of 5 stars (see, [www.bankrate.com/banking/money-market /rates/](http://www.bankrate.com/banking/money-market/rates/)):

- a. 2.30%      Memory Bank \*\*\*\*
- b. 2.25%      Zions Bank \*\*\*\*
- c. 2.25%      Flushing Bank (Bank Purely, a division)\*\*\*\*
- d. 2.16%      BealBank USA \*\*\*\*\*
- e. 2.00 %      Capital One \*\*\*\*\*

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Dissolution of E.J. Inc.)**

73. Petitioner repeats and realleges the foregoing allegations as if fully set forth herein.

74. At all relevant times (including, inter alia, the present date), Gupta was and still is a shareholder of E.J. Inc., owning 25% of the voting stock of the corporation.

75. Upon information and belief, at all relevant times (including, inter alia, the present date), Besen was and still is a shareholder of E.J. Inc., owning 37.5% of the voting stock of the



corporation.

76. Upon information and belief, at all relevant times (including, inter alia, the present date), Doshi was and still is a shareholder of E.J. Inc., owning 37.5% of the voting stock of the corporation (Hereinafter, Gupta, Besen, and Doshi shall be referred to collectively as the "Shareholders").

77. Pursuant to Business Corporation Law § 701:

*"Subject to any provision in the certificate of incorporation authorized by paragraph (b) of section 620 (Agreements as to voting; provision in certificate of incorporation as to control of directors) or by paragraph (b) of section 715 (Officers), the business of a corporation shall be managed under the direction of its board of directors, each of whom shall be at least eighteen years of age."*

78. Pursuant to Business Corporation Law § 703:

*"(a) At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting except as authorized by section 704 (Classification of directors). The certificate of incorporation may provide for the election of one or more directors by the holders of the shares of any class or series, or by the holders of bonds entitled to vote in the election of directors pursuant to section 518 (Corporate bonds), voting as a class. (b) Each director shall hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified."*

79. Pursuant to Article 5, paragraph (5.1) of the Bylaws, the annual meeting of the shareholders of E.J. Inc. is supposed to be held on the 15<sup>th</sup> day of the month of March in each year at the principal office of the corporation, as follows:

*"(5.1) Annual Meeting. The annual meeting of the shareholders shall be held on the 15th day of the month of March in each year at the principal office of the corporation. If the day fixed for the annual meeting is a Saturday, Sunday or holiday at the place it is to be held, the meeting shall be held on the following day that is not such a day. Unless otherwise stated in the notice of meeting pursuant to direction of the board of directors, the annual meeting shall be held at the principal office of the corporation." See Exhibit 2 annexed hereto.*

80. Pursuant to Article 5, paragraph (5.5) of the Bylaws, at each annual meeting of Shareholders, the Shareholders shall elect Directors to hold office:

*“(5.5) Order of Business. The order of business shall be as determined by the chairman of the meeting, but the order may be changed by a majority in voting power of the shareholders present in person or by proxy and entitled to vote. Unless otherwise determined as aforesaid, the order shall be as follows:*

- 1. Roll Call.*
  - 2. Proof of notice of meeting or waiver of notice*
  - 3. Reading of minutes of preceding meeting.*
  - 4. Reports of officers.*
  - 5. Reports of committees.*
  - 6. Election of directors.*
  - 7. Unfinished business.*
  - 8. New Business.”*
- [Emphasis Supplied]; See Exhibit 2 annexed hereto.

81. Thus, there should be an election of directors annually at the annual meeting to be held on the 15th day of the month of March in each year.
82. The Shareholders have not held an annual meeting (on the 15th day of the month of March in each year or otherwise) for at least the past two (2) years and therefore have not elected (or re-elected) a Board of Directors as required by the By-Laws, BCL §§ 701 and 703.
83. Upon information and belief, no meeting was ever called and held whereby directors were elected by the shareholders pursuant to the Business Corporation Law.
84. In addition, at the Special Meeting, Besen and Doshi refused to address the election (or re-election) of the Board of Directors as required by the By-Laws, BCL §§ 701 and 703.

*Business Corporation Law § 1104(c) provides, inter alia, “...any holder of shares entitled to vote at an election of directors of a corporation, may present a petition for its dissolution on the ground that the shareholders are so divided that they have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.”*

85. Since each director term lasts until the following annual meeting and no annual meeting has been held (with no election of Directors), petitioner Ram Gupta is entitled to relief pursuant to BCL § 1104(c).

86. In addition, pursuant to Article 3, paragraph (3.1) of the Bylaws, the Board of Directors are required to hold a regular meeting “*immediately after and at the same place as the annual meeting of shareholders.*” See Exhibit 2 annexed hereto.
87. There has been no in-person (or by any other means) board meeting for the past two (2) years at the least.
88. The failure of meetings to elect a Board of Directors has impacted the ability of the E.J. Inc. to make decisions on critical issues including: capital expenditures, long term strategy, personnel/employment matters, management reporting and delegation of authority, proposed contracts, the purchase and sale of real estate, potential acquisitions and dispositions, the hiring of legal counsel, and the hiring of consultants (including accountants).
89. Due to the inability of E.J. Inc.’s directors and/or shareholders to present unified decisions, the management of E.J. Inc. is operating without clear direction and is caught between three factions, unable to move forward to achieve the best interests of the corporation.<sup>4</sup>
90. Besen, who has been holding himself out to be the President, has only limited authority to act without direction from the directors and shareholders.
91. Moreover, Besen has no individual operating authority without the consent of the other

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<sup>4</sup> “*In the case of a close corporation the relationship between the shareholders is akin to that of partners and when the relationship begins to deteriorate, the ensuing deadlock and dissension can effectively destroy the orderly functioning of the corporation*”. Molod v Berkowitz, 233 AD2d 149, 150 [1st Dept 1996]; See Also Patti v Fusco, 10 Misc 3d 1058(A) [Sup Ct 2005]; Greer v Greer, 124 AD2d 707, 708 [2d Dept 1986]. “*Dissolution is not to be denied merely because the dissension has not yet had an appreciable impact on the [company]’s profitability.*” Molod v Berkowitz, 233 AD2d at 150; See Also Neville v Martin, 29 AD3d 444, 444-45 [1st Dept 2006]; Patti v Fusco, *supra*.

shareholders, Gupta and Doshi.

92. Moreover, Besen has refused to abide by the majorities' desire to allow a Free Market Sale of the Subject Property.

93. In addition, Besen's management company, NYC Management, has no individual authority to manage E.J Inc. and 945 & 947 Columbus Ave without the consent of the other shareholders, Gupta and Doshi.

94. These problems are exacerbated by the repeated failure of meetings to elect a Board of Directors as noted above.

95. Besen, Gupta, and Doshi lack the ability to reach consensus on long term strategy and disposition of 945 & 947 Columbus Ave (E.J. Inc.'s primary asset), to the detriment of E.J. Inc. and its shareholders.

96. As a result of their stalemates and disagreements, Besen, Gupta, and Doshi have each hired their own independent counsel.

97. As a result, Besen, Gupta, and Doshi communicate, if at all, almost exclusively through their respective attorneys.

98. Besen is attempting to use his attorneys to direct the activities of E.J. Inc.

99. Due to fundamental and irreconcilable differences of opinion, Besen, Gupta, and Doshi are hopelessly deadlocked on the management (including day-to-day operating issues), long term strategy (including strategic issues relating to the future of the business), and disposition of 945 & 947 Columbus Ave (E.J. Inc.'s primary asset).

100. As a result, the business of the company is substantially impaired.

101. As a result of the foregoing, E.J. Inc. is a dysfunctional corporation that should be liquidated.

102. Besen cannot be heard to complain about the dissolution given that he initiated the process for the Property Barter and Swap which in and of itself was ultimately the equivalent of a dissolution of E.J. Inc.
103. Besen's willingness to promote the dissolution of E.J. Inc. (among the Shared Entities) only so long as it benefits only him, is emblematic of the dysfunction of the management and Petitioner's right to a dissolution.
104. The company's management has become so dysfunctional and divided, and its business purpose so thwarted, that it is no longer practicable to operate the business.
105. The corporation should be dissolved because there is deeply-rooted dissention and distrust between Besen & Doshi.
106. Further, Besen's mistrust of Doshi has made it impossible for Besen to continue to operate any business with Doshi.
107. By his own admission, Besen has breached his fiduciary duty and allowed himself to operate in a conflict of interests environment by:
- a. Not making the issues between himself and Doshi known to Gupta;
  - b. Preventing a dissolution of E.J. Inc. (among the Shared Entities), of which he was one, when he himself admitted that Besen's mistrust of Doshi has made it impossible for him to continue to operate any business with Doshi;
  - c. So he could leverage a better situation for himself, Besen admittedly and under oath consciously allowed, in his own words, a "dysfunctional", "impossible" situation "of deeply-rooted dissention and distrust between himself and Doshi to continue", rather than allow the dissolution all of the Principals agreed should happen;
  - d. Using not just lack of candor or fiduciary transparency but subterfuge to leverage a better situation for himself by insisting on the Property Barter and Swap, which he alone would benefit since none of the other Principals wished to barter back and own the Shared Properties, but wanted to sell them; and

- e. Unreasonably delaying and avoiding resolution of matters, in order to continue managing the properties.

108. Doshi, too, has not been forthcoming in informing Gupta of the fact that he caused his Partnership with Besen, as neither did Besen inform Gupta of the same.

109. The actions of Besen and Doshi as alleged in this Petition (including the actions of Besen and Doshi alleged in the Besen v. Doshi Action and the Doshi' v. 'Besen' Foreclosure) have created an internal deadlock among its shareholders Besen, Doshi, and Gupta, none of whom own independently a majority (51.00% or greater) shareholder interest of E.J. Inc. or voting rights.

110. As stated above, the shareholders of E.J. Inc. are so divided that they have failed, for a period which includes at least two consecutive annual meeting dates, to elect directors or successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

111. Thus, there have been more than two consecutive annual meeting dates (March 15, 2017 and March 15, 2018) to elect directors or successors to directors whose terms have expired or will have expired, and no meetings have been held; and consequently no directors have been elected.

112. Thus, Petitioner is entitled to relief pursuant to Business Corporation Law § 1104(c).<sup>5</sup>

113. As stated above, Plaintiff made a demand upon the shareholders of E.J. Inc. (among the Shared Entities) including Besen and Doshi, to, inter alia, "dissolve the Corporation and/or

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<sup>5</sup> *In re El-Roh Realty Corp.*, 55 AD3d 1431, 1433 [4th Dept 2008] ("we conclude that the second cause of action sufficiently states a cause of action for dissolution pursuant to Business Corporation Law § 1104(c), inasmuch as it alleges that El-Roh failed to hold annual meetings for more than two years, thereby preventing the election of directors and impeding the corporation's ability to conduct business")

arrange for ...winding down of its business;" but even though Doshi's counsel did agreed that the parties either the Principals: "*agree to put the properties on the market and sell them*" or else, *proceed with a dissolution*" Besen has refused any solution other than the Barter and Swap, with which a majority of the Principals do not agree.

114. As exposed in in the pleadings filed by Besen against Doshi in the Besen v. Doshi Action and *Doshi' v. 'Besen' Foreclosure* the relationship between Besen against Doshi has degraded to such an extent that they are no longer on speaking terms (they have each retained an attorney in the Besen v. Doshi Action) and they have been unable to cooperate to make business decisions regarding fundamental business matters such as repairs and refinancing of mortgages.

115. In addition, Besen has asserted a multitude of causes of action against Doshi for alleged financial improprieties.

116. As has been set forth in detail above, demand would nevertheless be futile because Besen and Doshi had knowledge of all of the acts and transactions complained of herein and has failed and refused to seek redress therefore; and to do so, it would be necessary for them to sue themselves (or take actions against their own self-interest) and thus he would not be able properly to prosecute the same.

117. By reason of the foregoing, Petitioner should be granted an order and judgment from this Court dissolving E.J. Inc. and liquidating its business, assets and affairs, including but not limited to 945 & 947 Columbus Ave, with the sale proceeds to be distributed to the shareholders and for other and further relief that is just and proper under the circumstances, together with the costs of this proceeding.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Provisional Remedies)**

118. Petitioner repeats and realleges each of the foregoing allegations as if they are set forth in whole herein.

119. Petitioner has commenced this proceeding, *inter alia*, in an effort to preserve the assets, books and records of E.J. Inc. pending its involuntary dissolution; and to avoid and/or prevent any misappropriations; and to recover and/or discover and take possession of, conserve, manage, and collect any and all assets, income and profits belonging to the shareholders of E.J. Inc.

120. Petitioner shall require the relief afforded by provisional remedies, such as injunctions, temporary restraining, appointment of a referee and attachments to achieve the goals of this proceeding, where there is available remedy under law.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(For an Accounting Against Michael Besen)**

121. Petitioner repeats and realleges each of the foregoing allegations as if they are set forth in whole herein.

122. As a shareholder and officer of E.J. Inc. and in control of the assets and books and records of E.J. Inc. at all relevant times, Besen had a fiduciary duty and responsibility to E.J. Inc. and its shareholders, including Gupta.

123. At all relevant times Besen was, and still is, in control of and had custody of the books, records and financial accounts of E.J. Inc. (either personally and/or as the controlling member and manager of New York City Management LLC, E.J. Inc.'s managing agent), including E.J. Inc.'s transactions and of the monies disbursed and received by E.J. Inc.

124. Petitioner is entitled to a full accounting with respect to, *inter alia*, the interests, income, revenue, profits, expenses, expenditures, and assets of E.J. Inc.



125. Although demand for an accounting has been made upon Besen, Besen has refused to comply.

126. Absent an accounting from Besen, Gupta lacks an adequate remedy.

127. Gupta lacks an adequate remedy at law, and cannot receive substantial justice in this case without an accounting.

128. By reason of the dissolution of E.J. Inc. and the liquidation and distribution of its assets, Gupta needs an accounting of all E.J. Inc.'s transactions and of the monies disbursed and received by E.J. Inc., to enable a full and complete settlement of the accounts of the shareholders.

WHEREFORE, Petitioner demands judgment, as follows:

1. On the First Cause of Action, an order and judgment from this Court dissolving E.J. Inc. and liquidating its business, assets and affairs, including but not limited to 945 & 947 Columbus Ave, with the sale proceeds to be distributed to the shareholders, and for the appointment of a receiver to wind up the corporation's affairs and make said distributions to its shareholders, and other and further relief that is just and proper under the circumstances, together with the costs of this proceeding;
2. On the Second Cause of Action, the award of provisional remedies as may be needed in the course of this action;
3. On the Third Cause of Action, and order and judgment directing Besen to provide Judicial accounting to Petitioner, including, *inter alia*, to account for all income, revenue, profits, expenses, expenditures, and assets of E.J. Inc.
4. Such other relief as the Court deems just and equitable.

Dated: New York, New York  
January 31, 2019



Michael N. Coritsidis, Esq.  
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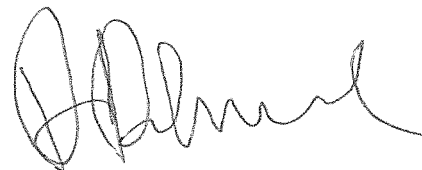
VERIFICATION

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

Ram Gupta, being duly sworn, deposes and says:

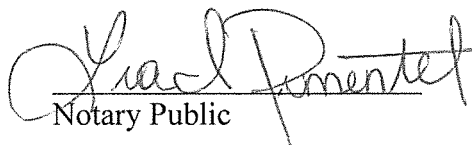
1. I am the individual Plaintiff in this action and a shareholder of *E.J. Bucket Buddies, Inc.* in the action herein; I have read the foregoing Verified Petition and know the contents thereof and the same are true to my knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters therein stated to be alleged on information and belief; I believe them to be true.

2. My belief, as to those matters therein not stated upon knowledge, is based upon the following: Materials in my files and personal recollection.



Ram Gupta

Sworn to before me this 31<sup>st</sup>  
day of January, 2019

  
Notary Public