

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

CHAIM BABAD and  
ONE EDGEWATER EQUITIES LLC,

Plaintiffs,

-against-

EDGEWATER PLAZA LOFT LLC, ONE  
EDGEWATER EQUITIES LLC, ONE EDGEWATER  
HOLDINGS LLC, EDGEWATER HOLDINGS LLC, SI  
FUNDING LLC, LLC, LL EDGEWATER HOLDINGS  
LLC, XYZ LLC, JANE DOE, and JOHN DOE,

Defendants.

)  
) INDEX NO. 150855/2018  
)  
)  
) **SUR-REPLY**  
) **AFFIRMATION OF**  
) **BRENDAN C. KOMBOL**  
) **IN FURTHER**  
) **OPPOSITION TO**  
) **ORDER TO**  
) **SHOW CAUSE TO**  
) **MODIFY THE PRIOR**  
) **ORDER OF THIS**  
) **COURT AND TO**  
) **PERMIT FINANCING**  
)

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

BRENDAN C. KOMBOL, an attorney duly licensed to practice law in the Courts of the State of New York, under penalties of perjury, duly affirms as follows:

1. I am the Attorney for the Plaintiffs herein, each of Chaim Babad (“Babad”) and One Edgewater Equities LLC (“Owner”), and I offer the herein affirmation in further opposition to the present order to show cause seeking to modify the prior order of this Court, which acted to, *inter alia*, prohibit any conveyance or encumbrance of the real property located at One Edgewater Plaza, Staten Island, NY (the “Property”) without the approval of this Court (the “Order”).

2. As an initial matter, since the date of the original OTSC brought the Defendants herein seeking financing (the “OTSC”), parties have literally crawled out of the woodwork with allegations substantially similar to those asserted by the Plaintiffs in the instant action, all complaining that the Defendants have (essentially) run a shell game through which they defrauded

various parties in order secure control of the Property. Examples of this have been annexed hereto as **Exhibits A, B, and, C** hereto, which each establish that various parties allege (in substance identically to the Plaintiffs herein) that the Defendants induced them to invest in the Property in exchange for membership interest therein.

3. The Defendants do not explain how these myriad parties came to believe they were owners of the venture forming the subject hereof in their present motion.

4. Instead, the Defendants argue that they should be permitted to borrower millions of more dollars from the equity of the Property, because (in essence) any of these members are (at best) non-voting assignees of former owners of the Owner.

5. Defendants' arguments are beyond insincere.

6. For example, annexed hereto as **Exhibit D** are numerous wire requests and check deposits solicited from the Plaintiff herein (or its affiliate) which were requested as part of the Plaintiffs' investment in the Property and Owner.

7. At all relevant times, the Defendants were aware that the Plaintiffs herein were members of the Owner by assignment.

8. This is why the Defendants solicited these funds, and why the Plaintiffs provided the same.

9. The Defendants now attempt to disenfranchise the Plaintiffs from the Owner pursuant to the present motion (improperly by way of provisional relief) through arguments raised only on reply, which arguments allege that the limited liability company law of the State of New York invalidates the Assignments under which the Plaintiffs benefit.

10. In doing so, the Defendants manifestly misrepresent the relevant law, and distort the relevant facts.

11. Specifically, under either of NY CLS LLC Law §§ 602 or 603, upon which the Defendants rely, an assignment of membership interest is (arguably) merely economic in nature only when an operating agreement is in place binding all such interests.

12. In connection with the present matter, there can be no question that while the Plaintiffs (specifically Babad) were recognized investors in the Owner, no operating agreement was ever finalized amongst the owners of the Owner. This is fact that cannot be challenged. *See, Ex.'s A - E* of the Plaintiffs' original opposition to this motion.

13. As is evident thereby, even Defendants' counsel, of the Firm, expressly acknowledged the Plaintiff Babad as a member of Owner. *See, Ex. A* to original opposition papers.

### **Conclusion**

14. For the reasons set forth herein, Defendants' motion must be denied, and this Court must grant such other and further relief as it deems just and proper. All rights are otherwise reserved.

15. This Affirmation is offered based on the actual knowledge of the undersigned.

Dated: New York, New York  
September 17, 2019

RICHARD L. YELLEN &  
ASSOCIATES, LLP

\_\_\_\_\_  
/s

By: Brendan C. Kombol, Esq.  
111 Broadway, 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 404-6988  
*Attorney for Plaintiffs*

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND-----X  
CHAIM BABAD and ONE EDGEWATER EQUITIES, Index No.: 150256/2018  
LLC,

Plaintiffs,

**NOTICE OF  
MOTION**

-against-

EDGEWATER PLAZA LOFT, LLC, ONE EDGEWATER  
EQUITIES, LLC, ONE EDGEWATER HOLDINGS, LLC,  
EDGEWATER HOLDINGS LLC, SI FUNDING LLC,  
LL EDGEWATER HOLDINGS, LLC, XYZ LLC, JANE  
DOE and JOHN DOE,Defendants.  
-----X

PLEASE TAKE NOTICE that upon the annexed Affidavit of Abraham Lesser, duly sworn on the 30<sup>th</sup> day of August, 2019, and the Memorandum of Law dated August 30, 2019, and upon all the pleadings and proceedings heretofore had herein, the proposed intervenor Edgewater Ventures, LLC, as beneficiary of a nominee agreement with LL Edgewater Holdings, LLC, will move this Court before the Honorable Orlando Marrazzo, Jr., at IAS Part 21 of the Supreme Court of Richmond County located at 26 Central Avenue, Staten Island, New York on the 24<sup>th</sup> day of September, 2019 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to CPLR § 1012(a)(2) or alternatively, § 1013, granting leave to Edgewater Ventures, LLC, the Proposed Intervenor, to intervene as a defendant in the above-caption action, either as of right or by permission, and for such other and further relief that this Honorable Court deems just and proper.

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