

STARR, GERN DAVISON & RUBIN.  
105 Eisenhower Parkway  
Roseland, New Jersey 07068  
(973) 403-9200  
Attorneys for Plaintiffs

JEFFREY D. CURTISS and KENNETH  
McBRIDE, individually and on behalf of  
HEIGHTS PROJECT LLC,  
NORTHUMBERLAND PROPERTY,  
LLC, and KING ARTHUR  
CONSTRUCTION COMPANY, LLC,

Plaintiffs,

vs.

MARCOS VELEZ, BENJAMIN VELEZ,  
RONALD SPANER, M&B  
CONSTRUCTION, 47-49 HANCOCK  
AVENUE LLC, 70 SOUTH STREET  
LLC, 90 COURT HOUSE PLACE LLC,  
258 NEW YORK AVENUE LLC, 268  
HANCOCK, LLC, 1112-1114 SEVENTH  
STREET LLC, 111 HUTTON STREET,  
LLC, MBR CENTRAL AVENUE LLC,  
413 PALISADE AVENUE, LLC,  
LEONARD REALTY 98, LLC,  
LEONARD REALTY 100, LLC, 180  
HUTTON STREET LLC, 122 LINCOLN  
STREET LLC, 36 CAMBRIDGE  
AVENUE LLC, NEWARK AVENUE 525  
LLC, 239 LIBERTY AVENUE LLC,  
DAVID GAISINKY, CHAU DIEP,  
RAJENDRA K. MEHTA, individually,  
RAJENDRA K. MEHTA IRA, SOL  
BRANDER, KIMARA, LLC, G. TORRES  
L.L.C., MITCHELL ALKOW, and  
ROBERT QUINN,

Defendants,

SUPERIOR COURT OF NEW  
JERSEY *Law*  
CHANCERY DIVISION: HUDSON  
COUNTY  
DOCKET NO. *C-139.08*

VERIFIED COMPLAINT

*L-4647-08*

**FILED**

SEP 10 2008

THOMAS P. OLIVIERI, P.J.C.M.

Plaintiffs, Jeffrey D. Curtiss ["Curtiss"] and Kenneth McBride ["McBride"],

individually and on behalf of Heights Project, LLC ["HP"], Northumberland Property, LLC, ["NP"] and King Arthur Construction Company, LLC, ["KAC"], by way of Complaint against the defendants herein, say:

### **NATURE OF THE ACTION**

1. This action by Curtiss and McBride, individually and on behalf of HP, NP and KAC, concerns a series of property development projects in Hudson County, New Jersey. In 2004, plaintiffs Curtiss and McBride and defendants Marcos Velez ("Marcos"), Benjamin Velez ("Ben") and Ronald Spaner ("Spaner") (collectively all five are sometimes hereinafter referred to as the "Principals") agreed that together they would engage in the acquisition, development, improvement and renovation of residential properties located in Hudson County, New Jersey, primarily in the neighborhood known as "Jersey City Heights," for the purpose of renting or selling same for profit. In furtherance of this agreement, in 2004, the Principals bought and began to renovate certain real property located at 1012 Summit Avenue, began performing due diligence on other potential properties and acquiring construction equipment for same.

2. On or about May, 2005, the Principals agreed to renovate and furnish office space (approximately 1,500 sq. ft.) located at 47-49 Hancock Avenue, Jersey City, New Jersey and to hire office staff for the carrying out their collective acquisition, development, improvement and renovation of residential properties. In reliance on the agreement reached by the Principals to collectively build a business to acquire, develop, and renovate residential properties, and with the intent and for the sole purpose of moving the business objective of the

group forward, said renovations and furniture were paid for by Curtiss and McBride.

3. Subsequently, in 2005, the Principals formed a limited liability company, NP, to acquire, develop and renovate residential properties located in Hudson County, New Jersey, primarily in the neighborhood known as "Jersey City Heights," for the purpose of renting or selling same for profit. The Principals also formed KAC, to provide the construction services, materials and equipment for the properties acquired and developed by NP. Each of the Principals owned an equal share of these companies.

4. In addition, NP and HP contracted with M&B Construction for the construction work on 3 buildings at the development project known as the "Heights Project." M&B Construction is owned and run by the individual defendants.

5. Unbeknownst to Curtiss and McBride, Marcos, Ben and Spaner, individually and by forming various partnerships, companies and/or joint ventures, were simultaneously engaging in the acquisition, development and renovation of other residential properties in Hudson County, New Jersey, also primarily in the neighborhood known as "Jersey City Heights," for the purpose of renting or selling same for profit. By doing so, the said defendants in effect flooded the Jersey City Heights condominium market, thereby diluting the value of plaintiffs' projects.

6. In order to develop these other properties, the said defendants diverted and utilized the equipment, personnel, materials, computers, assets,

funds and/or bonding capability of HP, NP and/or KAC. Consequently, HP's and NP's developments went uncompleted which caused HP and NP to default on numerous guaranteed debts and obligations.

7. Prior to learning about the said individual defendants' simultaneous acquisition, development and renovation of other residential properties in Hudson County, Curtiss and McBride used their personal funds to satisfy some of said guaranteed debts and obligations on behalf of HP and NP. However, some of the guaranteed debts of these entities remain unsatisfied and have resulted in lawsuits, exposing Curtiss and McBride to significant individual liability and litigation expense.

8. By reason of their conduct, the said defendants have usurped the corporate opportunities of NP and KAC, misappropriated and converted their assets for their own use, breached their fiduciary duties and otherwise damaged plaintiffs.

#### **THE PARTIES**

9. Plaintiff Curtiss resides at 58 Euclid Avenue, Maplewood, New Jersey 07307. He is the managing member of HP, a limited liability company formed on or about January 24, 2006 under the laws of the State of New Jersey, is a member of NP, a limited liability company formed in 2005 under the laws of the State of New Jersey, and is also a member of KAC, a limited liability company formed on or about March 29, 2005 under the laws of the State of New Jersey.

10. Plaintiff McBride resides at 32 Woodvale Drive, Laurel Hollow, New

York 11791 and is also a member of HP, NP and KAC.

11. Defendant Marcos Velez ("Marcos") has a business address at 90 Court Street, Jersey City, New Jersey 07306 and is also a member of HP, NP and KAC.

12. Defendant Benjamin Velez ("Ben"), also has a business address at 90 Court Street, Jersey City, New Jersey 07306 and is a member of HP, NP and KAC as well.

13. Defendant Ronald Spaner ("Spaner") resides at 8 Avon Lane, New York City, New York 11791 and is also a member of HP, NP and KAC.

14. Upon information and belief, Defendant M&B Construction is a limited liability company formed under the laws of the State of New Jersey. On information and belief, M&B Construction is owned and controlled by Marcos, Ben and/or Spaner.

15. Defendant 47-49 Hancock Avenue ("47-49 Hancock") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 47-49 Hancock Avenue, Jersey City, New Jersey 07307. On information and belief, 47-49 Hancock is owned and controlled by Marcos, Ben and/or Spaner.

16. Defendant 90 Court House Place LLC ("90 Court House") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 90 Court House Place, Jersey City, New Jersey 07306. On information and belief, 90 Court House is owned and controlled by Marcos, Ben and/or Spaner.

17. Defendant 258 New York Avenue, LLC ("258 New York") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 258 New York Avenue, Jersey City, New Jersey 07307. On information and belief, 258 New York is owned and controlled by Marcos, Ben and/or Spaner.

18. Defendant 70 South Street LLC ("70 South Street") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 70 South Street, Jersey City, New Jersey. On information and belief, 70 South Street is owned and controlled by Marcos, Ben and/or Spaner.

19. Defendant 268 Hancock, LLC ("268 Hancock") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 268 Hancock Avenue, Jersey City, New Jersey 07307. On information and belief, 268 Hancock is owned and controlled by Marcos, Ben and/or Spaner.

20. Defendant 1112-1114 Seventh Street LLC ("1112-1114 7<sup>th</sup> ") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 1112-1114 Seventh Street, North Bergen, New Jersey 07047. On information and belief, 1112-1114 7<sup>th</sup> is owned and controlled by Marcos, Ben and/or Spaner.

21. Defendant MBR Central Avenue, LLC ("MBR Central") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 398 Central Avenue, Jersey City, New Jersey 07307. On information and belief, MBR Central is owned and controlled by Marcos, Ben

and/or Spaner.

22. Defendant 111 Hutton Street, LLC ("111 Hutton") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 111 Hutton Street, Jersey City, New Jersey 07307. On information and belief, 111 Hutton is owned and controlled by Marcos, Ben and/or Spaner.

23. Defendant 413 Palisade Avenue, LLC ("413 Palisade") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 413 Palisade Avenue, Jersey City, New Jersey 07307. On information and belief, 413 Palisade is owned and controlled by Marcos, Ben and/or Spaner.

24. Defendant Leonard Realty 98, LLC ("98 Leonard") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 98 Leonard Street, Jersey City, New Jersey 07307. On information and belief, 98 Leonard is owned and controlled by Marcos, Ben and/or Spaner.

25. Defendant 632-634 Palisade Avenue LLC ("632-634 Palisade") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 632-634 Palisade Avenue, Jersey City, New Jersey. On information and belief, 632-634 Palisade Avenue is owned and controlled by Marcos, Ben and/or Spaner.

26. Defendant Leonard Realty 100, LLC ("100 Leonard") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 100 Leonard Street, Jersey City, New Jersey 07307. On

information and belief, 100 Leonard is owned and controlled by Marcos, Ben and/or Spaner.

27. Defendant 180 Hutton Street, LLC ("180 Hutton Street") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 180 Hutton Avenue, Jersey City, New Jersey 07307. On information and belief, 180 Hutton is owned and controlled by Marcos, Ben and/or Spaner.

28. Defendant 122 Lincoln Street LLC ("122 Lincoln") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 122 Lincoln Avenue, Jersey City, New Jersey 07307. On information and belief, 122 Lincoln is owned and controlled by Marcos, Ben and/or Spaner.

29. Defendant 36 Cambridge Avenue LLC ("36 Cambridge") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 36 Cambridge Avenue, Jersey City, New Jersey 07307. On information and belief, 36 Cambridge is owned and controlled by Marcos, Ben and/or Spaner.

30. Defendant Newark Avenue 525 LLC ("525 Newark") is a limited liability company formed under the laws of the State of New Jersey which owns the premises at 525 Newark Avenue, Jersey City, New Jersey 07306. On information and belief, 525 Newark is owned and controlled by Marcos, Ben and/or Spaner.

31. Defendant 239 Liberty Avenue LLC ("239 Liberty") is a limited



liability company formed under the laws of the State of New Jersey which owns the premises at 239 Liberty Avenue, Jersey City, New Jersey. On information and belief, 525 Newark is owned and controlled by Marcos, Ben and/or Spaner.

32. Defendant David Gaisinky, upon information and belief, is an individual residing at 222 Amy Croft Drive, Lakeshore, Ontario, Canada.

33. Defendant Chau Diep, upon information and belief, is an individual residing at 1489 Stoney Brook Cres., Windsor, Ontario, Canada.

34. Defendant Rajendra K. Mehta, upon information and belief, is an individual residing at 55 Christy Drive, Warren, New Jersey 07059.

35. Defendant Sol Brander, upon information and belief, is an individual residing at 31 Concord Drive, Money, New York, 10952.

36. Defendant Kimara, L.L.C., upon information and belief, is a limited liability company duly organized and existing under and by virtue of the laws of the State of Massachusetts.

37. Defendant G. Torres L.L.C., upon information and belief, is a limited liability company is a Florida limited liability company having an address at 7211 North Dale Mabry Highway, Suite 211, Tampa, Florida 33614

38. Defendant Mitchell Alkow, upon information and belief, is an individual residing at 168 Hickory Lane, Closter, New Jersey 07624.

39. Defendant Robert Quinn, upon information and belief, is an individual residing in Andover, Massachusetts.

40. The defendants identified in paragraphs 32 through 39 shall hereinafter be collectively referred to as "Investor Defendants."

41. All of the Investor Defendants entered into written agreements with NP, HP, Curtiss, McBride, Marcos, Ben and/or Spaner, through individual limited liability companies created for specific project developments, to provide loans for the acquisition of certain parcels of real property.

### **BACKGROUND ALLEGATIONS**

42. In 2004, the Principals (Curtiss, McBride, Marcos, Ben and Spaner) agreed that together they would engage in the acquisition, development, improvement and renovation of residential properties located in Hudson County, New Jersey, primarily in the neighborhood known as "Jersey City Heights," for the purpose of renting or selling same for profit.

43. In furtherance of this agreement, in 2004, the Principals bought and began to renovate certain real property located at 1012 Summit Avenue, began performing due diligence on other potential properties, looking for investors and acquiring construction equipment for future development projects.

44. In or about May, 2005, the Principals agreed to renovate and furnish office space (approximately 1,500 sq. ft.) located at 47-49 Hancock Avenue, Jersey City, New Jersey and the hire office staff for the carrying out their collective acquisition, development, improvement and renovation of residential properties. In reliance on the agreement reached by the five Principals to collectively build a business to acquire, develop, and renovate residential properties, and with the intent and for the sole purpose of moving the business objective of the group forward, said renovations and furniture were paid for by Curtiss and McBride.

45. Subsequently, in 2005, the Principals formed KAC as a limited liability company, the purpose of which was to provide construction services, materials and equipment for the properties to be so acquired and developed, improved and/or renovated. The interests in KAC were equally divided among the five individual parties.

46. In addition, the Principals formed NP, a limited liability company, the purpose of which was to oversee and administer the various development projects to be undertaken by the Principals in Hudson County, primarily in the neighborhood known as "Jersey City Heights," real estate market. The five members agreed that each member would hold a 20% interest in NP.

47. Pursuant to this business plan, the Principals began the process of acquiring, developing, improving and renovating various residential real estate properties in Hudson County, primarily in the neighborhood known as "Jersey City Heights," forming limited partnership entities with respect to each such project and using the resources of KAC to do so. Because of the greater level of experience of the individual defendants, Marcos, Ben and Spaner with the construction process, plaintiffs entrusted Marcos, Ben and Spaner with the direct responsibility for construction while plaintiffs Curtiss and McBride generally attended to financial aspects of the projects and provided funds for the purposes of effectuating the ends of the venture. Among the financial support which plaintiffs Curtiss and McBride afforded KAC was the furnishing of creditworthiness so that KAC could obtain a bond for municipal licensing and permitting purposes.

48. In order to carry out its business plan, NP formed various limited liability companies in which the plaintiffs Curtiss and McBride and the said three individual defendants, Marcos, Ben and Spaner, each were granted an equal interest. Each of the limited liability companies so formed assumed ownership of a construction project as to which the said individual defendants had construction responsibility.

49. In order to provide funds for the purpose of acquiring and developing the various properties, the Principals would obtain institutional financing secured by personal guarantees. In addition, they would raise further funds from individuals or entities either (a) by selling an interest in the project or (b) borrowing money. These individuals and entities were promised that the equity would be repurchased for a premium or the loan would be repaid with interest, as the case may have been, at a specific future date, the repurchase or repayment obligation typically being guaranteed in whole or in part by Curtiss, McBride, Marcos, Ben and Spaner.

50. By reason of the foregoing, it was critical that the various projects be completed in a timely fashion, so that institutional debt and the obligations to the individual investors/lenders would be paid when due.

51. Unbeknownst to plaintiffs Curtiss and McBride, however, the individual defendants Marcos, Ben and Spaner, in violation of the understanding of the parties and in breach of their duties and obligations of the said individual defendants to plaintiffs, (including the obligation to devote efforts to the prompt completion of the various projects undertaken as part of the NP venture), began

surreptitiously to acquire and develop residential properties in Hudson County on their own. Upon information and belief, these properties, (which, when referred to collectively hereinafter shall be denominated as "the Properties"), are owned either by an individual defendant or one of the defendant limited liability companies identified in paragraphs 15 through 31 above, as follows:

<u>Property Address</u>	<u>Owner</u>
70 South Street Jersey City , NJ 07307	Defendant 70 South Street
90 Court House Place Jersey City, NJ 07306	Defendant 90 Court House
258 New York Avenue Jersey City. NJ 07307	Defendant 258 New York
1112-1114 Seventh Street North Bergen, NJ 07047	Defendant 1112-1114 7 <sup>th</sup>
268 Hancock Avenue Jersey City, NJ 07307	Defendant 268 Hancock
111 Hutton Street Jersey City, NJ 07307	Defendant 111 Hutton
398 Central Avenue Jersey City, NJ 07307	Defendant MBR Central
413 Palisade Avenue Jersey City, NJ 07307	Defendant 413 Palisade
6309 Polk Street West New York, NJ 07093	Defendant Marcos Velez
47-49 Hancock Street Jersey City, NJ 07307	Defendant 47-49 Hancock
98 Leonard Street Jersey City, NJ 07307	Defendant 98 Leonard

100 Leonard Street Jersey City, NJ 07307	Defendant 100 Leonard
632-634 Palisade Avenue Jersey City, NJ 07307	Defendant Spaner
163 Zabriskie Street Jersey City, NJ 07307	Defendant Ben Velez
180 Hutton Street Jersey City, NJ 07307	Defendant 180 Hutton
15 Wales Jersey City, NJ 07306	Defendant Marcos Velez
122 Lincoln Street Jersey City, NJ 07307	Defendant 122 Lincoln Street, LLC
36 Cambridge Ave. Jersey City, NJ 07307	Defendant 36 Cambridge Ave, LLC
525 Newark Avenue Jersey City, NJ	Defendant Newark Avenue 525 LLC
1032 Summitt Avenue Jersey City, NJ	Defendant Marcos Velez [50% owner]
239 Liberty Avenue Jersey City, New Jersey	Defendant 239 Liberty

52. In addition to the surreptitious acquisition and development, improvement and/or renovation of the Properties, the said individual defendants and the defendant limited liability companies, as the case may be, diverted and utilized the construction equipment, materials, computers, assets and bonding capability of KAC to accomplish such development, improvement and renovation, without the knowledge of plaintiffs, and without paying KAC therefor. Moreover, in so doing, the said defendants Marcos, Ben and Spaner, were inattentive to the NP projects and neglected their responsibility to complete NP projects in a timely

and appropriate manner, exposing the plaintiffs to liability, *inter alia*, for various guaranteed debts and obligations, which liability has been asserted in various lawsuits in which the plaintiffs are named individually as defendants.

53. In addition to such exposure, as a consequence of the conduct of the said individual defendants, NP, and plaintiffs, individually and as members of NP, were deprived of the business opportunity to participate in the acquisition, development, improvement and/or renovation of the Properties and to realize the shares of the resultant profit and income generated by the Properties.

54. Furthermore, inasmuch as the Properties were located in the same Hudson County real estate market (primarily in the neighborhood known as "Jersey City Heights") as that in which NP engaged in business, they constituted competing uses which interfered with the success and profitability of the various projects undertaken by plaintiffs and the said individual defendants under the auspices of NP.

55. In addition, KAC, and plaintiffs, individually and as members of KAC, were deprived of fair compensation for the use of the equipment, materials, computers, assets and bonding capacity of KAC in the development, improvement and/or renovation of the Properties.

56. In or about November of 2006, the derelictions of defendants with respect to the NP projects had become apparent to the plaintiffs. Plaintiffs were forced to use their own funds to satisfy claims by investors/lenders and were being continually threatened by disappointed investor/lenders as to additional claims. As a consequence, plaintiffs demanded that an agreement be

reached with the individual defendants pursuant to which responsibility for outstanding projects and the payment of outstanding debts and obligations would be determined.

57. Thereafter, on or about February 14, 2007, the individual plaintiffs and the said individual defendants entered into a written agreement by which they agreed, *inter alia*, to complete certain outstanding projects through the efforts of the said individual defendants, discharge certain responsibilities and replace the KAC bond with a bond to be secured by the individual defendants. Among the matters upon which the parties so agreed was a limit on the amount which Curtiss and McBride would contribute to the satisfaction of investor/lender obligations.

58. The individual plaintiffs entered into this agreement without knowledge that the said individual defendants were simultaneously and surreptitiously engaging in real estate development in the same market of Hudson County, New Jersey, primarily the neighborhood known as "Jersey City Heights."

59. Notwithstanding the agreement, and the individual plaintiffs' good faith efforts to perform same, the individual defendants did not complete outstanding projects and did not fulfill their obligations with respect to the satisfaction of investor/lender debt, as required by the agreement. As a consequence, investors and lenders have instituted lawsuits in which plaintiffs have been included as defendants:



David Gaisinky and Chau Diep v. Heights Project, LLC, Jeffrey D. Curtiss, Kenneth McBride, Ronald J. Spaner, Benjamin Velez and Marcos A. Velez  
Docket No. HUD-L-968-08

Rajendra K. Mehta, individually and Rajendra K. Mehta IRA v. Heights Project, LLC, 22<sup>nd</sup> Street Partners, LLC; Jeffrey D. Curtiss, Marcos A. Velez, Ronald J. Spaner, Benjamin Velez and Kenneth McBride  
Docket No. HUD-L-3194-07

Sol Brander v. Heights Project, LLC; Jeffrey Curtiss, Benjamin Velez, Kenneth McBride, Ronald Spaner and Marcus A. Velez  
Docket No. HUD-L-4638-07

Kimara, LLC v. Jeffrey Curtis, Ronald Spaner, Kenneth McBride, Marcos Velez and Benjamin Velez  
Docket No. HUD-L-317-08

Kimara, LLC v. 6318 Jackson Street, LLC, Jeffrey D. Curtis and Kenneth McBride  
Docket No. HUD-L-323-08

Kimara, LLC v. Jeffrey Curtis, Ronald Spaner, Marcos Velez and Kenneth McBride  
Docket No. HUD-L-320-08

G. Torres L.L.C. v. Marcos Velez, Benjamin Velez, Ronald Spaner, Kenneth McBride and Jeffery D. Curtiss  
Docket No. HUD-L-5520-07

Mitchell Alkow v. Heights Project, LLC, Jeffery D. Curtiss, Kenneth McBride, Ronald J. Spaner, Marcus A. Velez and Benjamin Velez  
Docket No. HUD-L-2589-08

Robert Quinn v. MBR & CK, New York Avenue LLC, Jeffrey Curtiss, Marcos A. Velez, Benjamin Velez, Ronald Spaner and Keneth McBride  
Docket No. HUD-L-968-08

60. Moreover, although the individual defendants were supposed to obtain their own bond, the said individual defendants continued to utilize the KAC bond, undertaking construction projects, (both individually and through all of the

entity defendants), utilizing the assets of KAC for same, at, upon information and belief, the following addresses in Jersey City, New Jersey:

1012 Summit Avenue  
207 Ogden Avenue  
136 New York Avenue  
202 Ogden Avenue  
204 Ogden Avenue  
36 Bowers Avenue  
38 Bowers Avenue  
40 Bowers Avenue  
159 Congress Avenue  
385 Palisade Avenue  
239 Beacon Avenue  
249 New York Avenue  
15 Wales  
47-49 Hancock Avenue  
70 South Street  
90 Court House Place  
258 New York Avenue  
268 Hancock Avenue  
413 Palisade Avenue  
111 Hutton Street  
98-100 Leonard Street  
632-634 Palisade Avenue  
163 Zabriske Street  
180 Hutton Street  
122 Lincoln Avenue  
36 Cambridge Avenue  
525 Newark Avenue

On information and belief, these projects have generated and/or will generate additional profits and revenues for the said individual defendants.

61. In light of the actions of the said individual defendants, as alleged above, it is no longer reasonably practicable to carry on the affairs of HP, NP or KAC. Accordingly, plaintiffs, individually and as members of HP, NP and KAC, bring this action *inter alia* (a) to impose a constructive trust on the funds of all defendant entities, (b) to require defendants, as the case may be, to convey title

to each of the Properties to NP, (c) to require defendants, as the case may be, to account for all construction fund draw-downs, rents, profits, and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and pay such rents, profits and other moneys over to NP, (d) to require defendants, as the case may be, to compensate NP for all damages sustained as a result of the matters alleged in this Verified Complaint, (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP as aforesaid, to compel the liquidation of all assets of NP and to effect its dissolution, with the proceeds of same to be distributed in accordance with the interests of the various parties, (f) to require the payment of punitive damages by defendants as the court may deem appropriate, and (g) to require defendants to reimburse plaintiffs for all legal fees and costs associated with this lawsuit as well as the lawsuits specified in paragraph 59 of this complaint.

62. In addition, with respect to KAC, aside from such other relief, including punitive damages, which the Court may deem appropriate, plaintiffs seek an order requiring the said defendants, as the case may be, to account for the value of all equipment, materials and assets appropriated by defendants, or any of them, and to compensate KAC therefor, after which time the assets of KAC should be liquidated and its dissolution effected, with distribution being made in accordance with the respective interests of its members. In the alternative, plaintiffs seek a direct award to each of them of 20% of the value of the equipment, materials and assets of KAC appropriated by defendants together

with such additional relief, including compensatory and punitive damages, as the Court may deem appropriate.

63. Plaintiffs have not demanded that the controlling interests of HP, NP or KAC undertake this lawsuit as it would be futile to request the said individual defendants to undertake an action against themselves.

**FIRST COUNT**  
**(Breach of Fiduciary Duty – All Individual Defendants)**

64. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 63 of this Verified Complaint as if herein set forth at length.

65. As members of closely held entities with plaintiffs, the individual defendants, Marcos, Ben and Spaner, have a fiduciary relationship with plaintiffs and owe plaintiffs the duty of utmost care and loyalty inherent in fiduciary relationships. The obligations so imposed include the duty to bring into the closely held entity those business opportunities which fall within the scope of its purpose, to refrain from engaging in activities which compete with or otherwise impede the interests of said closely held entity, to be open and honest with co-members and to deal on fair economic terms with co-members.

66. The individual defendants breached these fiduciary duties in multiple ways, which include failing to bring the business opportunities represented by the Properties into the closely held entity, engaging in activities in competition with the common venture through acquisition and development of the Properties, utilizing the equipment, materials and assets of KAC for the development, improvement and/or renovation of the Properties without the knowledge of the plaintiffs and without reimbursing KAC therefore, and for failing

to disclose to plaintiffs the activities of the said defendants concerning the Properties.

67. The breaches of fiduciary duty heretofore described have caused injury and damage to plaintiffs which must be redressed.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating HP, NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of HP, NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of HP, NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;
- (f) for the award of compensatory and punitive damages in favor of

plaintiffs against said defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the said defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**SECOND COUNT**  
**(Breach of Fiduciary Duty – Defendant Marcos)**

68. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 67 of this Verified Complaint as if herein set forth at length.

69. Defendant Marcos negotiated the purchase of the properties comprising the Heights Project on behalf of HP. Said properties were purchased from Isaac Shamah, who, upon information and belief, at all relevant times, was also a partner with defendant Marcos in an entity known as VHS Associates. This association was not disclosed to HP or the individual plaintiffs.

70. Defendant Marcos also negotiated the purchase of real property located at 207 Ogden Avenue on behalf of NP. This property was purchased

from one Angel Velez who is, upon information and belief, a family relative of defendant Marcos. This family relation was not disclosed to NP or the individual plaintiffs.

71. By virtue of the foregoing, defendant Marcos breached fiduciary duties owed to HP, NP and the individual members of said closely held entities.

72. The breaches of fiduciary duty heretofore described have caused injury and damage to plaintiffs which must be redressed.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating HP, NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of HP, NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP

and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**THIRD COUNT**  
**(Breach of Contract – Individual Defendants)**

73. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 72 of this Verified Complaint as if herein set forth at length.

74. The said individual defendants entered into a contractual relationship with plaintiffs to acquire, develop, improve and/or renovate residential properties in the Hudson County real estate market for profit.

75. The plaintiffs each performed all duties required of them under said contractual relationship.



76. The acquisition, development, improvement and/or renovation of the Properties, either directly or through the defendant limited liability entities formed by the said individual defendants, and the operation thereof in competition with properties developed or to be developed by the plaintiffs and the individual defendants, constituted a breach of that contract.

77. The unauthorized use of the equipment, materials and assets of KAC constituted a breach of the contractual relationship pursuant to which KAC was formed.

78. In addition, the individual defendants failed to perform the terms and conditions of the agreement reached in February 2007.

79. Plaintiffs have satisfied all of the terms and conditions required of them under the February 2007 agreement.

80. The Principals entered into a contract on March 7, 2008 providing for, among other things, the removal of Curtiss and McBride from any and all loans made by Northern Funding LLC/Northern Resource LLC to 136 New York Avenue LLC.

81. Curtiss and McBride have satisfied all of the terms and conditions required of them under said March 7, 2008 agreement.

82. The individual defendants failed to perform the terms and conditions required of them under said March 7, 2008 agreement.

83. HP, NP and KAC, and the plaintiffs individually and as members thereof, have been injured and damaged by reason of the breaches of contract heretofore alleged.

WHEREFORE, plaintiffs demand judgment and relief on this Court as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating HP, NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;
- (f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;
- (g) appointing a fiscal agent to take control of and operate each of the Properties;
- (h) preliminarily and permanently restraining and enjoining the

defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**FOURTH COUNT**  
**(Breach of Contract – Defendant M&B Construction)**

84. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 83 of this Verified Complaint as if herein set forth at length.

85. Plaintiffs entered into a contractual relationship with M&B Construction to renovate three properties which were part of the Heights Project and located at 36-38 Bowers Street, 159 Congress Avenue (written contract) and 40 Bowers Street (implied contract).

86. Plaintiffs each performed all duties required of them under said contracts.

87. Defendant M&B Construction failed to perform construction services that were required of it by the contracts.

88. Defendant M&B Construction failed to use materials specified in the applicable plans in the construction at these three sites.

89. Such non-performance and inadequate performance on behalf of M&B Construction constituted a breach of the contracts between it and the

plaintiffs.

90. HP, NP, KAC, and the plaintiffs individually and as members thereof, have been, and continue to be, injured and damaged by reason of the breaches heretofore alleged.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) for damages compensating HP, NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (b) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;
- (c) for specific performance of its contractual duties;
- (d) for interest;
- (e) for attorney fees and costs; and
- (f) for such other and further relief as the Court may deem appropriate.

**FIFTH COUNT**  
**(Conversion – Individual Defendants)**

91. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 90 of this Verified Complaint as if herein set forth at length.

92. The said individual defendants have converted for their own use and the use of the defendant entities, the business opportunities, equipment, computers, materials, assets of NP and KAC as well as funds contributed by plaintiffs for the common ventures.

93. NP and KAC, and the plaintiffs individually and as members

thereof, have been injured and damaged by reason of the acts of conversion heretofore alleged.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;
- (f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;
- (g) appointing a fiscal agent to take control of and operate each of the

Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**SIXTH COUNT**

**(Breach of Covenant of Good Faith and Fair Dealing – Individual Defendants)**

94. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 93 of this Verified Complaint as if herein set forth at length.

95. Every contract contains an implied covenant of good faith and fair dealing.

96. By reason of the matters heretofore alleged, the individual defendants have breached the said implied covenant with respect to the several agreements alleged herein, for their own gain and profit, and thereby caused injury and damage to plaintiffs.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

(a) to impress a constructive trust on the assets of all the entities

identified in the complaint;

(b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;

(c) compelling defendants, as the case may be, to account for all rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;

(d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court,

from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as

well as the lawsuits specified in paragraph 48 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**SEVENTH COUNT**

**(Breach of Covenant of Good Faith and Fair Dealing – Individual Defendants)**

97. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 96 of this Verified Complaint as if herein set forth at length.

98. Every contract contains an implied covenant of good faith and fair dealing.

99. By reason of the matters heretofore alleged, the individual defendants have breached the said implied covenant with respect to the construction contracts it entered into with plaintiffs for their gain and profit, and thereby caused injury and damage to plaintiffs.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

(a) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(b) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(c) for specific performance of its contractual duties;



- (d) for interest;
- (e) for attorney fees and costs; and
- (f) for such other and further relief as the Court may deem appropriate.

**EIGHTH COUNT**  
**(Violation of N.J.S.A. 2A:38A-1, et seq.)**

100. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 99 of this Verified Complaint as if herein set forth at length.

101. The defendants purposefully and knowingly accessed and utilized KAC's and/or NP's data, database, computer programs, computer equipment, computer software, etc., for the purpose of conducting business activities not involving KAC and/or NP.

102. The defendants had no authority to so access and/or utilize KAC's and/or NP's data, database, computer programs, computer equipment, computer software, etc.

103. By engaging in such actions, defendants damaged plaintiffs.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair

allowance for expenses, pay such rents, profits and other moneys over to NP;

(d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**NINTH COUNT**  
**(Fraud – Individual Defendants)**

104. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 103 above.

105. By reason of the matters heretofore alleged, the said individual defendants have knowingly concealed material facts with respect to the several agreements described herein, and plaintiffs relied on said misrepresentations to their detriment.

106. Defendants thereby caused injury and damage to plaintiffs.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as

aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**TENTH COUNT**  
**(Fraud – M&B Construction)**

107. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 106 above.

108. By reason of the matters heretofore alleged, M&B Construction knowingly concealed material facts with respect to the several agreements described herein and plaintiffs relied on said misrepresentations to their detriment.

109. Defendants thereby caused injury and damage to plaintiffs.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

(a) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(b) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(c) for specific performance of its contractual duties;

(d) for interest;

(e) for attorney fees and costs; and

(f) for such other and further relief as the Court may deem appropriate.

**ELEVENTH COUNT**  
**(Unjust Enrichment – Individual Defendants)**

110. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 109 above.

111. By reason of the matters heretofore alleged, defendants have been unjustly enriched by their conduct.

112. As a direct result thereof, the plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

(a) to impress a constructive trust on the assets of all the entities identified in the complaint;

(b) compelling defendants, as the case may be, to convey title to each

of the Properties to NP;

(c) compelling defendants, as the case may be, to account for all rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;

(d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

- (j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and
- (k) for such other and further relief as the Court may deem appropriate.

**TWELFTH COUNT**  
**(Unjust Enrichment – M&B Construction)**

113. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 112 above.

114. By reason of the matters heretofore alleged, M&B Construction has been unjustly enriched by their conduct.

115. As a direct result thereof, the plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (b) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;
- (c) for specific performance of its contractual duties;
- (d) for interest;
- (e) for attorney fees and costs; and
- (f) for such other and further relief as the Court may deem appropriate.

**THIRTEENTH COUNT**  
**(Usurpation Of Business Opportunity)**

116. Plaintiffs repeat and incorporate herein by reference each and

every allegation of paragraphs 1 through 115 above.

117. In 2005, NP intended to purchase real property located at 90 Court Street, Jersey City, New Jersey. Defendant Marcos was supposed to negotiate said sale. Defendant Marcos informed plaintiff Curtiss that the owner of the building was no longer interested in selling the property. However, in actuality, defendant Marcos purchased the property for defendant entity 90 Court Street, which is owned by Marcos, Ben and/or Spaner.

118. By reason of the foregoing, as well as all of the matters heretofore alleged, plaintiffs knowingly usurped business opportunities from plaintiffs.

119. As direct result thereof, the plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment and relief on this Court as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;



(e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

#### **FOURTEENTH COUNT**

##### **(Tortious Interference With Prospective Economic Advantage)**

120. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 119 above.

121. Plaintiffs had a reasonable expectation of procuring and profiting from property development and/or renovation projects in Hudson County, New

Jersey, specifically in the area known as "Jersey City Heights."

122. By reason of the matters heretofore alleged, plaintiffs intentionally and without justification, interfered with plaintiffs' reasonable expectation of economic advantage from said property development and/or renovation projects.

123. As direct result thereof, the plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

- (a) to impress a constructive trust on the assets of all the entities identified in the complaint;
- (b) compelling defendants, as the case may be, to convey title to each of the Properties to NP;
- (c) compelling defendants, as the case may be, to account for all rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;
- (d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;
- (e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

(i) for interest;

(j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and

(k) for such other and further relief as the Court may deem appropriate.

**FIFTEENTH COUNT**  
**(Conspiracy)**

124. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 123 above.

125. By reason of the matters heretofore alleged, defendants engaged in civil conspiracy.

126. As a result thereof, the plaintiffs have suffered damages.

WHEREFORE, plaintiffs demand judgment and relief on this Count as follows:

(a) to impress a constructive trust on the assets of all the entities identified in the complaint;

(b) compelling defendants, as the case may be, to convey title to each of the Properties to;

(c) compelling defendants, as the case may be, to account for all construction draw downs, rents, profits and other moneys realized from the operation, use, rental or sale of the Properties or any part thereof and, after fair allowance for expenses, pay such rents, profits and other moneys over to NP;

(d) for damages compensating NP and KAC, as the case may be, for the value of all sums lost or unpaid or expenses sustained by reason of the actions, omissions or breaches by defendants;

(e) upon the conclusion of such conveyance, accounting, payment over of rents, profits or other moneys and compensation of NP and KAC as aforesaid, compelling the winding up of affairs and liquidation of all assets of NP and KAC in order to effect the dissolution of each, with the proceeds of such liquidation to be distributed in equitable fashion;

(f) for the award of compensatory and punitive damages in favor of plaintiffs against defendants in such amount as the Court may deem appropriate;

(g) appointing a fiscal agent to take control of and operate each of the Properties;

(h) preliminarily and permanently restraining and enjoining the defendants, and each of them, from selling, transferring, hypothecating or otherwise alienating any of the Properties and, except in the ordinary course of business and subject to the authority of a fiscal agent appointed by the Court, from leasing same or selling units therein;

- (i) for interest;
- (j) for attorney fees and costs of suit relating the current lawsuit, as well as the lawsuits specified in paragraph 59 of this complaint; and
- (k) for such other and further relief as the Court may deem appropriate.

**SIXTEENTH COUNT**  
**(Declaratory Judgment and Injunctive Relief)**

127. Plaintiffs repeat and incorporate herein by reference each and every allegation of paragraphs 1 through 126 above.

128. HP, NP, McBride, Curtiss, Marcos, Ben and Spaner, through individual limited liability companies created for specific project developments, previously entered into written agreements with each of the Investor Defendants for loans to acquire certain parcels of real property.

129. As per the terms of each of the written investor agreements, the loans were to be repaid with an amount specified in each agreement. Additionally, as per the terms of each of the written investor agreements, the loans were to be repaid within specific times frames of acquiring the real property that was the subject of the agreement, e.g., within six months of acquiring property X, an investor who made a loan of \$100,000.00 was to receive payment of \$125,000.00.

130. Because of the actions of defendants Marcos, Ben and Spaner heretofore alleged, the development of each of the projects that were subject to these investor agreements has not been completed. As a result, the properties have not been sold or rented and the loans have not been repaid.

131. Each of the investors are separately pursuing his/her rights to the

same pool of money by bringing lawsuits to recover the funds owed to them under these agreements. The lawsuits are specifically identified in paragraph 59 above (the "Investor Lawsuits").

132. A default judgment has been rendered in the Gaisinky case against HP and Curtiss for the amount of \$270,200.00

133. Liability has been determined in favor of plaintiffs in the Mehta case by virtue of a summary judgment motion

134. As a result of the default judgment rendered in the Gaisinky case, HP is now unable to draw down any further construction loan funds necessary to complete its renovation project. As a result, the property cannot be sold or rented and there are no funds with which to repay the investors.

135. Unless the Investor Defendants herein, who are plaintiffs in the Investor Lawsuits are enjoined from levying upon, filing a *lis pendens* and/or otherwise executing upon any judgment or order in the Investor Lawsuits, the plaintiffs herein, as well as the Investor Defendants themselves, will suffer irreparable harm for which there is no remedy at law.

136. Moreover, it is in the best interest of all parties, including the Investor Defendants, that no investor be permitted to enforce their rights under the individual investor agreements so that each of the subject properties can be completed and generate the funds necessary to repay all of the investors.

137. All necessary parties are before the court.

138. By reason of the foregoing, injunctive relief and declaratory judgment as provided for by the provisions of N.J.S.A. 2A:16-50, *et seq.* are both

necessary and proper in order to protect and determine the rights of the investors

WHEREFORE, plaintiffs respectfully request that the Court enter judgment as follows:

- 1) Declaring the rights of each investor defendant;
- 2) Providing for the establishment of a court administered bank account in which all sales proceeds from each of the properties subject to the investor agreements shall be deposited and same be equitably disbursed by the court to the investors in accordance with their determined rights;
- 3) Enjoining each of the individual investors from enforcing any judgment they obtain under the investor agreements;
- 4) Providing for any other relief which is equitable and just; and
- 5) Allowing plaintiffs their attorneys fees and costs.

STARR, GERN, DAVISON & RUBIN  
Attorneys for Plaintiffs

By: 

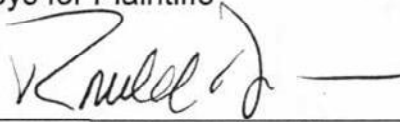
RONALD DAVISON

Dated: September 10, 2008

**DESIGNATION OF TRIAL COUNSEL**

Ronald L. Davison is hereby designated as trial counsel for plaintiffs Jeffrey D. Curtiss and Kenneth McBride, individually and on behalf of Northumberland Property, LLC, King Arthur Construction Company, LLC, and Heights Project, L.L.C.

**STARR, GERN, DAVISON & RUBIN, P.C.**  
Attorneys for Plaintiffs

By:   
\_\_\_\_\_  
RONALD L. DAVISON

Dated: September 10, 2008



Robert Quinn v. MBR & CK, New York Avenue LLC, Jeffrey  
Curtiss, Marcos A. Velez, Benjamin Velez, Ronald Spaner and  
Keneth McBride  
Docket No. HUD-L-968-08

It is further certified that there are no other parties currently known who should be  
joined herein as parties adverse to defendant.

**STARR, GERN, DAVISON & RUBIN, P.C.**  
Attorneys for Plaintiffs

By: 

RONALD L. DAVISON

Dated: September 10, 2008

VERIFICATION


The facts contained in the Verified Complaint, other than those alleged on information and belief, are true. As to the facts alleged on the basis of information and belief, we believe them to be true.

We hereby certify that the foregoing statements made by us are true. We are aware that if the foregoing statements are willfully false, we are subject to punishment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey D. Curtiss

Dated: 9-10-08

  
\_\_\_\_\_  
Kenneth McBride