

SHORT FORM ORDER

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT:

HON. IRA B. WARSHAWSKY,  
Justice.

TRIAL/IAS PART 8

LOUIS ROSSI,

Plaintiff,

INDEX NO.: 004095/2009  
MOTION DATE: 02/25/2010  
MOTION SEQUENCE: 001

-against-

FRANK PROCIDA, BRETT W. CORMIER,  
PROCIDA TILE IMPORTERS, INC., LJN, LLC,  
BFL REALTY, LLC, and RFL TILE, INC.,

Defendants.

The following papers read on this motion:

Notice of Motion, Affirmation & Exhibits Annexed ..... 1

PRELIMINARY STATEMENT

Plaintiff moves for a consolidation of the instant action with one subsequently commenced in Suffolk County under Index No.: 06040/2009. The present action was commenced on March 6, 2009. A verified answer was dated April 24, 2009. An amended summons an amended verified complaint are dated May 18, 2009, to which a verified answer dated June 10, 2009 was served. The Suffolk County action in which Frank Procida is the plaintiff in an action against Louis Rossi and Deborah Rossi, was commenced on March 20, 2009.

## BACKGROUND

The underlying action arises from an agreement between plaintiff, Procida, and Cormier to invest in LNJ, LLC, established for the purpose of acquiring and operating a Procida Tile retail store at 100 Jericho Tpke., Floral Park, New York. Plaintiff invested \$325,000.00, Cormier \$100.00, and Procida \$75.00, for an initial capitalization of BFL Realty, LLC (“BFL”) \$325,175.00. Plaintiff was to acquire 49% equity interest and 75% of profits generated; Cormier was to receive a 26% equity interest and 12.5% of profits; and Procida was to receive 25% equity interest and 12.5% of the profits. The complaint alleges that within a few months Comida and Procida locked plaintiff out of the store and conditioned his return upon his surrender of 25% of his entitlement to profits, to be transferred to Comida and Procida, leaving him with 50% interest in profits, and 25% each to the other two.

During the five years between March 1, 2004 — February 2009, plaintiff operated the store, until he was allegedly locked out by Procida and Cormier. Plaintiff claims that, without his knowledge, Procida acquired control of LNJ and BFL, without offering plaintiff an opportunity to purchase as required by the operating agreement. He also claims that Cormier and Procida were involved in a Ponzi scheme, utilizing funds such as those invested by plaintiff for unauthorized and illicit business operations. The complaint refers to four other investors or investing entities who were induced to invest money with Cormir and Procida.

The Amended Complaint sets forth seven causes of action as follows:

- First: Against Procida, Cormier for violation of 18 U.S.C. 1962 (a) (b) and (c);
- Second: Breach of Contract against Procida and Cormier;
- Third: Against Procida and Cormier for breach of fiduciary duty;
- Fourth: Fraud against Procida, Cormier and Procida Tile, Inc.;
- Fifth: Constructive trust against Cormier and Procida;

Sixth: Dissolution of BFL;

Seventh: Dissolution of LJV.

Eighth: Dissolution of LRF;

Ninth: Accounting.

The Verified Answer to the Amended Complaint, dated June 10, 2009, included the following counterclaims:

First: Rossi Guaranty on Loan to LJV, LLC;

Second: Breach of Fiduciary Duty by Rossi.

On March 20, 2009, defendant Procida, individually and derivatively on behalf of LJV, LLC, commenced an action against Louis Rossi and Deborah Rossi in Suffolk County. The complaint alleges two causes of action, which are identical to the counterclaims interposed in this action.

Defendants have not submitted opposition to the motion to consolidate, and in a conference before the Court on April 21, 2010, acknowledged their willingness that the action in Suffolk County be consolidated or tried jointly with this action. Because the plaintiff in this action is a defendant in the Suffolk County action, and the defendants in this action are plaintiffs in that action, the actions will maintain their own caption, but be tried jointly under Index Number 004095/2009. Plaintiff in the Suffolk County Action will obtain a Nassau County Index Number (at no additional charge).

The Suffolk County Clerk is directed to forward their file under Suffolk County Index Number 06040/2009 to the Nassau County Clerk for filing under Nassau County Index No. 004095/2009. The caption will thereafter appear as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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LOUIS ROSSI,

Plaintiff,

INDEX NO.: 004095/2009

-against-

FRANK PROCIDA, BRETT W. CORMIER,  
PROCIDA TILE IMPORTERS, INC., LJM, LLC,  
BFL REALTY, LLC, and RFL TILE, INC.,

Defendants.

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FRANK PROCIDA, Individually, and derivatively  
on behalf of LJM, LLC, a limited liability company,

Plaintiff,

INDEX NO.:

-against-

LOUIS ROSSI and DEBORAH ROSSI,

Defendants.

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This constitutes the Decision and Order of the Court.

Dated: April 26, 2010

  
J.S.C.

**ENTERED**  
APR 29 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE