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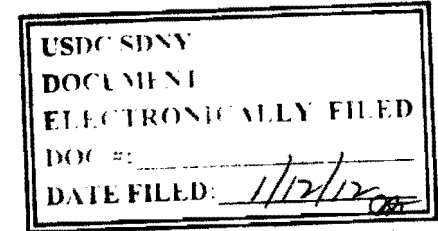
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January 10, 2012
(Federal Express)

Paul A. Engelmayer
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 670
New York, NY 10007
(212) 805-4893

MEMO ENDORSED



Re: Lebewohl, 2nd Ave Deli v. Heart Attack Grill, LLC., HAG, LLC, and Jon Basso
U.S. District Court, S.D. New York, Case No. 11-CIV-3153-PAE-JCF
Our Ref.: 5087-23

Dear Judge Engelmayer:

We represent Defendants HAG in this action. HAG seeks clarification of Your Honor's Order, D.E. 42, compelling HAG to disclose all "HAG owners and manager[s]." HAG seeks guidance given the fact that:

(a) in an earlier Order, the Court stated that "investors" need not be disclosed to Plaintiffs 2nd AVE DELI (see Order, D.E. 39 "As to interrogatories that call for the identification of (or communication among) HAG investors, the Court declines to enforce those interrogatories";

(b) in the Order D.E. 42 subject to clarification herein, the Court groups owners, managers and investors together ("Thus, if an owner or manager is also an investor, their identity as an owner or manager cannot be hidden under the cloak of investor status"). At the hearing on January 4, 2012, counsel for HAG was under the impression that disclosure of "any person having an active managerial input" was required, whether that person also is classified as an owner or an investor. HAG has made such disclosure to 2nd AVE DELI; but

(c) the current Order, D.E. 42, compels disclosure of all owners and managers.

HAG has no issue regarding “managers” and affirms that its current interrogatory answers fully disclose all persons who have any input into the management of the Defendant LLCs without regard to whether that person is an owner, a member or an investor.


HAG’s concern is that the word “owner” in the Order D.E. 42 has no specific legal meaning in the context of this litigation. The owner or owners of a corporation are shareholders. Owner-shareholders may also be involved in the management of the corporation. Corporations have directors serving as managers and executive officers as managers. However, the owners of a limited liability company (LLC) are “members.” Therefore, investors in an LLC are owner-members.

HAG has no concern over disclosure of anyone who has managerial input into the operation of the LLC Defendants. Such disclosure has been made.

However, given the uncertain meaning of the term “owner” used in the Order D.E. 42, HAG seeks clarification of the Order.


If the Court believes all owners of the corporate HAG defendants must be disclosed, this Order then covers all LLC members and all LLC investors (all LLC investors are LLC members). However, if the Order is directed to anyone who has managerial input into the operation of the LLC Defendants, then HAG has complied with this disclosure order weeks ago.

WHEREFORE, HAG seeks clarification of the scope of “owner” in the disclosure Order D.E. 42.

Sincerely,
/s/ Robert Kain 
Robert C. Kain, Jr., for the Firm
Counsel for Defendants HAG

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HAG is correct that the identity of a shareholder who has no role in managing HAG's business need not be disclosed,

SO ORDERED: 1/12/12


HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE