



Masaschi suing partners in residential complex near UR

By: Kevin Oklobzija January 8, 2019 0

Rochester real estate developer Thomas Masaschi is suing his partners in a housing development near the University of Rochester, claiming they fabricated tales of fraud in order to deprive him of \$5 million in equity sale proceeds.



The complaint, filed Friday in state Supreme Court in Monroe County, alleges Buffalo area developers John Yurtchuk and David Huck acted in bad faith in removing Masaschi as a partner and that their conduct was “legally and factually unjustified.”

“Huck and Yurtchuk’s actions are a classic case of greed over partnership and they manufactured defaults by Masaschi as a means to enrich themselves,” according to court papers filed by attorney Jeremy W. Schulman of the law firm Schulman Bhattacharya LLC, commercial litigators

based in Bethesda, Md.

Huck and Yurtchuk each owned 34 percent and Masaschi 32 percent of Riverview Collegiate Living, a 104-bed student housing facility on South Plymouth Avenue, across the Genesee River from the UR campus. The lawsuit says the property is “highly lucrative.”

Riverview was created in 2008, with Huck and Yurtchuk serving as managers. Transfer of ownership interest by any of the three partners was permitted, the lawsuit claims, only if a “bona fide written offer” was shared with the non-selling partner(s), who then had a 30-day right of first refusal to match the selling price.

Masaschi sent on May 15 to Huck and Yurtchuk an offer from Monroe Income Properties LLC to buy his 32 percent share for \$5 million, court papers say.



“Rather than exercise their rights of first refusal, Huck and Yurtchuk sent Masaschi a letter dated May 23, 2018, purporting to declare him involuntarily withdrawn and expelled from Riverview,” the complaint says. The actions were taken, the lawsuit says, for the purpose of “improving their ownership percentages from 34 percent to 50 percent each.”

The partnership agreement states members may be expelled if they breach the operating agreement or if they have “engaged in fraudulent or illegal actions relating to the business of Riverview,” the suit says. In the case of a breach of the agreement, the offending partner would be stripped of membership if he “failed to cure the breach within a reasonable time after receiving written notice thereof.” The letter, according to court papers, “implied that Masaschi committed fraud and/or an illegal act.”

The May 23 letter claims a breach of the partnership agreement occurred when Masaschi signed over a security interest in his Riverview share as collateral to US Income Partners LLC, on July 24, 2015. Huck and Yurtchuk claim in their letter of ouster to Masaschi that the agreement with US Income Partners was never disclosed to, nor was it approved by, the other partners and therefore constituted a default.

However, Masaschi’s lawsuit claims he did not conceal his agreement with US Income Partners because there was a public filing of the Universal Commercial Code-1 form and thus disclosure of the security interest in his share of Riverview.

The suit also says that if Huck and Yurtchuk did consider this to be a breach of the partnership agreement, “they should have provided him notice” and “the opportunity to cure the breach within a reasonable amount of time” under terms of the operating agreement.

“Masaschi has been ready, willing, and able to cure any purported defaults by obtaining and filing a termination of the pledge (as collateral to US Income Partners),” the lawsuit says.

Masaschi is asking that his status as a 32-percent partner be restored, that he receive at least \$5 million based on a breach of the agreement and breach of fiduciary duties by Huck and Yurtchuk, that he be awarded to-be-determined-amounts from his previous exclusion from Riverview profits, and that Riverview Collegiate Living be sold.

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