

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

KIN CHUN NG,

Petitioner,

-against-

PEARL STREET INVESTORS FUND L.P.
and LAM NYC EB-5 FUND REGIONAL
CENTER LLC,

Respondents.

Index No.

**PETITION PURSUANT TO
CPLR ARTICLE 4**

Petitioner Kin Chun Ng, by and through her undersigned counsel alleges, based upon personal knowledge as to herself, and upon information and belief otherwise, as follows:

NATURE OF THE ACTION

1. Petitioner brings this action pursuant to New York Civil Practice Law & Rules (“CPLR”) Article 4, New York Partnership Law § 99 and New York Revised Limited Partnership Act (“NYRLPA”) § 121-106 to enforce Petitioner’s right to inspect certain books and records of Pearl Street Investors Fund L.P. (“Pearl Street” or the “Partnership”). As set forth below, Petitioner’s demand is for the proper purpose of investigating corporate malfeasance and potential claims against the General Partner of Pearl Street, Lam NYC EB-5 Fund Regional Center LLC (“Lam EB-5” or the “General Partner”), for breach of fiduciary duty and fraud.

PARTIES

1. Petitioner Kin Chun Ng is a foreign national and has been a limited partner of Pearl Street since 2015.

2. Respondent Pearl Street or the Partnership is a limited partnership organized under the laws of the State of New York, with its offices at 202 Centre Street, New York, New York 10013. Pearl Street was organized pursuant to a Limited Partnership Agreement, entered into as of October 1, 2013 (“Partnership Agreement”).

3. Respondent Lam EB-5 is a New York limited liability company with offices at 202 Centre Street, New York, New York 10013. Lam EB-5 is the General Partner of Pearl Street. Lam EB-5 is affiliated with the Lam Group, a real estate developer, which also has offices at 202 Centre Street, New York, New York 10013. John Lam, the founder, CEO and Chairman of the Lam Group is the managing member of the General Partner.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to CPLR Article 4 to enforce the Respondents’ obligations under New York law and the Partnership Agreement.

5. Venue in New York County is proper pursuant to CPLR 503(d) and 506(a) as Respondents maintain their principal offices in New York, New York, and pursuant to Section 12.18 of the Partnership Agreement.

BACKGROUND FACTS

I. THE EB-5 IMMIGRANT INVESTOR PROGRAM

6. The EB-5 Immigrant Investor Program is a program that was created by Congress in 1992 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The United States Citizenship and Immigration Services (“USCIS”) administers the program. The program sets aside EB-5 immigrant visas for participants who invest in commercial enterprises approved by USCIS, which are sometimes administered by entities called “regional centers.”

7. The investments offered by regional centers to EB-5 foreign investors are typically offered as an interest in an investment vehicle such as a limited partnership or limited liability company. These investment vehicles are managed by a person or entity other than the foreign investor, specifically, the general partner or managing member of the investment vehicle.

8. To be eligible for an EB-5 visa through a regional center, a foreign investor is required to invest money (at least \$500,000 during the relevant time period), and put this money at risk for the purpose of generating a return. The investor may then petition the USCIS for conditional permanent residency for a two-year period through an application called an I-526 petition. If at least ten U.S. jobs are created as a result of the foreign investor's investment, the investor may apply to have the conditions removed from her/his visa and live and work in the United States permanently (an I-829 petition).

9. In June 2017, the USCIS clearly articulated a policy that it considers EB-5 investors' funds to have been sufficiently maintained for purposes of their I-829 petitions (for removal of conditions on residency), as long as investors maintained their original investments for the two-year period following their receipt of their conditional residencies.

II. THE PARTNERSHIP

10. Pearl Street was organized pursuant to a Limited Partnership Agreement, entered into as of October 1, 2013 (the Partnership Agreement). Lam EB-5 is the General Partner of Pearl Street and is one of the regional centers approved by the USCIS to develop projects within its approved geographic area, including New York, New York.

11. Petitioner is one of the limited partners in the Partnership (collectively, "Limited Partners," and together with the General Partner, "Partners").

12. According to the Partnership Agreement, the Partnership was formed for the purpose of making a loan ("Loan") to Lam's Golden Pearl Hotel Plaza, LLC ("Borrower") in

connection with the development and construction of a hotel on the real property located at 213 Pearl Street, New York, New York 10038 (“Project”).

III. THE LOAN AND EXTENSIONS OF THE LOAN

13. On October 1, 2013, the Partnership and Borrower entered into a loan agreement, for a minimum loan amount of \$500,000.00 and a maximum loan amount of \$45,000,000.00 (“Loan Agreement”). The term of the Loan was for five years from the date of the First Advance (defined to mean the date the minimum loan amount was available for advance).

14. On October 22, 2020, the term of the Loan expired.

15. On December 15, 2020, the General Partner sent a Notice of Loan Extension to the Limited Partners informing the Limited Partners that the Borrower requested, and the General Partner agreed, to extend the Loan to October 2021. In the December 15, 2020 Notice of Loan Extension, the General Partner justified the loan extension by claiming that, under the Partnership Agreement, distributions cannot be made prior to I-829 adjudication, which distributions are contemplated to be made from the repayment of the Loan.

16. On November 4, 2021, the General Partner sent a second Notice of Loan Extension to the Limited Partners informing the Limited Partners that the Loan remained outstanding and the term of the Loan had to be further extended to October 22, 2022.

17. The November 4, 2021 Notice of Loan Extension further explained:

As you may now, the project at 215 Pearl Street [the Project] is now substantially complete and the hotel had its soft opening on August 19, 2021. The EB-5 funds remain deployed into final completion and operation of the Project. Borrower advises that, while the I-829 adjudication remains pending, it is diligently continuing its efforts towards viable refinancing options and full hotel operations.

18. Finally, the November 4, 2021 Notice of Loan Extension again claimed that, under the Partnership Agreement, distributions could not be made prior to I-829 adjudication, which distributions are contemplated to be made from repayment of the Loan.

19. The Loan Agreement, however, does not contain any provision that permits the extension of the term of the Loan. Moreover, under “Remedies” in the Loan Agreement, the Partnership is entitled, at its sole option, to declare the Loan in default and exercise remedies under the loan documents, including foreclosure under the Uniform Commercial Code, in the event that Borrower shall fail to repay the Loan in accordance with the terms of the Loan Agreement.

20. In addition, contrary to the General Partner’s repeated justifications for extending the Loan, in June 2017, the USCIS clearly articulated a policy that it considers EB-5 investors’ funds to have been sufficiently maintained for purposes of their I-829 petitions (for removal of conditions on residency), as long as investors maintained their original investments for the two-year period following their receipt of their conditional residencies.

IV. PETITIONER’S BOOKS AND RECORDS DEMAND

21. Based on the facts described above, on January 26, 2022, Petitioner made a demand on the Partnership pursuant to NYRLPA § 121-106 (“Records”) of the New York Revised Limited Partnership Act (Partnership Law, Article 8-A) and Section 4.5¹ of the Partnership Agreement, to produce certain books and records during the Partnership’s usual business hours, for inspection and copying (“Demand”). *See* Exhibit 1, attached hereto. The relevant time period for this Demand was from October 1, 2013 through the present (the “Relevant Period”).

¹ Section 4.5 of the Loan Agreement states in relevant part: “(a) The General Partner shall maintain or cause to be maintained complete and accurate books of account (containing such information as shall be necessary to record allocations and distributions), and make such records and books of account available for inspection by any Partner, or any Partner’s duly authorized representative, during regular business hours and at the principal office of the Partnership, upon reasonable notice and for any purpose related to his or her ownership of Units.”

22. In the Demand, Petitioner sought:
- (a) All financial statements of the Partnership dated or created during the Relevant Period, including profit and loss statements and balance sheets.
 - (b) All Schedules K-1 dated or created during the Relevant Period related to Ms. Ng's interest in the Partnership.
 - (c) All documents memorializing the extension(s) to the term of the Loan.
 - (d) All communications between the Partnership and/or its General Partner, on the one hand, and the Borrower, on the other hand, concerning the extension(s) of the term of the Loan.
 - (e) All documents reflecting the financial operations and situation of the Borrower.
 - (f) The EB-5 business plan for the Project, showing how ten new U.S. jobs will be created within two years, per EB-5 investor (Limited Partner).
 - (g) The EB-5 economic report prepared by the regional center for the Project, showing how indirect jobs will be created.
 - (h) Construction invoices, pictures of construction in process/completed, and any other construction related reports and documents submitted to the USCIS when each Limited Partner's I-829 petition was filed, proving that jobs were created as proposed in the EB-5 business plan.
 - (i) All communications during the Relevant Period from the General Partner to the Limited Partners, including, but not limited to, communications concerning the decision to extend the term of the Loan, annual reports, and any other notices provided to the Limited Partners.
 - (j) All books and records dated or created during the Relevant Period concerning any audits or other financial review of the Partnership.
 - (k) All books and records dated or created during the Relevant Period concerning the progress and/or status of the Project.
23. In response to Petitioner's Demand, on or about March 2, 2022, Respondents produced certain documents ("Production").
24. As part of the Production, the Partnership produced the December 15, 2020 and November 4, 2021 Notices of Loan Extension, from the General Partner to the Limited Partners concerning the extension of the Partnership's Loan to the Borrower, in connection with the Project.

25. Also included in the Production was a letter, dated August 19, 2021 from Kin Chung Lam, Director of Lam Pearl Street Hotel, LLC, to the USCIS Adjudication Officer, providing an update on the status of the Project. Among other things, the letter stated:

- (a) “To date, 984 jobs have been created within the New York County Workforce Drawing Area. Additionally, the project will create another 234 jobs during the first year of operations.”
- (b) “The operation [of the Project] will be started from August 19, 2021. Therefore, the project has [been] successfully completed according to the EB-5 Business Plan without substantial changes.”
- (c) “It should be noted that the minor changes to the project timeline, such as caused by COVID-19, will not cause any change of the nature of the job creating activities, nor will [it] change the Business Plan or EB-5 investment.”

26. On June 7, 2022, Petitioner made a supplemental demand on the Partnership to produce certain books and records during the Partnership’s usual business hours, for inspection and copying (“Supplemental Demand”), attached hereto as Exhibit 2, seeking:

- (a) Books and records reflecting the status of the Limited Partners’ I-829 applications, including but not limited to, whether the I-829 applications have been adjudicated. This request includes any communications with the USCIS.
- (b) All financial statements of the Partnership, dated or created during the Relevant Period, including profit and loss statements and balance sheets.
- (c) All financial statements of the Borrower, dated or created during the Relevant Period, including profit and loss statements and balance sheets.
- (d) All financial statements of the Project, dated or created during the Relevant Period, including profit and loss statements and balance sheets.
- (e) To the extent not already included in the Production, all agreements relating to the Loan, including but not limited to the Loan Agreement, loan extension agreements, forbearance agreements, loan guaranties, and security and pledge agreements.
- (f) All agreements relating to any other loans obtained by the Borrower in connection with the Project, including but not limited to loan agreements, loan extension agreements, forbearance agreements, loan guaranties, and security and pledge agreements.

VI. RESPONDENT'S INADEQUATE RESPONSE

27. On June 9, 2022, in response to Petitioner's Supplemental Demand, counsel for the General Partner stated that they needed to discuss the request with their counsel, who was traveling out of the country and that she would "circle back in a few days." *See* Exhibit 3, attached hereto.

28. Approximately two weeks later, on June 22, 2022, Petitioner, through her counsel, requested confirmation as to whether the General Partner would be providing the books and records requested in Petitioner's Supplemental Demand. *See* Exhibit 4, attached hereto

29. As of the date of this Complaint, Respondents have not provided a response to Petitioner's Supplemental Demand, have not followed up on their proposed virtual settlement conference and have not responded to Petitioner's July 21 email.

CAUSE OF ACTION
(For Judgment Pursuant to CPLR Article 4)

30. Petitioner repeats and realleges each and every allegation contained in foregoing paragraphs as if set forth fully herein.

31. New York Partnership Law § 99, NYRLPA § 121-106, and Section 4.5 of the Partnership Agreement require the Partnership and the General Partner to provide the Limited Partners with access to books and records for any purpose reasonably related to the Limited Partner's interest as a limited partner.

32. As set forth herein, Petitioner made a Demand and a Supplemental Demand upon Pearl Street and Lam EB-5, and Pearl Street and Lam EB-5 have refused to comply with their duties under New York Partnership Law § 99, NYRLPA § 121-106 and Section 4 of the Partnership Agreement.

33. CPLR Article 4 allows for challenging the actions of the Partnership and the General Partner, and enforcing Petitioner's rights under New York law. Petitioner has a clear right

to the enforcement of, and compliance with, New York Partnership Law § 99, NYRLPA § 121-106, and Section 4.5 of the Partnership Agreement.

34. Petitioner has no adequate remedy at law.

35. Accordingly, Petitioner is entitled to judgment under CPLR Article 4 ordering Pearl Street and Lam EB-5 to fully comply with Petitioner's Supplemental Demand.

PRAYER FOR RELIEF

WHEREFORE, Petitioner demands judgment as follows:

- A. An order directing Respondents to permit Petitioner and/or her attorneys to inspect and copy the materials requested in the Supplemental Demand forthwith;
- B. An order awarding to Petitioner her attorneys' fees and costs associated with the prosecution of this action; and
- C. An order awarding such other and further relief as the Court deems appropriate.

Dated: July 29, 2022

/s/ Hung G. Ta
HGT LAW
Hung G. Ta, Esq.
JooYun Kim, Esq.
Natalia Williams, Esq.
250 Park Avenue, Seventh Floor
New York, NY 10177
Tel: (646) 453-7288
Fax: (646) 453-7289

Counsel for Petitioner