



## E-Notice

**2016-L-011333**

CALENDAR: S

To: Alexander Nicholas Loftus  
alex@stoltlaw.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**EVAN MUSIKANTOW vs. ALLEN MUSIKANTOW**  
**2016-L-011333**

The transmission was received on 04/06/2017 at 1:54 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 04/06/2017 at 2:20 PM.

**AMENDED COMPLAINT (Verified First Amended Complaint)**

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Notice Date: 4/6/2017 2:20:45 PM  
Total Pages: 15

**DOROTHY BROWN**  
**CLERK OF THE CIRCUIT COURT**  
COOK COUNTY  
RICHARD J. DALEY CENTER, ROOM 1001  
CHICAGO, IL 60602

(312) 603-5031  
courtclerk@cookcountycourt.com

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

EVAN MUSIKANTOW, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 16 L 11333  
 )  
ALLEN MUSIKANTOW, )  
 )  
Defendant, )  
 )  
PETER LOUGHMAN and )  
DAVID GLICKSTEIN )  
 )  
Respondents in Discovery. )

**VERIFIED FIRST AMENDED COMPLAINT**

Plaintiff, EVAN MUSIKANTOW, by and through his undersigned attorneys, complains against Defendant, ALLEN MUSIKANTOW, and alleges and states as follows:

**I. THE PARTIES**

1. Plaintiff, Evan Musikantow (“Evan”), is an individual and resident of the State of Arizona.
2. Defendant, Allen Musikantow (“Allen”), is an individual and resident of the State of Florida and the father of Evan Musikantow.
3. Respondent in Discovery David Glickstein, is a resident of Cook County.
4. Respondent in Discovery Peter Loughman is a resident of Cook County.

## **II. JURISDICTION AND VENUE**

5. Jurisdiction over Defendant and Respondents in Discovery is proper by virtue of 735 ILCS 5/2-209, as the breach of contract allegedly occurred in Illinois and Defendant has had more than minimal contacts with the State of Illinois, such that the exercise of jurisdiction over him does not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this county by virtue of 735 ILCS 5/12-101(2), as Cook County is the county in which the transaction or some part thereof occurred out of which the cause of action arose.

## **III. ALLEGATIONS COMMON TO ALL COUNTS**

7. Allen Musikantow is the co-founder and Chairman of Apple American Group, which owns and operates approximately 480 Applebee's Neighborhood Grill and Bar restaurants in 23 states from coast to coast. Apple American is the largest Applebee's franchisee with \$1.2 billion in sales and directly employing over 31,000 people and is one of the two largest franchisees of any concept in the United States.

8. The Musikantow "Family Business" was primarily real estate development for Applebee's franchises, hotels, and Shoney's franchises held in the following limited liability companies: MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC.

9. Evan's role in the Family Business was to build individual franchises throughout the country from site selection through hiring staff.

10. Once the individual franchises were up and running, they were frequently sold for a substantial profit.

11. When an individual franchise was sold, the profits would go to Allen or entities he controlled and Allen would then make distributions to Evan.

12. By late 2000, Evan, along with Allen, had an Ownership Interest in over 100 Applebee’s franchises and several hotels (hereinafter “Evan’s Ownership Interests”).

13. As of late 2000, Evan’s Ownership Interests in the Family Business were held in seven affiliated entities as follows:

<b>Item</b>	<b>Entity Name</b>	<b>Evan’s Percentage Ownership</b>
a.	MCM Investments of Ohio LLC	20.0%
b.	MCM Investments of Indiana LLC	20.0%
c.	MCM Investments of Delaware LLC	20.0%
d.	MCM Investments of New Jersey LLC	20.0%
e.	MCM Investments of Chicago LLC	20.0%
f.	Lakeview Associates III	2.5%
g.	MCM Hotels, LLC	20.0%

14. As of late 2000, Allen owned a controlling interest in each of the seven entities listed in Paragraph 13, items a. through g.

15. In approximately September 2001, Allen and Evan met at the Four Seasons in Chicago, Illinois and discussed how the proceeds of Evan’s Ownership Interests would be held after any of them were sold or transferred.

16. Evan expressed to his father his fear of the proceeds of his Ownership Interest being consumed by taxes or being taken in his ongoing divorce.

17. At their meeting at the Four Seasons, Allen offered and Evan accepted, for Allen to hold Evan’s Ownership Interest for the benefit of Evan (hereinafter “Agreement”).

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18. Allen promised to hold the proceeds of Evan’s Ownership Interest and pay them to Evan at a later date.

19. Evan trusted his father, who had always been financially generous with him and given him sound financial advice, to hold his Ownership Interest on Evan’s behalf and did not inquire further after their oral agreement until 2015.

20. Evan relied on his father for financial support throughout his professional career, having worked for his father for over twenty years.

21. At all times relevant to this complaint, Allen maintained financial control over Evan both as the controlling member of the limited liability companies they operated together and as his father.

22. Evan trusted Allen to hold and later distribute proceeds owed to Evan from other transactions which Allen did throughout their professional relationship.

23. At all times relevant to this complaint, Allen owed fiduciary duties to Evan as a member of the limited liability companies listed above.

24. In approximately November 2001, MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, and MCM Investments of Chicago LLC were sold to Apple American Group.

25. As a part of the sale, Evan continued to work with Apple American Group as a consultant through 2003.

26. David Glickstein represented the Musikantows in the sales to Apple American Group and MCM Hotels, LLC.

27. Upon information and belief, as a result of the sale to Apple American Group, the proceeds of the sale of Evan’s Ownership Interest were converted in part to stock in Apple

American Group and in part to cash held by Allen in a subsequently disallowed tax shelter operated by Deutsche Bank AG, Deutsche Bank Securities, Inc., d/b/a Deutsche Bank, Alex Brown, and David Parse, which ultimately failed and reverted to Allen.

28. In approximately December 2005, MCM Hotels, LLC was sold for approximately \$32.4 Million.

29. Just as he deferred payment from the 2001 sale, Evan did not receive any proceeds from the December 2005 sale pursuant to the Agreement.

30. Allen led Evan to believe Allen was holding Evan's share of the proceeds of the 2005 sale for his benefit.

31. Evan did not receive any proceeds from the November 2001 sale, and Evan was led to believe Evan's Ownership Interest was held by Allen pursuant to the Agreement.

32. Allen led Evan to believe David Glickstein and Peter Loughman were trustees or agents of the entities created by Allen to hold some of Evan's Ownership Interests.

33. On or about August 1, 2015, Evan first requested payment from Allen for his Ownership Interest and Allen refused.

34. On or about December 24, 2015, Peter Loughman, on behalf of Allen, refused to provide any documents regarding Evan's Ownership Interest.

35. Allen has denied he ever entered into the Agreement in the course of the instant litigation, and the investigation immediately prior to filing this suit.

## IV. CLAIMS

### COUNT I (Breach of Contract)

36. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34 of this Verified Complaint as Paragraph 36 of Count I of this Verified First Amended Complaint as though fully set forth herein.

37. In 2001, Evan and Allen entered into an oral agreement whereby Allen agreed to hold Evan's Ownership Interests in the Family Business.

38. Allen promised and agreed to hold Evan's Ownership Interest and return it on demand.

39. In reliance upon the agreement between the parties, Evan allowed Allen to hold his Ownership Interest in trust, which Allen placed into a tax shelter operated by Deutsche Bank referred to in paragraph 27 above.

40. Allen has breached the agreement between the parties by failing, refusing, and otherwise neglecting to return Evan's Ownership Interest when demanded in 2015.

41. As a proximate result of Allen's breach of the agreement between the parties, Plaintiff has been damaged in an amount in excess of \$20,000,000.

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that this Court enter an order against Defendant, ALLEN MUSIKANTOW, in his favor; award him compensatory damages in an amount in excess of \$20,000,000, and grant any and all further relief that the Court deems to be necessary or appropriate under the circumstances.

**COUNT II**  
**(Constructive Trust)**

42. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34 of this Verified Complaint as Paragraph 42 of Count II of this Verified First Amended Complaint as though fully set forth herein.

43. Illinois courts describe an action for constructive trust as follows: “A constructive trust is one raised by operation of law and imposed by a court of equity where the legal title to money or property is obtained by a person in violation of some duty owing to him who is equitably entitled thereto [....] A constructive trust will be used to compel a party who unfairly holds a property interest or money to convey that property to the one to whom it justly belongs [....] to prevent a person from holding for his own benefit an advantage gained by the abuse of a fiduciary relationship [....] or, where the person holding property would be unjustly enriched if he were permitted to retain such property.” *A.T. Kearney, Inc. v. INCA International, Inc.*, 132 Ill. App.3d 655 (1st Dist. 1985) (internal citations omitted).

44. As alleged in Paragraphs 16 through 32 above, Evan allowed Allen to hold his Ownership Interests and the proceeds thereof through the November 2001 Sale and the December 2005 Sale.

45. Evan entrusted such Ownership Interests to Allen in reliance on Allen’s promise to hold the Ownership Interests and their resulting proceeds in trust for Evan.

46. On or about August 1, 2015, Evan first demanded payment of his Ownership Interest and Allen refused.

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that this Court enter a judgment against Defendant, ALLEN MUSIKANTOW, in Evan’s favor awarding Evan compensatory damages in an amount in excess of \$20,000,000, and also awarding Evan punitive



damages of at least \$60,000,000, reasonable attorneys' fees, costs, prejudgment interest, and for any and all other relief that this Court deems necessary and appropriate under the circumstances.

**COUNT III**  
**(Breach of Fiduciary Duty)**  
*Alleged in the Alternative to Counts I and II*

47. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35 of this Verified Complaint as Paragraph 47 of Count III of this First Amended Verified Complaint as though fully set forth herein.

48. Allen fraudulently concealed the disposition of Evan's Ownership Interest in 2001 and 2005.

49. As alleged in paragraphs 24 and 28 above, the Family Business was sold for approximately \$100,000,000, and Evan was entitled to 20% of the sale proceeds.

50. Rather than pay Evan his fair share of the proceeds, Allen took the nearly \$20,000,000 for himself while lying to his son that he was simply "holding" the proceeds.

51. On or about August 1, 2015, Evan first learned Allen fraudulently concealed breaching his fiduciary duties owed to Evan in 2001 and 2005 when Allen refused to pay or provide information.

52. Allen engaged in a series of affirmative acts and representations with the intent of preventing Evan from timely discovering his cause of action against him including:

- a. Falsely stating to Evan that he was holding the proceeds of Evan's Ownership Interest;
- b. Falsely stating to Evan that he was depositing the proceeds of Evan's Ownership Interest in a tax shelter or trust;

- c. Refusing to give Evan any information as to the disposition of the proceeds of Evan's Ownership Interest;
- d. Creating forged documents with the assistance of counsel in 2015 to prevent Evan from learning details regarding the disposition of the sale proceeds; and
- e. Directing RSM McGladrey and DLA Piper to withhold documents regarding the sale of Evan's Ownership Interest from Evan through 2015.

53. Evan was lulled into believing Allen did not steal the proceeds of the sale of the Family Business of which he was a member and instead was holding them for his benefit by lying to him and withholding information.

54. Evan detrimentally relied on Allen's string of lies and concealment by waiting to pursue payment of his sale proceeds until 2015 after the statute of limitations would have expired but for the fraudulent concealment.

55. At all times relevant to this complaint, Allen owed Evan fiduciary duties as the majority owner of MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC of which Evan owned 20% to inform Evan of the terms of the sale of the entities and to distribute the proceeds of the sale to Evan.

56. Allen breached his fiduciary duties of candor and loyalty to Evan by, among other things:

- a. Not distributing any portion of the proceeds of the sale of MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM

Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC or their assets to Evan;

- b. Not disclosing the terms of the sale of MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC to Evan;
- c. Creating forged documents with the assistance of counsel in 2015 to prevent Evan from learning details regarding the disposition of the sale proceeds;
- d. Withholding information regarding disposition proceeds of the sale of MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC from Evan; and
- e. Taking Evan's 20% share of the proceeds of the sale of MCM Investments of Ohio LLC, MCM Investments of Indiana LLC, MCM Investments of Delaware LLC, MCM Investments of New Jersey LLC, MCM Investments of Chicago LLC, Lakeview Associates III, and MCM Hotels, LLC for himself.

57. Allen's breaches were ongoing from the time of the sale through 2015 because he continued to take affirmative actions detailed in paragraph 52 above to deceive Evan into believing Allen was holding the sale proceeds for him.

58. As a direct and proximate result of Allen's breach, Evan has lost his Ownership Interests in the Family Business valued at over \$20,000,000.

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that this Court enter an order against Defendant, ALLEN MUSIKANTOW, in his favor awarding him compensatory damages in an amount in excess of \$20,000,000, award him punitive damages in excess of \$60,000,000 reasonable attorneys' fees, costs, prejudgment interest, and for any and all other relief that this Court deems necessary and appropriate under the circumstances.

**COUNT IV**  
**(Promissory Estoppel)**  
***Alleged in the Alternative to Counts I and II***

59. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 and 18 through 46 of this First Amended Verified Complaint as Paragraph 59 of Count IV of this First Amended Verified Complaint as though fully set forth herein.

60. Allen promised Evan that he would pay Evan the proceeds of his Ownership Interests on demand.

61. Allen should have reasonably expected his son Evan to rely on the promise that he would hold and then pay Evan the proceeds the sale of his Ownership Interests.

62. In reliance upon that promise, Evan devoted significant time, skill, money, and expertise to assisting his father in the Family Business, and did not pursue any legal action against him for stealing the proceeds of his Ownership Interests until 2016.

63. Injustice can only be avoided by enforcing the promise to award Evan his full Ownership Interests, or the full value thereof.

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that this Court enter an order against Defendant, ALLEN MUSIKANTOW, in his favor awarding him

compensatory damages in an amount in excess of \$20,000,000, and award him costs, prejudgment interest, and for any and all other relief that this Court deems necessary and appropriate under the circumstances.

**COUNT V**  
**(Unjust Enrichment)**  
*Alleged in the Alternative to Counts I, II, III, & IV*

64. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 and 18 through 46 of this First Amended Verified Complaint as Paragraph 64 of Count V of this First Amended Verified Complaint as though fully set forth herein.

65. Evan entrusted his father Allen to hold his Ownership Interests in the Family Business — representing approximately 100 Applebee’s Restaurants, hotels, and Chicago prime real estate, as described in Paragraphs 12 and 13 — until Evan had a financial need, and to shield those Ownership Interests (or any proceeds from the sale thereof) from taxation and creditors.

66. Allen would be unjustly enriched if he were permitted to retain any of Evan’s Ownership Interests in violation of his fiduciary obligations or contrary to his promises.

67. Allen’s unjust enrichment has been to the detriment of Evan.

68. Evan did not gratuitously give Allen his Ownership Interests valued at approximately \$20,000,000.

69. Allen continues to refuse to remit payment for the full amount owed to Evan.

70. Allen’s retention of the funds after Evan’s demand for payment which is properly due and owing violates fundamental principles of justice, equity, and good conscience.

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that the Court enter judgment against Defendant, ALLEN MUSIKANTOW, in his favor; award him

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compensatory damages in an amount in excess of \$20,000,000, and grant any and all further relief that the Court deems to be necessary or appropriate under the circumstances.

**COUNT VI**  
**(Respondent in Discovery- David Glickstein)**

71. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 35 of this Verified Complaint as Paragraph 71 of Count VI of this Verified Complaint as though fully set forth herein.

72. David Glickstein has information essential information essential to the determination of who should properly be named as additional defendants in this action.

73. 735 ILCS 5/2-402 provides in pertinent part:

“The plaintiff in any civil action may designate as respondents in discovery in his or her pleading those individuals or other entities, other than the named defendants, believed by the plaintiff to have information essential to the determination of who should properly be named as additional defendants in the action.

Persons or entities so named as respondents in discovery shall be required to respond to discovery by the plaintiff in the same manner as are defendants and may, on motion of the plaintiff, be added as defendants if the evidence discloses the existence of probable cause for such action.

A person or entity named a respondent in discovery may upon his or her own motion be made a defendant in the action, in which case the provisions of this Section are no longer applicable to that person.”

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that the Court order Respondent in Discovery DAVID GLICKSTEIN to answer the attached summons for discovery.

**COUNT VII**  
**(Respondent in Discovery- Peter Loughman)**

74. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34 of this Verified Complaint as Paragraph 74 of Count VII of this Verified Complaint as though fully set forth herein.

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75. Peter Loughman has information essential information essential to the determination of who should properly be named as additional defendants in this action.

76. 735 ILCS 5/2-402 provides in pertinent part:

“The plaintiff in any civil action may designate as respondents in discovery in his or her pleading those individuals or other entities, other than the named defendants, believed by the plaintiff to have information essential to the determination of who should properly be named as additional defendants in the action.

Persons or entities so named as respondents in discovery shall be required to respond to discovery by the plaintiff in the same manner as are defendants and may, on motion of the plaintiff, be added as defendants if the evidence discloses the existence of probable cause for such action.

A person or entity named a respondent in discovery may upon his or her own motion be made a defendant in the action, in which case the provisions of this Section are no longer applicable to that person.”

WHEREFORE, Plaintiff, EVAN MUSIKANTOW, respectfully requests that the Court

order Respondent in Discovery PETER LOUGHMAN to answer the attached summons for discovery.

Respectfully submitted,  
**EVAN MUSIKANTOW,**  
Plaintiff

By: /s/Alexander N. Loftus  
One of His Attorneys

Alexander Loftus, Esq.  
STOLTMANN LAW OFFICES, P.C.  
10 S. LaSalle, 35th Floor  
Chicago, Illinois 60603  
T: 312.332.4200  
C: 312.772.5396  
alex@stoltlaw.com  
Firm No. 43671

Dated: April 7, 2017

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**VERIFICATION**

Under penalties as provided by law pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, the undersigned hereby certifies that the statements set forth in the VERIFIED FIRST AMENDED COMPLAINT are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

/s/Evan Musikantow  
Evan Musikantow

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# Law DIVISION

## Litigant List

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### Plaintiffs

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Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
MUSIKANTOW EVAN			0000	

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Total Plaintiffs: 1

### Defendants

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Defendant Name	Defendant Address	State	Unit #	Service By
GLICKSTEIN DAVID	203 N LASALLE	IL	0000	
LOUGHMAN PETER	155 N MICHIGAN	IL	0000	
MUSIKANTOW ALLEN			0000	

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Total Defendants: 3