

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D16725
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_____AD3d_____

Argued - October 1, 2007

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2007-02516

DECISION & ORDER

Murray Breidbart, et al., appellants, v
Melvin L. Wiesenthal, et al., respondents.

(Index No. 6038/02)

Marshal G. Kaplan, Brooklyn, N.Y. (Michael C. Marcus of counsel), for appellants.

Cullen and Dykman, LLP, New York, N.Y. (Cynthia Boyer Okrent of counsel), for respondents Samuel Goldstein, Marilyn Zuckerman, Barbara Claman, Brooklawn Associates, Sherman Associates, Britegold Realty Co., Inc., Hanruth Realty Corp., Franclen Realty Co., Inc., Marbob Realty Corp., Albob Realty Corp., Britegold Associates, Hanruth Associates, Franclen Associates, Marbob Associates, and Albob Associates.

Robert Shenkman, New York, N.Y., for respondents Frances Levenstein and Cornell Holding Corp.

In an action, inter alia, to compel partnership accountings and a distribution of partnership assets, the plaintiffs appeal from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated February 27, 2007, which granted the motion of the defendants Samuel Goldstein, Marilyn Zuckerman, Barbara Claman, Brooklawn Associates, Sherman Associates, Britegold Realty Co., Inc., Hanruth Realty Corp., Franclen Realty Co., Inc., Marbob Realty Corp., Albob Realty Corp., Britegold Associates, Hanruth Associates, Franclen Associates, Marbob Associates, and Albob Associates to compel the plaintiffs to exercise their option pursuant to Partnership Law § 73 to elect to take the value of their interest in the dissolved partnerships either with interest or, in lieu of interest, the profits attributable to the use of their rights in the property of

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the dissolved partnerships, and directed the plaintiffs to exercise their option by April 10, 2007.

ORDERED that the order is modified, on the law and as a matter of discretion, by deleting the provision thereof directing the plaintiffs to exercise their option pursuant to Partnership Law § 73, by April 10, 2007; as so modified, the order is affirmed, without costs or disbursements, and the plaintiffs' time to exercise their option pursuant to Partnership Law § 73 is extended until 30 days after determination of the value of the plaintiffs' interests in the dissolved partnerships as of April 12, 2000 (*see Breidbart v Wiesenthal*, _____AD3d_____ [Appellate Division Docket Nos. 2006-10207, 2006-11228 [decided herewith]]).

The order appealed from implements the provisions of Partnership Law § 73 which are applicable to the plaintiffs (*see Briedbart v Wiesenthal*, 10 AD3d 346). However, the election should be made after the value of the plaintiffs' interests as of April 12, 2000, is determined, when the plaintiffs can ascertain whether the interest on that value is in excess of the profits to which they are entitled pursuant to Partnership Law § 73.

MILLER, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court