

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

D33652
O/kmb

_____AD3d_____

Argued - December 20, 2011

REINALDO E. RIVERA, J.P.
SHERI S. ROMAN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-02501

DECISION & ORDER

Man Choi Chiu, et al., respondents, v
Winston Chiu, appellant (and another title).

(Index No. 21905/07)

Schlam Stone & Dolan, LLP, New York, N.Y. (Michael C. Marcus of counsel;
Jeffrey M. Eilender, Jonathan Mazer, and Samuel L. Butt on the brief), for appellant.

Warshaw Burstein Cohen Schlesinger & Kuh, LLP, New York, N.Y. (Bruce H.
Wiener of counsel), for respondents.

In an action, inter alia, for a judgment declaring the parties' interests in a certain limited liability company, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Strauss, J.), entered February 2, 2011, as denied that branch of his motion which was for summary judgment declaring that his interest in the limited liability company is at least 25%.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In this action involving a dispute as to the ownership of a certain limited liability company (hereinafter the LLC), the first cause of action requested a declaration as to the precise extent of the defendant's ownership interest in the LLC. In support of that branch of his motion which is at issue on this appeal, the defendant did not request a declaration as to the precise amount of his interest in the LLC. Instead, the defendant sought summary judgment declaring that he held at least a 25% interest in the LLC. Since the relief requested would not conclusively dispose of the merits of the first cause of action, or any part of that cause of action, that branch of the defendant's

February 28, 2012

Page 1.

MAN CHOI CHIU v CHIU

motion which is at issue on this appeal was properly denied (*see* CPLR 3212[e]; *B.Y., M.D., P.C. v Government Empls. Ins. Co.*, 26 Misc 3d 95, 96; *see also* 6B Carmody-Wait 2d § 39:173).

In light of our determination, we need not consider the parties' remaining contentions.

RIVERA, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court