

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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CAMPUS SQUARE LLC and  
MCGUIRE CAMPUS SQUARE, LLC,

Plaintiffs,

Decision

Index #: 809355/2019

vs.

MHT HOLDINGS, INC., and  
MARK H. TRAMMELL,

Defendants.

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Plaintiffs and Defendants were parties to several agreements relative to a construction project. Plaintiff alleges that Defendants violated the terms of the operating agreement, more specifically Article V, which designated Plaintiff as the managing member of Campus Square, when it, without authority or discussion, entered into a Brownfield Cleanup Program application to amend the Brownfield Cleanup Agreement with the State of New York. By doing so and failing to include Plaintiff on the Amendment, it lost tax credits for the project.

Plaintiff now moves for summary judgment, arguing that as a matter of law, Defendant did not possess the authority to enter into the amendment by virtue of the Operating Agreement which exclusively designated Plaintiff as the managing member that had the exclusive authority to make all decisions with respect to the business and the company. Defendants maintain that other

agreements, including an Ownership Representation Services Agreement and Development Funding Agreement, designated Defendant as the General Partner that possessed the authority to enter into such an amendment.

In moving for summary judgment, the proponent of such relief has the initial burden to 'make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.'" NY Professional Drywall of OC, Inc. v Rivergate Dev., LLC, 137 A.D.3d 1509; Alvarez v Prospect Hosp., 68 N.Y.2d 320. "Only when the movant bears this burden and the nonmoving party fails to demonstrate the existence of any material issue of fact will the motion be properly granted." Staunton v. Brooks, 129 AD3d 1371, 1372, 12 N.Y.S.3d 324 [2015]). On a motion for summary judgment, the facts are viewed in the light most favorable to the nonmovant. Tirse v. Andrews, 128 A.D.3d 1112 (2015). Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1977). The court's function on these motions is limited to "issue finding," not "issue determination." Sillman v. Twentieth Century Fox Film, 3 N.Y.2d 395 (1957). When only issues of law are raised in connection with a motion for summary judgment, the court may and should resolve them without the need for a testimonial hearing. Hindes v. Weisz, 303 A.D.2d 459 (2d Dept. 2003).

The Court finds that there are no questions of fact. Instead, the Courts focus is instead on the clear and unambiguous language of the controlling agreement. Contrary to the Defendant, the controlling document is indeed the Operating Agreement. The operating agreement clearly designates Plaintiff as the Managing Member that had the exclusive right to make decisions, such as making application for tax credits. Defendants, pursuant to the agreement, had no authority to do so. Nathanson v. Nathanson, 20 A.D.3d 403 (2<sup>nd</sup> Dept. 2005). As Plaintiff noted, “because only McGuire Group had the authority to execute the Amendment on Campus Square’s behalf, the Amendment executed by Defendants is null and void.”

Contrary to Defendant’s arguments, Campus Square was not a party to the agreements identified by the Defendant in support of their argument that they did possess the authority to enter into the amendment. The agreements referenced by Defendants do not empower them to make decisions on behalf of Campus Square. Instead, Article V of the Operating Agreement is the applicable agreement that governs the issue Plaintiff raises. If the Court were to accept Defendant’s arguments, it would render this provision pointless. The Court will not construe something that is otherwise straight forward. Because the Plaintiff possessed the exclusive authority to execute such an application and Defendant did not, Plaintiff’s motion must be granted. As such, Plaintiff’s motion for

summary judgment is granted in its entirety. Plaintiff shall submit an Order together with a copy of the transcript of this decision.