

Handler v Salfeld

2008 NY Slip Op 33727(U)

April 14, 2008

Supreme Court, New York County

Docket Number: 106995/05

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

ARNOLD HANDLER,
Plaintiff,

Index No.: 106995/05

- v -

Motion Date: 01/29/08

CHARLES SALFELD; RITA SALFELD and SALFELD-HANDLER as a de facto partnership,
Defendants.

Motion Seq. No.: 01

Motion Cal. No.: _____

The following papers, numbered 1 to 2 were read on this motion and cross motion for summary judgment

FILED
APR 1 8 2008
NYS SUPREME COURT
REVIEWED

PAPERS NUMBERED

Notice of Motion/Affidavits - Exhibits _____

1

Notice of Cross Motion/Answering Affidavits - Exhibits _____

2

Replying Affidavits - Exhibits _____

Sur-Replying Affidavits - Exhibits _____

3

FILED

Cross-Motion: Yes No

JUL - 2 2008

Upon the foregoing papers,

NEW YORK
COUNTY CLERK'S OFFICE

In this action for dissolution of the defendant Salfeld Handler, "a de facto partnership", defendants Charles Salfeld and Rita Salfeld ("the Salfelds") move for summary judgment dismissing the Complaint. Plaintiff cross-moves for a summary judgment declaring, inter alia, that defendant Salfeld-Handler is dissolved. The court must grant defendants' motion for summary judgment dismissing the second through sixth causes of action as well as plaintiff's cross-motion to the extent that it seeks a declaration of dissolution.

In 1988, Defendant Charles Salfeld invested and became a

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

named limited partner of Preakness Partners and G.K. Partners, both Texas limited partner organized for the purpose of purchasing and operating two different garden apartment complexes in or around Houston, Texas.

Defendant Salfeld and his mother-in-law Lillian Handler ("Mrs. Handler") entered into a letter agreement dated June 10, 1988, as to the Preakness Partnership, which was drafted and signed by defendant Salfeld and signed "Accepted and Agreed" by Mrs. Handler. It stated:

Dear Mom:

You and I have together purchased an interest in the partnership known as Preakness Partners. This letter will confirm our agreement that profits, losses and capital contributions and distributions are to be shared or borne between us in the following proportions:

You - 50%

Me - 50%

This agreement will be binding upon our successors and assigns.

Mrs. Handler and defendant Salfeld entered into the identical letter agreement as to G.K. Partners, except that Mrs. Handler's share was "19.636%" and defendant Salfeld's share was 80.364%.

Mrs. Handler died on January 23, 1983. Her last Will and Testament provided for the equal division of her residuary estate between plaintiff Arnold Handler, her son and defendant Salfeld's wife, her daughter.

Plaintiff commenced this action seeking a declaration that the Salfeld-Handler Partnership be dissolved, that the

partnership property (legal ownership of the limited partnership interests in Preakness Partners and G.K. Partners) be distributed, and that an accounting be made for all partnership property. Plaintiff claims that as a residuary legatee to his mother's estate, defendant Salfeld has breached his duty to him to promptly provide documents and other information available to registered limited partners of the Texas partnerships and to promptly provide plaintiff his full share of distributions received from the Texas partnerships.

The court concurs with plaintiff to the extent that Salfeld-Handler Partnership is dissolved, as a matter of law, and that the partners plaintiff son and his sister defendant Rita Salfeld are entitled to an accounting from defendant Salfeld. The court notes that defendant Salfeld-Handler partnership dissolved as of January 23, 1983, the date of Mrs. Handler's death. Partnership Law § 62(4). By operation of law, plaintiff and defendants thereafter created a new partnership at will ("Salfeld-Salfeld-Handler"). Peirez v Queens P.E.P. Associates Corp., 148 AD2d 596 (2d Dept 1989).

However, the court disagrees that either plaintiff or his sister are entitled to be named as limited partners in either Preakness Partners or G.K. Partners, as the only evidence that plaintiff puts forward are the letter agreements that memorialize the Salfeld-Handler Partnership, which was a partnership between

Mrs. Handler and defendant Salfeld only. The record is devoid of any evidence that Mrs. Handler had any partnership agreement with any of the other partners of the Texas partnerships and so neither she nor her successors are entitled to be named as partners in the Texas partnerships themselves.¹

There is no dispute in the record that each partner of the Salfeld-Salfeld-Handler Partnership filed United States and New York State tax returns reflecting that plaintiff holds a interest in Salfeld-Salfeld-Handler Partnership comprised of 25% of defendant Salfeld's interest in the Preakness Partnership and 9.818% of defendant Salfeld's interest in G.K. Partners. Thus, such returns circumstantially prove the terms of the new oral partnership agreement. Peirez, 598.

Under Partnership Law § 62(1)(b), plaintiff is entitled to dissolution of Salfeld-Salfeld-Handler Partnership. That notwithstanding, "a court of equity will not intervene to vindicate a partner's right to an accounting in the absence of a showing that a demand for one was made and rejected by the partner in possession of the books, records, profits or other assets of the partnership." Kaufman v Cohen, 307 AD2d 113, 124

¹Even assuming arguendo that Mrs. Handler was a named partner in the Texas partnerships, plaintiff Handler would not succeed to any such interest since there is no written agreement from the Texas partners that plaintiff would succeed to Mrs. Handler's interest upon her death, and any oral agreement to that effect would violate the Statute of Frauds. Peirez, 597.

(1st Dept 2003). While plaintiff has a right to an accounting upon dissolution of the Salfeld-Salfeld-Handler Partnership, there is no proof that he demanded an accounting from the new partnership, but merely that he demanded an accounting for the Handler-Salfeld Partnership, which was dissolved as a matter of law upon Mrs. Handler's death, and from the Texas partnerships, of which he is not a partner.

The court has considered plaintiff's cause of action pursuant to Partnership Law § 63 and rejects it as unfounded. The court has also examined plaintiff's claims to compel distribution of property of Salfeld-Holder, for a trust and/or for a constructive trust on such partnership property and found them likewise to be unwarranted.

Accordingly, it is hereby

ORDERED and ADJUDGED that the cross-motion of plaintiff for summary judgment is GRANTED to the extent that the court declares that defendant Salfeld-Salfeld-Handler, sued here as Salfeld-Handler, is declared dissolved; and it is further

ORDERED that motion of defendants to DISMISS the remaining causes of action is GRANTED; and it is further

ORDERED that the Clerk enter judgment as aforesaid. his is the decision and order of the court.

Dated: April 14, 2008

ENTER:

FILED

JUL - 2 2008
NEW YORK
COUNTY CLERK'S OFFICE

[Signature]
DEBRA A. JAMES J.S.C.
J.S.C.

[Signature]
CLERK