

**Tawil v Spitzer**

2014 NY Slip Op 32623(U)

September 29, 2014

Sup Ct, New York County

Docket Number: 652720/11

Judge: Jeffrey K. Oing

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL PART 48

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SAUL TAWIL, DAVID TAWIL, VICTOR TAWIL,  
ANEIL LIPP, LLC, JACK FRANCO, SONJA  
CABASSO, ALBERT MALEH, MARK MANELA,  
EZRA I. SHEHEBAR, GABRIEL SHEHEBAR,  
JACKSON GROUP LLC, HAROLD JARNICKI,  
MICHAEL GAD and BERGMAN FAMILY LP,  
individually and derivatively on  
behalf of Nashville Properties, LLC,

Plaintiffs,

-against-

ELIOT SPITZER, MICHAEL STEINBERG,  
E&S DEVELOPMENT AND PROPERTIES LLC,  
NASHVILLE PROPERTIES LLC, ABRAHAM  
POZNANSKI, SOVA MANAGEMENT, LLC,  
ARMAND LASKY, 401 CHURCH STREET LLC,  
AEL CHURCH STREET, INC. and JOHN  
DOES A through C,

Defendants,

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**Mtn Seq. No. 007**

**DECISION AND ORDER**

**JEFFREY K. OING, J. :**

Plaintiffs move, pursuant to CPLR 3212, for partial summary  
judgment on the following causes of action:

**First Cause of Action**

a declaration against defendants, Nashville Properties  
LLC ("Nashville"), Abraham Poznanski ("Poznanski"),  
Sova Management, LLC ("Sova"), Eliot Spitzer  
("Spitzer"), Michael Steinberg ("Steinberg") and E&S  
Development and Properties LLC ("E&S"), that  
plaintiffs' continue to hold and maintain their  
membership in Nashville, that Poznanski and Sova did  
not obtain a security interest or membership interest  
in plaintiffs' membership interest in Nashville, and  
that any purported transfer to Poznanski and Sova  
should be set aside

### **Second Cause of Action**

a declaration against defendants Nashville, Spitzer, Steinberg, E&S, Sova, Poznanski, 401 Church Street LLC ("Church Street"), AEL Church Street, Inc. ("AEL") and Armand Lasky ("Lasky") that the transfers of Nashville's membership interest in Church Street, to Sova and Poznanski were void and should be set aside

### **Third, Fourth & Fifth Causes of Action**

a claim against Nashville, Spitzer, Steinberg, E&S, Sova and Poznanski that the transfers of Nashville's membership interest in Church Street to Sova and Poznanski violated Debtor Creditor Law §§ 273, 274, and 275

### **Fourteenth Cause of Action**

a claim against Spitzer, Steinberg, E&S and Poznanski for breach of fiduciary duty; and 17) a declaration that Spitzer, Steinberg and Poznanski are no longer Nashville's managers

Defendants, Poznanski and Sova, cross-move for partial summary judgment dismissing these claims against them.

### **Discussion**

Familiarity with the underlying facts is presumed. In support of plaintiffs' motion, plaintiff Saul Tawil makes the following statements in his affidavit with regard to the disputed transfers:

9. We have now learned that in October 2007 Spitzer and Steinberg borrowed \$3 million from Sova in the name of Nashville, that the loan proceeds were paid to defendant, E&S Development Properties LLC ("E&S") (Exhibit M), a management company owned and controlled by Spitzer and Steinberg, and that such loan proceeds were never used for the benefit of or paid to

Nashville. Nevertheless, as security for this loan, Spitzer and Steinberg, without informing Plaintiffs or obtaining our authorization, transferred to Sova, Nashville's membership interest in Church Street and all distributions that the Plaintiffs were entitled to receive.

10. Thereafter, when the loan went into default, Sova took over Nashville's entire interest in Church Street, leaving Nashville insolvent and without assets and income. Neither Plaintiffs nor Nashville received any consideration for such transfer.

11. Additionally, under the loan agreement, at the time the loan was made, Poznanski became co-manager of Nashville with a veto power over all of Nashville's expenditures except for the loan proceeds, further underscoring that the loan proceeds were not to be used by or for Nashville.

(Tawil 6/25/14 Aff. [emphasis added]). Defendant Spitzer, however, makes the following statement in his affidavit concerning the disputed transaction:

13. Indeed, notwithstanding the fact that under the terms of Nashville's Operating Agreement, I was authorized to enter into this arrangement with Sova, I nonetheless conferred with Nashville's members and advised them about the specifics of the arrangement with Sova. Indeed, Nashville's members authorized me on behalf of Nashville, to enter into the aforementioned financing arrangement with Sova and secure said financing with Nashville's members' 66% interest in Nashville and its property. As such, I entered into the aforementioned financing arrangement with Sova.

(Spitzer 9/2014 Aff. [emphasis added]). Under these circumstances, a clear factual dispute exists with regard to the underlying transaction. Additionally, given the allegations in the second amended complaint against defendants Sova and

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Poznanski, and the factual disputes herein, they are indispensable parties because they purportedly hold a 49% membership interest in Nashville which plaintiffs seek to recover in this action.

Accordingly, it is

ORDERED that plaintiffs' motion for partial summary judgment is denied; and it is further

ORDERED that defendants' cross-motion for partial summary judgment is denied.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 9/29/14

  
HON. JEFFREY K. OING, J.S.C.

**JEFFREY K. OING**  
J.S.C.