

Sterling Natl. Bank v Lenar Constr. LLC
2014 NY Slip Op 34005(U)
May 6, 2014
Supreme Court, Rockland County
Docket Number: 030950/2014 E
Judge: Jr., Victor J. Alfieri
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SUPREME COURT : STATE OF NEW YORK
COUNTY OF ROCKLAND

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STERLING NATIONAL BANK f/k/a PROVIDENT
BANK,

Petitioner,

To commence the statutory time period
for appeals as of right (CPLR 5513(a)),
you are advised to serve a copy of this
order, with notice of entry, upon all
parties.

-against-

DECISION & ORDER

LENAR CONSTRUCTION LLC; LEONARD
KAPLAN; ARILD LAUEN,

Index No: 030950/2014 E

Respondents.

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HON. VICTOR J. ALFIERI, JR., A.J.S.C.

In an action entitled Provident Bank v. Leonard Kaplan, et al,
Index No. 030307/2011 E, Petitioner obtained a default judgment
against Leonard Kaplan (hereinafter "Kaplan") and Harbina
Construction Inc. in the amount of \$246,751.79¹ as a result of
Kaplan's default in payments on a Small Business Line of Credit and
Personal Guaranty. Petitioner commenced the within action in an
attempt to enforce its judgment against Kaplan, who has a fifty
percent (50%) membership interest in Lenar Construction LLC, a
limited liability corporation (hereinafter "Lenar LLC").
Specifically, Petitioner moves for an order granting it a charging
order with respect to Kaplan's interest in Lenar LLC and directing
Lenar LLC and Arild Lauen, the other fifty percent (50%) member in
Lenar LLC, to transfer Kaplan's fifty percent ownership interest in
Lenar LLC to Petitioner.² The Court has considered the following
papers:

1. Order to Show Cause, Petition, Affirmation with Exhibits
A through G attached thereto, and Affirmation with
Exhibits A through D attached thereto;
2. Notice of Cross-Motion, Attorney Affirmation with
Exhibits Q attached thereto and Memorandum of Law; and
3. Affirmation in Opposition to Cross-Motion with Exhibits

¹ Provident Bank's sole cause of action against Linda Kaplan is still
pending.

² As part of the charging order that Petitioner seeks, Petitioner
requests that the order direct that any payments to be made to Kaplan
representing proceeds from the sale of the Cambridge Heights property owned by
Lenar LLC be made to Petitioner.

- A through D attached thereto;
4. Reply Attorney Affirmation and Exhibit A attached thereto; and
 5. Miscellaneous correspondence.

With respect to the ability of creditors to enforce and satisfy judgments by levying upon a judgment debtor's membership interest in a limited liability company, Section 607 of Limited Liability Company Law provides as follows:

- (a) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor only has the rights of an assignee of the membership interest....
- (b) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

Limited Liability Co. Law §607.

In the event that the Court "charges" the membership interest of the member (i.e., judgment debtor) with payment of the unsatisfied amount of the judgment with interest, the plain language of Section 607(a) makes clear that "the judgment creditor only has the rights of an assignee of the membership interest." As provided in Section 603(a)(3), "the only effect of an assignment of a membership interest is to entitle the assignee to receive, to the extent assigned, the distributions and allocations of profits and losses to which the assignor [judgment debtor] would be entitled." The assignment does not entitle the assignee to participate in the management and affairs of the limited liability company." Nor does it give the judgment creditor of a member any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company. See, Limited Liability Co. Law §607(b). In other words, "[a] plain reading of Sections 603(a) and 607 of the Limited Liability Company Law make it clear that, at best, a creditor, such as the plaintiff, may only obtain an interest in a member's share of the profits and losses of a limited liability company, not the membership itself." Born to Build, LLC v. Saleh, 2014 N.Y. Misc. LEXIS 1706; 2014 N.Y.

Slip Op 50594(U) (Nassau Cnty. Supr. Ct. 2014).

Applied here, although Petitioner is entitled to a charging order, such charging order must be limited to Kaplan's share, i.e., fifty percent (50%) ownership interest, of the profits and losses of Lenar LLC. Petitioner, as judgment creditor, is not entitled to levy against the property owned by Lenar LLC. Although Petitioner may be entitled to the proceeds from the sale of the Cambridge Heights property, such entitlement will only occur if, after all is said and done, the sale proceeds become part of the profits and/or losses of the LLC. However, the law is clear that Petitioner is not entitled to obtain the membership interest itself. Id.

With respect to that portion of the Respondents' cross-motion to quash the subpoenas duces tecum, CPLR R5223, which governs disclosure in post-judgment enforcement proceedings, provides that "the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment...." (Emphasis added). Here, Respondents claim that the subpoenas served on them should be quashed because they seek information related to Kaplan's non-economic rights in Lenar LLC and/or its business opportunities, information which they are not entitled. This Court agrees. The subpoenas duces tecum served by Petitioners only seek information with regard to the sale of the Cambridge Heights property owned by Lenar LLC. As set forth above, Petitioner has no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company. Since the Cambridge Heights development is the property of Lenar LLC, the only information that would be relevant to the satisfaction of the judgment with respect to the sale of that property is in terms of its effect on the profits and losses of Lenar LLC. See, e.g., Lorret v. Kosachuk, 2013 N.Y.Misc. LEXIS 5168; 2013 NY Slip Op 32844(U) (New York Cnty. Supr. Ct. 2013).

Based on the foregoing, it is hereby

ORDERED that Petitioner's Petition to charge Leonard Kaplan's membership interest in Lenar LLC is granted to the extent that Petitioner shall only be entitled, as an assignee, to Kaplan's 50% membership interest in any profits made by Lenar LLC; and it is further

ORDERED that Petitioner's Petition to transfer Leonard Kaplan's 50% interest in Lenar LLC to Petitioner is denied; and it is further

ORDERED that Respondents' cross-motion to dismiss the Petition is denied; and it is further

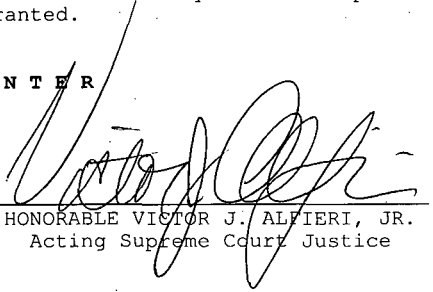
ORDERED that Respondents' cross-motion to limit the charging order is granted to the extent set forth above; and it is further

ORDERED that Respondents' cross-motion to vacate any property executions on property owned by Lenar LLC is granted; and it is further

ORDERED that Respondents' cross-motion to quash the subpoenas duces tecum served on them is granted.

E N T E R

Dated: May 6 2014
New City, New York



HONORABLE VICTOR J. ALFIERI, JR.
Acting Supreme Court Justice

TO: Counsel (via NYSCEF)