

**Leasing Innovations, Inc. v R&D Maidman Family
Ltd. Partnership**

2016 NY Slip Op 31330(U)

July 11, 2016

Supreme Court, New York County

Docket Number: 161309/2015

Judge: Geoffrey D. Wright

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

-----x
LEASING INNOVATIONS, INC.

Petitioner,

Index # 161309/2015

-against-

DECISION/ORDER

R&D MAIDMAN FAMILY LIMITED
PARTNERSHIP, WM. MAIDMAN FAMILY
LIMITED PARTNERSHIP and DAVID
A. MAIDMAN,

Respondents.

Present:
Hon. Geoffrey D. Wright

-----x Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR § 2219 (A), of the papers considered in the review of this Motion/Order for Dismiss

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed.....	___ 1 ___
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits.....	___ 2 ___
Replying Affidavits.....	___ 3 ___
Exhibits.....	_____
Memoranda.....	___ - ___
Cross-Motion	_____

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner Leasing Innovations, Inc. is a judgment creditor of respondent David A. Maidman (Maidman), pursuant to a judgment of the Supreme Court, Monroe County, dated January 13, 2015, in the amount of \$137,925.70.

The petition seeks an order, pursuant to CPLR 5225 (b),¹ directing respondents Maidman,

¹ CPLR 5225 (b), captioned "Payment or delivery of property of judgment debtor," provides, as pertinent: "[p]roperty not in the possession of judgment debtor. Upon a special

R & D Maidman Family Limited Partnership (Maidman LP), and Wm. Maidman Family Limited Partnership (Wm Maidman LP, jointly, the Maidman Family Partnerships, to execute and deliver to Joseph Fucito, the Sheriff, New York County, all necessary documents to deliver all of Maidman's interest as a limited partner in the Maidman Family Partnerships, and to recognize any transferee of such interests as a limited partner, or, alternatively, to authorize petitioner's attorney to execute and deliver all necessary documents to accomplish the foregoing in the event that any respondent fails so to do.

In motion sequence No. 002, the Maidman Family Partnerships move to dismiss the petition, pursuant to CPLR 404 (a), based on the terms of the respective agreements of the Maidman Family Partnerships, and, alternatively, pursuant to CPLR 409 (b).

CPLR 404 (a) allows a respondent in a special proceeding to raise an objection in point of law.² CPLR 409 (b) provides for a summary determination as follows:

“[t]he court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment.”

Respondents contend that, pursuant to section 111 of the Partnership Law, and the express terms of the limited partnerships, the general partner and all non-transferring limited partners have both a statutory and a contractual right to redeem or purchase Maidman's

proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest . . . the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor . . . to a designated sheriff.”

² Captioned, "Objections in point of law," CPLR 404 (a) provides: "[t]he respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court may permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service of the order with notice of entry; and the petitioner may re-notice the matter for hearing upon two days' notice, or the respondent may re-notice the matter for hearing upon service of the answer upon seven days' notice.”

ownership interests in the limited partnerships at their “allocable pro-rata book value.” They argue that such right is superior to that of the judgment creditor (Hazin affirmation, ¶ 2), on the basis of paragraph 18 of the limited partnership agreements, captioned “Assignability,” which provides in subdivision (g), as pertinent:

“[i]n case any transfer shall be made without permission of the Managing General Partner . . . the non-transferring Limited Partners may require the sale of such interest to them at the allocable pro-rata book value of the Partnership’s assets (including depreciation taken) less the pro-rata allocable liabilities of the Partnership first [sic] less a 20% discount for limited marketability and then less a further 20% discount because of the minority of the interest. Such options shall be exercised within ninety (90) days of written notice of the transfer by registered mail, return receipt requested, to all Partners and the Partnership. If not so exercised, the Partnership shall have a further sixty (60) days option at said price”

(Hazin affirmation, exhibits C and D).

Respondents state that the “allocable pro-rata book value” of Maidman’s limited partnership interests is negative. Thus, respondents assert that the Maidman Family Partnerships and other family members are entitled to buy back any limited partnership interests sold by the sheriff at auction at no cost to them. The Maidman Family Partnerships assert that this allegedly superior right entitles them to dismissal of this special proceeding. On this basis, respondents seek, alternatively, either to dismiss the petition pursuant to CPLR 404 (a), or make a summary determination pursuant to CPLR 409 (b).

Section 111 of the Partnership Law, captioned “Rights of creditors of limited partner,” provides:

“(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which

the circumstances of the case may require. (2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property. (3) The remedies conferred by subdivision one of this section shall not be deemed exclusive of others which may exist . . .”

Similarly, section 121-703 of the Revised Limited Partnership Act, captioned, “Rights of Creditor,” provides:

“[o]n application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.”

The motion is denied and the petition is granted in part and otherwise denied.

Pursuant to section 111 of the Partnership Law and section 121-703 of the Revised Limited Partnership Act, petitioner is entitled to a charging order directing the Maidman Family Partnerships to pay the judgment out of Maidman’s limited partnership interest. That interest is only the distributions of allocated profits to which Maidman, as a limited partner, is entitled. This charging order does not confer upon the judgment creditor “any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the partnership itself” (*Darvesh Holdings, LLC v Brightwater Towers Associates, L.P.*, 2006 WL 6927788 [Sup Ct, NY County 2006] quoting Rich, Practice Commentaries, McKinney’s Cons Laws of NY, Book 38, at 311).

According to the Hazin reply affirmation, the Maidman Family Partnerships made distributions in 2014, but not in 2015, and that Maidman may not receive distributions thereafter because the general partner is empowered to accumulate profits for capital costs or additional investments (Hazin reply affirmation, ¶¶ 6-8). Thus, the charging order will be entirely ineffectual for so long as no distributions are made.

Petitioner is also entitled to an order directing the Maidman Family Partnerships to deliver the documents required to transfer Maidman's limited partnership interest. Petitioner is not, however, entitled to an order directing the Maidman Family Partnerships to recognize any transferee as a limited partner. The terms of those agreements restricting ownership to family members are enforceable, but the terms authorizing those partnerships to buy back Maidman's interests at no cost, assuming without deciding, that such terms are enforceable, do not empower the partnerships to prevent the sale of Maidman's limited partnership interest. The Maidman Family Partnerships may assert their claimed contractual right to the sheriff. This court expresses no opinion as to the validity or effect of the buy-back provisions. Petitioner has a right to enforce its judgment through a sheriff's sale. This court will not intervene at this stage of the proceedings.

CPLR 5240, captioned, "Modification or protective order; supervision of enforcement," provides, as pertinent: "[t]he court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure." This provision applies to the enforcement of judgments (*see Cook v H. R. H. Constr. Corp.*, 32 AD2d 806, 807 [2d Dept 1969]).

Pursuant to CPLR 5240, and Partnership Law § 111 (1), which authorizes this court to "appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require", the court, on its own motion, directs the entry of a charging order, stays enforcement of that part of the order granting the turnover relief demanded in the petition for 90 days from the date of service of a copy of this order with notice of entry thereof. Upon the expiration of such 90-day period, respondents are directed to turn over the demanded documents to the sheriff.

The court also enjoins the Maidman Family Partnerships from making any payment directly to Maidman in connection with his limited partnership interests while the judgment remains unsatisfied.

Accordingly, it is

ORDERED that the petition of petitioner Leasing Innovations, Inc. is granted, to the


extent of directing that petitioner Leasing Innovations, Inc. is entitled to a charging order, pursuant to Revised Limited Partnership Act 121-703, directing respondents R & D Maidman Family Limited Partnership, and Wm. Maidman Family Limited Partnership to pay out of the respective limited partnership interests of respondent David A. Maidman, all sums to which such limited partner would otherwise be entitled to petitioner Leasing Innovations, Inc., until such time as the judgment entered in Monroe County, dated January 13, 2015, in the amount of \$137,925.70, is fully satisfied, with post-judgment interest; and it is further

ORDERED that respondents R & D Maidman Family Limited Partnership, and Wm. Maidman Family Limited Partnership are directed to execute and deliver to Joseph Fucito, the Sheriff, New York County, all necessary documents to deliver all of Maidman's interest as a limited partner in the Maidman Family Partnerships, with enforcement of the foregoing turnover stayed for 90 days from service of a copy of this order with notice of entry thereof upon respondents; and it is further

ORDERED that respondents R & D Maidman Family Limited Partnership, and Wm. Maidman Family Limited Partnership are enjoined from making any payment of Maidman's limited partnership to Maidman or any entity other than petitioner Leasing Innovations, Inc., for so long as the judgment that is the subject of this proceeding remains unsatisfied; and it is further

ORDERED that the motion of respondents R & D Maidman Family Limited Partnership, Wm. Maidman Family Limited Partnership and David A. Maidman to dismiss the petition, pursuant to CPLR 404 (a), or, alternatively, pursuant to CPLR 409 (b), is denied, with costs and disbursements, as taxed by the Clerk of the Court, upon presentment of an appropriate bill of costs.

Dated: July 11, 2016



GEOFFREY D. WRIGHT
 JUDGE GEOFFREY D. WRIGHT
 Acting Justice of the Supreme Court
 J. S. C.