

Rakosi v Sidney Rubell Co., LLC
2019 NY Slip Op 31616(U)
June 6, 2019
Supreme Court, New York County
Docket Number: 654473/2016
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 654473/2016

MICHAEL RAKOSI, STANLEY SPERBER, LINDA FREEDMAN, SIDNE,

MOTION DATE 02/25/2019

Plaintiffs,

MOTION SEQ. NO. 006

- v -

SIDNEY RUBELL COMPANY, LLC, ELAINE GORLECHEN,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 263, 264, 265, 266, 267, 268, 269, 270

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, it is

The plaintiffs' motion for partial summary judgment on their first cause of action for declaratory judgment is decided as follows:

The plaintiffs, Michael F. Rakosi, Stanley Sperber, and Linda Freedman, individually and as partners in Franklin Holding Co., RSR Holding Co., Belkar Holding Co. and Windshire Apts. (Franklin Holding Co., RSR Holding Co., Belkar Holding Co. and Windshire Apts., together, the Partnerships), bring this action against Sidney Rubell Company, LLC (SRC) and Elaine Gorlechen seeking, among other things, a declaration that the Partnerships are valid partnerships, that the plaintiffs are the majority partners in the Partnerships, and that, as such, that the legal right to control the management and affairs of the Partnerships, entities which hold certain commercial and residential properties throughout Manhattan, New York. The instant motion for partial summary judgement was initially filed under motion sequence 005, but was denied,

without prejudice, as premature in light of the fact that Justice Ramos was granting the defendants' motion to strike the note of issue and allowing an additional deposition to be taken (NYSCEF Doc. Nos. 209, 210). Previously, this court (Ramos, J.) granted the plaintiffs' motion for a preliminary injunction to enjoin SRC from acting as managing agent of the Partnerships and directed SRC to turn over all keys, security codes, books, records and accounts for the properties, and to cease representing that it is the manager of the properties held by the Partnerships (NYSCEF Doc. Nos. 66, 52). The Appellate Division, First Department unanimously affirmed, writing:

The terms of the May, 2009 settlement agreement were sufficiently clear to show that plaintiffs, expressly designated as partners with ownership interests in the real estate partnerships at issue here, acted within their authority by purporting to terminate SRC in July, 2016. We disagree with defendants that Supreme Court's previous determination in *Sperber et al. v Rubell et al.* (Sup Ct, NY County, Feb. 2, 2008, Tolub J., Index No. 109933/05) (Sperber litigation), that these individuals were not, by virtue of inheritance or assignment, partners of two of the real estate entities, disproves the settlement agreement's plain terms; the Sperber litigation predated, and was definitively resolved by the parties' execution of the settlement agreement. Moreover, Supreme Court here observed that, in the Sperber litigation, the sole surviving partner of the real estate partnerships was Sidney Rubell; as such, his agreement with plaintiffs here, and Stanley Rosenbloom, sufficed to vest these individuals with membership interests (*see* Partnership Law § 40[7]).

* * *

Plaintiffs have shown irreparable injury to the extent that the properties continue to be managed by an agent they do not desire. Further, given that defendants have been on notice, since 2009, that, by the settlement agreements' plain terms, their tenure as managing agent could expire as early as May, 2016, and given they do not show why, if their termination by plaintiffs is ultimately deemed valid, they cannot seek management work elsewhere, the balance of equities weighs in plaintiff's favor.

(155 AD 3d 564, 654-65 [citations omitted]).

Nothing produced in discovery following this decision has altered the conclusions reached by this court and affirmed by the Appellate Division. Each of the Partnerships are valid, duly existing partnerships owning partnership property. SRC was properly removed as manager of the the Partnerships by a majority vote of the partners. As in their opposition to the preliminary injunction motion, defendants again rely on certain property deeds and certain Partnership Form K-1's, which list certain defendant-affiliated trusts as partners, for proof that Sidney Rubell transferred his full partnership interest to these trusts. However, as explained by the Appellate Division, "such documents, standing alone, do not prove an express partnership exists," and, in any event, "defendants are judicially estopped from reliance on the K-1s as proof of their LLC's partnership interests, having taken the precise contrary position in the [prior] Litigation" between the parties, in which they, notably, prevailed (*id.*, citing *Baje Realty Corp. v Cutler*, 32 AD3d 307, 310 [1st Dept 2006]). As the Appellate Division previously held, "[t]heir failure to submit **any proof** (emphasis added) of Rubell's or other then-living partners' consent to their LLCs' acquisition of membership interests in the entities further undermines their position here" (*id.*, citing *Rapoport v 55 Perry Co.*, 50 AD2d 54, 57 [1st Dept 1975]).

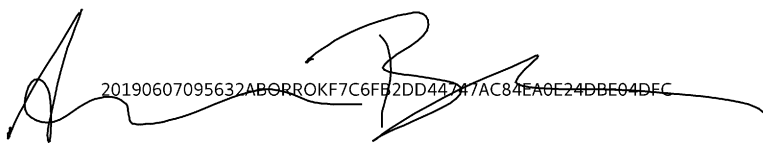
Accordingly, it is

ORDERED that the branch of the plaintiffs' motion that seeks summary judgment in the plaintiffs' favor on the first cause of action of the complaint and a declaratory judgment and permanent injunction with respect to the subject matter of that cause of action is granted to the extent set forth below; and it is further

ADJUDGED and DECLARED that the plaintiffs' termination of Sidney Rubell Company, LLC as manager was valid; and it is further

ORDERED that Sidney Rubell Company, LLC, its agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Sidney Rubell Company, LLC, are enjoined and restrained from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of Sidney Rubell Company, LLC, or otherwise, any actions as manager of the Partnership's properties, representing itself as a manager of the Partnership's properties, and/or otherwise taking any actions on behalf of the Partnership's properties unless the Partnerships choose to reengage Sidney Rubell Company, LLC's services; and it is further

ORDERED that the balance of the action is severed and continued.


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6/6/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE