

YMSF Family Partnership LP v Beitel

2022 NY Slip Op 31520(U)

April 26, 2022

Supreme Court, Kings County

Docket Number: Index No. 514791/17

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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YMSF FAMILY PARTNERSHIP LP,

Plaintiff, Decision and order

Index No. 514791/17

- against -

BINYAMIN BEITEL and 5309 18TH AVENUE
BESYATA LLC,

Defendants, April 26, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §2221 seeking to reargue a decision and order dated January 25, 2022. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, during September 2013 the plaintiff and the defendants entered into an operating agreement whereby the plaintiff paid \$800,000 "towards purchase of equity interest" and was given a 49.9% share in an entity called 5309 18th Ave Besatya LLC. The defendant Beitel maintained a 50.1% share of the entity. The plaintiff sought access to the entity's books and records and such request was denied numerous times. This action was brought seeking a declaratory judgement that they are a member of the entity and have all rights of membership. The defendant argued the plaintiff had no membership rights, rather, plaintiff merely effectuated a loan that does not carry any ownership rights. The

defendant asserted the operating agreement was written wherein it appears the plaintiff has an ownership interest as a way to avoid the prohibition against an interest bearing loan prohibited by Jewish law. The court rejected that argument and concluded that the plain language of the operating agreement clearly conferred ownership interests upon the plaintiff and that the court could not consider any subjective opinions about the relationship between the parties that contradicted the clear provisions of the operating agreement.

The defendants have moved seeking reargument asserting the court misapprehended the mechanism utilized to avoid an interest bearing loan, namely a heter-iska and that there are surely questions of fact concerning the existence of a heter-iska and consequently summary judgement should have been denied.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The defendants maintain that a heter-iska is not a document in the specific legal sense but rather it is a form of transaction which transcends documents. Thus, a heter-iska

arrangement can exist even without any document denominated as such as long as the transaction as a whole supports its existence. The defendants maintain that in this case the four documents executed by defendant Beitel clearly raise questions of fact as to the existence of an iska arrangement and a mere loan. The four documents include the operating agreement, a confession of judgement, a guaranty and a buy-back agreement. The defendants maintain that an examination of these four documents, in total, raise questions as to the existence of an iska arrangement which would raise questions of fact whether the plaintiff is an owner of the entity.

An examination of the operating agreement clearly indicates the plaintiff is an owner of the entity and the court has already reached that conclusion. Likewise, the buy-back agreement also states that the plaintiff "is the owner of forty nine and nine tenth percent (49.9%) of the membership interest in 5309 18th Ave Besyata LLC, a New York limited liability company" (see, Buy-Back Agreement, page 1). The entire buy-back agreement is in essence a contract whereby the plaintiff agrees to sell his share of ownership interest to the defendant. In the prior motion the defendant argued that the provisions of the buy-back agreement were satisfied and funds were forwarded to the plaintiff, however, the plaintiff rejected the acceptance of any such funds. Indeed, the defendant's eleventh defense and fourth

counterclaim asserts the plaintiff improperly refused to accept, essentially, the provisions contained within the buy-back agreement. The basis for rejecting that offer must be explored. The defendant's argue the remaining documents, namely the confession of judgement and guaranty both executed by Beitel raise questions of fact whether a loan was contemplated since those documents are almost exclusively associated with loans. However, both the confession of judgement and the guaranty relate to the buy-back agreement further highlighting the need to resolve the plaintiff's rejection of the buy-back's provisions. Thus, there really can be no question of fact the plaintiff maintains an ownership interest in the company. There may be questions whether in addition to an ownership interest the plaintiff also made a loan and the confession of judgement and guaranty refer to such loan. However, the plain language of the operating agreement and the buy-back agreement clearly indicate the plaintiff maintains an ownership interest in the company and the motion seeking reargument in this regard is denied.

However, as noted, there are questions that must be explored concerning the buy-back agreement and the defendant's counterclaim contending the rejection was improper. To the extent the prior opinion did not address this issue or denied any further discovery in this regard, the motion seeking reargument is granted. This counterclaim has merit and the defendant is

entitled to pursue it. Thus, while there are no questions of fact the plaintiff maintains an ownership interest there are questions of fact whether the plaintiff improperly refused to accept the terms of the buy-back agreement. While that determination will not affect ownership, per se, it is vital to understanding the complete relationship between the parties.

So ordered.

ENTER:

DATED: April 26, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC