

Benhar v 5 Star Legal Funding, LLC
2022 NY Slip Op 31789(U)
June 2, 2022
Supreme Court, New York County
Docket Number: Index No. 657390/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MARK BENHAR, MITCHELL HOROWITZ, ALAN PERL,
 JOSEPH PERL, IRENE PERL, ALAN SEFF, JOAN SEFF,
 RICHARD BODIAN,

Plaintiffs,

- v -

5 STAR LEGAL FUNDING, LLC, 5 STAR LEGAL
 FUNDING III GP, LLC, 5 STAR LEGAL FUNDING IV GP,
 LLC, FIVE STAR LEGAL ADVANCES FUND III, L.P., FIVE
 STAR LEGAL ADVANCES FUND IV, L.P., ROBERT
 GENTILI, JAY KOBAK, CHRISTOPHER MOLLIKA,
 JASON MILLER

Defendants.

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INDEX NO. 657390/2020
 MOTION DATE 05/12/2022
 MOTION SEQ. NO. 002

**DECISION + ORDER ON
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49

were read on this motion to VACATE STAY.

Plaintiff seeks an Order (i) substituting a named plaintiff pursuant to CPLR 1021, (ii) amending the caption, (iii) lifting the stay and (iv) directing Defendants to answer the Complaint and respond to Plaintiffs’ discovery demands within thirty days of the Court lifting the stay (NYSCEF 44).

This Court heard oral argument on Defendant’s motion to dismiss on December 14, 2021, after which it entered a decision and order granting the motion in part and denying it in part (NYSCEF 38). The Court also stated that Plaintiffs should serve discovery demands to which Defendants should respond “by the end of January [2022]” (NYSCEF 41 at 33:23-24 [Transcript of Hearing]). On January 5, 2022, however, the parties submitted a joint letter informing the Court that two of the named plaintiffs, Joseph Perl and Joan Seff, had died (NYSCEF 42). The Court

thus stayed this action “until a personal representative for the deceased plaintiffs’ estates is appointed or until a proper substitution is made either by motion or stipulation of the parties” (NYSCEF 43).

Plaintiff now represents that Plaintiff Joseph Perl’s interest in Five Star Legal Advances Fund IV, L.P. (“Fund IV”) was held together with his wife, Plaintiff Irene Perl, and that she shall continue as plaintiff with respect to such interests. Plaintiff further represents that Plaintiff Joan Seff’s interest in Fund IV was held together with her husband, Plaintiff Alan Seff, and that he shall continue as plaintiff with respect to such interests. Additionally, Karen Rubin, in her fiduciary capacity as co-executor of the Estate of Joan Seff, and pursuant to the authorization provided to her pursuant to Article SIXTH of the Last Will and Testament of Joan Ruth Seff, seeks to substitute as plaintiff for Joan Seff in the above-captioned action with respect to Joan Seff’s interest in Five Star Legal Advances Fund III, L.P., and to become a plaintiff with respect to such interests. Defendant takes no position on these representations made by Plaintiff.

Accordingly, based on the foregoing documents and representations, it is

ORDERED that the stay of this action (NYSCEF 43) is vacated; it is further

ORDERED that the Court adheres to and re-confirms its December 14, 2021, decision and order granting in part and denying in part Defendants’ motion to dismiss (Mot. Seq. No. 001) the Amended Complaint (NYSCEF 38); it is further

ORDERED that Defendants shall respond to (i) Plaintiffs’ First Request for Production of Documents, dated December 31, 2021, and (ii) the Amended Complaint, within 30 days of the date that this Decision and Order; it is further

ORDERED that Plaintiffs Joseph Perl and Joan Seff are hereby dismissed as plaintiffs in this action; it is further

ORDERED that Karen Rubin, in her fiduciary capacity as co-executor of the Estate of Joan Seff, deceased, be substituted as plaintiff in the above-entitled action in the place and instead of former plaintiff Joan Seff, without prejudice to any proceedings heretofore had herein; it is further

ORDERED that the caption shall be amended as follows:

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

MARK BENHAR, MITCHELL HOROWITZ,
ALAN PERL, IRENE PERL, ALLAN SEFF,
KAREN RUBIN, as CO-EXECUTOR OF THE ESTATE OF
JOAN SEFF, and RICHARD BODIAN,
individually, and derivatively on behalf of FIVE STAR
LEGAL ADVANCES FUND III, L.P., and
FIVE STAR LEGAL ADVANCES FUND IV, L.P.,

Plaintiffs,

- against -

5 STAR LEGAL FUNDING, LLC,
5 STAR LEGAL FUNDING III GP, LLC,
5 STAR LEGAL FUNDING IV GP, LLC,
ROBERT GENTILI, JAY KOBAK,
CHRISTOPHER MOLLICA, AND JASON MILLER,

Defendants,

And

FIVE STAR LEGAL ADVANCES FUND III, L.P., and
FIVE STAR LEGAL ADVANCES FUND IV, L.P.,

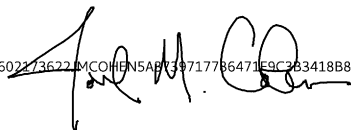
Nominal Defendants.

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It is further ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh)].

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

6/2/2022
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE