

Sternklar v Sternklar-Worenklein

2022 NY Slip Op 32697(U)

August 10, 2022

Supreme Court, New York County

Docket Number: Index No. 651270/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SARAH STERNKLAR,

Plaintiff,

- v -

CINDY STERNKLAR-WORENKLEIN, MARK
STERNKLAR, CISAM, LLC, STERNKLAR FAMILY
FOUNDATION, INC.,

Defendant.

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INDEX NO. 651270/2021

MOTION DATE 06/17/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents and for the reasons set forth on the record (8.9.22), the motion to amend the amended complaint is granted. Leave to amend the pleadings shall be freely granted (*Sharon Ava & Co., Inc., v Olympic Tower Assocs.*, 259 AD2d 315 [1st Dept 1999]; CPLR 3025[b]).

As alleged, the concealment of Cindy Sternklar-Worenklein’s assignment of her interest in CISAM, LLC (**CISAM**) led Sarah Sternklar to withdraw her interest in CISAM despite being CISAM’s sole remaining Member. This she only learned in May, 2022 (NYSCEF Doc. No. 92, ¶ 4), through discovery and after she had sought a declaration. Her motion is therefore neither frivolous nor are her claims utterly devoid of merit or palpably improper (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [2010]).

Simply put, as alleged, Sarah Sternklar did not know that her sister Cindy Sternklar-Worenklein had assigned her interest in CISAM to an entity named SAES Realty Group LLC (**SAES**) in late 2020. She alleges that this was in violation of Section 8 of the Operating Agreement of CISAM, LLC (the **Operating Agreement**; NYSCEF Doc. No. 86) which prohibited assignments.

Without knowing about Cindy Sternklar-Worenklein's prior clandestine assignment, Sarah Sternklar sent a Notice of Withdrawal from CISAM, LLC because she was tired of squabbling with Cindy Sternklar-Worenklein and her brother Mark Sternklar (the **Withdrawal Notice**; NYSCEF Doc. No. 85). She alleges that at the time that she sent her Withdrawal Notice, she was the sole member of CISAM.

Previously, in 2009, Mark Sternklar had assigned his interest in CISAM to a trust. This assignment also violated Section 8 of the Operating Agreement. As relevant, Section 13.4 of the Operating Agreement prohibited amendments to the Operating Agreement without the written consent of the 2/3 of the percentage of the membership interests held by the Members. In October 2018, Cindy Sternklar-Worenklein and Mark Sternklar (who had violated the Operating Agreement nine years earlier by assigning his interest to a trust) executed a First Amendment to the Operating Agreement of CISAM, LLC, Dated February 1996 (the **First Amendment**; NYSCEF Doc. No. 89) which they argue retroactively authorized Mark Sternklar's assignment. Sarah Sternklar has maintained from the beginning of this lawsuit that this First Amendment was a nullity because either Mark Sternklar was not a Member (and only held an economic interest) or he was an interested party such that his consent to the First Amendment can not count towards the 2/3 written consent requirement (NYSCEF Doc. No. 26, ¶¶ 50-57). Sarah Sternklar did not

sign it and she alleges that Cindy Sternklar-Worenklein could not give her written consent by herself (NYSCEF Doc. No. 111).

Additionally, the court notes that Section 10 of the Operating Agreement provides for the consent of the admission of additional members. Unlike the provision for amendments to the Operating Agreement where written consent is required, consent for the admission of an additional member need not be in writing. The defendants argue that Sarah Sternklar has not previously (*i.e.*, before this litigation) taken the position that her brother Mark Sternklar or his trust were merely the holders of an economic interest in CISAM and in fact she consented to his assignment and admission based on the course of conduct over many years and certain documents that she signed indicating his interest to third parties. She argues he never was listed on the K-1s as a member and only held an economic interest which entitled him to distributions and that is exactly what he received. This raises certain factual issues not properly adjudicated on this motion.

For completeness, Section 12 of the Operating Agreement provides that the Company shall be dissolved “upon the death, retirement, resignation, expulsion, or bankruptcy of a Member *or the occurrence of any other event which terminates the continued membership of a Member in the Company*, unless the remaining Members, within ninety (90) days after the event or occurrence, unanimously elect to continue the business of the Company pursuant to the terms of this Agreement” (NYSCEF Doc. No. 86, ¶ 12).

If Sarah Sternklar was the only member, as she now alleges, there may well have been an event of dissolution under Section 12 of the Operating Agreement to which there may be no members who can elect to continue the business of CISAM unless Sarah Sternklar is able to rescind her resignation as she seeks to do.¹ On the other hand, if the First Amendment is effective (in which case Cindy Sternklar-Worenklein and Mark Sternklar may be members) or if Mark Sternklar is a Member because Sarah Sternklar and Cindy Sternklar-Worenklein consented to his admission, he may need to elect to continue CISAM to avoid the entity being in dissolution. Lastly, the prior assignments if effective and pursuant to which Mark Sternklar and Cindy Sternklar-Worenklein divested themselves of membership may also well have been events of dissolution under the Operating Agreement.

Given the foregoing, the defendants can not claim prejudice and granting the motion is appropriate so that the record can be adequately developed (*Oil Heat Inst. v RMTS Assocs., LLC*, 4 AD3d 290, 293-94 [1st Dept 2004]).

Accordingly, it is

ORDERED that the motion to amend the amended complaint is granted; and it is further

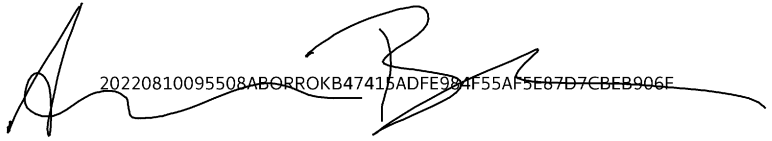
ORDERED that Sarah Sternklar shall file her amended complaint within 10 days of this decision and order; and it is further

¹ The parties debate whether this is feasible but the issue is not fully briefed at this time.
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ORDERED that the parties shall appear for a status conference on **August 18, 2022 at 10:30**

AM; and it is further

ORDERED that the plaintiff shall order a copy of the transcript (8.9.22) and upload a copy to NYSCEF.



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8/10/2022
DATE

ANDREW BORROK, J.S.C.

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