

SAES Realty Group LLC v Sternklar

2023 NY Slip Op 31614(U)

May 10, 2023

Supreme Court, New York County

Docket Number: Index No. 654908/2022

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

SAES REALTY GROUP LLC, SHKOIACH LLC
Plaintiff,
- v -
SARAH STERNKLAR,
Defendant.
INDEX NO. 654908/2022
MOTION DATE 12/19/2022, 01/20/2023, 04/20/2023
MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2 were read on this motion to/for DISSOLUTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 were read on this motion to/for DISMISS

Upon the foregoing documents, the petition (Mtn. Seq. No. 1) to dissolve CISAM LLC (CISAM) and appoint a receiver must be granted and the motion to dismiss (Mtn. Seq. No. 3) must be denied. For the avoidance of doubt, the motion (Mtn. Seq. No. 2) for default judgment is denied as moot.

Reference is made to a related action captioned Sarah Sternklar, Individually And Derivatively On Behalf Of Nominal Defendant Sternklar Family Foundation, Inc. v Cindy Sternklar-

Worenklein et al, Index No. 651270/2021 (the Prior Action). In the Prior Action, Sarah

Sternklar sued Cindy Sternklar-Worenklein and Mark Sternklar seeking dissolution of CISAM

and, among other things, a declaration that she was no longer a member of CISAM. When the defendants moved to dismiss, the Court denied the motion to the extent that the Court held that Sarah Sternklar was entitled to a declaration that she was no longer a member of CISAM as of December 31, 2021 (NYSCEF Doc. No. 7, at 1).

For clarity, and by way of background, Mark Sternklar and Cindy Sternklar-Worenklein desired to transfer their interests in CISAM for estate planning purposes. In 2018, they executed a First Amendment to the CISAM Operating Agreement authorizing such assignments (NYSCEF Doc. No. 5). Sarah Sternklar was presented with the First Amendment but did not return an executed copy of it. More specifically, according to Mark Sternklar and Cindy Sternklar-Worenklein, Sarah Sternklar had indicated that she would sign it but did not in fact return it.

Subsequently, it came to Sarah Sternklar's attention that Mark Sternklar had purported to transfer his interest in CISAM to the Lila Sternklar and Jack Sternklar Trust FBO Mark Sternklar. She then decided that she no longer wanted to be a member of CISAM and only wanted to receive distributions in respect of her economic interest and otherwise wanted to be paid out for the fair value of her membership interest in CISAM.

To wit, by letter dated February 18, 2021 (the **2021 Letter**; NYSCEF Doc. No. 6), from Sarah Sternklar to Cindy Sternklar-Worenklein, Sarah Sternklar wrote:

As Mark Sternklar has assigned his economic interest in CISAM, LLC ("CISAM") to the Lila Sternklar and Jock Sternklar Trust FBO Mark Sternklar ("Trust"), which is not a member of CISAM, you and I are the remaining members of CISAM. Accordingly, I am seeking your written consent, as the only member of CISAM other than myself, to consent to my withdrawal as a member of CISAM as of December 31, 2021.

Article 9 of the Operating Agreement of CISAM, LLC (“Operating Agreement”) permits my withdrawal in accordance with the Limited Liability Company Law (“LLCL”). LLCL § 606, as in effect when CISAM's articles of organization were filed in January 1996, permits my withdrawal upon the written consent of at least two-thirds in interest of its members other than the member proposing to withdraw. Within 10 business days from your receipt of this letter, please provide your consent by signing and returning the consent acknowledgement below.

In the event you do not consent to my withdrawal, LLCL § 606 provinces that I may withdraw without consent upon not less than six months’ prior written notice to CISAM. Accordingly, *I hereby notify CISAM that I will withdraw as a member of CISAM as of the close of business on December 31, 2021.*

Pursuant to LLCL § 509, I request that CISAM continue to give me any distribution to which I am entitled under the Operating Agreement and, within a reasonable time after my withdrawal, the fair value of my membership interest in CISAM as of my withdrawal date based on my one-third interest in the company

(NYSCEF Doc. No. 6 [emphasis added]).

During discovery in the Prior Action, Sarah Sternklar alleges that she learned for the first time that Mark Sternklar and Cindy Sternklar-Worenklein had in fact both assigned their interests to other entities and that notwithstanding (x) the First Amendment which she was given and (y) her 2021 Letter which acknowledged that Mark Sternklar had done exactly that which the First Amendment contemplated – *i.e.*, transferred his interest – this was a big shock to her. And, in fact, she only discontinued her membership in CISAM based on the false understanding that Cindy Sternklar-Worenklein was in fact still a member of CISAM.

Given the foregoing, on August 10, 2022, when Sarah Sternklar moved to amend her complaint in the Prior Action, the Court indicated that unless an election was made to continue the business of CISAM pursuant to the Operating Agreement, CISAM was likely dissolved (NYSCEF Doc. No. 35, at 3-4). Significantly, it is undisputed that Sarah Sternklar did not either together with

Mark Sternklar and Cindy Sternklar-Worenklein or on her own execute in writing an election to continue the business of CISAM as required by Sections 12 and 13.2 of the Operating Agreement and, to date, Sarah Sternklar has not executed a document purporting to rescind her resignation.

Given that Section 12 of the Operating Agreement (NYSCEF Doc. No. 4) requires an election to be made continuing the business of CISAM within 90 days of the occurrence of an event of dissolution, and that such 90 days have passed, CISAM is in dissolution – *i.e.*, (i) if Mark Sternklar and Cindy Sternklar-Worenklein are no longer members of CISAM, then CISAM is without members, no election to continue the business of CISAM has occurred within the relevant time period by anyone eligible to do so including Sarah Sternklar and (ii) if Mark Sternklar and Cindy Sternklar-Worenklein are members of CISAM, then Mark Sternklar and Cindy Sternklar-Worenklein have indicated their desire as the only members of CISAM to dissolve CISAM. Stated differently, the Petition must be granted because either (i) Mark Sternklar and Cindy Sternklar-Worenklein are members of CISAM and they have decided to dissolve CISAM which they are permitted to do, or (ii) CISAM has no members and there has neither been a rescission of the 2021 Letter nor an election to continue the business of CISAM by Sarah Sternklar (either on her own or with her siblings) – both of which would be necessary to comply with the CISAM Operating Agreement and for Sarah Sternklar to properly oppose this motion. As no issues of fact exist, the Petition must be granted.

For completeness, it does not matter that Sarah Sternklar understood the transfer of Mark Sternklar's interest to be to the Lila Sternklar and Jock Sternklar Trust FBO Mark Sternklar and

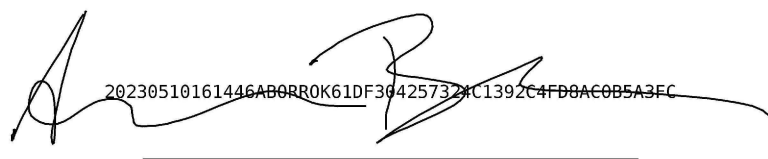
that it may have been to Shkoiach LLC. Nor does it matter that Cindy Sternklar-Worenklein may have transferred her interest to SAES Realty Group LLC. What matters is that Sarah Sternklar understood that her siblings were contemplating transfers and that when she “learned” that Mark Sternklar had purported to transfer his interest in CISAM, she sought to withdraw and be paid out the fair value of her membership interest. Thus, it can not be said that an actionable fraud here occurred given that her siblings are dissolving CISAM pursuant to this Petition and that as a result she will in fact be paid out as she desired and CISAM will in fact be dissolved as she had previously moved this Court to do.

It is hereby ORDERED that the petition (Mtn. Seq. No. 1) is granted; and it is further

ORDERED that the parties are each directed to each submit the names and resumes of two proposed receivers to Part 53 (SFC-Part53@nycourts.gov) by June 8, 2023; and it is further

ORDERED that parties are directed to appear for a status conference on July 13, 2023 at 9:30am; and it is further

ORDERED that the motion (Mtn. Seq. No. 2) for default judgment and the motion (Mtn. Seq. No. 3) to dismiss are denied.


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5/10/2023
DATE

ANDREW BORROK, J.S.C.

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