

**Tekiner v Bremen House Inc.**

2024 NY Slip Op 30625(U)

February 28, 2024

Supreme Court, New York County

Docket Number: Index No. 657193/2020

Judge: Joel M. Cohen

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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 03M

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YASEMIN TEKINER,

Plaintiff,

- v -

BREMEN HOUSE INC., GERMAN NEWS COMPANY,  
INC., BERRIN TEKINER, GONCA TEKINER, BILLUR  
AKIPEK, ZEYNEP TEKINER,

Defendants.

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INDEX NO. 657193/2020

MOTION DATE 10/02/2023

MOTION SEQ. NO. 065

**DECISION + ORDER ON  
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 065) 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1887, 1905, 1924, 1932, 1941, 1942, 1944

were read on this motion for REMOVAL OF TRUSTEES.

In 2011, Berrin Tekiner (“Berrin”) created Delaware-law trusts for the benefit of her three daughters, Gonca, Yasemin, and Zeynep and named herself as Protector of those trusts.<sup>1</sup> In so doing, she gave herself power over hiring and firing members of each Trust Committee, but also committed to being a fiduciary to the Trusts and their beneficiaries. As part of her estate planning and to minimize the tax burden on her assets, she also caused those trusts to take out promissory notes payable to her to purchase shares of Bremen House, Inc., and its affiliates (the “Company”). Berrin further caused the Trusts to execute Security and Pledge Agreements to

<sup>1</sup> The Court presumes familiarity with the background facts of this case, which were recounted at length in a prior Decision and Order removing Billur Apitek as a member of the Trust Committees of Yasemin’s Trust (NYSCEF 799 [October 19, 2022 Decision and Order]).

secure the amounts due under the Notes, which purportedly gave Berrin a security interest in the shares of the Companies that form the *res* of each Trust.

Prior to the disputes giving rise to this litigation, Berrin routinely caused the Company to transfer funds to the shareholder Trusts for the annual interest payments to her on the promissory notes. Berrin would thereafter cause the then-acting members of the respective Trust Committees to direct the corporate trustee of each Trust to transfer those funds back to Berrin as an interest payment. This method of paying the annual interest due under the Notes was created at the outset to protect against default. However, in 2022, Berrin caused the Company to stop those transfers, rendering the Trusts unable to make required payments under the promissory notes.

Meanwhile, following this Court's removal of Billur Apitek ("Billur") as the sole independent trustee of the Yasemin Tekiner 2011 Descendants Trust and the Zeynep Tekiner 2011 Descendants Trust in October 2022 (NYSCEF 799; 800), Berrin, in her role as Trust Protector, appointed Pinar Nalbantoglu (Plaintiffs' cousin) and Ahu Iltus (purportedly a longtime friend of Berrin and Billur) as members of Zeynep's Trust Committee and Pinar as the sole member of Yasemin's Trust Committee (NYSCEF 892, 893).

Yasemin and Zeynep submit that at no time did Pinar or Ahu, directly or through counsel, advise Yasemin or Zeynep that their respective Trusts had failed to make required interest payments on the Notes to Berrin or that the Companies had failed to make distributions to the Trusts enabling them to make such interest payments (NYSCEF 1793 ["Yasemin Aff"] ¶30; NYSCEF 1806 ["Zeynep Aff"] ¶54). Yasemin and Zeynep also submit that neither Berrin nor Billur, then a member of both Trust Committees, provided notice to them, despite Berrin's assertion that the Trusts' alleged defaults began in 2022 (Yasemin Aff., ¶30; Zeynep Aff., fn 4).

On September 6, 2023, Berrin purported to call a default on each of the notes as a result of the Trusts' failure to make annual interest payments to Berrin in 2022 and 2023, threatening to foreclose on the Trusts' shares and corresponding voting rights of the Company, which could effectively render some or all of Plaintiffs' claims in this action moot.

Plaintiffs Yasemin and Zeynep (collectively, "Plaintiffs") now move jointly by Order to Show Cause (i) to Remove Berrin Tekiner as Protector of Their Trusts, (ii) in the alternative, to Remove or Compel the Removal of Pinar Nalbantoglu and Ahu Iltus as Trust Committee Members and Appoint Independent Trust Committee Members, and (iii) for a Temporary Restraining Order and Preliminary Injunction Enjoining Berrin Tekiner from Exercising Certain Default Remedies.

The Court heard oral argument on the temporary relief requested, and thereafter entered an Interim Order, pending resolution of this motion, enjoining all efforts, both monetary and non-monetary, to enforce the subject Promissory Notes, and staying the period for curing the alleged default (NYSCEF 1941).

Having now fully considered the merits of the arguments raised, the Court defers decision on this motion until trial. Deciding this motion now may essentially moot this case, premitting decision on core issues of breach of fiduciary duty, corporate waste, and mismanagement. Specifically, deciding the motion could result in either the Plaintiffs losing their Trusts' shares and corresponding voting rights of the Company or Defendant Berrin losing her position and/or authority as sole Trust Protector under the Trusts, which could in turn result in Berrin being removed from the Company. The Court concludes that such fundamental decisions should not be made based on the limited record submitted in connection with this

motion. Instead, the substantive rights of the parties are better left for a holistic review of the evidence at trial (or potentially on summary judgment).

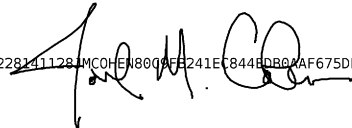
There are no exigent circumstances which counsel against deferral of this decision. Discovery has been substantially completed,<sup>2</sup> and this case should soon be ready for summary judgment and trial. Accordingly, the Interim Order shall remain in effect *pendente lite* or until further order of the Court. This will preserve the status quo for mediation (*see* NYSCEF 2000) and for resolution at or after trial.

Accordingly, it is

**ORDRED** that Plaintiffs’ motion is hereby **deferred** for resolution at or after trial; it is further

**ORDERED** that the Interim Order (NYSCEF 1941) shall remain in effect *pendente lite* or until further order of the Court.

This constitutes the Decision and Order of the Court.

<u>2/28/2024</u> DATE			 <small>20240228141128 JMC0HEN8009FE3241EC844BDB0AF675DEE7E768</small> _____ JOEL M. COHEN, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>2</sup> Post-Note of Issue discovery was to be completed by February 16, 2024, and summary judgment motions are to be filed by March 22, 2024 (*see* NYSCEF 1946).