

Goldstein v Goldstein

2024 NY Slip Op 32024(U)

June 12, 2024

Supreme Court, New York County

Docket Number: Index No. 151629/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

INDEX NO. 151629/2024
MOTION DATES 02/23/2024, 04/12/2024
MOTION SEQ. NOS. 001 002

JEFFREY GOLDSTEIN, INDIVIDUALLY AND AS TRUSTEE OF JEFFREY GOLDSTEIN 2018 NON-GST EXEMPT TRUST,

Petitioner,

- v -

ALICIA GOLDSTEIN, ALICIA GOLDSTEIN 2018 NON-GST EXEMPT TRUST,

Respondents.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21 were read on this motion for DISSOLUTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to DISMISS

Upon the foregoing documents, oral argument held on e 3, 2024, and for the reasons stated hereinbelow, the motion to dismiss, pursuant to CPLR 3211(a)(7), is granted and the petition to dissolve, pursuant to Limited Liability Corporation Law § 703, is denied.

Background

The Parties

Essentially, this special proceeding arises from a dispute between two siblings, petitioner, Jeffrey Goldstein ("Jeffrey"), the Trustee of the Jeffrey Goldstein 2018 Non-GST Exempt Trust ("the Jeffrey Trust"), and his sister, respondent Alicia Goldstein ("Alicia"), the Trustee of respondent the Alicia Goldstein 2018 Non-GST Exempt Trust ("the Alicia Trust"), over their late mother's estate, the Estate of Patricia Goldstein ("the Estate"). NYSCEF Doc. No. 1.

As part of the settling of the Estate, the parties formed the subject limited liability corporation, AMGJGRE LLC, owned equally by the Alicia Trust and the Jeffrey Trust, to hold certain joint real estate investments and a bank account ("the UBS account") for holding and distributing funds to the siblings' individual trusts. NYSCEF Doc. No. 6.

Pursuant to Article 8.3 of AMGJGRE's Operating Agreement, with the exception of certain affiliate transactions, "each action by the Managers [Alicia and Jeffrey] requires the unanimous consent of the Managers." NYSCEF Doc. No. 6.

The Underlying Action

On October 27, 2021, Jeffrey, individually and derivatively on behalf of non-party PAJ Holdings LLC (“PAJ”), another LLC related to the Estate, commenced a lawsuit in New York Supreme Court against Alicia and Adam Braunschweiger (“Braunschweiger”), a business partner of Alicia’s, captioned Jeffrey Goldstein v Alicia Goldstein et al., Index No. 656237/2021, (the “Underlying Action”). In that ongoing action, Jeffrey has asserted five causes of action and alleged, inter alia, that Alicia and Braunschweiger had held “hostage” half of the proceeds from the sale of a PAJ-owned condominium unit, and Alicia has asserted eighteen counterclaims, including for an accounting, breach of fiduciary duty, breach of implied contract, conversion, and unjust enrichment.

The UBS Action

In a letter dated November 11, 2022, non-party UBS Financial Services, Inc. (“UBS”) informed Jeffrey’s counsel that, because of the Underlying Action, it had “placed a restriction” on the UBS account until that action was resolved. NYSCEF Doc. No. 9. UBS said that it would remove the restriction only after receiving either signed letters of authorization from Jeffrey and Alicia, or a court order. Id.

On October 20, 2023, pursuant to CPLR 1006, UBS filed an interpleader action, captioned UBS Fin. Svcs. Inc. v AMGJGRE LLC et al., Index No. 655194/2023, demanding judgment that Alicia and Jeffrey be restrained from pursuing any action against UBS for recovery of UBS account funds and requiring Alicia and Jeffrey to litigate between themselves (the “UBS Action”).

On January 17, 2024, this Court so-ordered a December 20, 2023 stipulation between the parties that dismissed the UBS action, discharged UBS from all liability in relation to its retention of the funds in UBS account, and granted UBS exclusive control of the UBS account funds absent a court order or the mutual direction of Alicia and Jeffrey. UBS Fin. Svcs. Inc., Index No. 655194/2023, NYSCEF Doc. No. 16.

The Instant Special Proceeding

On February 23, 2024, Jeffrey filed the instant petition to dissolve AMGJGRE, arguing that the dispute over whether to distribute the funds in the UBS account has deadlocked AMGJGRE, and that therefore, without being able to distribute the funds, AMGJGRE has outlived its purpose. NYSCEF Doc. No. 1. In the alternative, Jeffrey asks the Court to appoint a receiver or liquidating trustee to collect AMGJGRE’s income and distribute its holdings. Id.

In a Decision and Order dated March 18, 2024, Justice Lyle E. Frank granted the petition on default. NYSCEF Doc. No. 20. In a Decision and Order dated March 20, 2024, Justice Frank vacated his prior decision, and, pursuant to an Order dated the same day, the General Clerk’s Office reassigned this matter to this part, due to its relation to the Underlying and UBS Actions. NYSCEF Doc. Nos. 21, 22.

On April 12, 2024, Alicia moved, pursuant to CPLR 3211(a)(7), to dismiss the petition. NYSCEF Doc. No. 27.

Alicia argues, inter alia, that: a deadlock is not alone sufficient for dissolution of an LLC; disputes between members are not alone sufficient to defeat an LLC's stated purpose; AMGJGRE is financially feasible, as it continues to collect profits; and that Jeffrey has failed to plead grounds for the appointment of a receiver. NYSCEF Doc. No. 31.

In opposition, Jeffrey argues, inter alia, that AMGJGRE was created for the purpose of holding and distributing the funds from the Estate's investments, and the deadlock between the siblings has prevented the LLC from achieving its purpose. NYSCEF Doc. No. 32. He also argues that a receiver is appropriate given the parties' inability to agree what day of the week it is. Id.

In reply, Alicia argues, inter alia, that: AMGJGRE's purpose is broader than just distributing funds, as it owns, holds, and manages various real estate investments; Jeffrey consented in the UBS Action to UBS keeping the UBS account in escrow; and that AMGJGRE faces no financial threat. NYSCEF Doc. No. 35.

Discussion

Dismissal pursuant to CPLR 3211(a)(7) is warranted when, "afford[ing] the pleadings a liberal construction, tak[ing] the allegations of the complaint as true and provid[ing] plaintiff the benefit of every possible inference," the complaint fails to assert facts that would make out a cause of action. EBC I, Inc v Goldman, Sachs & Co, 5 NY3d 11, 19 (2005).

Pursuant to Limited Liability Company Law § 702, on application by or for a member, the Court may dissolve a limited liability company "whenever it is not reasonably practicable to carry on the business in conformity with" its operating agreement.

To show it is not "reasonably practicable" for a company to carry on its business, as required for judicial dissolution, a party must show "the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or [that] continuing the entity is financially unfeasible." Doyle v Icon, LLC, 103 AD3d 440, 440 (1st Dept 2013) quoting In re 1545 Ocean Ave, LLC, 72 AD3d 121, 129 (2d Dept 2010).

Deadlock is not an "independent ground for dissolution" under Limited Liability Company Law § 702, and so, instead, courts must "consider the managers' disagreement in light of the operating agreement" and the ability of the company to function in that context. 1545 Ocean Ave. at 129. Conduct that breaks "the working relationship between the parties and was harmful to the company financially" is insufficient to warrant judicial dissolution, pursuant to Limited Liability Company Law § 702, because it does not establish that an LLC's purpose was "utterly defeated" by the disputes. See Sieni v Jamsfab, LLC, 2013 NY Slip Op 31473[U] (NY Sup Ct, Suffolk County 2013) (dismissing dissolution proceeding because member disputes did not defeat LLC's stated purpose and LLC's finances remained feasible).

Here, Jeffrey has failed to plead that the management of AMGJGRE is unable or unwilling to reasonably permit or promote the entity's stated purpose. Jeffrey argues that AMGJGRE was formed for the purpose of opening financial accounts into which the distributions from shared investments would be deposited and then distributed to Alicia and Jeffrey's trusts. However, distribution is not the sole purpose of the LLC, as AMGJGRE continues to earn profits. And

although income from the Estate’s investments is not, currently, being distributed to Alicia or Jeffrey, the hold on distributions from the UBS account is not necessarily permanent.

Jeffrey has also failed to establish that AMGJGRE is financially unfeasible. The petition contains no facts to indicate that AMGJGRE is in trouble with creditors or tax authorities, let alone faces imminent bankruptcy. Jeffrey instead merely pleads that he is not currently getting his fair share of profits. The fact that AMGJGRE is still earning profits, however, tends to demonstrate that AMGJGRE is still financially viable. See Mangan v Second to None, LLC, 2016 NY Slip Op 32378[U], 5 [NY Sup Ct, Richmond County 2016] (“the allegation that respondent has failed to pay petitioner her share of the profits and award her distributions tends to demonstrate that the company is still profitable.”).

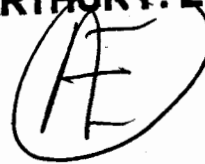
Therefore, because AMGJGRE’s purpose has not been defeated and it remains financially viable, this Court must grant Alicia’s motion to dismiss the instant petition and need not reach Jeffrey’s request for the appointment of a receiver or liquidating trustee.

This Court has considered the petitioner’s other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

The motion to dismiss is hereby granted, the petition to dissolve is hereby denied, and the Clerk is hereby directed to enter judgment dismissing the petition accordingly.

HON. ARTHUR F. ENGORON



6/12/2024

DATE

ARTHUR F. ENGORON, 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