

**Freedman v Rakosi**

2025 NY Slip Op 30690(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 655608/2023

Judge: Andrew Borrok

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

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LINDA M. FREEDMAN, STANLEY SPERBER,

Plaintiff,

- v -

MICHAEL F. RAKOSI, STANLEY ROSENBLOOM,  
WEBER-FARHAT REALTY MANAGEMENT INC., WEBER  
REALTY MANAGEMENT LLC, TRUST FBO JUDITH E.  
ROSENBLOOM, TRUST FBO MICHAEL F. RAKOSI,  
SPERBER GSTT TRUST FBO LINDA FREEDMAN,  
SPERBER TRUST FBO STANLEY SPERBER, LINDA &  
STANLEY LLC, FAMILY OF JEANETTE LLC, FAMILY OF  
LOUIS LLC, FAMILY OF FANNY LLC, ELAINE  
GORLECHEN, MARILYN RUBELL

Defendant.

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**INDEX NO.** 655608/2023

02/11/2024,

12/20/2024,

12/20/2024,

12/20/2024,

**MOTION DATE** 02/06/2025

004 008 009

010 011

**MOTION SEQ. NO.** 010 011

**DECISION + ORDER ON  
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 118, 119, 120, 121, 122, 123, 124, 171, 172, 177, 315, 319, 376, 385

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 378, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 431, 432, 433, 533, 537, 538, 539

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 360, 361, 362, 363, 364, 365, 379, 408, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 434, 435, 543

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 380, 409, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 540, 541, 542

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 535, 536, 544, 545, 546, 547, 548

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The critical issue in this case ultimately is whether Stanley Rosenbaum is mentally competent and/or if he is no longer mentally competent, when he became mentally incompetent including when, as, and if he became subject to a condition that affected his capacity to carry out his fiduciary duties.

This is critical because it will settle the issue of whether Stanley Rosenbloom is in fact a partner or whether he merely holds an economic interest in the partnership and who holds a Majority-in-Interest (and if it is the plaintiffs in this case) in the partnership. To wit, if in fact Stanley Rosenbloom became incompetent, it is critical to understand when that occurred given the actions taken by the other partners in this case including the potential termination of the contract with Weber. It will also bring light to what was done to meet his fiduciary duties given his absence from partnership meetings for last five years (as discussed below).

The plaintiffs allege that Susan Rosenbloom (Defendant Michael Rakosi's niece) and Michael Rakosi admitted that Stanley Rosenbloom (Susan Rosenbloom's father) was ill and otherwise lacked capacity including not being able to follow certain conversations (e.g., NYSCEF Doc. Nos. 146 and 129). They also contend that Stanley Rosenbloom's son, Larry Rosenbloom, indicated that Stanley Rosenbloom should not attend partnership meetings (NYSCEF Doc. No. 323 ¶ 63). Stanley Rosenbloom has not attended a partnership meeting either in person or over a virtual platform in five years (*id.* ¶¶ 61-80). Susan Rosenbloom has since recanted her admission and, as such, has put Stanley Rosenbloom's mental capacity at issue. The defendants take the

position that Stanley Rosenbloom has not yet been adjudicated as incompetent. A competency hearing is therefore required.

Prior to the hearing, the defendants are entitled to produce evidence of Stanley Rosenbloom's competency and the plaintiffs are entitled to take relevant discovery as well (including Stanley Rosenbloom's medical records, dating back to 2020, the time in which Susan Rosenbloom and Larry Rosenbloom are alleged to have made those statement, and when Stanley Rosenbloom stopped going to partnership meetings). Having recanted the prior admissions and now put Stanley Rosenbloom's mental capacity at issue, if the defendants fail to produce relevant discovery, the Court will take note of that.

To be clear, the plaintiffs are also entitled to discovery as part of this case as to what Michael Rakoski, Susan Rosenbloom, and Jeffrey Weber understood Stanley Rosenbloom's mental condition to be over the last five years. Among other things, this is relevant to the breach of fiduciary duty and aiding breach of fiduciary duty claims. It is also relevant to the issue of willful breach.

The Court notes that the partnership agreements have very specific proxy provisions regarding the ability to designate anyone for the purpose of vote by proxy (NYSCEF Doc. Nos. 325-328 § 8.2). The requirements would have needed to be followed or waived. Upon the record before the Court, Susan Rosenbloom has a revocable power of attorney (NYSCEF Doc. No. 72) from her father Stanley Rosenbloom which, among other things, provides her with broad authority to act on her father's behalf but both provides (i) for the potential for revocation by her father or (ii)

that “if [Stanley Rosenbloom] is no longer of sound mind, a court can remove an agent for acting improperly.”

Fiduciary duties, on the other hand, cannot however be delegated by power of attorney as the Court previously explained (citing *In re Alan G.W.*, 51 Misc 3d 998 [Sup Ct 2016]) and even where a representative is sent to a meeting to vote or participate on behalf of a partner, the partner would still be required to otherwise satisfy their fiduciary duties of care and loyalty. Discovery as to what Stanley Rosenbloom did and understood as to the issues with Weber, the renting of the 19<sup>th</sup> Street building and why that has not gone forward, why distributions have not been restored, why Michael Rakosi has not gone to meetings, why Weber remains the manager, among other issues, raised by the Amended Complaint, is all appropriate. Discovery is also appropriate as to what Michael Rakosi did, not only as to these issues, but also what he did to satisfy himself as to Stanley Rosenbloom’s alleged lack of capacity. Given the concerns of his partners and the alleged admissions of two of Stanley Rosenblooms’ children (and his own alleged admission), he was required to do that.

On a motion to dismiss pursuant to CPLR § 3211 (a) (7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). The court’s inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]).

The defendants are not entitled to dismissal of this case based on their argument that the anti-dissolution provisions are valid under all circumstances or that the plaintiffs have violated these provisions. As an initial matter, the Court notes that in the action captioned *Michael F. Rakosi v. Linda M. Freedman, et al.*, Index No. 654846/2023, and as the Court explained, filing a declaratory action seeking relief from the Court that such provisions are void against public policy is not violative of Section 10.2 of the partnership agreements (Index No. 654846/2023 NYSCEF Doc. No. 110). Thus, the motion to dismiss is denied on this ground.

As to the validity of the provision itself, the record is not developed such that a ruling is appropriate at this stage. To be clear, there are any number of circumstances in which the invocation of the provision would violate policy and would thus be invalid including judicial dissolution (*see e.g., Schimel v Berkun*, 264 AD2d 725, 728 [2d Dept 1999]). On the other hand, if the purpose of the provision was to satisfy a third party obligation that dissolution would otherwise cause a default as to those obligations, then, under the circumstances, the provision and use of the provision to convert a partner to an economic interest holder makes sense and would not violate public policy (*e.g.*, to address a law firm's lease provision preventing too many partners from leaving or a mortgage requiring certain key members to be alive and to control the partnership).<sup>1</sup> In addition, the parties do have remedies, including suing for breach of fiduciary duty as they have done here.

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<sup>1</sup> Generally these provisions include reference to the third party obligation as the third party generally requires that.  
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Motion No. 004 008 009 010 011

As to the balance of the defendants' motions (Mtn. Seq. Nos. 08, 09), the defendants are not entitled to dismissal of the causes of action seeking a declaratory judgment (first and tenth causes of action).<sup>2</sup> As discussed above (and previously), there is a genuine dispute as to who the partners are and whether the application of certain of provisions are in fact valid under New York law and what the affect was as to certain actions previously taken (*see American Ins. Ass'n v Chu*, 64 NY2d 379, 283 [1985]).<sup>3</sup>

Rescission requires a material and willful breach of contract that substantially defeats the object of the parties in making the contract (*Bisk v Cooper Sq. Realty, Inc.*, 419 [1<sup>st</sup> Dept 2014]). In this case, the plaintiffs allege that Michael Rakosi promised that he would take certain steps in managing the properties (*i.e.* clearing title, opening a line of credit, and obtaining bids from multiple vendors for building repairs) to induce the plaintiffs to enter into certain agreements and to oust the former manager. The plaintiffs allege that this was knowingly false when made, and that Michael Rakosi has willfully breached agreements with the plaintiffs including the settlement agreement. This is sufficient at this stage of the lawsuit. [The plaintiffs' second cause of action for rescission of the Partnership Agreements is properly pled in the alternative because there is a bona fide dispute as to the enforceability of the governing agreements (*see e.g.*,

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<sup>2</sup> The Amended Complaint provides:

258. Susan, as attorney-in-fact for Rosenbloom, and Weber each assert that the votes taken at the December 28, 2022 Partnership meeting to terminate Weber as the Partnerships' manager and to retain Roger Bernstein as Partnership counsel are void and a "nullity."

259. Based on the foregoing, there is a substantial controversy between Plaintiffs and Defendants, as to a) who the partners are, b) who the economic interest holders are, c) whether Rosenbloom is competent and d) the enforceability of the decisions made at the December 22, 2023 partnership meeting.

(NYSCEF Doc. No. 323 ¶¶ 258-259).

<sup>3</sup> Although the defendants are correct in pointing out that if Stanley Rosenbloom remains a partner, Susan Rosenbloom could be a permitted transferee under the partnership, as discussed above, he may not in fact be a partner under partnership law, and the partnership agreement requires the execution of certain documentation which on the record before the Court has never occurred.

*American Telephone & Utility, Inc. v Beth Israel Medical Center*, 307 AD2d 834, 835 [1st Dept 2003].] To be clear, this too does not violate the Section 10.2 anti-dissolution provision because if the partnership agreement were rescinded, the partners could enter into a new partnership agreement without dissolution of the partnership.

The record before the Court includes substantial evidence of breach of fiduciary duty (third cause of action) and breach of contract (fourth cause of action) including ceding the obligations to manage the properties, misappropriating funds, self-dealing, failing to provide the complete books, records and documents related to the partnerships, and taking actions in favor of one partner (*i.e.*, Michael Rakosi) and against the wishes of at least two partners (*i.e.*, the plaintiffs, who may in fact hold a Majority In Interest) (*see Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014]; *34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).<sup>4</sup>

The plaintiffs individually and on behalf of the partnership have also established a cause of action for breach of fiduciary duty against their partner, Michael Rakosi (fifth and sixth causes of action), for his conduct in failing to carry out his fiduciary duties, failing to properly disclose Stanley Rosenbloom's cognitive decline and otherwise facilitating the implementation of his desired business plan without the approval of his partners (and knowing in fact that they wanted to pursue a different and inconsistent business plan). Inasmuch as the claims of breach of fiduciary duty are adequately alleged as against Stanley Rosenbloom and the Weber Defendants,

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<sup>4</sup> As to Weber, the record also includes that he doctored the notarized management agreement to insert the name a company called Weber Realty Management. The management agreement was entered into with Weber-Farhat Realty Management. The record is not clear at this stage if this is a mere name change (as he says [NYSCEF Doc. No. 488]) or if it was a different company and that this amounts to a purported assignment of the management agreement potentially without consent of the partners who say they had not seen it.

the claim for aiding and abetting the Weber Defendants' breach of fiduciary duty (seventh cause of action) is also not dismissed.

As discussed (*tr.* 2.28.25), the record before the Court also firmly establishes that Michael Rakosi and Susan Rosenbloom are stymieing the partnerships' ability to operate. Among other things, Michael Rakosi is not attending meetings. He appears content to let Weber do nothing to rent the apartments because it facilitates his business plan of looking not to rent the apartments so that the buildings can become empty and available for sale (which plan is not what his partners want). As discussed below, Susan Rosenbloom (who may be acting on behalf of her father Stanley Rosenbloom who may be competent and who may still be a partner) refuses to discuss partnership business unless the other partners **first** accede to her demand that they admit her as a partner in her own right (NYSCEF Doc. No. 449). This too is substantial evidence of breach of fiduciary duty and aiding and abetting breach of fiduciary duty. It does not matter that if Stanley Rosenbloom is competent she could be a permitted transferee and could become a partner by executing appropriate documents. What matters is that she can not hide her father's condition (whatever that may be) and demand admission as predicate for avoiding confronting the business issues of the partnership.

The defendants are also not entitled to dismissal of the cause of action seeking specific performance because the Amended Complaint alleges that Michael Rakosi and Stanley Rosenbloom (through Susan Rosenbloom) have failed to cooperate in good faith to take any steps, disclose what they have specifically done, or provide the necessary documents to quiet title as required by a certain settlement agreement (NYSCEF Doc. No. 333 § 7). This is sufficient.

As such, the claims for specific performance of this settlement agreement (the eighth and ninth causes of action) are not dismissed.

Finally, and as discussed above, the Amended Complaint states a cause of action for fraudulent concealment (eleventh cause of action) as against Stanley Rosenbloom and Michael Rakosi. As alleged, Michael Rakosi omitted to disclose information to the plaintiffs that Stanley Rosenbloom was losing his capacity and ultimately became incompetent. This concealment was material and had a material impact on the operation of the partnerships. As such, this claim is not dismissed.

As to the motion seeking leave to renew (Mtn. Seq. No. 11), it “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion.” (CPLR 2221[e]). Motions to renew are addressed to the court’s sound discretion (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

In a prior Decision and Order of this Court (the **Prior Decision**; NYSCEF Doc. No. 213), dated March 5, 2024, the Court granted the plaintiffs’ motion for a preliminary injunction “solely to the extent that the Defendants must grant the Plaintiffs reasonable access on reasonable notice to all of the partnerships’ books and records” but did not grant the portion of the motion seeking the appointment of a temporary receiver.

What is new and has become clear since the prior hearing, and as discussed above and on the record (*tr.* 2/28/25), is that the partners are not meeting and not deliberating over important business decisions which are properly considered by and made by the partners – including whether the apartments should be rented, whether money (if necessary) should be spent to renovate apartments (and if so how much per apartment) so that they should be rented, whether distributions should be made in the amount of \$20,000 instead of \$12,500,<sup>5</sup> whether the partners voted to change the management company previously, whether they want to now, whether the management company has purported to assign the management agreement to an affiliate without partnership approval, whether the buildings should be sold and any and all other decisions properly considered by the partners. As discussed above, Michael Rakosi has not met with his partners and on this record refuses to do so. Susan Rosenbloom (in whatever capacity) actually has refused to discuss any partnership business until and unless the other partners agree to make her a partner.

Given the foregoing, appointment of a receiver is required (*see Chaline Estates v Furcraft Assoc.*, 278 AD2d 141 [1st Dept. 2000])

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<sup>5</sup> In 2018 the partners voted for the distributions to be no less than \$20,000 and payments were made until the COVID pandemic when the partners apparently agreed to reduce the amount to \$12,500 without a vote. Since the end of the pandemic, Weber has refused to make reset distributions to \$20,000 without unanimous agreement among the partners. This is not what is required under the partnership agreement. Pursuant to Section 4.1, the partnership agreement provides net cash distributions will be provided each fiscal quarter:

**SECTION 4.1 Net Cash From Operations.** Except as provided in Section 11.2, Net Cash From Operations, if any, shall be distributed not later than the thirtieth day after the end of each fiscal quarter to the Partners in proportion to their Percentage Interests.

(NYSCEF Doc. Nos. 325-328 § 4.1). The partnership agreements further provide that a Majority in Interest is required to make such decisions:

**SECTION 5.1 Day-To-Day Management of the Partnership.** Subject to the limitations and restrictions set forth in this Agreement (including, without limitation, those set forth in this Article V) all decisions respecting the management, operation and control of the Partnership's business and determination made in accordance with the provisions of this Agreement shall be made based upon the vote of the Majority In Interest of the Partners in favor of the decision.

(*id.* § 5.1).

For the avoidance of doubt, the plaintiffs' motion (Mtn. Seq. No. 04) to consolidate this action with *Michael F. Rakosi v. Linda M. Freedman, et al.*, Index No. 654846/2023, for the purpose of discovery and trial is denied as moot because that case is dismissed with prejudice.

The Court has considered the remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the plaintiffs' motion (Mtn. Seq. No. 04) is DENIED; and it is further

ORDERED that the motions to dismiss (Mtn. Seq. Nos. 08, 09, 10) are DENIED; and it is further

ORDERED that the defendants shall file an answer within 20 days of this decision and order; and it is further

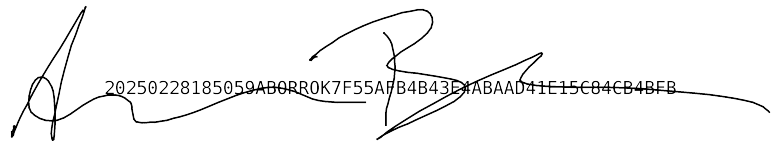
ORDERED that the plaintiffs will serve discovery demands no later than March 7, 2025; and it is further

ORDERED that the defendants shall respond to discovery demands by March 14, 2025; and it is further

ORDERED that the parties shall appear for a competency hearing in person on April 8, 2025, at 10:00 a.m. at 60 Centre Street, to determine whether Mr. Rosenbloom is legally competent; and it is further

ORDERED that the plaintiffs' motion (Mtn. Seq. No. 11) to renew for the appointment of a temporary receiver to operate the business of the partnerships is GRANTED; and it is further

ORDERED that the parties are each directed to submit the name of one potential receiver, together with a proposed order for appointment by Monday, March 3, 2025, at 5 p.m.



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2/28/2025

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