

J.S.I.K. Intl. LLC v Schuster

2025 NY Slip Op 32486(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 650898/2023

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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J.S.I.K. INTERNATIONAL LLC, HK REALTY LLC,
Plaintiff,

INDEX NO. 650898/2023

MOTION DATE 04/07/2025

- v -

MOTION SEQ. NO. 005

JOSHUA SCHUSTER, SCHUSTER ENTERPRISES, LLC,
SILVERBACK ACQUISITIONS LLC, SD SECOND
AVENUE MEMBER LLC, SD SECOND AVENUE
VENTURE, LLC, SD SECOND AVENUE HOLDING, LLC,
SD SECOND AVENUE PROPERTY, LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

SD SECOND AVENUE VENTURE, LLC, SD SECOND
AVENUE HOLDING, LLC, SD SECOND AVENUE
PROPERTY, LLC

Third-Party
Index No. 595387/2023

Plaintiffs,

-against-

SD SECOND AVENUE MANAGER LLC, 359 SECOND
AVENUE GRAMERCY LLC, JVEM SILVERBACK GRAMERCY
LLC

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 259, 260, 261, 262, 263, 264, 265, 266

were read on this motion to AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on June 6, 2025, it is

ORDERED that the J.S.I.K. International LLC and HK Realty LLC's (collectively "Karten Parties" or "Plaintiffs") Motion is **GRANTED IN PART** insofar as leave to amend their Complaint to add PW Market View LLC and WR Acquisition Co., LLC (collectively, "PW") as parties and the eighth cause of action for declaratory judgment; the motion is otherwise **DENIED** as to the branch of the motion seeking summary judgment on that newly amended claim for the reasons stated below;¹ it is further

ORDERED that Plaintiffs file the First Amended Complaint within five (5) days of the date of this Order, and upon such filing, the First Amended Complaint shall be deemed served; it is further

ORDERED that defendants file an Answer or otherwise move with respect to the First Amended Complaint within twenty-one days of the date of this Order; it is further

ORDERED that Silber's² cross-motion to intervene in this action is **GRANTED** insofar the Court considered its opposition to the Karten Parties' Motion, however formal intervention is **denied** as untimely; it is further

ORDERED that any deposition of Mr. Schuster (or any entity in which he would be the corporate representative) is hereby **STAYED** pending the criminal case against Mr. Schuster in the United States District Court for the Southern District of New York captioned *United States v Joshua Schuster*, 25 CR 204 (SDNY 2025) or further Order of the Court; it is further

¹ While the Court granted the motion to amend on the record, the Court did not address the Karten Parties' motion for summary judgment on their new claim for declaratory judgment. The Court addresses that motion herein.

² Parties in the related action, *Soifer v SD Second Avenue Member LLC* (Index No. 654475/2021 [Sup Ct, NY County]).

ORDERED that all parties in the Consolidated Action appear for a case management conference on **July 16, 2025 at 11:00 am**; and it is further

ORDERED that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt.

* * * * *

SUMMARY JUDGMENT - DECLARATORY JUDGMENT CLAIM

The Karten Parties seek summary judgment on their newly amended claim which seeks declaratory judgment that the they have properly assumed the management and control of SD Second Avenue Manager LLC (“SD Manager”), JVEM Silverback Gramercy LLC (“JVEM Silverback”), and SD Second Avenue Member LLC (“SD Member”) (NYSCEF 196 [“Proposed FAC”] ¶143). Even putting aside whether this motion is premature (*see Valentine Tr., Inc. v Kernizan*, 191 AD2d 159, 160 [1st Dept 1993] [trial court improperly granted summary judgment where issue had not been joined and the parties had not filed an answer to amended pleading]), the motion is denied.

First, while the Karten Parties argue that they have the strongest claim to control JS Member from an equitable standpoint, there are several factors which weigh against such a finding as a matter of law at this stage. First, there is a dispute as to whether Karten Parties’ \$5 million contribution ever made it into the project. During discovery in this action, Citibank N.A. produced bank records indicating that the Karten Parties wired \$5 million to “Silverback Acquisitions LLC” (NYSCEF 477) – an entity that does not appear anywhere in the project organizational chart. The Karten Parties also argue that they have \$718,344 invested in the

Project by means of subsequent capital calls. However, per the Karten Parties complaint, they received \$469,055 back from Project funds in the form of “developer fees” (FAC ¶44).

The Soifer parties argue that any amount contributed by the Karten Parties should not be attributed to the Project, as the Karten Parties made the payment to satisfy their capital call obligations to SD Manager (*see* NYSCEF 247 [Capital Call Notices]). Thus, the Soifer parties contend, the money belonged to SD Manager. Even if SD Manger redirected its money to the Project, that does not necessarily make the Karten Parties a contributor to the Project, which would have been a Major Decision under the JV Operating Agreement requiring CS Member’s prior written consent (NYSCEF 351 [First Amended JV] § 5.5[d]; NYSCEF 102 [Second Amended JV] §5.5 [d]).

Second, the main dispute raised in the Complaint has not been resolved—namely, the Karten Parties’ allegations of fraud against Schuster, which stem from Schuster’s alleged concealment of the Notes and Security Pledge Schuster entered into with Silber, the Lettire Note, and any defaults thereof from the Karten Parties (NYSCEF 2 [“Compl.”] ¶3). While the Karten Parties suggest that “[t]here is little doubt that Schuster engaged in fraud” referencing the \$5,000,000 the Karten Parties allege they were fraudulently induced into sending to Schuster, these fraud allegations have not been proven.

The newly added eighth cause of action seeking declaratory judgment also relies on the Karten Parties’ fraud allegations as the reason for SD Manager’s default, the Karten Parties’ subsequent removal of the Schuster Enterprises as manager of SD Manger under the SD Manager Operating Agreement, and thereafter the Karten Parties’ (as putative Manager of SD Manager) removal of JVEM Gramercy as a Manager of JVEM Silverback under the JVEM Silverback Operating Agreement based on fraud on the part of “JVEM Principal,” which was

Joshua Schuster (NYSCEF 196 [“Proposed FAC”] ¶¶129-142). At each stage, the Karten Parties allege that the default and removal was based on Schuster’s fraud (Proposed FAC ¶¶129, 131, 138). Thus, the basis of the Karten Parties’ declaratory judgment claim is its fraud allegation against Schuster, which the Karten Parties have not undertaken to establish conclusively in this motion. And despite bringing this action in 2023, the Karten Parties only provided notice of Schuster’s alleged fraud and default on January 7, 2025—years after the occurrence of the alleged fraud in 2019-2021—on Schuster Enterprises vis-à-vis PW. For the Court to issue a declaration in the Karten Parties’ favor, the Karten Parties must prove the allegations underlying their removal notices.

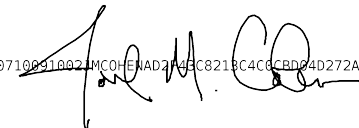
Moreover, the Karten Parties’ claim for an accelerated judgment that they obtained management control over SD Member through various transfers and other transactions fails for another reason. Under the JV Operating Agreements, there is a substantial argument that transfer of any direct or indirect interest in SD Member resulting in a change in control would be void *ab initio* and non-binding on the Venture absent CS Member’s consent. The Karten Parties do not provide any conclusive arguments to the contrary on this point.

In addition, to the extent that PW claims management control, successors-in-interest of a claim (which PW is) inherit both the “infirmities” and “liabilities” of their predecessors-in-interest (*Intl. Ribbon Mills, Ltd. v Arjan Ribbons, Inc.*, 36 NY2d 121 [1975] [“It is elementary ancient law that an assignee never stands in any better position than his assignor. He is subject to all the equities and burden which attach to the property assigned because he receives no more than his assignor”]). In other words, PW inherited Schuster’s liabilities. Moreover, the Terms of Sale of the public auction by which PW claims to have acquired JS Member expressly states that the sale is “subject to the terms of the governing documents of the Entities (including their

operating agreements.)” (NYSCEF 356). Thus, nothing about the Turnover Order (NYSCEF 180), at this stage, changes the outcome here.

Finally, to the extent the Karten Parties now argue that they are alternatively proper managers of the Venture based on a stipulation between the Karten Parties and PW, this allegation was not contained in the Amended Complaint. Therefore, there is no basis to grant summary judgment in the Karten Parties’ favor at this stage.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/10/2025
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input 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