

Goldstein v Goldstein

2026 NY Slip Op 31799(U)

April 24, 2026

Supreme Court, New York County

Docket Number: Index No. 656237/2021

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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JEFFREY GOLDSTEIN,

Plaintiff,

- v -

ALICIA GOLDSTEIN, ADAM BRAUNSCHWEIGER

Defendant.

INDEX NO. 656237/2021
MOTION DATE 12/20/2024
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 110, 111, 112, 113, 115, 118, 127, 128, 129, 138, 139, 140, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the motion is granted in part.

Background

This motion to amend the pleadings arises out of a long-running and bitter dispute between siblings over estate assets. After the passing of their mother in 2015, Plaintiff Jeffrey Goldstein and defendant Alicia Goldstein largely cooperated in the management of the estate assets. Sadly, the parties began in 2020 to have disputes over the management of shared assets and the various trusts and other business entities related to said assets. Both sides accuse the other of various deeds of mismanagement and misuse of shared assets over the years. In 2021, a condominium unit owned by AMGJGRE LLC (the "Joint LLC"), of which both parties are equal members, was sold. The funds were wired to the account of an attorney, Adam Braunschweiger, who was initially named as a defendant in this matter but is no longer a party. Defendant directed Braunschweiger to withhold Plaintiff's share of the proceeds pending the production of certain records relating to other bank accounts that Defendant had demanded from Plaintiff.

In response, Plaintiff commenced this underlying proceeding in October of 2021, seeking damages and other relief related to the sale of the condominium unit in question. Over the course of this litigation, both parties have asserted various claims relating to alleged misuse and mismanagement of shared assets. There has been some discovery and settlement discussions over the course of this litigation.

Discussion

In the present motion, Plaintiff seeks leave to amend the pleadings to add the parties' respective trusts as additional parties and to assert five new claims. Defendant opposes the motion, arguing 1) the new claims could have been brought years ago; 2) the proposed amendment would prejudice Defendant; and 3) the proposed amendments are palpably insufficient and patently devoid of merit. As a general rule, leave to amend is to be "freely given upon such terms as may be just." CPLR § 3025(b). Such leave should be granted absent prejudice or surprise resulting from delay. *McCaskey, Davies & Associates, Inc. v. New York City Health & Hospitals Corp.*, 59 N.Y.2d 755, 757 [1983]. A party seeking leave to amend does not need to establish the merit of their claims, simply show that the new claims are not "palpably insufficient or clearly devoid of merit." *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 500 [1st Dept. 2010]. The issue therefore is whether Defendant has made an adequate showing of prejudice or surprise and that the proposed new claims lack merit. For the reasons that follow, the motion to amend is denied as to the proposed first, fifth, and sixth claims and granted as to the rest.

Prejudice Is Not Shown Here

Defendant argues that the motion should be denied due to delay. The proposed claims in question allege that Defendant improperly took certain assets (jewelry and paintings) from their

mother's estate, failed to pay Plaintiff his share of the proceeds of a vehicle sale, mismanaged the administration of jointly owned LLC, and interfered with funds being held for the both of them. Defendant argues that Plaintiff was aware of these facts since 2015, or mid-2022 at the latest. Plaintiff's position is that regardless of when the facts were known to him, there is no prejudice to Defendant in permitting the amendment.

Delay alone is not sufficient cause to deny leave to amend. Instead, delay must be accompanied by "significant prejudice" to the other side. *Masterwear Corp. v. Bernard*, 3 A.D.3d 305, 306 [1st Dept. 2004]. And "prejudice occurs when the party opposing amendment has been hindered in the preparation of this case or has been prevented from taking some measure in support of his position." *Jacobson v. McNeil Consumer & Specialty Pharms.*, 68 A.D.3d 652, 654 – 55 [1st Dept. 2009]. Here, Defendant argues that she will be prejudiced in having to expend further costs in conducting additional discovery. She also claims that while this litigation is pending she has been unable to file tax returns for various joint entities. Neither of these arguments suffice to show the requisite prejudice. Additional discovery and extended litigation does not constitute prejudice when discovery is still outstanding (as is the case here). *St. Nicholas W. 126 L.P. v. Republic Inv. Co., LLC*, 193 A.D.3d 488, 489 [1st Dept. 2021]. Without a showing of prejudice, mere delay alone does not suffice to defeat a motion for leave to amend.

Palpably Insufficient and/or Clearly Devoid of Merit

Without a showing of prejudice or surprise, the analysis then turns to the matter of the proposed claim's merit. Plaintiff seeks leave to add claims for 1) declaratory relief; 2) intentional interference with business relations; 3) breach of fiduciary duty; 4) accounting; 5) conversion;

and 6) fraud. Defendant argues that all proposed claims fail for various reasons, each of which is addressed below.

The Claims Relating to the LLC Funds Held at UBS Are Not Defeated by the Operating Agreement

Plaintiff's proposed first through fourth causes of action related to Defendant's direction to UBS to withhold certain funds in an account owned by the Joint LLC. Defendant points to the Joint LLC's operating agreement as conclusively defeating these claims. The Joint LLC's operating agreement contains a provision stating that each action taken by the managers (Plaintiff and Defendant) needed unanimous consent. The parties differ on this provision's interpretation. Defendant argues that both parties' consent was therefore needed in order for distributions to be made, and therefore she was within her rights to withhold her approval. Plaintiff points to the regular distributions UBS had been making from that Joint LLC account up to Defendant's direction and argues that the provision in question requires that there be unanimous consent for distributions to cease. Because the operating agreement does not so conclusively defeat the proposed claims as to make them clearly meritless, this argument fails.

The First Cause of Action is Palpably Insufficient Because Declaratory Relief is Barred by the Terms of the Joint LLC's Operating Agreement

Defendant also briefly argues that each of these four claims fail for other reasons. She argues that the first claim fails because non-monetary relief is expressly barred by the terms of the Joint LLC's operating agreement. That agreement contains a provision stating that the sole remedy under the agreement is for the recovery of money damages. In response, Plaintiff argues that declaratory relief would be necessary in order to have the funds in question released by the bank. But the operating agreement is clear that Plaintiff's only remedy for Defendant's alleged

misdeeds is the recovery of money damages from her. Nor is it clear that an award of money damages against Defendant would fail to make Plaintiff whole for any harm he may have suffered because the funds were not released. For that reason, the proposed first cause of action is palpably insufficient, and amendment should not be granted as for that claim.

The Breach of Fiduciary Duty and the Accounting Claims Are Not Palpably Insufficient

Defendant argues that the third cause of action for breach of fiduciary duty fails because both parties were equally authorized to take actions for the Joint LLC. The claim in question concerns (finish). Plaintiff's own complaint states that the parties are the entity's sole managers and are currently "hopelessly deadlocked in managing" the Joint LLC. He alleges that Defendant at some point in 2020 took over management of all shared assets, and that he did not object at the time because he believed that "she had his best interests at heart." As a general rule, co-fiduciaries are "regarded in law as one entity [. . . and when] a fiduciary party has an obligation, he cannot prevail in a cause of action against cofiduciaries for breach of the same obligation." *Zimmerman v. Pokart*, 242 A.D.2d 202, 203 [1st Dept. 1997]. Furthermore, that one fiduciary "passively relied on the expertise of his cofiduciary would not allow him to escape liability." *Id.*

Here, the claim is that Plaintiff's co-fiduciary mismanaged the Joint LLC and breached a duty to her fellow manager and member through directing UBS not to distribute funds, failing to fund a capital call, and not permitting the Joint LLC to file tax returns. As for the last two actions, those are ones that Plaintiff as co-manager was also entitled to do, and his reliance on Defendant cannot negate his own duty as a manager of the Joint LLC to ensure that it was managed properly. But the decision to cease distributions was directed at Plaintiff in his capacity as member of the Joint LLC, not manager. Therefore, the claim as concerns this action is not palpably insufficient or clearly without merit. Neither does the proposed fourth cause of action

fail due to Plaintiff's status as a manager. Defendant argues that Plaintiff's claim for an accounting fails because as a co-manager, Plaintiff can access the documents in question. The parties' dispute whether Plaintiff's access to the Joint LLC's documents is blocked, and therefore dismissal of this claim would be premature.

The Claims Regarding the Mother's Estate Belong in Surrogate's Court

Defendant also argues that the claims concerning alleged mishandling of their mother's estate are time barred, should be handled in Surrogate's Court, and barred by res judicata. The claims are that certain assets from the mother's estate were not properly given to Plaintiff when the estate was settled by Surrogate's Court in 2017. The fifth and sixth causes of action are based entirely on alleged misappropriation of estate assets in violation of the estate split that was approved in 2017. Defendant argues, and Plaintiff does not contest, that Surrogate's Court is the appropriate venue for these claims. The First Department has held that "[w]herever possible, all litigation involving the property and funds of a decedent's estate should be disposed of in Surrogate's Court." *Benjamin v. Morgan Guar. Trust Co.*, 173 A.D.2d 373, 374 [1st Dept. 1991]. For this reason, the proposed amendment should be denied as to the fifth and sixth causes of action. Accordingly, it is hereby

ADJUDGED that the motion is denied as to the proposed first, fifth and sixth causes of action and granted as to the rest; and it is further

ORDERED and ADJUDGED that the plaintiffs' motion for leave to amend the complaint herein is granted except as to the proposed first, fifth, and sixth causes of action, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that “Jeffrey Goldstein, as Trustee of Jeffrey Goldstein 2018 Non-GST Exempt Trust” shall be added as a plaintiff herein, and that “Alicia Goldstein 2018 Non-GST Exempt Trust” shall be added as a defendant herein; and it is further

ORDERED that the Clerk shall amend the caption accordingly; and it is further

ORDERED that the parties appear for a preliminary conference via Microsoft Teams on June 23rd at 10:30 a.m.

4/24/2026

DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: