SHORT FORM ORDER

ORIGINAL

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA
Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

In the Matter of the Application of
MARK ROZOF, LINDA ROZOF-GUBER
and JUDITH TEITELL, General Partners,

INDEX No. 601181/16

MOTION DATE: April 13, 2016
Motion Sequence # 001, 002

Petitioners,

For the Judicial Winding Up of 392 1st Street Company, a Domestic Partnership, Pursuant to Section 68 of the Partnership Law,

-and-

ARTHUR ROZOF, as a General Partner and in his Representative Capacity as Executor of the Estate of EDNA ROZOF, General Partner, deceased,

Respondent.

The following papers read on this motion:

Notice of Petition/Motion..... XX
Affirmation in Support..... X
Affidavit in Opposition..... XXX
Affidavit in Further Support..... XX
Memorandum of Law..... XX
Reply Memorandum of Law..... X

Petition for the judicial dissolution of 392 1st Street Company is **denied** with leave to renew in Kings County. Motion by respondent Arthur Rozoff to dismiss the action for

another action pending or failure to state a cause of action, or in the alternative, to transfer the proceeding to Kings County is **granted** to the extent of transferring the action to Kings County and otherwise **denied**.

This a special proceeding for the judicial dissolution of a partnership. Petitioner Mark Rozof holds a 18.27% partnership interest in 392 1st Street Company. Petitioner Linda Rozof-Gruber owns a 16.35% interest, and petitioner Judith Teitell owns a 16.35% interest in the partnership. Respondent Arthur Rozoff owns an 18.27% partnership interest. Mark, Linda, Judith, and Arthur Rozof are siblings. Arthur Rozof is also the executor of the estate of Edna Rozof, their mother, who died on December 4, 2011. Edna Rozof owned a 30.76% interest in the partnership.

Petitioners allege that the partnership holds title to a four-story residential apartment building located at 392 1st Street in Brooklyn. Petitioners allege that the partnership acquired title pursuant to a deed executed by D. Karnofsky, Inc. on March 31, 1986. The deed was signed by Edna Rozof as president of D. Karnofsky. Arthur Rozof claims to own a 23.07% interest in D. Karnofsky and to hold a 11.54 % interest as executor of Edna's estate. According to Arthur, the other siblings own the remaining 65.38% interest in D. Karnofsky. D. Karnofsky holds title to five apartment buildings in Manhattan, as well as a building located at 677 Vanderbilt Avenue in Brooklyn.

On January 6, 2016, Arthur Rozof commenced an action against the other siblings, D. Karnofsky, and 392 1st Street Company in Supreme Court, Kings County (Index No 500150/16). In the Kings County action, Arthur Rozof alleges that D. Karnofsky transferred title to the 392 1st Street property to the partnership in connection with a plan to convert to cooperative ownership. Arthur Rozof alleges that the other siblings adopted a plan to sell the various properties over his objection. In the Kings County action, Arthur Rozof requests a declaratory judgment limiting the other siblings' rights to sell the properties without his consent. On February 20, 2016, petitioners demanded that the venue of the Kings County action be changed to Nassau County.

On February 18, 2016, Judith Teitell notified the other partners that she was withdrawing from the partnership, effective immediately.

This proceeding was commenced on February 23, 2016. Petitioners assert that the partnership dissolved by operation of law upon Edna's death on December 4, 2011. Petitioners further assert that the partnership dissolved by operation of law upon Judith's

withdrawal on February 19, 2016. Petitioners desire to sell 392 1st Street and wind up the affairs of the partnership.

By notice of motion dated March 30, 2016, respondent Arthur Rozof moves to dismiss the action for another action pending or failure to state a cause of action, or in the alternative, to transfer the proceeding to Kings County. Arthur Rozof relies on an agreement which Edna Rozof entered into in 1954 with the other shareholders of D. Karnofsky, none of whom are parties to the present action, agreeing not to sell their stock without first offering it to the other stockholders. Arthur Rozof argues that venue is properly in Kings County because the property is located there and the partnership is a resident of that county.

CPLR 3211(a)(4) provides that a party may move for judgment dismissing one or more causes of action asserted against him on the ground that there is another action pending between the same parties for the same cause of action in a court of any state or the United States. The court need not dismiss upon this ground but may make such order as justice requires (Id). A court has broad discretion as to the disposition of an action when another action is pending (***Simonetti v Larson***, 44 AD3d 1028 [2d Dept 2007]). Because the Kings County action involves properties other than the property which is the subject of this partnership dissolution action, there is not a substantial identity of the causes of action. Respondent's motion to dismiss for another action pending is **denied**.

A general partnership dissolves upon the death of a partner (Partnership Law § 62[4]). Additionally, dissolution is caused by the express will of any partner when no definite term or particular undertaking is specified (Partnership Law § 62[1][b]). Thus, petitioners have clearly stated a claim for dissolution of 392 1st Street Company.

Arthur Rozof has submitted tax returns and other documents to the IRS showing that 392 1st Street Company, not D. Karnofsky, is the owner of the property. Respondent is estopped from contradicting representations made to the taxing authority (***Mahoney-Buntzman v Buntzman***, 12 NY3d 415, 422 [2009]). Since title is in the partnership, the D. Karnofsky shareholder agreement is not controlling. Accordingly, respondent's motion to dismiss the petition for failure to state a cause of action is **denied**.

CPLR § 503(d) provides that, "A partnership...shall be deemed a resident of any county in which it has its principal office, as well as the county in which the partner or individual owner suing or being sued actually resides. Since Linda Rozof-Gruber resides in Jericho, venue in Nassau County is not improper. Nevertheless, because the sole asset of the

partnership is the apartment building, the dissolution action arguably affects title, possession, use, or enjoyment of real property (CPLR § 507). Moreover, the Kings County action was commenced first, and the actions should be joined in order to provide complete relief among the parties. Accordingly, as a matter of discretion, respondent's motion to change venue to Kings County is **granted**. The Clerk of the County is directed to transfer the file of the action to the Clerk of Kings County, where the action shall be joined with Kings County Index No 500150/16.

So ordered.

Dated MAY 25 2016

Stephen A. Bucaria
J.S.C.

ENTERED

MAY 31 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE