

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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IN THE MATTER OF THE APPLICATION OF MARK
ROZOF, LINDA ROZOF-GUBER, AND JUDITH TEITELL,
GENERAL PARTNERS,

Petitioners, Decision and order

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

- and -

Index No. 525611/2019

ARTHUR ROZOF, AS A GENERAL PARTNER AND IN HIS
REPRESENTATIVE CAPACITY AS EXECUTOR OF THE
ESTATE OF EDNA ROZOF, GENERAL PARTNER, DECEASED,

Respondents, August 31, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The petitioners have moved seeking a judgement winding-up
the partnership known as 392 1st Street Company. The respondents
have cross- moved seeking to dismiss the petition. The motions
have been opposed respectively. Papers were submitted by the
parties and arguments held. After reviewing all the arguments
this court now makes the following determination.

The petitioners Mark Rozof, Linda Rozof-Guber, and Judith
Teitell and respondent Arthur Rozof are siblings. The four
siblings as well as the estate of their mother are partners in
the partnership which owns one piece of land located at 392 1st
Street in Kings County. That partnership forms a small part of
larger family holdings that are owned by corporations. In 2015
the petitioners sought to sell the property associated with the
partnership and an action was commenced. That lawsuit was

resolved by a judgement which stated that there must be "consent to a sale of all or substantially all of the assets of Defendant D. Karnofsky, Inc. ("Corporation")" (see, Order and Judgement, dated September 28, 2017 [NYSCEF Doc. No. 38]). Another action was commenced by the petitioners in Nassau County which sought judicial oversight to sell the partnership property. While that lawsuit was transferred to Kings County this lawsuit was commenced seeking judicial approval of winding up of the partnership and the right to sell the partnership property. The respondents seek to dismiss the action on the grounds the lawsuit cannot proceed.

Conclusions of Law

It is well settled that the death of a partner dissolves the partnership (see, Partnership Law §62(4)). It is further well settled that when a partner retires or dies and the partnership continues "without any settlement of accounts . . . between . . . his estate and the . . . partnership continuing the business" the estate of that partner has two rights: (1) to receive the deceased partner's share of the partnership's value as of the date of dissolution (death); and (2) to elect either (a) interest on the value of the partnership or (b) the profits attributable to the partnership's "use of [its] right in the property of the dissolved partnership" for the time period

between dissolution and judgment (NYPL §73). In this case the partnership continued all operations upon Edna's death. Likewise, the partnership continued all operations upon Judith's withdrawal or retirement from the partnership. Concerning the continuation of the partnership after the death of Edna and the withdrawal of Judith, such continuation created a new partnership at will (see, Burger, Kurzman, Kaplan & Stuchin v. Kurzman, 139 AD2d 422, 527 NYS2d 15 [1st Dept., 1988]). As the court stated in Peirez v. Queens P.E.P. Associates Corp., 148 AD2d 596, 539 NYS2d 61 [2d Dept., 1989] "absent specific agreement to the contrary, a partnership or a joint venture to which the partnership was a party, dissolves upon the death of a partner and, though the survivors continue to operate the business of the former partnership, they in effect create a new partnership at will" (id). The rights of Edna's estate and Judith's rights are governed by Partnership Law 73 as noted. However, there can be no winding-up of the original partnership that has been replaced by the new partnership at will still functioning at this time. It would be improper to seek to wind-up a partnership that has continued in a new form with the remaining partners. The petitioners insist that they did not simply continue to operate without either Edna or Judith and that they were simply winding up the affairs of the partnership. However, Edna passed away in 2011 and the petitioners have not presented any evidence at all

that any actions in furtherance of winding-up the partnership were undertaken. The petitioners continued to perform the same duties and responsibilities, and earn the same profits without Edna. That is not a winding-up of the partnership, rather it is a commencement of a new at will partnership. Furthermore, the desire to sell the asset in question is not evidence of any winding-up of a partnership that had already been terminated for over five years. Therefore, since the new partnership has replaced the old one there can be no winding-up of its affairs. Consequently, the motion of the petitioners seeking judicial oversight of a sale of any partnership assets is denied.

Further, upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR S3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

The petition seeks judicial oversight following a dissolution. However, as noted, there has been no dissolution of the current partnership. The new at-will partnership continues to operate, albeit with disagreement among the partners as expressed in numerous litigations. The court cannot oversee any judicial dissolution where none exists. Consequently, the motion seeking to dismiss the petition is granted.

So ordered.

ENTER:

DATED: August 31, 2023
Brooklyn N.Y.



Hon. Leon Ruchelman
JSC