

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,

November 9, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3

The petitioners have moved seeking to reargue a decision and order dated August 31, 2023 denying a request seeking judicial oversight of a sale of any partnership assets. The respondents have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order, 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 Edna were partners in the partnership which owns one piece of property located at 392 1st Street in Kings County. 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 court held that the death of a partner terminates a partnership, thus Edna's death terminated the partnership. However, the prior decision noted the partnership continued to operate upon Edna's death and thus created a new at will partnership thereby. Upon reargument the petitioners assert that Judith withdrew from the partnership on February 18, 2016 and immediately thereafter sought judicial action to wind up the partnership. Thus, the petitioners argue, the court erred by failing to consider that Judith's activities established an intent and actual efforts to dissolve the partnership. Consequently, upon reargument the court should consider such efforts and grant petitioner's motion seeking judicial review of the sale of partnership assets.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason

mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

There is no dispute that upon Edna's death the partnership terminated and a new partnership was created. Thus, the partnership, namely, 392 1st Street Company, which is the subject of this petition terminated in 2011. There is further no dispute that the continued operation by the partners in the same manner, as if nothing had changed, created a new partnership at law. To be sure, the individual partners may not have been aware of the formation of a newly constituted partnership, yet that is the unmistakable conclusion based upon Edna's death. There is further no dispute that there was no winding up of the partnership at all upon Edna's death. Thus, on February 18, 2016 Judith could only have withdrawn from the new partnership, not 392 1st Street Company, which had already been dissolved for five years. The petitioners argue that Judith's withdrawal "under Partnership Law § 16, effected an independent, automatic dissolution of the Partnership by operation of law" (see, Memorandum of Law, page 3 [NYSCEF Doc. No. 77]). First, the reference to Partnership Law §16 is a typographical mistake since that statute does not exist and it is unlikely it was confused with Uniform Partnership Act §16 which concerns partners by estoppel. In any event it is difficult to imagine how Judith

could "independently" withdraw from a corporation that had already been dissolved for five years. Thus, the imprecise references to Judith's withdrawal from "the" partnership cannot possibly mean 392 1st Street Company but can only mean the new partnership created by the ongoing operation, albeit without Edna. Judith's subjective belief regarding her withdrawal cannot change these legal realities. Nor can filings of tax returns listing income from a partnership that had long ago been dissolved. Consequently, Judith withdrew, pursuant to her rights, from the newly formed partnership. Her subsequent petition in Nassau County and her repeated requests to engage in winding up of the already dissolved partnership were really acts of no consequence. Those acts can only be termed nullities. Of course, Judith properly withdrew from the new partnership and could have brought a proceeding to wind up that partnership. While Judith's actions demonstrate legitimate efforts to wind up the newly formed partnership her petition and subsequent requests seeking oversight of the sale of partnership assets simply focused upon the wrong partnership. There is little doubt that Judith attempted to withdrawn from whichever partnership existed and seeks judicial oversight concerning the sale of assets of whichever partnership from which she withdrew. However, the court cannot ignore the actual filings in this case which clearly and unequivocally refer to a dissolved partnership and impose


instead the subjective wishes of what Judith really meant.

Therefore, there can be no oversight of the sale of any assets of 392 1st Street Company and thus the motion seeking reargument is denied.

So ordered.

ENTER:

DATED: November 9, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC