To Be Argued By:
John P. McEntee
Time Requested: 15 Minutes

New York Supreme Court

APPELLATE DIVISION — SECOND DEPARTMENT

Docket No.
2023-09113

In the Matter of the Application of

MARK ROZOF, LINDA ROZOF-GUBER,
AND JUDITH TEITELL, GENERAL PARTNERS,

Petitioners-Appellants,

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

against

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

Respondent-Respondent.

BRIEF FOR PETITIONERS-APPELLANTS

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STATEMENT OF THE QUESTION PRESENTED

1. Should a court deny a petition for judicial winding up of a general partnership at will that dissolved by operation of law upon a partner's withdrawal on the basis that petitioners took no steps to wind up the affairs of the partnership, despite court records showing petitioners, including the withdrawing partner: commenced a proceeding for judicial oversight five days after the withdrawal; repeatedly and diligently sought a determination in that proceeding; commenced a second proceeding for the same relief when a determination could not be obtained in the first proceeding; and where petitioners limited their activities after dissolution to those required by and consistent with the winding up of the affairs of the partnership such as the filing of tax returns, the collection of rents, and the payment of expenses?

The trial court answered in the affirmative.

Petitioners-Appellants Mark Rozof ("Mark"), Linda Rozof-Guber ("Linda"), and Judith Teitell ("Judy") (collectively, "Appellants") submit this brief in support of their appeal ("Appeal") from the Decision and Order ("Order") of the Hon. Leon Ruchelsman dated August 31, 2023 (R. 5-9) dismissing the Verified Petition, which sought an Order and Judgment: (a) supervising the winding up of 392 1st Street Company ("Partnership") under Partnership Law § 68; (b) authorizing Appellants to sell the Partnership's only material asset, a walk-up apartment building, and distribute the sale proceeds to the partners; and (c) directing that a final accounting be prepared and that upon a final accounting, issuing a declaration that the Partnership's affairs have been wound up.

STATEMENT OF FACTS

This is a dispute between Appellants and their brother, Respondent-Respondent Arthur Rozof ("Arthur") (collectively, the "Siblings"). The Siblings, together with the estate ("Estate") of their deceased mother, Edna Rozof ("Edna"), are the general partners of the Partnership (R. 13, ¶¶ 4-8). Edna died on December 4, 2011 (*id*., ¶ 8). Arthur is the Executor of the Estate (*id*.). The Appeal marks the second time the Siblings have been to this Court in a dispute involving Edna (*see Matter of Rozof*, 219 AD3d 1428, 1430 [2d Dept 2023] [affirming issues of fact exist about "whether the execution of [Edna's] will was the result of [Arthur's] undue influence"]).

The Partnership is a general partnership at will; there is no partnership agreement (R. 14, ¶ 22). The Siblings and the Estate are also shareholders in a corporation, D. Karnofsky, Inc. ("DKI") (R. 347, ¶ 3). The Partnership has a single material asset, a four-story residential apartment building ("Building") at 392 1st Street, Brooklyn, New York ("Partnership Property"), which the Partnership acquired from DKI in 1986 (R. 13, ¶¶ 11-12; R. 24). The Partnership dissolved by operation of law on Edna's death (R. 14, ¶ 14; *see also* Partnership Law § 62[4]). Arthur refused to acknowledge this dissolution, though (R. 15, ¶ 29; R. 349, ¶ 7; R. 351-352, ¶ 12; R. 42, ¶ 12 [Arthur asserting "there has been no dissolution of the Partnership"]).

The trial court noted that the death of a partner dissolves the partnership and accordingly rejected Arthur's argument that the Partnership had not been dissolved (*see* R. 6). But, it found that a new partnership was created among the Siblings and the Estate after Edna's death, in other words, a reconstitution of the Partnership, because "the partnership continued all operations upon Edna's death" (R. 7, at 3). For purposes of the Appeal, Appellants do not dispute this finding.

In 2015, four years after Edna's death, Appellants engaged a licensed real estate broker to sell the Building (*see* R. 14, ¶ 20; R. 350, ¶ 9, R. 107). A sealed bid process was established, and Arthur was advised of the bid deadline (R. 232, ¶ 7; R. 240; R. 241). Arthur did not submit a bid (R. 351, ¶ 11). Instead, he asserted, without

any legal basis, that he should have "the option to match or beat" the highest sealed bid (R. 232, ¶ 7; R. 233, ¶ 9; R. 245). On January 6, 2016, shortly after learning the Partnership was negotiating a contract of sale with the winning bidder for a sale price of $4,750,000, Arthur commenced an action in the Supreme Court, Kings County, relating to the Partnership and to DKI (R. 233, ¶ 11) in which Arthur argued the Partnership was not in dissolution (R. 351-352, ¶ 12). There was no determination of that issue, though (R. 200).

Arthur's refusal to consent to the sale of the Building and the disclosure of Arthur's lawsuit to the winning bidder scuttled the sale (R. 352, ¶ 13; R. 353, ¶ 16; R. 15, ¶¶ 30-31). Weeks later, Judy sent a written notice stating she was withdrawing from the Partnership (R. 14, ¶ 16; R. 26; R. 351-352, ¶ 12), effecting a dissolution of the Partnership by operation of law (*see* Partnership Law § 62[1][b]).

On February 23, 2016, five days after Judy served her withdrawal notice, Appellants commenced a proceeding ("Original Proceeding") in the Supreme Court, Nassau County, for the same relief sought in this proceeding, namely, (i) the judicial supervision of the winding up of the Partnership; (ii) authorization to sell the Building and distribute the sale proceeds; and (iii) directing that a final accounting be prepared and that upon a final accounting issuing a declaration that the Partnership's affairs have been wound up (R. 27; R. 15-16, ¶¶ 33-34, 38).

Arthur moved to dismiss the Original Proceeding, arguing: that the Partnership was not in dissolution; that DKI, not the Partnership, owned the Building; and that under the DKI shareholder agreement he had the right of first refusal to purchase the Building (R. 235-236, ¶¶ 16-18; R. 28-30, at 2-4), while asking the court alternatively to transfer venue to Kings County if the motion to dismiss was denied (*id.*). In his Order deciding the motion, Nassau County Supreme Court Justice Stephen Bucaria held:

> 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. [Arthur] is estopped from contradicting representations made to the taxing authority (***Mahonev-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**.

(R. 29 [emphasis in original]).

After the Original Proceeding was transferred to the Supreme Court, Kings County,[1] years went by without a decision on the Petition, despite repeated written requests to the court for a decision (R. 236, ¶ 18; R. 329; R. 330; R. 333; R. 334; R.

[1] Venue was properly placed in Nassau County, where Linda resided (*see* New York Civil Practice Law & Rule § 503[d]), but the proceeding was transferred to Kings County, as a matter of discretion, because the Building is located in Kings County (R. 29-30).

335). As a result, Appellants commenced this proceeding, placing venue in Kings County. On November 11, 2022, Respondent moved to dismiss the Petition (R. 36), arguing the Partnership is not dissolved because Mark, Linda, and Judy purportedly "continued to operate the Partnership in the same manner as always" by "fixing rents, filing tax returns, [and] issuing K-1s to all the Siblings" (R. 39-40). Appellants opposed the motion (R. 230-447).

The trial court granted Arthur's motion and dismissed the Petition (R. 5), finding that a new partnership was formed after Edna's death in 2011 (R. 7-8). Focusing on the events after Edna's death to the exclusion of the events surrounding Judy's withdrawal from the Partnership in February, 2016, the trial court found Appellants "have not presented any evidence at all that any actions in furtherance of winding up the partnership were undertaken" (*id.*).

In reaching this conclusion, the trial court did not address the undisputed facts that: (i) on February 23, 2016, five days after Judy served her February 18, 2016 written notice of withdrawal from the Partnership (R. 14, ¶ 16; R. 26), Appellants commenced the Original Proceeding seeking judicial supervision of the winding up of the Partnership (R. 235, ¶ 16; R. 267), (ii) upon the transfer of the Original Proceeding to Kings County repeatedly contacted the court in writing for a determination of the Petition (R. 236, ¶ 18; R. 333; R. 334; R. 335), and (iii)

commenced this (second) proceeding when they could not get a determination in the Original Proceeding (R. 236, ¶ 19).

The trial court further held that Appellants "continued to perform the same duties and responsibilities, and earn the same profits without Edna" (R. 7-8). In reaching this conclusion, the trial court overlooked the fact that Appellants' payment of Building expenses, including real estate taxes and utilities, collection of rent from tenants, and the filing of tax returns while awaiting a decision on Appellants' petition for judicial supervision of the winding up of the Partnership were necessary actions consistent with the winding up of Partnership affairs and comported with Appellants' fiduciary duties to exercise due care in their management of the Partnership.

ARGUMENT

THE TRIAL COURT ERRED IN CONCLUDING THAT APPELLANTS TOOK NO STEPS TO WIND UP THE PARTNERSHIP, AS APPELLANTS PROMPTLY SOUGHT JUDICIAL OVERSIGHT OVER THE WINDING UP OF THE PARTNERSHIP UPON JUDY'S WITHDRAWAL AND THEIR ACTIONS IN COLLECTING RENTS AND PAYING EXPENSES OF THE PARTNERSHIP AFTER THIS WITHDRAWAL WERE CONSISTENT WITH, AND WERE FOR THE PURPOSE OF, WINDING UP THE AFFAIRS OF THE PARTNERSHIP

None of the actions taken by Appellants following Judy's withdrawal from the Partnership on February 18, 2016, which effected a dissolution of the Partnership by operation of law, demonstrated that the Partnership was reformed after this dissolution. To the contrary, all of the actions taken by Appellants while they diligently sought judicial supervision of the winding-up of the Partnership, including collecting rents, paying expenses, and filing tax returns, were consistent with Appellants' fiduciary duty of due care to the Partnership.

Because the Partnership does not have a partnership agreement, which Arthur concedes (R. 46, ¶ 24), the default provisions of the Partnership Law apply (*see Ederer v Gursky*, 9 NY3d 514, 526 [2007]; *Breidbart v Wiesenthal*, 10 AD3d 346, 348 [2d Dept 2004]). A general partnership dissolves automatically upon the death of a partner (R. 6; Partnership Law § 62[4]; *Green v Albert*, 199 AD2d 465, 466 [2d Dept 1993]) and upon a partner's withdrawal (Partnership Law §§ 60, 62[1][b]; *Dawson v White & Case*, 88 NY2d 666, 670 [1996]), and "continues until the winding up of the partnership affairs is completed" (Partnership Law § 61).

The Verified Petition alleges the Partnership dissolved automatically upon Edna's death in 2011 (R. 14, ¶ 14). Appellants assume, for purposes of the Appeal, that the trial court correctly held the Partnership reconstituted after Edna's death with the surviving partners, namely, Appellants and Arthur, individually and as Executor of the Estate (*see Wittels v Sanford*, 137 AD3d 657, 658 [1st Dept 2016] [law firm reconstituted after dissolution caused by disciplinary proceedings against partner]; *Dawson v White & Case*, 212 AD2d 385, 385 [1st Dept 1995], *mod on other grounds* 88 NY2d at 669 [law firm reconstituted with same name and address after dissolution]; *Feder v Feder Kaszovitz LLP*, 2021 NY Slip Op 32525[U], * 1 [Sup Ct, NY County, Nov. 30, 2021] [law firm reconstituted under the same name after partner's retirement]; *In re Gouz*, NYLJ, Nov. 8, 1991 at 28, col 1, 1991 NYLJ LEXIS 4257, * 4 [Sur Ct, NY County 1991] [partnership may be reconstituted after death of partner]).

Arthur acknowledges Judy gave written notice on February 18, 2016 withdrawing from the reconstituted Partnership (R. 48, ¶ 31; R. 51, ¶ 40), but argues that Appellants' filing of income tax returns, the issuance of IRS K-1 forms and partnership distributions, the renovation of an apartment in the Building, and Judy's continued participation in the affairs of the Partnership is proof that there was "no real withdrawal by Judith, and no dissolution of the Partnership" (R. 42, ¶ 12; *see also* R. 39-40, ¶ 5; R. 48, ¶ 31; R. 222). Arthur further argued Judy's withdrawal

notice "was a mere sham" (R. 42, ¶ 10) and that her claim to be a partner of the Partnership was, "to say the least, inconsistent with the assertion that Judith withdrew from the Partnership in 2016" (*id.*), even though Judy, as a matter of law, remains a partner of the Partnership until the winding up of its affairs is completed (*see* Partnership Law § 61; *Lai v Gartlan*, 46 AD3d 237, 245 [1st Dept 2007]; *Matter of Silverberg (Schwartz)*, 81 AD2d 640, 641 [2d Dept 1981]).

In addition, Arthur argued Appellants were attempting to "strong-arm" and "pressure" him into giving up his Partnership interest (R. 41, ¶ 8; R. 42-43, ¶ 13), an odd claim given Appellants are seeking judicial supervision of the winding up of the affairs of the Partnership. If Arthur is truly concerned about whether he would receive the fair value of his interest in the Partnership, logic suggests he would enthusiastically embrace, rather than vociferously oppose, the judicial supervision sought by Appellants.

The trial court focused on the actions of the Siblings after Edna's death in 2011 rather than the actions of the parties at the time of, and after, Judy's withdrawal from the Partnership in February, 2016 (*see* R. 7-8). Assuming the trial court concluded correctly that the Partnership reconstituted after Edna's death in 2011, it overlooked the subsequent events surrounding Judy's withdrawal from the Partnership on February 18, 2016 (R. 26), which effected a dissolution of the Partnership by operation of law (*see* Partnership Law § 62[1][b]). From the date of

that notice, February 18, 2016, until the present, Appellants did nothing to evidence that the Partnership had again reconstituted. To the contrary, Appellants sought at all times during this period to wind up the affairs of the Partnership.

In 2015, Appellants engaged a licensed real estate broker to market the Building for sale (R. 14, ¶ 20; R. 350, ¶ 9; R. 107). A process was established for the submission of sealed bids from prospective purchasers, with Arthur's attorney being advised in writing on November 11, 2015 that a bid deadline was set for November 18, 2015 (R. 232, ¶ 7; R. 240; R. 241). Arthur did not submit a bid (R. 232, ¶ 7), asserting instead he should be given the "the option to match or beat" the highest bid for the Building (R. 233, ¶ 9; R. 245).

Appellants then proceeded to negotiate a contract of sale for the sale of the Building to the highest bidder for a price of $4,750,000 (R. 233, ¶ 11). On January 6, 2016, shortly after learning the Partnership was negotiating a contract of sale for the Building, Arthur sued Appellants in the Supreme Court, Kings County relating to the Partnership and to DKI (*id.*). In that action, Arthur asserted the Partnership was not in dissolution (R. 351-352, ¶ 12), but there was no determination of that issue (R. 200).

Arthur's refusal to consent to the sale of the Building and the disclosure of Arthur's lawsuit to the winning bidder scuttled the sale (R. 352, ¶ 13; R. 353, ¶ 16; R. 15, ¶¶ 30-31; *see also* Partnership Law §§ 20, 21). Weeks later, on February 18,

2016, Judy sent her withdrawal notice (R. 14, ¶ 16; R. 26; R. 351-352, ¶ 12) to cause an automatic dissolution of the Partnership (*see* Partnership Law § 62[1][b]). Five days later, on February 23, 2016, knowing that Arthur would not cooperate in the winding up of the affairs of the Partnership, Appellants commenced the Original Proceeding seeking the same relief Appellants sought in this proceeding (R. 15-16, ¶¶ 33-34, 38; R. 27-28).

The Original Proceeding was transferred to Kings County (R. 27; R. 30; R. 16, ¶ 35). After the transfer, Appellants requested, after eight months of inactivity, that it be assigned to the Commercial Division (R. 236, ¶ 18). Once so assigned, Appellants repeatedly wrote to the IAS Justice to obtain a decision on the transferred petition (R. 16, ¶ 36; R. 236, ¶ 18; R. 333; R. 334; R. 335), but no decision was ever issued (R. 236, ¶¶ 18-19; R. 16, ¶ 36). In 2019, after concluding that no decision in that proceeding would be forthcoming (R. 236, ¶ 19), Appellants commenced this proceeding, which, due to delays occasioned by COVID and other factors, was not decided until August, 2023.

The trial court's conclusion that Appellants "have not presented *any evidence at all* that any actions in furtherance of winding up the partnership were taken" (R. 7-8 [emphasis added]) overlooks material undisputed facts. Less than one week after Judy served her notice of withdrawal from the Partnership, Appellants commenced the Original Proceeding, repeatedly requested a determination in that proceeding,

and, when Appellants could not obtain the requested relief despite due diligence, Appellants commenced a second proceeding, namely, this proceeding, for the same relief.

With Arthur refusing to consent to the sale of the Building, the Building could not be sold (*see* Partnership Law §§ 20, 21). Unable to sell the Building, Appellants had to take actions to maintain the Building and the Partnership while they awaited a determination on their request for judicial supervision, which included paying real estate and income taxes, collecting rent, paying utility bills and other Building expenses, and renovating an apartment to allow it to be relet (R. 39-40, ¶ 5; R. 442-443). There is nothing more Appellants could have done to wind up the affairs of the Partnership, and there is no evidence Appellants took steps inconsistent with the winding up of the Partnership, such as the admission of new partners, purchasing another building, or engaging in transactions unrelated to the Building.

"[T]he continuation of the business of the partnership after its dissolution does not revive the dissolved entity" (*Bitetto v F. Chau & Assocs., LLP*, 10 Misc 3d 595, 601 [Sup Ct, Nassau County 2005], citing *Burger, Kurzman, Kaplan & Stuchin v Kurzman*, 139 AD2d 422 [1st Dept 1988]). When a partnership is dissolved, "the partnership is not terminated, but continues until the winding up of partnership affairs is completed" (Partnership Law § 61; *Lai*, 46 AD3d at 245; *Matter of Silverberg (Schwartz)*, 81 AD2d at 641).

After dissolution, "a partner may bind the partnership by any appropriate action necessary to wind up the partnership affairs or complete transactions unfinished at the time of dissolution" (*Stark v Utica Screw Products, Inc.*, 103 Misc 2d 163, 165-166 [Utica City Ct, 1980], citing Partnership Law § 66[1]; *see Matter of Perkins & Will Partnership (Syska & Hennessy)*, 50 AD2d 226, 232 [1st Dept 1975] [dissolved partnership may, among other things, take and settle accounts, collect partnership property and assets, and watch over the business for the benefit of all those interested]; *Fox Meadow Partners, Ltd. v Board of Assessment Review*, 273 AD2d 472, 472-473 [2d Dept 2000] [dissolved partnership could commence tax certiorari proceeding in connection with winding up of partnership affairs]; *In re Belden's Will*, 143 Misc 159, 160-161 [Sur Ct, Westchester County 1932] [dissolved partnership could expend necessary and reasonable expenses for winding up of partnership]; *see also 89 Pine Hollow Rd. Realty Corp. v American Tax Fund*, 96 AD3d 995, 998 [2d Dept 2012] [dissolved corporation could commence action to vacate tax deed]; *Luna Light., Inc. v Just Indus., Inc*., 45 AD3d 814, 815 [2d Dept 2007] [dissolved corporation could exercise right to redeem mortgage]; *Bowditch v 57 Laight Street Corp*., 111 Misc 2d 255, 258 [Sup Ct, NY County, Apr. 13, 1981] [dissolved corporation could exercise real estate purchase option]).

Appellants' actions after the 2016 withdrawal notice are not evidence that the Partnership was again reconstituted or a new partnership was formed. Even in

dissolution, the Partnership must collect rents, pay taxes and expenses, file tax returns, and maintain rental units, as dissolution is not the equivalent of termination (*see* Partnership Law § 61). Because a partnership does not evaporate into the ether on dissolution but instead "continues until the winding up of partnership affairs is completed" (*id*.), a failure to perform these actions would have destroyed the value of the Partnership's only material asset while giving rise to a claim for waste and breach of the fiduciary duty of due care.

Appellants took these actions because Arthur refused to consent to the sale of the Building unless he was given the "option to match or beat" third-party bids for the Building (R. 233, ¶ 9; R. 245; R. 15, ¶ 30), and the Building could not be sold over Arthur's objection (R. 352, ¶ 13; R. 353, ¶ 16; R. 15, ¶¶ 30-31; *see* Partnership Law §§ 20, 21). And, because these activities took place during the pendency of proceedings that Appellants brought for judicial oversight of the winding up of the Partnership, Arthur could not have been under a misimpression that the Partnership had been reformed after Judy's withdrawal.

Moreover, Arthur's efforts to acquire the Building for himself, which interfered with the efforts of Appellants to wind up the Partnership's affairs through a sale of the Building and the distribution of the sale proceeds (R. 15, ¶¶ 29, 30; R. 349-352, ¶¶ 7-13), did not comport with Arthur's fiduciary duties of loyalty and good faith and to "refrain from acting for purely private gain" (*Gibbs v Breed, Abbott*

& Morgan, 271 AD2d 180, 184 [1st Dept 2000]). The trial court, by denying the Petition on the basis of activities that were necessitated by Arthur's efforts to benefit himself financially to the detriment of the Partnership, rewarded Arthur's obstreperous behavior and gave him leverage over Appellants in his effort to obtain the "the option to match or beat" the highest bid for the Building (R. 233, ¶ 9; R. 245).

The two substantive cases relied on by the trial court in its Decision and Order do not support a finding that a new partnership formed after Judy's 2016 withdrawal. In *Burger, Kurzman, Kaplan & Stuchin* (139 AD2d at 422), an accounting partnership dissolved in 1979 upon the death of a partner while the three remaining partners continued to operate the business until 1983, when two of the partners advised the third that the partnership was terminating at the end of the year. The Court found that the three surviving partners had created a new partnership by continuing the business after the death of the partner, but also found this new partnership dissolved in 1983 when notice of termination was given (*id*. at 424). And in *Peirez v Queens P.E.P. Assoc. Corp*., 148 AD2d 596, 597-598 [2d Dept 1989]), the Court found that where the remaining parties carried on the business of the partnership after a partner died a new partnership at will was created, an unremarkable proposition. But, unlike here, there was no evidence that steps were taken to wind up the affairs of the old partnership (*id*.).

In the last year of Edna's life, Arthur procured a new will for 91-year-old Edna, giving all of Edna's interest in DKI to himself upon her death to the exclusion of Appellants (R. 349, ¶ 6), leading to a will contest alleging undue influence (*id.*; R. 237, ¶ 20; R. 336; *see Matter of Rozof*, 219 AD3d at 1429). And then, in January, 2016, Arthur sued Judy (R. 233-234, ¶¶ 11-12; R. 247). Arthur, who conceded "there is discord amongst Arthur and [Appellants]" (R. 224), surely could not have been surprised when Judy, weeks after Arthur sued her, sent a notice withdrawing from the Partnership and then joined with Mark and Linda seeking court supervision for the winding up the Partnership so that they would no longer have to be Arthur's partner (R. 15-16, ¶¶ 33-35).

It is a basic principle of partnership law that, absent a written partnership agreement establishing a fixed duration for a partnership, "[n]o one can be forced to continue as a partner against his will" (*Napoli v Domnitch*, 18 AD2d 707, 708 [2d Dept 1962], *affd* 14 NY2d 508 [1964]; *see Seligson v Russo*, 16 AD3d 253, 253 [1st Dept 2005] [same, citing *Napoli*]; *DeMartino v Pensavalle*, 56 AD2d 589, 589 [2d Dept 1977] [partnership at will "may be dissolved at any time by any partner," citing *Napoli*]).

"[A]t the heart of the partnership concept is the principle that partners may choose with whom they wish to be associated" (*Gelder Med. Group v Webber*, 41 NY2d 680, 684 [1977]; *Dawson*, 88 NY2d at 669-670 [same]). Even if Arthur is

able to establish in the Surrogate's Court that the new will he secretly procured for his 91-year-old mother in the last year of her life was not the product of undue influence (R. 336; *Matter of Rozof*, 219 AD3d at 1429), he cannot deny the new will materially changed the disposition of the Estate in his favor (*id*.; R. 349, ¶ 6). Having chosen money over family harmony, Arthur cannot complain about the consequences of that choice, which is that Appellants do not want to be his partner.

The trial court's finding that the Partnership again reconstituted after Judy's withdrawal ignores undisputed contrary evidence that, upon the withdrawal, Appellants immediately went to great lengths to obtain court supervision of the winding up of the Partnership and simply comported with their fiduciary duty of due care in collecting rent, paying expenses, and filing tax returns while awaiting an order for judicial supervision. The trial court's error has wrongly forced Appellants to remain partners of Arthur against their will and the Decision and Order of the trial court should be reversed.

CONCLUSION

None of the actions taken by Appellants following Judy's withdrawal from the Partnership on February 18, 2016, which effected a dissolution of the Partnership by operation of law, demonstrated that the Partnership was reformed. Rather, all of the actions taken by Appellants, such as collecting rents, paying expenses, and filing tax returns, were consistent with Appellants' fiduciary duty of due care to the Partnership and were taken while Appellants were actively and diligently seeking court supervision of the winding up process. The trial court, by finding that the Partnership took no steps to wind up the affairs of the Partnership and had reformed after Judy's withdrawal in 2016, erred as a matter of law.

Because there is no reason why the Partnership, a single-asset partnership-at-will, should continue as a partnership over Appellants' objections (*see Napoli*, 18 AD2d at 708), the Court should reverse the Decision and Order of the trial court and grant the relief sought in the Petition.

Dated: Garden City, New York
June 24, 2024

Respectfully submitted,

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