

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: COMMERCIAL DIVISION**

**PRESENT: HON. JENNIFER G. SCHECTER PART 54**

*Justice*

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NORBERTO JORGE LEVIN, FONDO DE INVERSION  
PRIVADO LEVIN GLOBAL,

**INDEX NO. 650477/2017**

Plaintiffs,

**DECISION AFTER TRIAL**

- v -

CARLOS LUIS SALVINI, MAURICIO VALENTIM  
GUGLIANO,

Defendants.

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After trial, the court finds--based on the credibility of the witnesses, the contributors' correspondence and the agreement itself--that defendants overwhelmingly proved that section 13.1 of the Contributors Agreement is an unenforceable penalty. The court does not believe that the \$1,000,000 fine, "which is delinquent in nature" and is payable above and beyond "other applicable damages in accordance with the general rules of law," was intended as a reasonable estimation of actual damages. Significantly, although Mr. Levin and Mr. De Paolantonio used language such as "reasonable estimate" (Tr. 96, 277), there was no believable evidence that, in fact, the parties actually discussed the difficulty of estimating damages, what the actual monetary damages to the Fund looked like after a breach of the non-compete or any actual Fund financial metrics in increasing the fine from \$20,000 to \$1,000,000 after Ms. Berrocal's departure (*see e.g.* Tr. 100 [there "was no mathematics in it. It was just what made common sense"]; 278:24-279:2). No specifics were provided of any substantive discussions of potential damages that were tethered to any contemplated financial harm that the Fund would suffer. All of the credible evidence pointed to the increase of the fine as a measure intended to sufficiently disincentivize disloyalty and make it worthwhile for the Fund to punish it (*see e.g.* Tr. 276; 278-279; DX-EE).

The court also finds that there is no basis for a judgment declaring that Mr. Levin may take ownership of either defendants' shares or that defendants' shares were forfeited. Section 8.3 of the Contributors Agreement provided for penalties upon breach of the non-compete and forfeiture of the shares was not one of them. In fact, any of the remainder of the Contributors could have purchased the competing contributors' shares pursuant to section 8.4 but chose not to do so.

**POST-TRIAL DECISION**

Accordingly, section 13.1 is an unenforceable penalty, defendants' shares were not forfeited and plaintiffs were not entitled to their shares.

It is ORDERED that the parties shall attempt to jointly prepare a proposed judgment consistent with the verdict and this order, and by September 5, 2024, they shall either e-file and email the court a Word version of their joint proposed judgment or competing proposed judgments along with a redline and a joint letter, not to exceed 4 pages, explaining their disagreements.



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**DATE: 8/28/2024**

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**JENNIFER G. SCHECTER, JSC**