

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

INDEX No. 19181/03

MOTION DATE: July 31, 2013
Motion sequence # 049

ANTHONY ALIZIO, individually and as a
General Partner in OCEANVIEW REALTY
COMPANY, OCEANVIEW ASSOCIATES,
OCEANVIEW II ASSOCIATES, HEYSON
GARDENS ASSOCIATES, BRIDGEVIEW II
ASSOCIATES and BRIDGEVIEW III
ASSOCIATES,

Plaintiffs,

-against-

PETER ROBERT PERPIGNANO, LILLIAN
EISENBERG, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF IRVING EISENBERG,
BERNICE EISENBERG, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
LEONARD EISENBERG, JOSEPH ALIZIO,
CHARLES TITONE, GREGORY RONAN,
GODDARD, RONAN & DINEEN, LLP, OCEANVIEW
REALTY COMPANY, OCEANVIEW ASSOCIATES,
OCEANVIEW II ASSOCIATES, HEYSON
GARDENS ASSOCIATES, BRIDGEVIEW II COMPANY,
BRIDGEVIEW II ASSOCIATES and BRIDGEVIEW
III ASSOCIATES, BRIDGEVIEW III HOUSING
CORP. and MAYPORT HOUSING PARTNERSHIP,
JOSEPH DINEEN, ANITA OTTON, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF EDWARD
T. OTTON and SHEILA LEIPSNER,

Defendants.

The following papers read on these motions:

Order to Show Cause.....	X
Cross-Motion.....	X
Affidavit in Opposition.....	XXX
Affirmation in Support.....	X
Memorandum of Law.....	XXXX

Motion by defendant Bridgeview III Housing Corp. for dissolution of Bridgeview III Associates and the appointment of a receiver to sell the property is **granted**. Cross-motion by plaintiff Anthony Alizio for an injunction restraining defendants Peter Perpignano and Bridgeview III Housing Corp. from interfering with efforts to obtain refinancing is **denied**.

The present actions arise from disputes among the partners in a group of affiliated partnerships, each of which owned a subsidized apartment building. The partners included plaintiff Anthony Alizio, his twin brother defendant Joseph Alizio, Peter Perpignano, and defendants Leonard and Irving Eisenberg. Leonard Eisenberg died in August 2005, and Irving Eisenberg died in April 2006. Leonard and Irving’s personal representatives have appeared, and the actions continue against their estates.

In July 2003, certain of the partners wished to sell certain of the properties, but Anthony was opposed to that action. In July 2003, Joseph Alizio agreed to cast the decisive vote to sell a number of the properties and to supervise the winding up of the partnerships. In consideration of Joseph’s voting to sell the properties, the general partners, other than Anthony, agreed to pay Joseph a total of \$1,575,000, or \$525,000 upon the closing of each property.

All of the properties have now been sold, except for a building located in Astoria and owned by defendant Bridgeview III Housing Corp. Bridgeview III Housing Corp. claims the building is worth approximately \$20-\$25 million but is presently operating at a loss.

In his first cause of action in the amended complaint (Index No. 19181/03), Anthony alleges that Joseph breached his fiduciary duty to the partnerships by selling the properties for less than fair value. Additionally, Anthony claims that Joseph breached his fiduciary duty by accepting a separate consideration to vote in favor of selling the properties.

In the second cause of action (Index No. 19181/03), Anthony claims that Irving

Eisenberg, who was the managing general partner, Leonard Eisenberg, Joseph Alizio, and Perpignano used partnership funds to pay the law firm of Herrick Feinstein, LLP for legal services performed for certain of the partners in their individual capacities.

In his third cause of action (Index No. 19181/03), Anthony seeks an accounting with respect to the affairs of the partnerships. In his fourth cause of action (Index No. 19181/03), Anthony seeks to recover from Leonard and Irving Eisenberg their proportionate shares of attorneys fees which Anthony advanced in separate cases brought in Supreme Court, Queens County and the United States District Court for the Southern District of New York. In the Queens County action, Joseph Alizio sued Leonard and Irving Eisenberg and Anthony Alizio to declare certain management agreements covering the buildings null and void (Index No. 601063). In the federal action, the Eisenbergs and the Alizios were sued by Rosewood Apartments Corp. (99 CV4226).

P.J. Alizio Realty, Inc., a company operated by Anthony's sons, was the managing agent for certain of the buildings. On May 14, 1991, P.J. Alizio Realty entered into management agreements for the buildings owned by Bridgeview II, Bridgeview III, Ocean View, Ocean View II, and Heyson Gardens. The agreements provided that they could be terminated by the owner only for cause. The agreement contained a liquidated damages provision of \$150,000 for wrongful termination prior to July 1, 1998 and \$100,000 for wrongful termination after that date. In P.J. Alizio Realty, Inc. v Irving Eisenberg (Index No. 312/04), P.J. Alizio alleges that Irving Eisenberg wrongfully terminated the management agreements on behalf of the partnerships in December 2003. In that action, Joseph Alizio asserts a derivative counterclaim, on behalf of the partnerships, against Anthony and P.J. Alizio Realty for breach of fiduciary duty and breach of the management agreements by charging the partnerships for P.J. Alizio's overhead expenses. Joseph asserts similar counterclaims in Anthony Alizio v Peter Robert Perpignano (Index No. 19181/03).

On September 17, 2013, trial commenced as to these matters, as well as certain attorney malpractice claims, which arise from the July 2003 agreement to sell the properties. By order to show cause dated September 24, 2013, defendant Bridgeview III Housing Corp., joined by Perpignano and the Eisenberg estates, moves for an order directing the sale of the property, or in the alternative for dissolution of the Bridgeview III Associates partnership and the appointment of a receiver to sell the property.

Bridgview III Associates is a New York limited partnership, which was founded in 1975. The current general partners are Anthony and Joseph Alizio and defendant Bridgeview

III Housing Corp., which holds title to the property. Defendant Peter Perpignano, the president of Bridgeview III Housing Corp. requests that the property be sold, but Anthony and Joseph Alizio oppose that action. The Alizios assert that \$ 13 million in interest free financing is available from the City in order to renovate the property.

Article Eighth of the partnership agreement provides that 51 % of the profits and losses shall be distributed to the general partners and 49 % shall be distributed to the limited partners. Article Ninth provides that the general partners may not, prior to January 1, 1996, sell, lease, or otherwise dispose of the project without the consent of 75 % of the limited partners. The agreement appears to be silent as to whether the approval of the limited partners is necessary for a sale after that date. However, Article Twenty-First, Part B provides that the general partners shall have the power to "direct the Housing Company on behalf of the partnership to sell... all or any part of the partnership property." Although the corporation holds title to the property, Anthony and Joseph Alizio assert that the corporation may not dispose to the property without the approval of a majority of the general partners of the partnership.

With certain exceptions, a general partner in a limited partnership has the rights and powers of a partnership without limited partners (Partnership Law § 98). Among these powers is the power to seek dissolution of the partnership on the ground that the business can only be carried on at a loss, or other circumstances render dissolution equitable (Partnership Law § 63).

The parties have been mired in litigation for over ten years. Two of the original general partners have died, and all but one of the properties has been sold. In these circumstances, the court concludes that the dissolution of Bridgeview Associates III is equitable. Accordingly, defendant Bridgeview III Housing Corp.'s motion for dissolution of Bridgeview III Associates and the appointment of a receiver to sell the property is **granted**. Defendant may settle a formal order of dissolution and a separate order for the appointment of a receiver on notice to all parties. Plaintiff Anthony Alizio's cross-motion for an injunction restraining defendants Peter Perpignano and Bridgeview III Housing Corp. from interfering with efforts to obtain refinancing is **denied**.

So ordered.

Dated 15 October 2013

ENTERED

OCT 17 2013

NASSEY COUNTY
COUNTY CLERK'S OFFICE

Stephen A. Bucaria
J.S.C.