

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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JOZEF SOKOLOWSKI AND WIESLAWA  
SOKOLOWSKA a/k/a WIESLAWA SOKOLOWSKI,

Plaintiff,

**Index No. 20793/2012**

-against-

MACIEJ WODKIEWICZ and SELF RELIANCE (NY)  
FEDERAL CREDIT UNION,

Defendants.  
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**MEMORANDUM OF LAW IN SUPPORT OF THE APPLICATION OF PLAINTIFF  
JOZEF SOKOLOWSKI AND WIESLAWA SOKOLOWSKI FOR SUMMARY  
JUDGMENT**

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Dated: New York, New York  
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## PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted in support of the application of Plaintiff JOZEF SOKOLOWSKI AND WIESLAWA SOKOLOWSKI (collectively, “Plaintiff”) for an order:

- (a) pursuant to CPLR § 3212 granting summary judgment in favor of Plaintiff and against Defendants on all causes of action;
- (b) directing Defendant to comply with the Partnership Agreement’s buyout provision; and
- (c) granting such other and further relief as this Court deems just and proper.

Plaintiff’s facts are set forth herein, in the accompanying affirmation of Jay B. Itkowitz, dated December 19, 2013 (“Itkowitz Aff.”), in the Affidavit of Wieslawa Sokolowski (“Sokolowski Aff.”) sworn on December 19, 2013, and the Affidavit of Michael Kelly (“Kelly Aff.”) sworn on December 16, 2013.

This action involves Plaintiff’s rights as a partner under a fully executed Partnership Agreement between Plaintiff and Defendant’s late-father, Mr. Arkadiusz Wodkiewicz (“Mr. Wodkiewicz”), dated March 25, 1991 (“the Agreement”). In the event of death, the Partnership Agreement gave the surviving partner the right to “buyout” the deceased partner’s fair market value interest in the partnership. The Partnership existed until its dissolution, which occurred upon Mr. Wodkiewicz’s passing. Settled legal principles mandate that “fair market value” be determined by the dissolution date. As such, Defendant’s claim that he is a co-partner or is entitled to accounting of the Partnership’s profits should be rejected

inasmuch as he is only entitled to a “buyout” predicated on the value as of the interest as of the date of death.

As set forth below, summary judgment should be granted in Plaintiff’s favor because no triable issues of fact exist and the only extant issue is the method of valuation to be employed by the Court for determining the “buyout” price.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On or about March 25, 1991, Plaintiff and Mr. Wodkiewicz entered into the Agreement. *See* Sokolowski Aff. ¶ 4. The Agreement established the J&J Real Estate Partnership and provided, among other things, that: (1) the partnership would “hold real estate,” including 223 Franklin Street and 225 Franklin Street, Brooklyn, New York (“the Premises” or “the Property”); (2) Plaintiff and Mr. Wodkiewicz would be partners; (3) profits and losses would be divided equally and that both partners would contribute equally any additional capital; (4) the partners would open a joint checking account to be used for payments of the partnership expenses and distribution of profits. *Id.* at Exhibit “1”. The Partnership existed until July 19, 2009, the date Mr. Wodkiewicz died.

In “*Death of Partner or Sale of Partnership Interest*,” the Agreement states:

In the event of the death of one of the Partners or purchase of a partner’s interest by the other Partner, the value of such shall be fair market value. Fair market value shall be the average price of two obtained by two independent licensed business brokers. The Partners intend to obtain partner’s life insurance coverage on each other to satisfy the Estate of the deceased partner’s interest. *Id.* at ¶ 7.

The same day the Partnership was formed, on March 25, 1991, Plaintiff and Mr. Wodkiewicz purchased the property (“the Premises”) comprising of two separate tax lots, Lot 21 (225 Franklin Street) and Lot 22 (223 Franklin Street). *Id.* at ¶ 9. The deed shows “Jozef

Sokolowski & Wieslawa Sokolowski” both own a fifty percent (50%) interest with the remaining fifty percent interest belonging to Mr. Wodkiewicz. *Id.* at ¶ 10. Plaintiff and Mr. Wodkiewicz obtained a loan from Self Reliance (NY) Federal Credit Union (“Self Reliance”) which has continuously held the mortgage against the Premises. *Id.* at ¶ 11. Since the purchase, Plaintiff managed the Premises and Mr. Wodkiewicz prepared all financial statements pertaining to the Partnership. *Id.* at ¶¶ 12-13.

Mr. Wodkiewicz died on July 19, 2009. *See* Sokolowski Aff. ¶ 14. On January 7, 2010, his son Defendant Maciej Wodkiewicz (“Defendant”) was appointed by the Surrogate Court of the State of New York, Kings County, to act as the fiduciary of his father’s estate. *Id.* at ¶ 15, Exhibit “6”.

Since Mr. Wodkiewicz’s passing, Plaintiff sought to purchase decedent’s interest in the Premises pursuant to the Agreement. However, the parties failed to reach an agreement. *Id.* at ¶ 17.

On October 18, 2012, Plaintiff filed the Summons and Complaint against Defendant. *Id.* at ¶ 19. On November 2, 2012, Defendant agreed to be bought out “according to the agreement signed by [his] late father.” *Id.* at ¶ 20. As such, Defendant agreed to an appraisal of the Premises. *Id.*

On November 23, 2012, R.J. Saar Associates appraised the Premises for Plaintiff valuing the Premises, as of the date of Mr. Wodkiewicz’s death, at \$ 2,075,000. *See* Sokolowski Aff. ¶ 21. Defendant’s appraisal company valued the Premises at \$3,450,000. *Id.* at ¶ 22. Despite having the Premises appraised, Defendant changed his mind and did not agree to a buyout. *Id.*

On April 12, 2012, Defendant served his answer and counterclaims. *See* Itkowitz Aff. ¶ 14, Exhibit “B”. Defendant, among other things, denied knowing whether the Partnership existed and claimed that the parties were co-owners of the Premises and that Plaintiff had failed to tender an accounting of the income and expenses of the Premises. *Id.* at ¶ 5. Defendant demanded an accounting and alternatively, asked this Court to order a partition of the Premises with the net proceeds divided equally between the parties, or for the Court to declare that the parties are co-owners of the Premises. *Id.*

On April 22, 2013, Plaintiff responded to the counterclaims. *See* Itkowitz Aff. ¶ 15, Exhibit “C”. A preliminary court conference took place on September 4, 2013. *Id.* at ¶ 16. On October 8, 2013, the parties agreed to extend the discovery deadline for an additional thirty days. *Id.* at 18. On November 14, 2013, Defendant served his demand for a bill of particulars and his document and discovery requests. *Id.* at 19.

## **ARGUMENT**

### **Standard of Review**

A motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212. Summary judgment is thus granted when the movant has established that there are no triable issues of fact. *Andre v. Pomeroy*, 35 N.Y. 2d 361, 362 N.Y.S.2d 131, 320 N.E.2d 853 (1974). Once the movant has established a prima facie entitlement to judgment as a matter of law, the party opposing the motion must come forward with proof establishing the existence of triable issues of fact or must demonstrate an acceptable excuse for its failure to do so. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S. 2d 595, 404 N.E.2d 718 (1980).

## POINT I

**THIS COURT SHOULD GRANT SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF BECAUSE THE PARTNERSHIP AGREEMENT CLEARLY ENTITLES PLAINTIFF TO “BUYOUT” MR. WODKIEWICZ’S INTEREST WITH AN AMOUNT SET BY THE FAIR MARKET VALUE OF THE PREMISES AT THE DATE OF MR. WODKIEWICZ’S DEATH.**

Plaintiff seeks summary judgment on the Agreement executed by Plaintiff and Mr. Wodkiewicz. The Agreement clearly provides that in the event of death, Plaintiff may purchase Mr. Wodkiewicz’s interest for an appraised amount as of the date of Mr. Wodkiewicz’s passing. Despite the Agreement, Defendant argues that (1) a Partnership did not exist; (2) he is entitled to an accounting from the date of his father’s death until present; (3) and alternatively, that he is a co-owner of the Premises. Defendant’s arguments lack merit and defy the indisputable facts of this case.

**A. Plaintiff has set forth a *prima facie* showing that a partnership existed between Plaintiff and Mr. Wodkiewicz**

In his answer at ¶ 5, Defendant denies the existence of the partnership between Plaintiff and his late father.

“A partnership is defined to be a contract of two or more persons, to place their money, effects, labor or skill, or some or all of them, in lawful commerce or business, and to divide the profits and bear the loss in certain proportions.” *Pattison v. Blanchard*, 5 N.Y. 186, 189 (1851). A partnership may result from an express or implied contract. *Martin v. Peyton*, 246 N.Y. 213, 158 N.E. 77 (1927). “The rights and obligations of the partners arise from and are fixed by their agreement.” *Levy v. Leavitt*, 257 N.Y. 461, 466, 178 N.E. 758 (2nd Dep’t 1931).



When a written agreement between the parties is clear and unambiguous and sets forth the full understanding and obligations of the parties, “the language of the partnership agreement controls and will not be questioned.” *Silverman v. Caplin*, 150 A.D. 2d 673, 541 N.Y.S.2d 546 (2nd Dep’t 1989). Indeed, “[t]he clear and unambiguous terms of the partnership agreement mandate the finding, *as a matter of law*, that the parties’ relationship was in fact a partnership.” *Id.* Moreover, where the parties have entered into such an agreement, parol or extraneous evidence or evidence of contemporaneous negotiations may not be admitted to vary the terms of the agreement. *Neiman v. Backer*, 167 A.D.2d 403, 561 N.Y.S.2d 811 (2nd Dep’t 1990); *see also Matter of Rosmarin*, 107 A.D. 2d 689, 692-93, 484 N.Y.S.2d 44,48 (2nd Dep’t 1985).

Here, Plaintiff established that a partnership existed with Mr. Wodkiewicz “as a matter of law.” The Agreement signed and executed by both Plaintiff and Mr. Wodkiewicz and witnessed by their attorney, Mr. Michael Kelly on March 25, 1991, established the Partnership. *See Kelly Aff.*; *Sokolowski Aff.* ¶ 4, Exhibit “1.” The Agreement sets the partners’ interest in the partnership’s holdings as each 50% and equally divides all profits and losses. *See Sokolowski Aff.* ¶4, Exhibit “1”. The Agreement also designates that the partners “shall hold real estate” including the subject Premises of this suit. *Id.* Furthermore, the Business Certificate of Conducting Business as Partners, executed on March 25, 1991, names the partnership “J&J Real Estate Partnership” and designates the partners as Plaintiff and Mr. Wodkiewicz. *See Kelly Aff.* ¶ 8; *see also Sokolowski Aff.* ¶ 5, Exhibit “2”.

Significantly, the buyout provision states that “[i]n the event of death of one of the Partners or purchase of a partner’s interest by the other Partner, the value of

such shall be fair market value. Fair market value shall be the average price of two obtained by two independent licensed business brokers . . . .” Sokolowski Aff. ¶ 4, Exhibit “1”. This Court should note that Defendant lived in Poland at the time of the Agreement’s execution. *Id.* at ¶ 16. Therefore, Defendant is in no position to dispute the terms thereof.

**B. The Partnership dissolved on the date of Mr. Wodkiewicz’s death and Defendant is entitled to his father’s interest in the Partnership as of the date of Mr. Wodkiewicz’s death**

Defendant argues that he is entitled to an accounting and that the value of the accounting should include the time following his father’s death. Alternatively, Defendant argues that the Premises should be auctioned with the purchase price divided equally between himself and Plaintiff. Such claims contradict the plain terms of the Agreement.

N.Y. Partnership Law § 62 dictates that dissolution of a partnership occurs, “without violation of the agreement between the partners . . . by the death of any partner[.]” Absent an agreement to the contrary, “a partnership . . . 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.” *Pierez v. Queens P.E.P. Associates Corp.*, 148 A.D.2d 596, 597, 539 N.Y.S.2d 61, 63 (2nd Dep’t 1989). Significantly, the Appellate Division, Second Department, has held that “*the . . . share of the fair market value of a parcel of real property [is] fixed as of the date the partnership dissolved.*” *Breidbart v. Wiesenthal*, 108 A.D.3d 492, 493, 969 N.Y.S.2d 89, 90 (2nd Dep’t 2013).

Here, Mr. Wodkiewicz died on July 19, 2009 and the Partnership dissolved on that day. *See* Partnership Law § 62. The Agreement further provided for the surviving partner to purchase the deceased Partner's interest. Sokolowski Aff. ¶ 4, Exhibit "1". It also states that the value of the deceased Partner's interest "shall be fair market value." *Id.* "Fair market value" is defined as the "average price of two [values] obtained by two independent licensed business brokers." *Id.* Thus, Plaintiff is entitled to purchase Mr. Wodkiewicz's interest in the partnership with a sum set to the Premises' fair market value as of the date of Mr. Wodkiewicz's death. Plaintiff respectfully requests this Court direct Defendant to comply with the "buyout" provision of the Agreement by agreeing to the average of two appraisals of the Premises, as of the date of Mr. Wodkiewicz's death.

Finally, Defendant's request for an accounting and/or a sale of the premises essentially asks this Court to ignore and rewrite the terms of the Agreement. However, law establishes that "partners may agree to dispose of partnership . . . on the termination of the partnership in any method they wish . . . ." *Gabay v. Rosenberg*, 29 A.D.2d 653, 654, 287 N.Y.S.2d 451, 453 (2nd Dep't 1978), *aff'd*, 23 N.Y.2d 747, 244 N.E.2d 267 (1968).

Here, the evidence established the Agreement was voluntarily entered into by all concerned. *See* Kelly Aff. ¶ 7. There can be no question of fact as to the validity of the Agreement and Plaintiff's right to purchase the decedent's interest at a value as of the date of death.. Accordingly, this Court should grant summary judgment and direct Defendant to comply with the "buyout" provision of the Agreement.

**CONCLUSION**

Plaintiff's motion for summary judgment directing the sale of the the decedent's fifty (50%) interest in the Agreement valued as of the date of decedent's death should be granted in all respects.

Dated: New York, New York  
December 19, 2013

Leily Faridzadeh, on the brief.

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