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NEW YORK STATE SUPREME COURT  
NEW YORK COUNTY : CIVIL TERM : PART 54

-----X  
DONNA REDEL,

Plaintiff,

-against-

IRVING REDEL and LEDER ENTERPRISES,

Defendants.

-----X  
Index No. 653395/2014

New York Supreme Court  
60 Centre Street  
New York, New York 10007  
June 9, 2015

B E F O R E: HON. SHIRLEY WERNER KORNREICH  
Supreme Court Justice

A P P E A R A N C E S:

TANNENBAUM, HELPERN, SYRACUSE & HIRSCHTRITT, LLP  
Attorneys for the Plaintiff  
900 Third Avenue  
New York, New York 10022  
BY: JOEL A. KLARREICH, ESQ.  
AND: RICHARD W. TROTTER, ESQ.

THE LAW OFFICES OF TIMOTHY P. KEBBE  
Attorneys for the Defendants  
445 Hamilton Avenue - Suite 1102  
White Plains, New York 10601-1825  
BY: TIMOTHY P. KEBBE, ESQ.

Lori Ann Sacco  
Official Court Reporter

## MOTION

1  
2 THE COURT: What I have in front of me at  
3 this point is a motion to dismiss based upon  
4 3211(a)(1)(7) and (a)(10)(c) and also 1001(a) of the  
5 CPLR arguing necessary parties were not properly  
6 joined. This case, the underlying case is  
7 unfortunate. It's -- Unfortunately I see this too  
8 much in this part. It's the case of a plaintiff, the  
9 daughter of and sister for the most part of  
10 defendants and seeking a dissolution of a  
11 partnership. And the partnership was started in  
12 1981. And then subsequently -- And it was a  
13 partnership which really had no assets. The father  
14 had -- he created the partnership, I guess, for  
15 himself, his wife and his three daughters. Each  
16 owned 20 percent of the partnership. There was a  
17 certificate. Something filed with the Secretary of  
18 State. There was never any kind of partnership  
19 agreement. But it was oral, I guess. And then in  
20 1983, a couple years later, the wife died.

21 The way I read partnership law such as this,  
22 I think the partnership may well have been dissolved  
23 at that point. So, it's not raised in the briefs,  
24 but it makes me think that perhaps there is no  
25 partnership once the wife died. But shortly after  
26 her death, a few months later, there may well have

## MOTION

1  
2 been a second partnership created in which the father  
3 now had 40 percent of this partnership, again with no  
4 assets. Each of the daughters had 20 percent. And  
5 they then went and had purchased an asset in real  
6 estate. It was -- I can't remember the exact  
7 address. Perhaps --

8 MR. KLARREICH: 225 Broadway, your Honor.

9 MR. KEBBE: 225 Broadway.

10 THE COURT: A building on Broadway, which the  
11 father, who probably had many connections at that  
12 point in the real estate industry, he bought ten  
13 percent, a ten percent share in that building. That  
14 building was owned by partners as well, but it was an  
15 LP.

16 MR. KEBBE: Correct.

17 THE COURT: And there was an agreement there.  
18 So, at that point the partnership between the family  
19 -- And that was in July of 1983. Several months.  
20 The mother had died in February of '83. So, frankly  
21 the way the Court looks at it, may well have been a  
22 new partnership, but under the same name of Leder,  
23 L-E-D-E-R, Partners. But before purchasing the ten  
24 percent interest, the father sold four percent of his  
25 20 percent to an outsider who had been a boyfriend of  
26 the plaintiff, Mr. Siegel. So, once the purchase of

## MOTION

1  
2 the ten percent took place, the father now owned  
3 16 percent of the partnership. Mr. Siegel four  
4 percent and each of the daughters 20 percent.

5 MR. KEBBE: Thirty-six percent, your Honor.

6 THE COURT: I'm sorry, 36 percent. I  
7 shouldn't have said 16. Thirty-six percent.

8 MR. KEBBE: No problem.

9 THE COURT: And the only asset was the ten  
10 percent in this LP, this building. And Mr. Siegel,  
11 when he purchased his four percent, made it clear in  
12 his -- of course he did it with a promissory note,  
13 and he paid, that it was purely, this partnership was  
14 purely for the purchase of that ten percent.

15 Now at this point it's many years later. The  
16 LP, which they own ten percent of, requires the  
17 partners, each partner of the LP, to keep that  
18 partner -- that piece of the business until the  
19 partnership dissolves in 2033 or for some other --  
20 for some other specific reasons, but basically they  
21 have to hold on to the partnership. They can't just  
22 get out. And there is a pretty robust LP agreement.

23 At this point now it's 2015. One of the  
24 daughters, Donna, is suing to dissolve the  
25 partnership, not the LP, the partnership. And she's  
26 asking for a lot of things. Basically she wants to

## MOTION

1  
2 dissolve and wind up Leder Enterprises, which is the  
3 partnership. And she also wants to dissolve it  
4 pursuant to BCL 63. Not the BCL, I'm sorry. The  
5 Partnership Law, Section 63. She wants a formal  
6 accounting. She claims she didn't get \$50,000 more  
7 than ten years ago. I'm not sure about any statute  
8 of limitations. And she's arguing a breach of  
9 fiduciary duty, because she has demanded to see the  
10 books and records, but wants them sent to her, I  
11 think. Even though, according to the defendant, they  
12 have told her she could have access, and the books  
13 and records are with an accountant. And she's also  
14 claiming breach of fiduciary duty. And this is all  
15 on the part of her father, according to her, because  
16 there is a \$50,000 shortfall. And she's also  
17 claiming breach of fiduciary duty for failing to  
18 dissolve the partnership and refusing to wind it up.

19 And as a footnote, which has nothing at all  
20 to do with this, it looks like the father was the one  
21 who put all the money in. And there apparently is a  
22 \$200,000 note signed by plaintiff, although plaintiff  
23 denies signing it. Those are the facts. Now I'll  
24 hear argument.

25 MR. KLARREICH: I'm the movant.

26 THE COURT: You're defendants.

## MOTION

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MR. KLARREICH: No. I'm the plaintiff.

THE COURT: You're sitting in the wrong spot then. Plaintiffs sit near the jury box, since they have the burden of proof. Defendants sit on the other side. Please reverse.

MR. KEBBE: Good morning, your Honor.

THE COURT: Good morning.

MR. KEBBE: I'm Tim Kebbe. I represent the defendants.

THE COURT: Okay. I read all the papers. I'm familiar with the facts.

MR. KEBBE: Before we start, I just would like to introduce Mr. Redel, the managing partner of Leder, and Jessica Redel, one of the daughters who is being sued.

Your Honor, the subscription agreement to this partnership reflects --

THE COURT: Which partnership?

MR. KEBBE: To the limited partnership.

THE COURT: The LP.

MR. KEBBE: -- the LP reflects that the partners agree, of the general partnership, agree to be bound by the terms of the limited partnership. And as we know from New York law, long established, that a partner acts as an agent not only for the

## MOTION

1  
2 partner, but also for the individual partners.

3 So, Ms. Redel can jump up and down and say  
4 I'm not bound by it, but that's clearly not the case.  
5 She's bound by the terms of the limited partnership.

6 THE COURT: I believe your argument is that  
7 this may well have been an oral partnership  
8 agreement, but in a sense it has a definite term or a  
9 particular purpose.

10 MR. KEBBE: It absolutely has a definite  
11 term.

12 THE COURT: Because of the LP.

13 MR. KEBBE: Of the LP.

14 THE COURT: That's the only reason that the  
15 partnership exists.

16 MR. KEBBE: That's all there is. We can't  
17 withdraw our money at any time before the partnership  
18 is dissolved in accordance with the term or the term  
19 terminates. The rules are the rules.

20 THE COURT: That would probably be a stronger  
21 argument even if, in fact, the 1981 partnership was  
22 dissolved upon the death of Natalie, am I correct?

23 MR. KEBBE: Well, it is automatically  
24 dissolved.

25 THE COURT: Pursuant to the Partnership Law.

26 MR. KEBBE: It has to be.

## MOTION

1  
2 THE COURT: So that there was a new partner-  
3 ship created in 1983, which Mr. Siegel was part of.

4 MR. KEBBE: That's correct. And, by the way,  
5 there is an aside, your Honor. Ms. Redel doesn't  
6 claim she was denied access to the partnership books  
7 and records at any time before 2013. So, for a  
8 period of 30 years she had access to those  
9 partnership books and records. Presumably knew their  
10 contents. She's presumed to as a matter of law.  
11 Whatever claims she had -- And she says oh, the  
12 partnership was dissolved with Mr. Siegel, but was  
13 admitted that the claim expired in 1989.

14 THE COURT: So, at this point that claim  
15 expired, right?

16 MR. KEBBE: Yes.

17 THE COURT: There is a statute of  
18 limitations.

19 MR. KEBBE: Yes. Long ago.

20 THE COURT: So, you're moving to dismiss on  
21 many grounds.

22 MR. KEBBE: Yes, your Honor.

23 THE COURT: You first moved to dismiss on  
24 necessary party. No accounting is appropriate here.  
25 You can't dissolve because of the LP.

26 MR. KEBBE: Yes.

## MOTION

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2 THE COURT: Subsequently, in response to the  
3 motion, there was an amended complaint which added  
4 the partners, because they were necessary parties.

5 MR. KEBBE: Correct.

6 THE COURT: However, you've agreed to have  
7 your original motion to dismiss apply to the amended  
8 complaint.

9 MR. KEBBE: Yes, ma'am.

10 THE COURT: But you've added at this point  
11 that Mr. Siegel has not been properly --

12 MR. KEBBE: He was properly served.

13 THE COURT: He was?

14 MR. KEBBE: He was eventually properly  
15 served.

16 THE COURT: Oh, okay.

17 MR. KEBBE: That all of that -- Mr. Siegel  
18 has fallen away.

19 THE COURT: Okay. So, that argument is no  
20 longer. What -- what are your arguments at this  
21 point?

22 MR. KEBBE: Let's just take one at a time.  
23 Mr. Redel cannot be sued for breach of fiduciary  
24 until -- She's seeking damages. Damages necessarily  
25 require review of the books and records. The law is  
26 clear that you can't sue another party, partner in an

## MOTION

1  
2 action in law until there has been an accounting  
3 record. That claim disappears.

4 As far as the dissolution and winding up, you  
5 can't dissolve and wind up. The LP agreement is our  
6 agreement necessarily. We are all bound by it, not  
7 only through the subscription agreement, but by the  
8 text of 4(c) of the subscription agreement where  
9 Ms. Redel on behalf of Leder Enterprises said, I  
10 agree to be bound by all the terms of the limited  
11 partnership agreement. The partners are bound.  
12 We're bound.

13 In any event, Leder is a limited partner in  
14 the general -- in the limited partnership. That  
15 agreement controls our relationships with the limited  
16 partner and inter assay amongst the general partners.  
17 We can't transfer our interest. We can't sell our  
18 interest. We can't get our capital out. We can't  
19 get a pro rata share of the profits or of the value  
20 of the building, whatever it might be at this point.  
21 We can't get anything other than what the limited  
22 partnership gives us as distributions.

23 THE COURT: And distributions have been  
24 coming in over the years.

25 MR. KEBBE: Yes.

26 THE COURT: Since 1983.

## MOTION

1  
2 MR. KEBBE: In down years there are no  
3 distributions, of course. But in good years there  
4 are distributions. There were distributions, as far  
5 as I know, last year. We provided Ms. Redel with  
6 K-1s from 2004 until 2013. She can see the  
7 distributions. She has distribution checks. She's  
8 complaining about --

9 THE COURT: All these years what happened  
10 with the K-1s? Were they -- They were sent to the  
11 partnership?

12 MR. KEBBE: Well, they are distributed to --  
13 The partners get a K-1.

14 THE COURT: So, has -- That's what I wasn't  
15 clear about. Has Donna Redel been getting K-1s all  
16 these years?

17 MR. KEBBE: Yes, ma'am. Yes, ma'am.

18 THE COURT: So, Mr. Siegel --

19 MR. KEBBE: He gets K-1s.

20 THE COURT: And the partners are all on the  
21 K-1s?

22 MR. KEBBE: I don't know whether every  
23 partner is on every K-1. You might get a K-1  
24 specific to your share of the account. Let's not  
25 forget Donna worked with her dad in the same office,  
26 Redel Trading Company.

## MOTION

1  
2 THE COURT: Oh, so she certainly saw these  
3 records.

4 MR. KEBBE: Yes.

5 THE COURT: The records were kept there.

6 MR. KEBBE: Yes. Until -- Mr. Redel is not  
7 as young as he once was.

8 THE COURT: He's 91 at this point.

9 MR. KEBBE: Ninety-two and looking very well.

10 THE COURT: Ninety-two.

11 MR. KEBBE: And there is no question. She's  
12 presumed to have knowledge. In fact, she says there  
13 was not a minute of family discord in the 1980s.  
14 That's an admission against interest, your Honor.  
15 She had access to the books and records. She could  
16 have seen everything. She did --

17 THE COURT: What about the claims you raise,  
18 at least in Mr. Siegel's issues, about statute of  
19 limitations?

20 MR. KEBBE: Well, the statute of limitations,  
21 her claim is for declaratory judgment, barring him or  
22 saying he's not a partner. Mr. Siegel was admitted  
23 to the partnership in 1983, on July 19th. That claim  
24 is a judicable controversy on that day. It's a non-  
25 enumerated -- It's not contained --

26 THE COURT: It wasn't admitted to the

## MOTION

1  
2 partnership. The way this all occurred, there was no  
3 partnership once Natalie died. So, the new partner-  
4 ship was created.

5 MR. KEBBE: There is a new partnership formed  
6 at that point in time.

7 THE COURT: In July.

8 MR. KEBBE: At that point.

9 THE COURT: And Mr. Siegel is part of it.

10 MR. KEBBE: He's part of it. So, if she's  
11 complaining, that complaint wound up six years later  
12 under 2131.

13 THE COURT: What about the other issues?

14 MR. KEBBE: Look, she's -- she's -- Ms. Redel  
15 is the one with unclean hands here. She wants --

16 THE COURT: What about the 50,000, 49,500,  
17 the 50,000?

18 MR. KEBBE: It's so long ago, your Honor.

19 THE COURT: Does that have a statute of  
20 limitations on it as well?

21 MR. KEBBE: We haven't raised it.

22 THE COURT: You haven't raised it though.

23 MR. KEBBE: Not at this juncture.

24 THE COURT: You still haven't answered.

25 MR. KEBBE: We still haven't answered. There  
26 are so many other obvious -- We're limited to 25

## MOTION

1  
2 pages, your Honor -- there are so many other reasons  
3 to get rid of this case that we do what we do. But I  
4 don't know.

5 If I may, your Honor, this is not the first  
6 time that Ms. Redel, Donna, has sued dad. This is  
7 the second time. I handled the first litigation.  
8 That was in the early part of the last decade.

9 THE COURT: Let's go through all the causes  
10 of action.

11 MR. KEBBE: Yes.

12 THE COURT: They are asking for, well, there  
13 is the dissolution cause of action.

14 MR. KEBBE: How can we dissolve the  
15 partnership. We're not allowed to under the limited  
16 partnership.

17 THE COURT: You're bound by it because of --  
18 That's the only purpose. It's the only --

19 MR. KEBBE: It's the only purpose of the  
20 partnership. I do want to read to your Honor, if you  
21 don't mind, the paragraph of the subscription  
22 agreement which says, which is signed by Mr. Redel on  
23 behalf of Leder, "I shall comply with the terms of  
24 the partnership agreement". The partnership  
25 agreement here refers to the limited partnership  
26 agreement. "And execute any and all further

## MOTION

1  
2 documents in connection with becoming a limited  
3 partner of the partnership." He binds himself. He  
4 binds Leder, and he binds the partners in Leder.  
5 That's it. We're stuck. I mean, I understand --

6 THE COURT: What about the accounting?

7 MR. KEBBE: She can't -- We have asked her --  
8 Ms. Redel has unclean hands candidly. She's trying  
9 to do something inappropriate. She caused damage to  
10 the partnership. We offered her to go to Scott and  
11 Gilflow (sic.) for all the books and records. I have  
12 offered it in writing to her attorneys, Mr. Golden  
13 before, these gentlemen here.

14 I'm required to make the books and records.  
15 The partnership is required to make the books and  
16 records available, not ship them to her. There are  
17 two accountants. There are books and records. You  
18 want to read them, read them. We have given her the  
19 ten Ks. We have given her --

20 THE COURT: Is she entitled to just a formal  
21 accounting, whether or not she looks at these books  
22 and records?

23 MR. KEBBE: She's entitled to inspect the  
24 books and records. She's not entitled to a formal  
25 accounting unless, after reviewing the books and  
26 records, there is some issue that erupts.

## MOTION

1  
2 THE COURT: The issue she raises is the  
3 \$50,000.

4 MR. KEBBE: Is the \$50,000. But if we can't  
5 find a record with a discrepancy in it, this rather  
6 late hour in the partnership, 33 years on, I would  
7 argue, your Honor, that before you're entitled to an  
8 accounting, go look at the books and records and tell  
9 me what the problem is. I've looked at the  
10 partnership records.

11 THE COURT: Is the fact that she claims she  
12 didn't get the 50,000, even though it's more than  
13 probably ten years, is that sufficient for an  
14 accounting, since you don't raise statute of  
15 limitations in this motion?

16 MR. KEBBE: That she didn't get -- (pause).  
17 It's not in and of itself sufficient, your Honor,  
18 when we have offered her books and records to take a  
19 look at which --

20 THE COURT: And you offered to -- to pay her  
21 \$50,000 if -- if you find a problem.

22 MR. KEBBE: If we could find a problem, as I  
23 represented to the Court -- And I can't disclose  
24 settlement discussions -- but that's not going to be  
25 an issue. And, your Honor, we are scheduled, just as  
26 an aside, to go to mediation. And win, lose or draw,

## MOTION

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perhaps we can resolve that there.

THE COURT: Okay. Let me hear from the other side.

MR. KLARREICH: Good morning, your Honor. Joel Klarreich for the plaintiff.

Your Honor, there is a singular question that becomes before this Court before any of these other questions, and that is, what is the partnership agreement for Leder Enterprises.

THE COURT: There is no partnership agreement.

MR. KLARREICH: Correct, your Honor.

THE COURT: There is an oral partnership agreement --

MR. KLARREICH: Okay. Fine.

THE COURT: -- that was created in 1981. The death of Natalie under the law ended that partnership.

MR. KLARREICH: Okay.

THE COURT: A new partnership was created in July 1983, which frankly, from reading all the papers, I think included Siegel. So at that point you got a new partnership agreement.

MR. KLARREICH: Okay. Fine.

THE COURT: The only reason that partnership

## MOTION

1  
2 went forward was to invest in 225 Broadway, ten  
3 percent, 225 Broadway. That was the only purpose of  
4 this partnership agreement. 225 Broadway had an LP  
5 agreement, which specifically had a term and a  
6 purpose and does not allow the dissolution. So,  
7 basically -- Or the withdrawal -- so basically I  
8 don't understand what you're asking for here.

9 MR. KLARREICH: Okay, your Honor. With all  
10 due respect, first, the partnership agreement,  
11 assuming it all, and assuming it was a partnership  
12 agreement for Leder to invest in 225 Broadway, and  
13 assuming it's all is violative of the statute of  
14 frauds, because a partnership agreement for more than  
15 one year, which this agreement was, because it was to  
16 invest in a partnership that had a term of more than  
17 one year, is violative of the statute of frauds.

18 THE COURT: Well, perhaps it wasn't a  
19 partnership. Perhaps it was a joint venture. It was  
20 a creation of the father giving the children, his  
21 three daughters, 20 percent. He gave it to them.

22 MR. KLARREICH: Okay.

23 THE COURT: Now one of the daughters says, I  
24 was cheated 33 years later or 30 years later. I want  
25 my money. I want to dissolve it.

26 MR. KLARREICH: With all due respect, your

## MOTION

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Honor, she doesn't want her money.

THE COURT: She wants to dissolve the partnership.

MR. KLARREICH: Let me tell you what she wants, your Honor. And Mr. Kebbe, I believe, that with all due respect to Mr. Kebbe, admits to this Court, in his papers, your Honor, I will read from page eight, "The LP agreement acknowledges that Leder may lawfully dissolve." And that's a quote, your Honor, here. The partnership agreement for 225 does not prohibit a dissolution of Leder.

THE COURT: It prohibits a withdrawal.

MR. KLARREICH: I'm sorry?

THE COURT: A withdrawal.

MR. KLARREICH: We're not looking to withdraw, your Honor. Your Honor, we're --

THE COURT: Are you asking that the LP be dissolved?

MR. KLARREICH: No. I'm asking that Leder be dissolved, and that each partner be distributed his or her pro rata interest in the investment in 225 Broadway.

THE COURT: Can I ask you something.

MR. KLARREICH: That's --

THE COURT: Did your client sign a \$200,000

## MOTION

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2 note, a demand note based upon getting her  
3 percentage?

4 MR. KLARREICH: Right. I believe she did.

5 THE COURT: Has the other side demanded the  
6 money?

7 MR. KEBBE: Not yet, your Honor, but it's  
8 here.

9 MR. KLARREICH: If I may continue, please,  
10 your Honor, it's very important.

11 THE COURT: Okay.

12 MR. KLARREICH: The partnership agreement for  
13 225 Broadway says if Leder were to dissolve, the  
14 distributees of that partnership interest, the  
15 80 percent or the 20 percent, depending on how you do  
16 it, carry forward as assignees of a partnership. I'm  
17 sure the Court is well familiar with the fact that  
18 you could have an assignee of a partnership interest.  
19 We're putting the remedy before the law.

20 Whatever this agreement is, your Honor, it's  
21 all -- it's oral. If it's oral, under the  
22 Partnership Law, it's dissolvable at the will of a  
23 partner. If they claim that it was a partnership to  
24 invest in an entity that had a term of 50 years.  
25 It's also dissolvable at will because the statute of  
26 frauds converts it into a partnership at will. But,

## MOTION

1  
2 moreover, Mr. Kebbe acknowledges --

3 THE COURT: If a partnership -- If the only  
4 purpose of this partnership, you know, I got to do a  
5 little more research, if the only purpose of this  
6 partnership was to invest in the LP, then wouldn't  
7 the LP control and the term of that LP is to 2033?

8 MR. KLARREICH: No. But, your Honor, that  
9 agreement is oral. The issue is -- I think that  
10 we're inflating what partnership we're talking about.  
11 225 Broadway --

12 THE COURT: I'm talking about -- I'm talking  
13 about the partnership, the joint venture which is  
14 later, after this.

15 MR. KLARREICH: Okay. So, that agreement is  
16 oral. We all agree to that.

17 MR. KEBBE: Respectfully --

18 MR. KLARREICH: There is no writing before  
19 this Court at this stage that represents --

20 THE COURT: Well, the other side says there  
21 was some kind of a writing, and that's why they say  
22 it's a partnership. They can't find the writing.  
23 Whether the writing was in 1981 or not, if they are  
24 talking about a 1981 writing, I think frankly  
25 Natalie's death would have done that partnership in.  
26 So, you're talking 1983. And 1983 Mr. Siegel -- you

## MOTION

1  
2 know, we have got the partners here or the joint  
3 venture, I'm not sure which, and we're going forward.

4 MR. KLARREICH: But a joint venture, your  
5 Honor, by law is a partnership.

6 THE COURT: A joint venture can be oral.

7 MR. KLARREICH: Yes.

8 THE COURT: And without running into the  
9 statute of frauds.

10 MR. KLARREICH: But, your Honor, they don't  
11 claim it's a joint venture. They claim it's a  
12 partnership. Then they raise the issue in their  
13 minds -- Mr. Kebbe, I didn't interrupt you at all.

14 MR. KEBBE: I haven't interrupted you, sir.

15 MR. KLARREICH: Your Honor, and they are  
16 claiming it's a partnership. They don't say it's a  
17 joint venture and express it. They even say it in  
18 your papers.

19 THE COURT: So, your argument is because your  
20 client at this point wants to dissolve the  
21 partnership, the partnership at will, and she has an  
22 absolute right to do so.

23 MR. KLARREICH: Correct. And the defendants  
24 claim in their papers that they have the right to  
25 carry forward the investment as the assignees of  
26 Leder. If they have the right to do that for their

## MOTION

1  
2 80 percent, Donna has the same right for her  
3 20 percent. All we're saying to this Court,  
4 stripping away everything, your Honor, all the  
5 papers, is this is an oral agreement. It's a  
6 partnership.

7           Assuming for the moment it was created in  
8 1983, and there was an agreement to invest in 225  
9 Broadway. And assuming they said to Mr. Redel, you  
10 can sign this agreement. And then assuming, which is  
11 not before this court, that they knew that he was  
12 signing something that had this 50 year term, all of  
13 it still becomes a partnership or an agreement at  
14 will, which is terminable without penalty.

15           The defendants now claim, and if you read  
16 their papers, that they want to continue the  
17 partnership as an assignee of 225 Broadway. If Donna  
18 has the right to dissolve, they have two choices,  
19 neither of which are, in my opinion, draconian to  
20 them. Choice A is they can distribute 80 percent to  
21 themselves upon dissolution and continue their  
22 investment as an assignee of Leder.

23           THE COURT: Does the LP allow that?

24           MR. KLARREICH: Yes. It says right here,  
25 your Honor, I'm reading from the 225 Broadway  
26 agreement, which is what Mr. Kebbe quoted in his

## MOTION

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2 papers. "The representative or successor in interest  
3 thereof, as the case may be, shall be deemed to be an  
4 assignee of the economic interest of the limited  
5 partner and may apply for admission to the limited  
6 partnership." But you don't have to apply. The  
7 Partnership Law, clearly even under New York Law, if  
8 I have a partnership interest in a partnership, and I  
9 have a right to assign my partnership interest  
10 without my assignee becoming a partner, it's an  
11 economic transaction. I have no partnership rights,  
12 but I'm entitled to all the distributions.

13 What the defendants are trying to do, your  
14 Honor, is prevent dissolution by -- by arguing that  
15 the remedy is draconian. I agree with you, your  
16 Honor, to the extent that it may seem that the  
17 equities are not in Donna's favor. But she has an  
18 absolute right, as we see it under New York Law, for  
19 this partnership to be dissolved.

20 THE COURT: Moving on. Why is she entitled  
21 to an accounting?

22 MR. KLARREICH: I'm sorry?

23 THE COURT: Why is she entitled to an  
24 accounting?

25 MR. KLARREICH: Your Honor, right now there  
26 is an admitted \$50,000 shortfall.

## MOTION

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THE COURT: From years ago.

MR. KLARREICH: No. But, your Honor, she never knew. Here's what happened.

THE COURT: This is a woman who worked as a commodities broker.

MR. KLARREICH: She did not get -- Here's what happened, your Honor.

THE COURT: She got K-1s. And now years later, ten, 12, 14 years later -- Let me finish -- she's saying that she's missing \$49,500 somehow.

MR. KLARREICH: No. She's not saying somehow. Your Honor, in a partnership, if you make pro rata distributions, every partner who has the same interest will have --

THE COURT: I understand, but this happened years ago.

MR. KLARREICH: But she didn't know.

THE COURT: How did she not know?

MR. KLARREICH: Because the only K-1s she ever got was hers. When a partnership gives out a tax return --

THE COURT: So, the fact that she's claiming she didn't know that, does away with the statute of limitations if --

MR. KLARREICH: Your Honor, whether it does

## MOTION

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2 or not, on a motion to dismiss, I think it gets me  
3 past a motion to dismiss, okay. In terms of the  
4 breach of fiduciary duty, your Honor, the need for an  
5 accounting --

6 THE COURT: What duty was breached?

7 MR. KLARREICH: I'm sorry?

8 THE COURT: What duty was breached?

9 MR. KLARREICH: First the \$50,000. Secondly

10 --

11 THE COURT: Well, there would have to be some  
12 wrongdoing, I think.

13 MR. KLARREICH: If it's 50,000 --

14 THE COURT: You don't allege any wrongdoing.  
15 You allege no wrongdoing on the part of Mr. Redel.

16 MR. KLARREICH: Well, I think he admitted  
17 Siegel. We claim that he admitted Mr. Siegel without

18 --

19 THE COURT: Well, Mr. Siegel, that formed the  
20 partnership. If Natalie died, that's not wrongdoing.  
21 Mr. Siegel became one of the partners.

22 MR. KLARREICH: No, I don't believe that's  
23 the case, your Honor. When the mother died,  
24 Mr. Redel owned 40 percent.

25 THE COURT: There was no partnership when the  
26 mother died. Once a partner dies, the partnership is

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dissolved.

MR. KLARREICH: But at the moment whatever they reconstituted was 40, 20, 20, 20. When you read the papers, Mr. Redel sold four percent of his 40 percent to Mr. Siegel. So, the partnership, whatever it was --

THE COURT: Did the \$60,000 go to Mr. Redel or did it go to the partnership?

MR. KLARREICH: It went to Mr. Redel.

THE COURT: Counsel.

MR. KEBBE: No. It was used as a capital contribution.

THE COURT: A capital contribution for the partnership.

MR. KEBBE: Of course it was.

THE COURT: That was part of the formation of the new partnership, and the \$60,000 went to your client as well to buy this. So, therefore, at this point your client objected would be more than just --

MR. KLARREICH: I would like to check the record for a moment, your Honor. I'm not sure that's the case. But, your Honor, again it doesn't matter. In my opinion this case, we shouldn't get past --

THE COURT: What fiduciary duty is breached? I still don't get it.

## MOTION

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MR. KLARREICH: The admission of Siegel.

THE COURT: I don't believe that you've shown that.

MR. KLARREICH: The \$50,000.

THE COURT: You haven't shown any wrongdoing. What else?

MR. KLARREICH: And the third one was not dissolving on demand.

THE COURT: That's -- that's a breach of fiduciary duty.

MR. KLARREICH: Your Honor, at this moment the main case here, the main threshold is the argument that says we're entitled --

THE COURT: I think you're lucky they didn't move for, you know, sanctions for frivolous conduct for some of this.

MR. KLARREICH: Your Honor, it's ironic that you say this, because I believe, based upon this record, that you should search the record and grant us summary judgment, because there is no partnership agreement under the law. And under the statute of frauds we're entitled to dissolution at will.

I hear the Court. I understand how Mr. Kebbe has put a black hat on my client. But at the end of the day, if there is no partnership agreement in

## MOTION

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2 writing, this partnership is a partnership at will  
3 and can be dissolved at will. I know you're a very  
4 well respected jurist. But this case mandates  
5 dissolution. The fact that it's 225 Broadway is a  
6 red herring. It's irrelevant. And, as Mr. Kebbe  
7 says in his papers, all you do is distribute the  
8 interest and everybody carries forward as an  
9 assignee.

10 I really don't understand how we're not in a  
11 position of saying it's dissolved at will. I thank  
12 you very much for your attention, your Honor.

13 THE COURT: Did you want to say one other  
14 thing, counsel?

15 MR. KEBBE: I do have a couple of other  
16 points. Your Honor, I'm sure you're familiar with  
17 the Gelman case in the Court of Appeals, which  
18 provides an oral partnership having a definite term  
19 for a particular purpose.

20 THE COURT: You're talking about, it has the  
21 term of the LP?

22 MR. KEBBE: Right.

23 THE COURT: But does that mean -- His  
24 argument is that Leder Enterprises can still be  
25 dissolved.

26 MR. KEBBE: Gelman says it's not dissolvable

## MOTION

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2 at will. And then if you turn to the Dreyfus case,  
3 okay, which is really pretty close to our case,  
4 another Court of Appeals case, there is an over-  
5 arching oral agreement among the parent corporation  
6 and their subsidiaries in conformity with the  
7 subordinate --

8 THE COURT: So, basically you're arguing what  
9 plaintiff is arguing is under 62 of the Partnership  
10 Law, dissolution can occur under one big, by the  
11 express will of any partner when no definite term or  
12 particular undertaking is specified. You're arguing  
13 there is a definite term because of the LP. That's  
14 your argument.

15 MR. KEBBE: That's the argument, yes.

16 THE COURT: And the argument of the other  
17 side is he has an absolute right under 62(1)(b) or  
18 she, I should say Donna, to dissolve. Those are the  
19 two arguments we're faced with.

20 MR. KEBBE: But there is another -- there is  
21 another provision that we haven't pointed to in the  
22 LP agreement, but it is worthy of note. "Except as  
23 otherwise provided herein or by the laws of the State  
24 of New York, no partner may resign, withdraw, retire  
25 voluntarily from the limited partnership where self  
26 transfer" -- This is Section 7.1 at page 17 of the LP

## MOTION

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2 agreement. "No partner may resign, withdraw,  
3 retire", and partner is defined as limited partners  
4 and general partners, "retire, resign, withdraw  
5 voluntarily from the limited partnership where self  
6 transfer or assign or otherwise dispose of his  
7 interest in a limited partnership." You are  
8 required, even if somebody puts out -- Let's say one  
9 of the limited partners passed away, we would have to  
10 keep going. We can't -- we can't get anything for  
11 our interest in the partnership ever until the term  
12 expires or they sell the building. That's the very  
13 bottom line. That is necessary. This is the only  
14 asset of the partnership. We are bound by this  
15 agreement. It's sophistry, your Honor, to think  
16 otherwise. How could it possibly be?

17 MR. KLARREICH: Could I have two minutes,  
18 your Honor?

19 MR. KEBBE: Otherwise where would we be?

20 THE COURT: Two minutes.

21 MR. KLARREICH: Not even. Your Honor, point  
22 one, the partnership, whoever is a member of it, that  
23 agreed to invest in 225 Broadway, that's an oral  
24 agreement. I don't think anybody has presented a  
25 written agreement among the partners.

26 THE COURT: There is no doubt, and frankly

## MOTION

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2 the agreement may have been from 1981. Once Natalie  
3 died, that partnership is gone.

4 MR. KLARREICH: We believe, as a matter of  
5 law, we're entitled to dismiss under 62. Number  
6 two --

7 THE COURT: But they are arguing that this  
8 partnership had a specific purpose and a specific  
9 term.

10 MR. KLARREICH: But the point is, your Honor,  
11 the 225 agreement doesn't preclude dissolution. None  
12 of those things that a limited partner can't do say  
13 dissolve. And the LP agreement specifically says  
14 that if you dissolve, the successors in interest  
15 become an assignee.

16 So, very simply, there is no prejudice to the  
17 defendants. We dissolve this partnership. Donna  
18 gets a distribution of her 20 percent interest in the  
19 limited partnership. She's an assignee. She can  
20 become a limited partner or not, depending on the  
21 will of the judgement partner, and their 80 percent  
22 can become an assignee again.

23 THE COURT: Okay. You know, I've heard it  
24 and I read the papers. I have to look at the LP  
25 agreement again. I am reserving. I'm going to ask  
26 the parties to order the record and e-file it.

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MR. KLARREICH: Thank you your Honor.

MR. KEBBE: Your Honor, may I just note we also discussed the statute of frauds issue in our papers. I don't want to go on.

THE COURT: Yes.

MR. KEBBE: Partial performance, you know, beyond.

THE COURT: It's been many years.

MR. KEBBE: For 30 odd years.

MR. KLARREICH: I appreciate your patience.

MR. KEBBE: Thank you very much, your Honor.

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Certified to be a true and accurate transcript of the above-captioned stenographic minutes.

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Lori Ann Sacco

Official Court Reporter