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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART 27

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In the Matter of Petition of

LOUIS GOLDER, as Administrator of the  
Estate of Robert Golder,

Petitioner,

for Judicial Dissolution of

29 WEST 27TH STREET ASSOCIATES, LLC,

Respondent

TAUBER FAMILY IRREVOCABLE TRUST DATED DECEMBER  
10, 2012, AVIVA BIELORY AS TRUSTEE OF THE  
ELIEZER BIELORY RESIDUARY TRUST AGREEMENT DATED  
MAY 3, 2007 and LARRY TAUBER,

Respondents.

-----X  
Index No. 652371/16  
ORAL ARGUMENT  
and RECOMMENDATION

60 Centre Street  
New York, N.Y.  
November 28, 2017

B E F O R E:

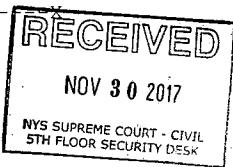
HONORABLE IRA GAMMERMAN,  
Judicial Hearing Officer

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

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BY: SETH DENENBERG, ESQ.

ALAN F. BOWIN, CSR, RMR, CRR



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(Appearances continued:)

Also Present: LOUIS GOLDER  
LARRY TAUBER  
ALAN TAUBER  
PEDRO CONTRERAS

ALAN F. BOWIN, CSR, RMR, CRR  
Official Court Reporter

ALAN F. BOWIN, CSR, RMR, CRR

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Proceedings

THE COURT: Okay, on the record.

This case is 1707. That's just the number in my computer. It's here pursuant to a Decision and Order of Justice Scarpulla, dated July 17, 2017, in which she finds that a material issue of fact exists as to whether or not a written operating agreement exists with respect to the term of the duration of an LLC, and she directs an evidentiary hearing to resolve that material issue of fact.

I presume she needs the hearing so that a referee or JHO can make a recommendation on that issue.

And she grants the petitioner's motion to compel the production by the respondents of all current leases, rent rolls, statement of income and expenses for the past three months. Has that been complied with?

MR. FEDER: Yeah. That's not an issue today.

THE COURT: Okay, that's been done.

MR. FEDER: Yes.

MR. DENENBERG: Yes.

THE COURT: Okay. So the only issue is the issue of fact that -- that material issue of fact -- that she sets forth on page -- whatever page it is of her order. It looks to me like -- it says page 1 but it looks to me as if it's page 3. It's page 3 of 12.

1 Proceedings

2 All right, and we -- let me see...

3 I have Mr. Feder?

4 MR. FEDER: That's me (indicating).

5 THE COURT: Is that you?

6 MR. FEDER: Yes.

7 THE COURT: And Mr. Denenberg?

8 MR. DENENBERG: Right here (indicating).

9 THE COURT: That's you.

10 And who are the witnesses?

11 MR. FEDER: This (indicating) is Mr. Golder.

12 MR. GOLDER: Hello.

13 THE COURT: All right. He's the petitioner.

14 MR. FEDER: Yes.

15 THE COURT: Okay. And tell me what the issue

16 is.

17 MR. FEDER: Well, let me -- I'll give you a

18 little bit of background.

19 THE COURT: By all means.

20 MR. FEDER: Okay.

21 So what we have is a situation that -- back

22 in 1981, there was a partnership that was formed by

23 three different people. One of the people was Robert

24 Golder, which is his (indicating) late brother; there

25 was a man named Mr. Tauber and there was a man named

26 Mr. Bielory. These three got together -- Mr. Golder

ALAN F. BOWIN, CSR, RMR, CRR

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Proceedings

owned a building; he brought the other two people in as  
shareholders.

THE COURT: Where is this building; on 27th  
Street?

MR. FEDER: 29 West 27th Street.

THE COURT: All right. Okay.

MR. FEDER: So these three people got  
together in a partnership and they were -- for the  
purpose of operating the -- and -- renovating and  
operating -- operating the building.

THE COURT: And there was a written  
partnership agreement?

MR. FEDER: Yes, there was.

THE COURT: Okay.

MR. FEDER: There was a written partnership  
agreement at the time. And we have copies of that, of  
course --

THE COURT: All right.

MR. FEDER: -- signed by everybody.

One of the terms that was in the partnership  
agreement was that the partnership would last until  
December 31st of 2011, and that was going to be the end  
of the term of the partnership. That's in the written  
partnership agreement.

THE COURT: And what was going to happen at

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Proceedings

the end of the partnership?

MR. FEDER: It would be dissolved; terminated and dissolved. Unless the parties agreed otherwise, terminated and dissolved.

THE COURT: I see. And what was going to happen to the property that the partnership owned?

MR. FEDER: They would have to either sell it out or one would buy out the other, or some disposition -- some sort of disposition was supposed to happen December 31st of 2011; and that was what they agreed to in 1981.

THE COURT: This is a residential building?

MR. FEDER: It's a mixed-use building.

THE COURT: Okay, go ahead.

MR. FEDER: Some stores and a few apartments above.

Okay. So everything is fine. Between -- What happened in real life was that one of the -- the son of one of the partners, named Larry Tauber, is a real estate manager; that's what he does --

THE COURT: Right.

MR. FEDER: -- and he, sort of, began to run the building --

THE COURT: Right.

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Proceedings

MR. FEDER: -- because he did, and that's how the building was run.

In 2003, Larry Tauber approached my client (indicating) -- by that time, his brother had passed away; he's the administrator of the estate. He approached him and said, "Listen, we need to" --

THE COURT: So he took over the partnership position of his brother?

MR. FEDER: Yes, correct.

THE COURT: Go ahead.

MR. FEDER: And, by the way, he has 45 percent, so he's actually the major partner --

THE COURT: I see.

MR. FEDER: -- in this. Forty-five; 40 and 15 between the other two.

THE COURT: Okay.

MR. FEDER: So Mr. Tauber -- Larry Tauber -- came to him and said, "We need to refinance -- I want to do a refinance on the building." "Fine. I think it's a good idea; let's do it." And he said, "At the same time that we're going to do this refinance, I want to change the character of the ownership of the property from a partnership, which it is; I want to turn it into an LLC." Okay. Why? Because of tax reasons and whatever.

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Proceedings

THE COURT: Right.

MR. FEDER: So Mr. Golder said, "Okay, that's fine." He said, "But what's going to be -- you know, how is this going to be set up?" The answer was: "We're going to leave everything exactly the same. Whatever it was, it will be and we'll continue that way." Fine. So Mr. Golder said: "Okay. If you say it, it sounds like a good idea to me; let's do it."

There was a one-page letter that was given to him: "I hereby consent to," you know, allow the entity to be changed over to an LLC, with the same partners' interests surviving. We'll show you the letter. And he signed it, and that's -- that's fine; there was no --

THE COURT: So the three partners were now going to become three members of an LLC --

MR. FEDER: Correct.

THE COURT: -- having the same percentage interest that they had in the partnership?

MR. FEDER: Correct. Exactly. Exactly right.

There was no written operating agreement given to my client; none was discussed.

THE COURT: Okay.

MR. FEDER: All there was was this one little



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Proceedings

letter, which says, "I hereby consent to switching it over," with the same interests remaining. And that was it, and everything went on and it was fine; no problem.

THE COURT: Right.

MR. FEDER: Comes 2011, which is when it was supposed to be dissolved -- so they have some discussions. Unfortunately, their relationship was not the greatest; in fact, it was pretty bad between -- so they didn't really discuss very much, and it, sort of, just continued. Nobody pushed; nobody did anything. It, sort of, just -- you know --

THE COURT: So your position is that the initial -- the partnership agreement controls, I take it.

MR. FEDER: That the partnership agreement...?

THE COURT: The initial partnership agreement controls.

MR. FEDER: Yes.

THE COURT: And that as of 2011, the LLC should be dissolved --

MR. FEDER: Exactly.

THE COURT: -- and the parties either sell the building or sell to each other or resolve their differences.

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Proceedings

MR. FEDER: Exactly. Exactly right.

THE COURT: Okay.

MR. FEDER: And then, when we --

And unfortunately, there was no way to resolve it and, eventually, we started the litigation to dissolve the LLC.

THE COURT: Okay. The issue that Judge Scarpulla seems to frame is whether or not that initial partnership agreement controls the LLC.

MR. FEDER: Yeah. Specifically --

THE COURT: Right.

MR. FEDER: -- she said, she wants to know if there is a written agreement signed by all parties --

THE COURT: Well, isn't -- there's --

Is there a dispute as to whether or not such agreement exists?

MR. FEDER: Yeah. We've never seen it nor have they ever even claimed they had it.

MR. DENENBERG: Oh, my God.

THE COURT: No, no. Wait a minute.

So we don't -- nobody has a copy of any written agreement?

MR. DENENBERG: May I, Judge?

THE COURT: Is that correct?

MR. DENENBERG: Of course we have.

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Proceedings

MR. FEDER: Can I see it?

THE COURT: What?

MR. DENENBERG: Of course we have. In fact, he (indicating) saw it back in 2003.

MR. FEDER: I'd love to --

MR. DENENBERG: And they've seen it a number of times in our opposition papers.

THE COURT: No, no. I'm talking about the original agreement between the partners, not the 2003 --

In 2003, there was a conversion --

MR. DENENBERG: You don't have the --

THE COURT: Stop talking for a moment.

My understanding is, in 2003, there was a conversion from a partnership to an LLC.

MR. DENENBERG: Um-hmm.

THE COURT: I'm interested in the original partnership agreement. Is there any document that reflects the agreement between those three original partners; his (indicating) deceased brother and the other two partners?

MR. FEDER: Of course there is. We -- we -- it's --

THE COURT: You have a copy of it?

MR. FEDER: Oh, sure. It's been in evidence

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Proceedings

all along. Of course.

THE COURT: All right.

MR. FEDER: Sure. This is the one that's --

THE COURT: And that's the one that -- okay.

And then you're saying that, in 2003, an additional agreement was entered into?

MR. DENENBERG: In 2003, the parties agreed --

THE COURT: No. There's a written agreement in 2003?

MR. DENENBERG: Yeah; they have a written operating agreement.

MR. FEDER: Is it signed?

MR. DENENBERG: It's signed by a party --

MR. FEDER: Who is it signed by?

THE COURT: All right, just a second.

So you're not disputing that there was, initially, a written partnership agreement when the building was acquired, or when the partnership was formed; correct?

MR. DENENBERG: No.

THE COURT: Okay. But you're saying that the terms of that partnership agreement were modified or changed as a result of the operating agreement of 2003.

MR. DENENBERG: Yeah.

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Proceedings

THE COURT: Is that correct?

MR. DENENBERG: Yeah.

THE COURT: So we just have --

So we have to see: Is there a reference in the 2003 agreement to the earlier partnership agreement?

MR. DENENBERG: A letter (indicating) signed by --

THE COURT: Give it to the clerk.

MR. DENENBERG: -- this gentleman (indicating).

THE COURT: Give it to the clerk.

(Mr. Denenberg complied.)

MR. DENENBERG: And here's the operating agreement (indicating).

THE COURT: No. That's (indicating) the one I want to see. I'm not interested in the letter; I'm interested in the agreement.

MR. DENENBERG: It's a letter that ratified the operating agreement.

THE COURT: No, no.

MR. DENENBERG: And --

THE COURT: No, no. Just a second.

(Said document handed to the Court.)

(Pause.)

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Proceedings

THE COURT: Okay, let me see the operating agreement.

MR. DENENBERG: It's on page 5; "of perpetual duration" (handing).

And, Judge --

THE COURT: Just a moment.

MR. DENENBERG: Okay.

THE COURT: Where is it signed by Mr. Golder?

MR. DENENBERG: It wasn't. The letter ratified it.

THE COURT: I disagree.

MR. DENENBERG: And then, in two thousand --

THE COURT: I disagree. I'm telling you that right now. I disagree.

MR. DENENBERG: Two thousand --

I have the attorney who drafted it and knows all about it right here (indicating).

THE COURT: I disagree.

MR. DENENBERG: And then --

THE COURT: This operating agreement (indicating) was never signed by the petitioner.

MR. FEDER: And neither was --

THE COURT: And I don't think this letter constitutes his agreement to the terms of the operating agreement.

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Proceedings

MR. DENENBERG: Well, take a look at this agreement from 2012 (handing) --

THE COURT: Let me see that.

MR. DENENBERG: -- after, where he consents to the appointment of --

THE COURT: Let me see that.

MR. DENENBERG: -- my client, Mr. Tauber, the managing member --

THE COURT: Hold on. Hold on. Let me read this (indicating).

(Pause.)

THE COURT: No, I disagree. That doesn't change anything.

That's it? I don't need any testimony.

MR. FEDER: That's exactly --

That's what I thought.

THE COURT: I don't need any testimony.

MR. DENENBERG: Yes, you do.

THE COURT: Why?

MR. DENENBERG: Because I have the attorney (indicating) who formed it --

THE COURT: I don't need any testimony, counselor. You don't have an operating agreement signed by the petitioner, in my opinion. I don't care what the attorney says.

Proceedings

MR. DENENBERG: Your Honor, an operating agreement doesn't need to be signed by the petitioner if he has ratified it.

THE COURT: It's not ratified, counselor.

MR. DENENBERG: It is ratified by his --

THE COURT: I disagree with -- I disagree with you. I'm looking at the --

MR. DENENBERG: By --

THE COURT: -- document --

Listen to me. I'm looking at the document that contains the alleged ratification; correct? That's the April -- or, the August 14, 2003 document; correct?

MR. DENENBERG: Right.

THE COURT: Correct?

MR. DENENBERG: "...Consent And Appointment Letter regarding the formation of [the] LLC.

"Please note" --

And attached to it was a copy of the operating agreement (indicating).

THE COURT: That's your argument.

My recommendation --

All right, I don't need any testimony.

My recommendation is that the operating agreement is -- that the initial partnership agreement



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Proceedings

applies and that the operating agreement didn't modify it.

Thank you.

MR. DENENBERG: I -- no, I have the accountant here. He's been receiving tax returns every single year --

THE COURT: Yes?

MR. DENENBERG: -- and keeps taking the tax returns -- the K-1's -- from the LLC. How could you say that the LLC doesn't exist?

THE COURT: The LLC exists. I'm not saying it doesn't exist.

MR. DENENBERG: But he's also got tax returns in '12, '13, '14.

THE COURT: Counsel, look. Argue -- Look. In response to my recommendation to Judge Scarpulla, you can make whatever arguments you want.

Thank you, all, very much.

MR. DENENBERG: Wait a second.

The "Consent And Appointment" --

THE COURT: Get a copy of this transcript --

MR. DENENBERG: -- is signed after the termination of the limited partnership. How could we do a closing in 2012, after the limited partnership

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Proceedings

expired? He signed something in 2012, Judge. He signed in --

THE COURT: Thank you, all, very much.

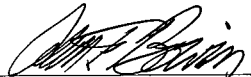
THE CLERK: Whoever's going to order the transcript, just get it from the court reporter; the Judge will sign it and I'll upload it to e-filing.

Okay, folks.

MR. FEDER: Thank you.

\* \* \*

CERTIFIED to be a true and accurate transcript of the proceedings.



ALAN F. BOWIN, CSR, RMR, CRR  
Official Court Reporter

12/5/17 So worked

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JHO

HON. IRA GAMMERMAN, J.H.O.