

**Garcia v Garcia**

2016 NY Slip Op 32780(U)

July 13, 2016

Supreme Court, Kings County

Docket Number: 24618/10

Judge: Lawrence S. Knipel

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At an IAS Term, Part Comm 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13<sup>th</sup> day of July, 2016.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

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JOAQUIN GARCIA, MICHAEL GARCIA,  
Individually and on behalf of JMP  
PROPERTIES, LLC and ALL-BORO MANAGEMENT  
Co., LLC,

Plaintiffs,

- against -

PETER GARCIA,

Defendant.

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PETER GARCIA,

Plaintiff,

- against -

JOAQUIN GARCIA, MICHAEL GARCIA,  
JMP PROPERTIES, LLC, ALL-BORO  
MANAGEMENT Co., LLC,  
BROOKLYN PROPERTIES 21, LLC, and  
GARCON, INC.,

Defendants.

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The following papers numbered 1 to 4 read herein:

Notice of Motion and Affirmation Annexed \_\_\_\_\_  
Opposing Affirmation \_\_\_\_\_  
Reply Affirmation \_\_\_\_\_

Papers Numbered

\_\_\_\_\_  
1-2  
\_\_\_\_\_  
3  
\_\_\_\_\_  
4  
\_\_\_\_\_

The two actions before the Court relate to the operation and control of JMP Properties, LLC, All-Boro Management Co., LLC, and Brooklyn Properties 21, LLC (collectively, the .

LLCs), all of which are limited liability companies formed primarily for the purpose of owning and/or operating various real properties located in Brooklyn. The second action further relates to the operation and control of Garcon, Inc. (Garcon), which is engaged in the business of providing construction and maintenance services to the LLCs. The defendant Peter Garcia (hereafter, Peter) was (or is, depending on the entity) a part owner of the LLCs and Garcon.

During the pendency of these actions, Peter and his wife went through a bankruptcy case that resulted in a confirmed chapter 11 plan. Peter now moves for (1) a declaration that his prior bankruptcy case did not cause him to lose ownership, if any, in any of the LLCs, and that the value of any real property owned by any of the LLCs may not be determined “as of the effective date of [his] bankruptcy,” and (2) an order providing him with access to books and records of the LLCs and of Garcon. Plaintiffs/third-party defendants oppose Peter’s motion.

### *Discussion*

After the Court reserved decision on the instant motion, Special Referee Nina Kurtz issued a decision and order, dated February 16, 2016 and filed February 22, 2016, finding and determining that the expulsion of Peter from JMP Properties, LLC (JMP) and All-Boro Management Co., LLC (All-Boro) on August 19, 2011 was proper and divested him of any membership/ownership/management interest in those entities. Because Peter’s expulsion from JMP and All-Boro preceded his (and his wife’s) bankruptcy case, he had no interest in

JMP and All-Boro to pass to his bankruptcy estate.<sup>1</sup> In light of Special Referee Kurtz's determination,<sup>2</sup> the branch of Peter's motion relating to JMP and All-Boro is denied as moot.

Turning to the remaining LLC which is Brooklyn Properties 21, LLC (BP21), the Court notes that Peter was never expelled from that LLC and thus his interest in that LLC passed to his bankruptcy estate pursuant to 11 USC § 541 (a) (1).<sup>3</sup> Although the operating agreement for that LLC provides in § 11.1<sup>4</sup> for an automatic disassociation of a member upon "the bankruptcy of [that] Member," such provision is rendered unenforceable under

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<sup>1</sup> Peter's attempts to set aside his expulsion from JMP and All-Boro as improper under the bankruptcy law were rejected by the bankruptcy court (*see In re Garcia*, 494 BR 799 [Bankr ED NY 2013], *reconsideration denied* 507 BR 434 [Bankr ED NY 2014]).

<sup>2</sup> As more fully set forth in the JHO/Special Referee Order, dated Jan. 30, 2015, the parties consented to have that issue heard and determined. By notice of appeal, dated Apr. 5, 2016, Peter appealed the decision and order of Special Referee Kurtz to the Second Department.

<sup>3</sup> 11 USC § 541 (a) (1) provides, in part, that:

"The commencement of a case under . . . this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

\* \* \*

[A]ll legal or equitable interests of the debtor in property as of the commencement of the case."

<sup>4</sup> The parties have not provided the Court with a copy of the operating agreement for BP21. As the parties do not dispute that BP21 is governed by the same form of the operating agreement that govern the other two LLCs (JMP and All-Boro), the Court relies on the relevant provision of the operating agreement for these LLCs, as was quoted by Justice David I. Schmidt in his prior decision and order (*see Garcia v Garcia*, 33 Misc 3d 1237[A], 2011 NY Slip Op 52261[U] [Sup Ct, Kings County 2011]).



11 USC § 541 (c) (1) (B)<sup>5</sup> (*see e.g. In re Talbut*, 2015 WL 5145598, \*3 [Bankr ND Ohio 2015]; *In re Denman*, 513 BR 720, 727 [Bankr WD Tenn 2014]; *In re Warner*, 480 BR 641, 655-656 [Bankr ND W Va 2012]). Peter's membership interest in BP21, which is a form of personal property, therefore became part of his bankruptcy estate and, on confirmation of his (and his wife's) chapter 11 plan by order, dated October 15, 2014, his rights in that membership interest re-vested in him in accordance with 11 USC § 1141 (b).<sup>6</sup> Thus, the branch of Peter's motion which is for a declaration that his bankruptcy case did not cause him to lose ownership in BP21 and that the value of any real property owned by BP21 may not be determined "as of the effective date of [his] bankruptcy," is granted.<sup>7</sup>

The balance of Peter's motion is for an order providing him with access to books and records of the LLCs and of Garcon. As noted, his request with respect to JMP and All-Boro is moot in light of the prior determination that his expulsion from those entities was proper. As to BP21, the Court notes that, by short-form order, dated November 20, 2015, it granted the branch of Peter's prior motion which likewise sought access to books and records of

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<sup>5</sup> 11 USC § 541 (c) (1) (B) provides, in part, that:

"[A]n interest of the debtor in property becomes property of the estate . . . notwithstanding any provision in an agreement . . . or applicable nonbankruptcy law . . . that is conditioned . . . on the commencement of a case under [the Bankruptcy Code] . . . , and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property."

<sup>6</sup> 11 USC § 1141 (b) provides, in part, that "the confirmation of a plan vests all of the property of the estate in the debtor."

<sup>7</sup> Since Garcon is a corporation, its corporate form does not present an issue of ipso-facto dissolution.

BP21. As to the remaining entity which is Garcon, the Court hereby grants the branch of Peter's motion which is for discovery from Garcon.

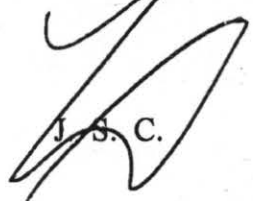
**Conclusion**

Peter's motion is granted to the extent that (1) the Court hereby declares that his bankruptcy case did not cause him to lose ownership in BP21 and that the value of any real property owned by BP21 may not be determined "as of the effective date of [his] bankruptcy," and (2) he is permitted reasonable access to review and copy the books and records of Garcon; and his motion is otherwise denied. For the avoidance of doubt, the Court expressly denies Peter's request, advanced in ¶ 62 of his counsel's opening affirmation, that no evidence of his bankruptcy be permitted to be admitted at trial. Insofar as Peter's bankruptcy case is concerned, the Court's holding is narrow; namely, that Peter's bankruptcy case did not affect his membership/ownership/management interest in BP21.

The parties are reminded of their next appearance in Commercial Part Trial Term 4 on September 12, 2016.

This constitutes the decision and order of the Court.

ENTER,



J. S. C.

**HON. LAWRENCE KNIPEL**

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