

SHORT FORM ORDER

ORIGINAL

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

HELEN WEBSTER,

TRIAL/IAS, PART 1
NASSAU COUNTY

Plaintiff,

INDEX No. 603009/15

MOTION DATE: June 30, 2015
Motion Sequence # 001

-against-

FOREST HILLS CARE CENTER, LLC,
FOREST HILLS ESTATE ASSOCIATES, LLC,
DVORA OSTREICHER and BENJAMIN
LANDA,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Affirmation in Opposition..... X
Reply Affirmation..... X
Memorandum of Law..... X
Reply Memorandum of Law..... X

Motion by defendants to dismiss the complaint is **granted** to the extent indicated below.

This is an action for an accounting with respect to the affairs of two related limited liability companies. Defendant Forest Hills Care Center LLC, a limited liability company which was formed on April 27, 200, operates a nursing home located at 71-44 Yellowstone Boulevard, Forest Hills, Queens. Defendant Forest Hills Estate Associates, LLC,

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which was formed in November 1997, owns the real property upon which the nursing home is located. Plaintiff Helen Webster holds a 15 % membership interest in both limited liability companies. The operating agreements state that defendant Benjamin Landa is a 25 % member, and defendant Dvora Ostreicher is a 10 % member, of each company.

Landa previously commenced an action against Webster in Supreme Court, Nassau County concerning two other companies in which the parties held membership interests, 76th Street Realty Associates, LLC and BBB Health Resources, LLC. That action was assigned to Justice Austin (Index No. 17269/04). On January 12, 2006, the parties entered into a written settlement agreement, with the assistance of court attorney referee Frank Schellace. The settlement agreement provides in part that the "Forest Hills Nursing Home" owed a distribution to Webster of \$41,250.00 as of December 14, 2005. The settlement agreement does not specify whether the Forest Hills Nursing Home referred to Forest Hills Care Center of Forest Hills Estate. Nevertheless, the settlement agreement provides that "all future and further distributions...made to any...member...shall be simultaneously paid proportionately to Webster, consistent with her percentage ownership." The settlement agreement provides that the Supreme Court, County of Nassau shall retain jurisdiction to determine any claims arising under the agreement.

This action was commenced on September 18, 2014 in Kings County. Webster alleges that she has not received the distributions to which she is entitled and seeks an accounting with respect to both Forest Hills Care Center and Forest Hills Estate. In the third cause of action, Webster alleges that Landa has interfered with her rights under the operating agreements of Forest Hills Care and Forest Hills Estate. The fourth cause of action is against Landa for breach of the settlement agreement. The fifth cause of action is against Ostreicher for breach of the operating agreements of both companies by failing to make distributions to Webster.

Defendants move to dismiss the complaint based on a defense founded upon documentary evidence, statute of limitations, and failure to state a cause of action. Defendants argue that plaintiff cannot obtain an accounting for any period before September 18, 2011. Defendants argue that under Limited Liability Company Law § 609 defendant Ostreicher, as a member of manager, cannot be held liable for the debts of Forest Hills Care or Forest Hills Estate. Defendants argue that the settlement agreement imposes no obligation on Landa to pay distributions. Defendants argue that with respect to the fourth cause of action venue should be in Nassau rather than Kings. Finally, defendants argue that defendant Ostreicher is not a party to the operating agreements. In opposition, plaintiff argues that the

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complaint states a claim for breach of fiduciary duty against both defendants Landa and Ostreicher, as well as a claim for an accounting.

[C]ourts are generally loath to intercede in squabbles between partners that result in piece-meal adjudications, preferring that partners either settle their own differences amicably or dissolve and finally conclude their affairs by a full accounting” (*Gramercy Equities Corp. v Dumont*, 72 NY2d 560,564-65 [1988]). The same reluctance to engage in piece-meal adjudication applies to limited liability companies. In January 2006, Webster obtained an adjudication with respect to her entitlement to distributions from Forest Hills Care Center and/or Forest Hills Estate as of December 14, 2005. The court is reluctant to engage in a second piece-meal adjudication of her entitlement to distributions, absent a dissolution or a buyout of her interest in the two companies (*Mizrahi v Cohen*, 104 AD3d 917 [2d Dept 2013]).

Limited Liability Company Law § 702 provides that on application of a member, the Supreme Court in the judicial district in which the office of the limited liability company is located may decree dissolution on the grounds that it is not reasonably practicable to carry on the business in conformity with the operating agreement.

Webster essentially argues that it is not practicable to carry on the business of Forest Hills Care Center and Forest Hills Estate when those members in control of the companies refuse to pay her regular distributions in accordance with her membership interests. The January 2006 settlement agree primarily involved companies other than Forest Hills Care Center and Forest Hills Estate. In any event, the venue provision in the Limited Liability Company Law must take precedence over the settlement agreement with respect to the venue of a dissolution proceeding.

Accordingly, defendants’ motion to dismiss the complaint is **granted**, without prejudice to plaintiff’s commencing a proceeding for the judicial dissolution of Forest Hills Care Center LLC and Forest Hills Estate Associates, LLC in Supreme Court, Queens County.

This order concludes the within matter assigned to me pursuant to the Uniform Rules for New York State Trial Courts.

So ordered.

Dated JUL 14 2015


XXX J.S.C.

ENTERED

JUL 21 2015
NASSAU COUNTY
COUNTY CLERK'S OFFICE