

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT PART 47

Justice

HARVEY RUBIN,  
Plaintiff-Petitioner(s)

INDEX NO. 653707/15  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 2 \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

-v-

JAMES S. BAUMANN, WINN WINN ASSET  
MANAGEMENT LLC, and 330 WEST 85, LLC,

Defendant-Respondent(s)

The following papers, numbered 1 to 6 were read on this motion to/for partial summary judgment

**PAPERS NUMBERED**


Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits _____	2
Replying Affidavits _____	3
Memoranda	4,5,6

Supporting affidavit

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion by the Plaintiff for an order granting partial summary judgment is granted, a/p/o.

Dated: Ju1 19, 2016

  
**GEOFFREY D. WRIGHT**  
AJSC J.S.C.

Check one:  FINAL DISPOSITION  X NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 47

-----X  
HARVEY RUBIN,

Plaintiff/Petitioner(s)

-against-

JAMES S. BAUMANN, WINN WINN  
ASSET MANAGEMENT LLC and  
330 WEST 85, LLC,

Defendant/Respondent(s),  
-----X

Index #653707/15  
Motion Cal. #  
Motion Seq. #2  
**DECISION/ORDER**  
Pursuant To Present  
Hon. Geoffrey Wright  
Judge, Supreme Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion to: grant partial summary judgment

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PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	3
Cross-motion & Exhibits Annexed	
Supporting Affidavits	
Memoranda	4,5,6

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Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Plaintiff brings this action, and this motion, to enforce his rights under the operating agreement of 330 West 85, LLC. The Plaintiff is one of two members of the LLC. James Baumann is the other. The operating agreement, in section 8.5, provides for the owner of at least 33% of the LLC, to demand that his interest be purchased by the management. In the event that management does not buy out the member, the other members are given that opportunity. In this instance, management is James Baumann, who is also the sole other member of the LLC.


Section 8.5.3, of the agreement provides that if management and the remaining membership of the LLC do not purchase the interest of the seller, he may then compel the sale of the property so long as suggested the sales price can meet all obligations of the LLC, including the costs of closing, is the net result.

By letter dated May 7, 2015, the Plaintiff had his counsel send a letter to Mr. Baumann indicating that the Plaintiff wished to sell his interest in the building for \$8.6 million.

The Plaintiff seems to have received an offer to purchase the building for \$22 million, which would satisfy, on its face, the financial requirements of the operating agreement.

Then there are the technicalities raised by Mr. Baumann, to wit, there was no genuine offer of sale, since the initial communication was made by a stranger, to wit the attorney for Mr. Rubin. This point seems to be conceded, but it is countered with a claim of waiver, since the Defendants entered into negotiations with the Plaintiff without apparent cavil. I accept the position of the Plaintiff. The Defendants did in fact respond to the notice of sale, and negotiate terms, almost to the point of resolution. They cannot now retreat from that position. The Plaintiff has otherwise met the specifications of the operating agreement, and is thus entitled to the relief sought in the motion to this extent: (1) the notice was timely served; (2) any technical objection to the authorship of the notice is deemed waived; (3) pursuant to the terms of the operating agreement, the Plaintiff is authorized to go forward with sale of the building; (4) the Defendant, Baumann, is directed to execute all documents required to complete the sale or face a motion for contempt of court.

The foregoing constitutes the decision and order of the court.

  
**GEOFFREY D. WRIGHT**  
**AJSC**

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Dated: July 19, 2016