

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

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 CAROL E. KELLER and GAIL SHIELDS :  
 as Preliminary Executors of the Estate of : Index No. 653735/2019  
 LOIS WEINSTEIN, individually, :  
 : AMENDED  
 Petitioners : VERIFIED PETITION  
 - against - :  
 :  
 RAS PROPERTY MANAGEMENT, LLC, :  
 RITA A. SKLAR, individually and RITA :  
 SKLAR and STEVEN C. MERO as :  
 Trustees of the Exempt Issue Trust FBO :  
 Hannah Rose Gettinger, the Exempt Issue :  
 Trust FBO Ruby Hilene Sklar and the :  
 Exempt Issue Trust FBO Sadie Pearl Sklar, :  
 and NINETY-FIVE MADISON :  
 COMPANY, LP, :  
 Respondents. :  
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The petition of CAROL E. KELLER and GAIL SHIELDS as Preliminary  
Executors of the Estate of LOIS WEINSTEIN respectfully shows:

1. Petitioners CAROL E. KELLER and GAIL SHIELDS are Preliminary Executors of the Estate of LOIS WEINSTEIN having been appointed by the Surrogate's Court of the State of New York, County of New York, by decree dated December 31, 2019.
2. Respondent RAS Property Management, LLC ("RAS") is a limited liability company organized and existing under the laws of the State of New York with an office at 95 Madison Avenue, New York, NY.
3. Respondent Rita A. Sklar ("Sklar") is a resident of the State of New York and is the sole member of RAS.
4. Respondents RITA SKLAR and STEVEN C. MERO are Trustees of the Exempt Issue Trust FBO Hannah Rose Gettinger, the Exempt Issue Trust FBO Ruby Hilene Sklar

and the Exempt Issue Trust FBO Sadie Pearl Sklar each of which, upon information and belief, owns a beneficial interest in NFMC -- possibly up to 49%.

5. Respondent Ninety-Five Madison Company, LP (“NFMC”) is a limited partnership organized and existing under the laws of the State of New York and is the owner of real property known as, and located at, 95 Madison Avenue, New York, NY 10016.

6. Upon information and belief, until October 24, 2019, RAS was the general partner of respondent NFMC.

7. NFMC’s Limited Partnership Agreement (the “Limited Partnership Agreement”), a true and correct copy of which is attached hereto as Exhibit A and is incorporated by reference herein, provides that NFMC is dissolved by the occurrence of “[t]he withdrawal or bankruptcy of a General Partner if the Partnership is not continued in accordance with Section 8.5 hereof”. Limited Partnership Agreement Article 9.1(B). Attached hereto as Exhibit B is a true and correct copy of the “Certificate of Adoption of Revised Limited Partnership Act of Ninety-Five Madison Company.”

8. NFMC is also dissolved by “Any event which shall make it unlawful for the existence of the Partnership to be continued.” Limited Partnership Agreement Article 9.1(C).

9. The Limited Partnership Agreement does not define “withdrawal” or “event of withdrawal of a general partner.” However, the Revised Limited Partnership Act defines “event of withdrawal of a general partner” as “an event that causes a person to cease to be general partner as provided in section 121-402 of this article.” Revised Limited Partnership Act § 121-101(d).

10. Pursuant to section 121-402 of the Revised Limited Partnership Act, a person ceases to be a general partner of a limited partnership “if within one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed or stayed.” Revised Limited Partnership Act § 121-402(e)(i).

11. Additionally, the same section provides that a person ceases to be a general partner of a limited partnership “if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed.” Revised Limited Partnership Act § 121-402(e)(ii).

12. On June 26, 2019, prior to her death (on November 25, 2019), Lois Weinstein had commenced a proceeding in the Supreme Court of the State of New York, County of New York, entitled Lois Weinstein, individually and on behalf of Ninety-Five Madison Company L.P. v RAS. Property Management LLC et al, Index No. 653735/2019 (the “Dissolution Proceeding”), against RAS Property Management, LLC and Ninety-Five Madison Company, LP seeking the judicial dissolution of Ninety-Five Madison Company, LP and the appointment of a receiver.

13. This action was not stayed prior to October 24, 2019 (the one hundred twentieth day following June 26, 2019), has not been dismissed, and as of October 24, 2019 had not been stayed until November 25, 2019 when an automatic stay was imposed by the death of Lois Weinstein.

14. In a separate action, JAMS no. 1425024190, a receiver was appointed for NFMC and RAS by an arbitrator, the Hon. Stephen Crane, on August 7, 2019 with authority over “all of the landlord’s (RAS Property Management LLC’s and Ninety-Five Madison LP’s) obligations, responsibilities, and prerogatives” regarding Vitra, Inc. Vitra, Inc. is one of NFMCLP’s tiny handful of tenants, and Vitra, Inc. is by far the most significant tenant (both in terms of physical space and rent obligations), leasing space at 95 Madison Ave. from Ninety-Five Madison Company, LP.

15. On October 30, 2019, the appointment of the Receiver was confirmed in the action Vitra, Inc. v. Ninety-Five Madison Company, LP, 652342/2017 (the “Vitra Action”). In the Vitra Action, Justice Saliann Scarpulla confirmed Judge Crane’s August 7, 2019 arbitral award appointing a receiver in “all respects”. A true and correct copy of Justice Scarpulla’s October 30, 2019 Order is attached hereto as Exhibit C.

16. The appointment of a receiver by Judge Crane’s August 7, 2019 arbitral award appointing the receiver (which was confirmed in all respects by Judge Scarpulla’s October 30, 2019 order) has never been vacated or stayed. In fact, upon information and belief, the receiver continues to exercise authority to this day.

17. By virtue of the foregoing, pursuant to § 121-402(e)(i) of the Revised Limited Partnership Act, RAS ceased to be general partner of NFMC on October 24, 2019 (the 120th day following the commencement of Dissolution Proceeding (Supreme Court Case Index No.: 653735/2019) seeking the dissolution of NFMC).

18. The ninetieth day following the appointment of the receiver in the Vitra Action, on August 7, 2019 was November 5, 2019. Pursuant to § 121-402(e)(ii) of the revised limited partnership act RAS Property Management LLC would have ceased to be general

partner of Ninety-Five Madison Company, LP on November 5, 2019 had it not already ceased to be general partner on October 24, 2019 by virtue of its failure to stay or have dismissed the Dissolution Proceeding.

19. Upon information and belief, no provision of the Limited Partnership Agreement modifies the governing provisions § 121-402(e) of the Revised Limited Partnership Act.

20. Section 121-801 of the Revised Limited Partnership Law provides that a limited partnership is dissolved and its affairs shall be wound up “at the time or upon the happening of events specified in the partnership agreement”. Revised Limited Partnership Act § 121-801(b).

21. Section 121-801(d) of the Revised Limited Partnership Act provides that a limited partnership is dissolved and its affairs shall be wound up upon:

an event of withdrawal of a general partner unless (1) at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, or (2) unless the partnership agreement provides otherwise, if within ninety days after the withdrawal of the last general partner, not less than a majority in interest of the limited partners agree in writing to continue the business of the limited partnership and to the appointment, effective as of the date of withdrawal, of one or more additional general partners if necessary or desired.

Revised Limited Partnership Act § 121-801(d).

22. From October 24, 2019, the day RAS Property Management, LLC ceased being general partner of NFMC and NFMC has been without a general partner. Prior to that day RAS Property Management, LLC was the sole general partner of NFMC so the provisions of § 121-801(d)(1) of the Revised Limited Partnership Act do not apply.

23. The ninetieth day following October 24, 2019 was January 22, 2020. As a majority in interest of the limited partners of NFMC did not agree in writing to continue

the business of the limited partnership or to the appointment of a general partner on or prior to that date, January 22, 2020, NFMC was dissolved pursuant to § 121-801(d)(2) of the Revised Limited Partnership Act.

24. If the November 5, 2019 date is, instead, the correct for the termination of RAS Property Management, LLC's status as general partner, NFMC was dissolved pursuant to § 121-801(d)(2) of the Revised Limited Partnership Act on February 3, 2020.

25. Under Article 8.5 of the Limited Partnership Agreement the general partner was required to promptly notify the limited partner of the withdrawal which act, upon information and belief, never occurred. The Partnership Agreement provides that in such instance, "the partnership shall be dissolved and terminated unless the Limited Partner elects to continue the business of the Partnership." Limited Partnership Agreement Article 8.5.

26. Upon the withdrawal of RAS Property Management, LLC as general partner, the limited partners did not elect to continue the business of NFMC and did not appoint a new general partner.

27. By virtue of the foregoing, as a matter of law and indisputable fact, NFMC has been dissolved.

28. Article 8.5 of NFMC's Limited Partnership Agreement also provides that after the withdrawal of the general partner that the "General Partner or her legal representative shall take no part in the management of the Partnership...." NFMC Limited Partnership Agreement Article 8.5.

29. As the former general partner, RAS, did not die and was not declared incompetent the provisions of article 8.6 of the Limited Partnership Agreement do not apply. Limited Partnership Agreement § 8.6.

30. Both the Limited Partnership Agreement and the Revised Limited Partnership Act section 121-803 provide, on the dissolution of the partnership a receiver is to appointed to pay the creditors of the partnership and to distribute to the partners their contributions and ownership of partnership property in proportion to their shares.

31. It is not reasonably practicable for Ninety-Five Madison Company LP to carry on its business in conformity with the partnership Agreement.

**32. No Prior application for the relief requested herein has been made, except in the original petition.**

WHEREFORE, Plaintiff demands judgment as follows:

- The appointment of a Receiver to engage competent management to take over the affairs of 95 Madison Avenue, New York, NY and to discharge and eject RITA SKLAR, RAS PROPERTY MANAGEMENT and the present officers and Partners of Ninety-Five Madison Company, LP, from all portions of 95 Madison Avenue, New York, NY while the affairs of Ninety-Five Madison Company, LP are wound up;
- A Writ of Assistance to the Sheriff of the City of New York, to eject RITA SKLAR, RAS PROPERTY MANAGEMENT and the present officers and Partners of Ninety-Five Madison Company, LP from all portions of the 95 Madison Avenue, New York, NY ;
- an Order requiring the turn over to the Receiver appointed of all records concerning the operation of 95 Madison Avenue and Ninety-Five Madison Company, LP
- The appointment of Receiver to distribute the assets of Ninety-Five Madison Company, LP to the limited partners and to the Estate of Lois Weinstein in their proportionate share **as tenants in common**;
- an award of Petitioners' reasonable expenses and legal fees per statute
- Plus such other and further relief as to the court seems just and proper.

NYSCEF DOC. NO. 148

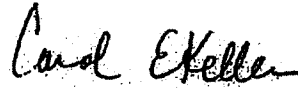
RECEIVED NYSCEF: 07/21/2020

INDEX NO. 653735/2019

NYSCEF DOC. NO. 142

RECEIVED NYSCEF: 07/07/2020

Dated: New York, NY  
July 3, 2020



CAROL E. KELLER, Petitioner



GAIL SHIELDS, Petitioner

JEFFREY A. BARR

By: 

Attorney for Petitioners  
225 Broadway, Suite 3110  
New York, NY 10007  
(212) 227-1834



VERIFICATION

STATE OF NEW YORK            )  
  )        ss.:  
COUNTY OF NEW YORK        )

CAROL E. KELLER, being duly sworn, deposes and says:

I am one of the Petitioners in this Proceeding. I have read the foregoing Verified Amended Petition and the contents thereof is true, except as to matters asserted on information and belief, and as to those matters, I believe it to be true.

  
\_\_\_\_\_  
CAROL E. KELLER

sworn to before me this  
3d day of July, 2020

  
notary public

JEFFREY A. BARR  
No. 02BA4799670  
Qualified in New York County  
Certificate Filed in New York County  
Commission Expires 1/31/2020  
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