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 LOIS WEINSTEIN, individually, | : | Index No. 653735/2019 |
| Petitioners, | : | AFFIRMATION OF JEFFREY A. BARR IN OPPOSITION TO MOTION TO DISMISS and in SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT |
| - against - | : | |
| RAS PROPERTY MANAGEMENT, LLC, RITA A. SKLAR, individually, and RITA A. SKLAR and STEVEN C. MERO, as Trustees of the Exempt Issue Trust FBO Hanna 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. | : | |

JEFFREY A. BARR, an attorney duly admitted to practice before the Courts of the State, under the penalties of perjury, does affirm as follows:

1. I was counsel to Petitioner Lois Weinstein, who is now deceased, and I am now counsel to Carol E. Keller and Gail Shields, the Preliminary Executors of Lois Weinstein's estate; I am fully familiar with the matters asserted herein and I make this affirmation in opposition to the motion of respondents Ninety-Five Madison Company LP ("NFMCLP") , Rita Sklar and RAS Property Management LLC ("RAS") (collectively the "RAS Respondents") to dismiss the amended petition and in support of the cross-motion for summary judgment, to extend the time to file the amended petition, and to amend that petition should the Court deem it defective.

2. By order dated June 15, 2020, this Court granted re-argument with respect to its February 5, 2020 order and ordered the substitution of Carol E. Keller and Gail Shields as

preliminary executors of the estate of Lois Weinstein. A true and correct copy of the June 15, 2020 Order is annexed hereto as Exhibit A.

3. The Court also granted that portion of the petitioners' cross motion that sought leave to amend the petition based on new facts and to add a new theory of recovery to be asserted individually and not derivatively.

4. Petitioners have amended the Petition which now seeks a declaration that NFMCLP was dissolved by operation of law, and seeks appointment of a liquidating agent and a distribution of its assets pursuant to NYRLPA section 121- 804 and sections 9.2 and 9.4 of the NFMC Limited Partnership agreement of its proportional interests in the dissolved limited partnership's assets.

5. At the time that this Court issued its June 15, 2020 decision and order, the Petitioners were the subject of a temporary restraining order issued March 16, 2020 by Surrogate Rita Mella of the New York County Surrogate's Court in the action In the Matter of the Estate of Lois Weinstein, File No. 2019-4714/B/C which restrained them from taking any action to dissolve NFMCLP or to sell 95 Madison Avenue, New York, NY. A true and correct copy of that order is annexed hereto as Exhibit B.

6. The TRO remained in effect until June 30, 2020, when Surrogate Mella lifted the TRO when she dismissed, at oral argument, two petitions filed by Rita Sklar to remove the Preliminary Executors and a third petition filed by Sklar's children seeking their appointment as limited executors to select their choice of tax counsel.

7. This left Petitioners only seven days to file their amended Petition pursuant to the July 15, 2020 Order. I had limited access to my office during this period and was reliant on home equipment. While I had the Petition ready to file earlier on July 6, 2020, I encountered a

computer scanning issue which prevented me from filing the amended petition until 12:24 a.m. on July 7, 2020 making it technically 24 minutes late. A true and correct copy of the Amended Petition and the filing receipt showing the time of filing is annexed hereto as Exhibit C.

RESPONDENTS' MOTION TO DISMISS.

8. Respondents moved within 20 days (14 days actually) of the filing of the amended petition by motion dated July 21, 2020.

9. Respondents assert five grounds for dismissal.

10. Respondent's first point for dismissal is that the amended petition was filed 24 minutes late.

11. The fact that it was filed the night of July 6 should be sufficient proof that there was no intentional delay. While I am certainly contrite and apologize to the Court about the late filing, I believe that since respondents were able to serve their motion to dismiss within 20 days of the filing of the amended petition, they can show no prejudice from the late filing.

12. Petitioners respectfully requests that that portion of their cross-motion to extend their time to file, *nunc pro tunc*, pursuant to CPLR 2004, be granted in the interests of justice. (I have read the Federal Court case annexed to Respondents' brief where a federal magistrate judge ruled that a 24 minute delay in filing a motion to disqualify counsel was prejudicial in light of the fact that there were already strict discovery deadlines in place in that case. Respondents do not claim to have been prejudiced by the 24 minute delay).

13. Respondents' second attack on the petition is that it fails to state a cause of action. While I agree that since the relief is declaratory, there should have been a clearer statement as required by CPLR 402 and CPLR 3017(b) specifying the precise declaration sought. However, CPLR 3016 provides that pleadings should be liberally construed and I believe that the Amended

Petition does state all of the facts which give rise to the relief requested. There is only one cause of action and therefore it should not have been necessary to denominate separate causes of action.

14. Respondents have seriously misconstrued the relief requested, particularly their misreading the relief sought as the removal of RAS as general partner when the Petition seeks a declaration that RAS has already ceased to be a general partner by operation of law.

15. The Amended Petition clearly sets forth facts and law which show that as a matter of law, RAS had already ceased to be the general partner as of either October 24, 2019 or November 5, 2019 (see Amended Petition, Exh. C, ¶¶ 17 and 18).

16. Further, the relief sought are the rights which the NFMCLP partnership agreement gives to any assignee of a limited partnership interest upon dissolution (see Partnership Agreement ¶¶ 8.4 and 9.4 (B). A true and correct copy of the NFMC Limited Partnership Agreement is annexed hereto as Exhibit D.

17. The right, which belongs to the Estate, is the right to a distribution of the assets of the dissolved partnership, in kind, as tenants in common, with the other former partners by the liquidating agent. See Partnership Agreement Section 9.2 (Exh. D at p. 37) and 9.4 (B)(ii) (Exh. D at p. 40).

18. Respondents take issue with the Preliminary Executor's decision to seek a distribution of dissolved partnership assets ( 18% of 95 Madison Avenue, New York) as tenants in common. Respondents seem to believe that there is no difference between an 18% interest in the profits and losses of NFMCLP and an 18% interest as a tenant in common of an actual office building and the land upon which it sits.

19. The Preliminary Executors have a fiduciary duty to determine the nature of the interest under their control and to be able to take the proper and necessary steps to distribute that interest to the creditors and/or the heirs (assuming that Rita Sklar's purported will contest is ultimately dismissed).

20. The Preliminary Executors legitimately need to know whether it is an 18% interest in a non-functioning, mismanaged and nearly bankrupt limited partnership or an 18% interest in an office building possibly worth more than Sixty Million dollars.

21. Respondents' third ground of attack is the claim that the Amended Petition asserts derivative claims. It does not.

22. Respondents misconstrue the Amended Petition to seek the removal of RAS which they (correctly) admit would be a benefit to the limited partners and the limited partnership. However, removal is not the relief being sought here. The relief is a declaration that RAS ceased to be the general partner on either October 24, 2019 or November 5, 2019 and that because no election was made within 90 days to continue the partnership, NFMC was dissolved as a matter of law January 22, 2020 or February 3, 2020. See Amended Petition ¶¶ 23 and 24.

23. This action, which merely seeks as its remedy, distribution of an asset due to the fact that the partnership has already been dissolved, is aimed at benefitting only the Estate of Lois Weinstein and its beneficiaries and does not seek any relief on behalf of any other party. At issue is not a wrong to the partnership which is being rectified or remedied. Petitioners seek only the distribution to the Estate of the Estate's share of the assets of the partnership as is their right under sections 9.2 and 9.4 of the Partnership Agreement and NYRLPA § 121-804.

24. If the Court deems a clarification of the allegations necessary, it is respectfully submitted that the Court should permit a second amendment to the Petition pursuant to CPLR 3026 in the form annexed hereto as Exhibit E.

25. Respondents' fourth ground for dismissal is that the Preliminary Executors lack standing to remove the general partner because they are not limited partners. This is the ruling of this Court in its February 5, 2020 Decision and Order. The Amended Petition does not violate this ruling.

26. Again, Respondents have misconstrued the allegations of the Petition. Petitioners do not seek the removal of RAS. They seek a recognition that RAS has already ceased to be general partner by operation of NYRLPA section 121-402(e)(i) and/or (ii) and that the partnership has already been dissolved.

27. Finally, Respondents assert that NYRLPA section 121-402 (e) applies only to proceedings against the general partner and not proceedings brought against the partnership itself.

28. Respondents, however, ignore the specific language of NYRLPA section 121-402 (e) (i) which does not contain such a specific limitation and they ignore a very specific portion of the language of Section 121-402 (e) (ii) which mandates automatic cessation as general partner where a significant asset of the general partner becomes the subject of a receivership and that receivership is not vacated within 90 days.

29. As demonstrated below, the receivership imposed on NFMCLP and the "restrained parties" which include specifically RAS and Rita A. Sklar, does constitute a receivership over a significant asset of RAS and clearly fits within the ambit of section 121-402 (e) (ii) and provides sufficient grounds upon which Petitioners may rely in seeking distribution of

the estate's interests. Accordingly, the motion to dismiss should be denied and summary judgment granted.

SUMMARY JUDGMENT SHOULD BE GRANTED

30. None of the relevant facts are in dispute. The issues are purely legal.

31. The Amended Petition asserts that the failure of respondent RAS to have moved for a stay or to have had this action dismissed by October 24, 2019, the 120th day after the commencement of the instant proceeding, by operation of law, removed RAS as general partner. Because no new general partner was appointed within ninety days, this resulted in the dissolution of the limited partnership as a matter of law.

32. Under NYRLPA 121-402(e)(i), RAS ceased to be the general partner and thereby effectively withdrew from the partnership. There being no other general partner, under the precise terms of the Limited Partnership Agreement ( section 8.5) and NYRLPA section 121-801(d), NFMCLP has already been dissolved as of January 22, 2020. See Exh. D at pp. 27-28.

33. Under the Partnership Agreement section 8.5, only the limited partner(s) could have attempted to name another general partner and chosen to continue the partnership, but the 90 day period to do so under NYRLPA section 121-801 (d) and the Partnership Agreement 8.5 expired on January 22, 2020.

34. Respondent RAS argues that NYRLPA 121-401 (e)(i) only applies with respect to actions brought against the general partner and not the limited partnership itself, that therefore its terms do not apply here.

35. 121-401(e)(i) does not specifically limit its application to actions seeking dissolution of the just the general partner, but uses the broadest description: "any proceeding

against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, under any statute, law, or regulation... Id.

36. Assuming that Respondents are correct in their analysis and that § 121-401 (e) only applies to actions against the general partner, and the instant proceeding therefore cannot serve as a predicate to trigger cessation of RAS's status as general partner, there is still another set of undisputed facts which explicitly do apply to the general partner and which bring about the same result -- dissolution.

37. Unquestionably, RAS ceased to be the general partner by virtue of NYRLPA § 121-401 (e)(ii) because a receiver was appointed over all or a substantial part of RAS's properties and such receivership was not vacated within 90 days.

38. In an action commenced by Vitra, Inc., NFMCLP's only significant tenant, which arose out of RAS's willful breaches of the tenant's lease, and over the strenuous objection of RAS (Sklar admits to having paid $1,132,564 in defending against the action), a receiver was appointed over NFMCLP on August 7, 2019. See In Vitra Inc., claimant v. Ninety Five Madison Company LP, respondent; JAMS no. 1425024190 ( the "Vitra Arbitration").

39. In the Vitra Arbitration on August 7, 2019, Arbitrator Hon. Stephen Crane, appointed Denise Lesser, Esq. as receiver, 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." A true and correct copy of the August 7, 2019 Amended Fifth Interim Award, is annexed hereto as Exhibit F.

40. Vitra is by far the most significant tenant (both in terms of physical space and rent obligations) at 95 Madison Avenue. The Vitra Lease which is worth $11,000,000 (by Sklar's own admission) to NFMCLP and must be considered a significant asset of NFMCLP and

by extension of RAS. A true and correct copy of Sklar's hand written valuation of the Vitra Lease in a letter written to her counsel (at the time) is annexed hereto as Exhibit G

41. On Page 13, of the Amended Fifth Interim Award, Justice Crane made it expressly clear that the receivership applied to "Respondent, its agents, officers, members, employees, affiliates, partners, managers, attorneys, contractors, representatives and all other persons acting on its behalf, including the Respondent's principal, Rita A. Sklar (collectively the Restrained Parties") Exhibit F at P. 13.

42. On October 30, 2019, the appointment of the Receiver was confirmed in the action Vitra, Inc. v. Ninety-Five Madison Company, LP, New York State Supreme Court , New York County Index No. 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 H.

43. The appointment of a receiver by Judge Crane's August 7, 2019 arbitral award appointing the receiver has never been vacated nor stayed. In fact, the receiver continues to exercise authority to this day over the continued objection of the RAS Respondents. See Order dated July 21, 2020 a true and correct copy of which is annexed hereto as Exhibit I.

44. The ninetieth day following the August 7, 2019 appointment of the receiver in the Vitra Action, 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 .

45. Unquestionably, NFMCLP is a substantial asset of RAS. Indeed, NFMCLP is RAS's only asset. The receivership imposed over NFMCLP and the Restrained Parties, satisfies

the language of Section 121-401(e)(ii) which reads: "if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator or the general partner **or of all or any substantial part of his properties, the appointment is not vacated or stayed...** (emphasis supplied).

46. Contrary to Respondents' argument, there is no provision of the NFMCLP Limited Partnership Agreement or its certificate which modifies or negates the governing provisions § 121-402(e) of the NYRLPA.

47. The NFMCLP Partnership Agreement was adopted in 1983 before the enactment in 1990 of the NYRLPA.

48. The certificate filed March 10, 2011 and executed by Sklar herself, which expressly adopted all the provisions of the NYRLPA is annexed hereto as Exhibit J. There is nothing in the Certificate which limits § 121-402.

49. NYRLPA Section 121-801(b) 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”.

50. The Partnership Agreement provides that upon the withdrawal of the General Partner the partnership is dissolved. (Section 8.5). It also gives only to the Limited Partner(s) the right to continue the partnership and prohibits the withdrawing general partner from any part in the continued management of the partnership.

51. Limiting the rights conveyed by NYRLPA Section 121-401(e) would severely prejudice Petitioners and the Estate and its beneficiaries for whom they are fiduciaries. The statute is remedial and should be read expansively. See People v. Brown, 25 N.Y. 3d 247,251 (2015).

52. The clear purpose of the statute is to provide a remedy where a general partner is not properly functioning or can function as general partner to the detriment of the partnership. This is clearly the case here.

53. RAS's refusal to lease out a sixteen floor office building which is nearly vacant and its principal's unbridled hostility toward NFMCLP's most significant and practically only tenant, Vitra, has already cost the partnership so far over $1,786,096 in legal fees she has been ordered to pay to the tenant's lawyers and another $ 41,132,564 Sklar admits having paid to NFMCLP's lawyers. This does not include the costs of the receivership, rent abatements and punitive awards for her failures to act. In the Vitra Action, Sklar recently submitted a handwritten schedule of how much the Vitra litigation has cost NFMCLP. That schedule is annexed hereto as Exhibit K. Sklar seems to estimate the total costs of her complete blunder as general manager at an astounding $6,053,589.13.

54. Justice Scarpulla's July 21, 2020 Order clearly includes fees for the Receiver and a $525,000 sanctions award in Vitra's favor based on the illegal and completely contumacious continued conduct of the RAS and Sklar in failing to file a work permit. See Exhibit F and H.

55. As is clearly evident from Justice Scarpulla's decision, the receivership remains in place which is further undisputed evidence supporting summary judgment.

56. Rita Sklar's illegal and oppressive behavior and her apparent lack of understanding of her responsibilities, recently resulted in the Surrogate's Court granting summary judgment removing her as a fiduciary for deceased petitioner. A true and correct copy of the November 22, 2019 order of the Surrogate's Court is annexed hereto as Exhibit L.

57. In conclusion, it is respectfully submitted that as a matter of law, petitioners are entitled to summary judgment on the Amended Verified Petition.

WHEREFORE, it is respectfully submitted that the Respondents' motion to dismiss be denied and that the cross-motion for summary judgment, to extend the time to file the first Amended Petition, and to amend the Amended Petition, should the Court deem that necessary, be granted in its entirety plus such other and further relief as to the Court seems just and proper.

Dated: New York, NY
August 5, 2020

JEFFREY A. BARR

CERTIFICATION PURSUANT RULE 202.70.17

I hereby certify that the word count excluding captions as indicated by Microsoft Word is 3,240 words.

Dated: August 5, 2020

Jeffrey A. Barr