

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  
LOIS WEINSTEIN, individually,

Index No.: 653735/2019

Petitioners,

I.A.S. Part 53

-against-

Motion Seq. # 007

RAS PROPERTY MANAGEMENT, LLC,  
RITA A. SKLAR, individually and RITA 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,

AFFIRMATION OF  
ROBERT LAPLACA

Respondents.

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ROBERT LAPLACA, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a partner of Verrill Dana LLP, attorneys for the Respondents RAS Property Management, LLC, Rita A. Sklar and Ninety-Five Madison Company, L.P. I am fully familiar with the facts set forth herein. I submit this affirmation in opposition to Petitioners' motion for summary judgment pursuant to CPLR 3212.

2. Issue has not been joined with the Amended Verified Petition in this action.

3. *If* the Court were not to grant Respondents' motion to dismiss and were to ignore that fact that the cross-motion for summary judgment were procedurally improper, summary judgment should nevertheless be denied because, at a minimum, the following factual issues would exist.

4. Respondents had a good faith belief that LP Act § 121-402(e) did not apply, especially in light of the fact that the statute on its face does not encompass the circumstances herein and there is no legal support for expanding the plain meaning to encompass the circumstances herein. Further, Respondents' good faith belief is supported by the fact that Weinstein never raised this statute prior to her death, when she had an opportunity to do so, including in response to Respondents' motion to stay the action based on prior action pending.

5. Weinstein and Petitioners waived any right to rely upon this statute. The action was commenced on June 26, 2019. 120 days thereafter to purportedly vacate or dismiss the action would have been October 24, 2019. Weinstein did not pursue her purported rights under the statute while she was alive – she died on November 25, 2019. During this time, in opposition to Respondents' motion to stay this proceeding (on the grounds of other action pending), on November 11, 2019, Weinstein by her counsel filed opposition to that motion (NYSCEF Doc. No. 95) which never mentioned LP Act § 121-402(e) or its applicability to this proceeding. Further, Petitioners originally moved to substitute in this action on January 23, 2020 and did not mention LP Act § 121-402(e) or its applicability to this proceeding. (*See* NYSCEF Doc. No. 101). This statute was first raised by Petitioners in opposition to Respondent's motion to dismiss and in support of their cross-motion to amend the petition on February 13, 2020 (NYSCEF Doc. No. 130) – over 7 months since the action was commenced and over 3 months since Petitioners have claimed the time to stay or dismiss the action and stay or vacate the receivership had expired. Accordingly, their failure to raise this statute as a basis for any relief constitutes a waiver or at least raises the factual issue of waiver.

6. In addition, while Respondents contend that the provisions in the NFMIC LP Agreement are clear and controlling, in the event this Court does not grant their motion to dismiss,

at a minimum, these following provisions raise issues of fact as to Petitioners' claim and requests for relief, precluding summary judgment:

- a. Respondents contend that by addressing the agreed-upon circumstances for the removal of the general partner Article VIII "otherwise provides" for a removal of the general partner and thus, precludes the application of LP Act § 121-402(e).
- b. Respondents contend that Article VIII limits the rights of "Assignees" to receive profits, losses and distributions and precludes them from taking any action to bind the partnership, including this action.
- c. Respondents contend that proper notice was not provided of any purported dissolution as required by Section 8.5.
- d. Respondents contend that the "Limited Partners" still have the right under Section 8.5 to elect to continue the partnership, which would be exercised since Ms. Sklar (a defendant and movant in this action) owns or controls all of the "Limited Partner" interests. (*See* Affidavit of Rita A. Sklar, NYSCEF Doc. No. 150 at para. 3.)
- e. Respondents contend that Petitioners do not have the right to receive interests in the building as tenants in common, since such relief is precluded under Section 3.4(B).

7. Respondents contend that the relief requested is not "necessary" for the administration of Weinstein's estate, since there is nothing precluding Petitioners from distributing Weinstein's interest NFMC without having to remove the general partner, dissolve NFMC and wind up NFMC.

Dated: August 11, 2020



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ROBERT LAPLACA