

At a term of Supreme Court held in and for the County of Jefferson, in the City of Watertown, New York on the 30th day of May, 2019

PRESENT: HONORABLE JAMES P. McCLUSKY
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

COPY

JOHN L. YEHLE

Petitioner,

MEMORANDUM
DECISION
AND
ORDER

-vs-

JON T. RICH, JR.

Respondent.

Index No. 2015-1321

RJI NO. 22-15-0572

Respondent John T. Rich has filed a motion seeking the appointment of a receiver to arrange for the sale of the Wellesley Island Storage, LLC (LLC) pursuant to the terms of the Stipulated Order signed by this Court on November 20, 2018. Petitioner John L. Yehle cross moved to set aside the Stipulated Order. The motion is partially granted and the cross motion is denied.

The Court has considered the Affidavit of Daniel R. Rose, Esq. dated May 7, 2019, with attachments; the Affidavit of Robert W. Connolly, Esq. dated May 29, 2019, with attachments; the Affirmation of Robert J. Siye, Esq. dated May 22, 2019, with attachments and the Affidavit of Nicole M. Teska dated May 20, 2019, with attachments.

This matter commenced June 11, 2015 with Petitioner seeking judicial dissolution of the LLC and liquidation and distribution of the LLC's assets. Discovery moved slowly

and more than three years after commencement the parties entered into a Stipulated Order granting partial summary judgment regarding the sale of the LLC's assets. Respondent seeks enforcement of the Order while the Petitioner seeks to have the Order set aside.

Petitioner believes that the Stipulation and Order should be set aside as he does not believe the Respondent has been forthcoming with discovery, and alleges that Respondent cannot sustain his claims based on the documents provided through discovery. However, the parties' stipulation acknowledged "the parties have engaged in discovery, with additional discovery relating to the accounting and distribution of assets still outstanding." When the Stipulated Order was entered between the parties they anticipated the additional discovery that Petitioner is now complaining he has not received. (Respondent indicates that he has complied with discovery and the reason no further information has been provided is because there is none in his possession.) The stipulation does not indicate the sale would not occur until the discovery was complete.

The Stipulation and Order also states "that following the sale of the assets, as referenced herein, further proceedings and claims remain to determine each member's contribution and membership interests." It was not anticipated that all issues would be resolved at the time of the sale. Issues raised by Petitioner should be resolved in any post sale proceedings. Thus there are no grounds to set aside the Stipulation and Order.

Based on the Court's Decision and Order today the need for a Receiver is obviated.

It is therefore

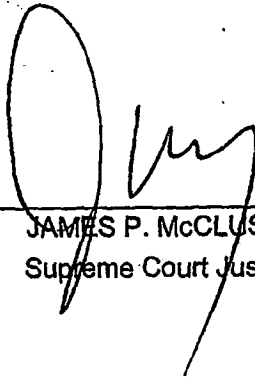
ORDERED that Respondent's motion is granted to the extent that the sale of all

assets of Wellesley Island Storage LLC shall be sold at auction by Brzostek's Auction Services, Inc. or in the event Brzostek's is unavailable or otherwise unable to auction Wellesley Island Storage, LLC, by another auction house by August 4, 2019, and it is further;

ORDERED that both parties shall execute the necessary documents with the auction house within seven (7) days of receipt of the papers, and it is further;

ORDERED that the cross motion by Petitioner is denied.

Dated: June 3, 2019
Watertown, New York
ENTER



JAMES P. McCLUSKY
Supreme Court Justice