

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

JEANNIE-MARIE MCGUIRE, et al.,

Plaintiffs,

ORDER

-against-

Index No. 804480/2020

F. JAMES MCGUIRE, et al.,

Defendants.

NOW, UPON CONSIDERATION of:

1. Defendants' Motion to Cancel the Notice of Pendency (NYSCEF Doc. No. 26; Motion No. 002) and all papers filed in support thereof (Doc. Nos. 27-37; and Doc. Nos. 112 - 115) and in opposition thereto (Doc. Nos. 69-108); and
2. Defendant F. James McGuire's Motion for Partial Summary Judgment on the Fifth and Sixth Causes of Action (Doc. No. 39; Motion No. 003) and all papers filed in support thereof (Doc. Nos. 40-67; and doc. Nos. 117-124) and in opposition thereto (Doc. Nos. 69-108); and
3. Plaintiffs' Cross-Motion for Partial Summary Judgment, an Accounting, and for an Order dismissing Defendant F. James McGuire's counterclaims (Doc. No. 68; Motion No. 004) and all papers filed in support thereof (Doc. Nos. 69-108 and Doc. Nos. 125-128) and in opposition thereto (Doc. Nos. 109-110, Doc. Nos. 117-124, and Doc. Nos. 133-134);

AND, UPON DUE DELIBERATION by the Court;

IT IS HEREBY ORDERED that, consistent with the Court's email decision dated

September 18, 2020, a true and accurate copy of which is appended hereto as **Exhibit A** and incorporated by reference herein:

1. Motion No. 003 (Doc. No. 39) is **GRANTED** on the basis that Plaintiffs waived the right to object to the disputed notices relating to the 2018 and 2019 capital calls at issue, and are estopped from claiming ownership interests that are inconsistent with those set forth in, *inter alia*, verified tax documents, such that the respective ownership interests of McGuire Development Company are hereby determined to be:
 - a. F. James McGuire - 49.3869%
 - b. Michael McGuire - 9.9803%
 - c. Kathleen M. McGuire - 9.9803%
 - d. Jeannie Marie McGuire - 9.9803%
 - e. Jacquelyn McGuire Gurney - 20.6727%;
2. Motion No. 002 (Doc. No. 26) is **GRANTED** and the Notice of Pendency filed by Plaintiffs (Doc. No. 13) is hereby vacated, and by this Order the Clerk of Erie County is directed to cancel the Notice of Pendency pursuant to CPLR § 6514(b); and
3. Motion No. 004 (Doc. No. 68) is **DENIED**. As to the Fifth Cause of Action, the motion is denied based on the Court's determination that Plaintiffs waived the right to object to the disputed notices relating to the 2018 and 2019 capital calls and are estopped from claiming ownership interests that are inconsistent with those set forth in verified tax documents. As to the remaining aspects of the cross-

motion, the Court denies the cross-motion based on the existence of genuine issues of material fact.

Dated: September 24, 2020

A handwritten signature in black ink, appearing to be 'T. Walker', written over a horizontal line.

Hon. Timothy J. Walker, J.C.C., A.S.C.J.

EXHIBIT "A"

John Garbo

From: Hon. Timothy J. Walker
Sent: Friday, September 18, 2020 4:07 PM
To: jhorn@hselaw.com; bgwitt@woodsoviatt.com; dtang@underbergkessler.com; lmendolera@hselaw.com; agriffin@underberkessler.com; bgwitt@woodsoviatt.com
Cc: John Garbo; Christine D. Paz; Darryl J. Colosi
Subject: RE: 804480/2020 Jeannie-Marie McGuire et al v. F. James McGuire et al

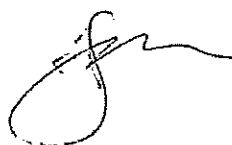
The Court has reviewed and considered the parties' respective submissions in connection with the motions and cross-motion identified at NYSCEF Doc. Nos. 26 (motion no. 2), 39 (motion no. 3) and 68 (cross-motion, motion no. 4). The motion at Doc. no. 12 (motion no. 1) was resolved via stipulated standstill order (Doc. no. 21).

The above-referenced motions and cross-motion are hereby determined as follows:

1. Motion no. 3 (Doc. no. 39) is **granted** on the basis, *inter alia*, that Plaintiffs waived the right to object to the disputed notices relating to the 2018 and 2019 capital calls at issue, and are estopped from claiming ownership interests that are inconsistent with those set forth in, *inter alia*, verified tax documents, such that the respective ownership interests are hereby determined to be: F. James McGuire: 49.3869%; Michael McGuire: 9.9803%; Kathleen M. McGuire: 9.9803%; Jeannie Marie McGuire: 9.9803%; and Jacquelyn McGuire Gurney: 20.6727%;
2. Motion no. 2 (Doc. no. 26) is **granted** and the Notice of Pendency is hereby vacated;
3. Motion no. 4 (cross-motion)(Doc. no. 68) is **denied** (as to the 5th cause of action, based on the Court's determination of same in Motion no. 39 and, as to the remaining aspects of the cross-motion, based on the existence of genuine issues of material fact.

Defendants' counsel shall upload a proposed order consistent with, and attaching a copy of this decision, and shall forward a copy of same to the Court in a version capable of editing.

Dated: September 18, 2020



Hon. Timothy J. Walker, J.C.C., A.S.C.J.

Please be CAREFUL when clicking links or opening attachments.