

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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RUBEN ELBERG,

Plaintiff,

- v -

CRABAPPLE CORP., TAMARA PEWZNER, ROYAL ONE REAL ESTATE, LLC, ROYAL REAL ESTATE MANAGEMENT LLC, ROYAL LIC REAL ESTATE MANAGEMENT LLC, ROYAL HOTEL & RESORTS LLC, ROYAL CP HOTEL HOLDINGS LP, ROYAL HI HOTEL HOLDINGS LP, ZHU QING, FENG LI, MENGSHA CHEN, RUIZHEN WANG, HONG GE, QIN SI, YANG ZHANG, ZHE FANG, XU NING,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369 were read on this motion to/for RESTORE.

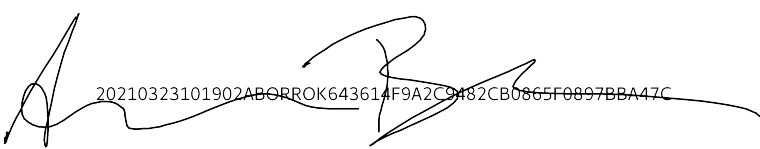
Upon the foregoing documents and as set forth on the record (3/22/2021), the order to show cause is granted solely to the extent that the plaintiff is granted a supplemental declaration that (i) he is a 40% minority member of the subject LLC because in the action captioned Crabapple Corp. v Elberg, Index No. 650492/2015, the First Department previously found as such (the Prior First Department Order; Index. No. 650492/2015, NYSCEF Doc. No. 357), and (ii) plaintiff may move for all appropriate post-judgment remedial relief. The Prior First Department Order provides:

... Elberg was not removed as the sole "managing member" of the LLCs. The record demonstrates that he was a 40% minority member, not a managing member with the power to act unilaterally on the LLCs' behalf. The relevant agreements contained no provision regarding the succession of management of the LLCs in the event of the death of Jacob, the majority member. Thus, Jacob's controlling interest in the LLCs passed to

his estate upon his death, and Elberg and Pewzner, the co-executors of the estate, had the authority to act as co-managers of the LLCs (Limited Liability Company Law [LLC] § 608; see also *Yew Prospect v Szulman*, 305 AD2d 588, 589 [2d Dept 2003]). LLC § 608 provides that the executor of a deceased member "may exercise all of the member's rights for the purpose of settling his or her estate"

(*id.*; 153 AD3d 434 [1st Dept 2017] [emphasis added]).

For the avoidance of doubt, to the extent the defendants argue that because the plaintiff opposes their motion to expand the record in front of the First Department as to the LLCs' ownership in *this action*, the First Department never looked at the issue, the argument fails. As discussed above, the First Department *did* look at this issue (i.e., 650492/2015, NYSCEF Doc. No. 357) and found that on the record before the court in *that action*, Mr. Elberg *is* a 40% minority member of the subject LLCs.



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3/23/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- APPLICATION: SETTLE ORDER
- CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE