Supreme Court of the State of New York
Bronx County

Dean George Pappas, as the
Executor of the Estate of William Egan, and
Dean George Pappas, individually,

Plaintiffs,

-against-

B & G Holding Co.
d/b/a B & G Holding Company and
Eugene Leogrande,

Defendants.

Memorandum of Law

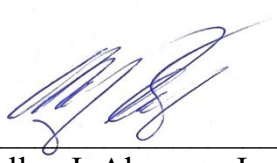
Index No.: 35136/2020E

Hon. Fidel E. Gomez, J.S.C.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A DECLARATORY JUDGMENT

Dated: Warwick, New York
April 26, 2024

THE AHEARNE LAW FIRM, PLLC



Allan J. Ahearne, Jr., Esq.
25 Railroad Avenue, Second Floor
Warwick, New York 10990
Tel: (845) 986-2777
Fax: (212) 813-3153
allan@ahearnelaw.com

Attorneys for Plaintiffs Dean George Pappas, as the Executor of the Estate of William Egan, and Dean George Pappas, individually.

Table of Contents

Table of Authorities

Cases

Statutes

PRELIMINARY STATEMENT

This is an action for an accounting of Plaintiff's interests in a New York General Partnership. Plaintiffs seek a declaratory judgment Order holding that (i) there are no waivers of the right to make testamentary bequests stated within the Partnership Agreement that (ii) the deceased was therefore free to make a specific bequest of his Partnership interests to the Plaintiff, that (iii) the deceased did make a specific bequest of his Partnership interests to the Plaintiff, and (iv) as such, title in the deceased's Partnership interests vested in Plaintiff as a specific devisee upon the death of the Partner, and that therefore (v) the deceased's Partnership interests passed outside of his estate, and that (vi) there are no valuation provisions in the Partnership Agreement that apply to Partnership interests that pass to a specific devisee, and (vii) because the Partnership Agreement states no limitations or methodology for the valuation of specific bequests, the Agreement does not control the valuation of the Partnership interests held by the Plaintiff.

Contractual Waivers of the Right to Make Testamentary Bequests

New York law requires contractual prohibitions against the making of testamentary bequests to be expressly and unequivocally stated. The waiver of the right to make testamentary bequests must be in writing, clear and unequivocable. There must be no doubt. There is no such language in the Partnership Agreement. The Partnership Agreement is entirely silent as to whether testamentary bequests are permitted.

Title in Specific Bequests Vest Upon Death and Pass Outside the Testator's Estate

It is well settled in New York that under the Estates, Powers, and Trusts Law (EPTL), title to property stated in a specific bequest passes outside of the testator's estate and vests at death immediately into the specific devisee.

There are no waivers of the right to make testamentary bequests in the Partnership Agreement. Here, the deceased made a specific bequest of 100% of his Partnership interests to the Plaintiff. Under the EPTL, and under the Partnership Agreement, the deceased was free to make a specific bequest of his Partnership interests to the Plaintiff. Pursuant to the deceased's Will, title to his Partnership interests vested in the Plaintiff upon his death. Because the Plaintiff took title as a specific devisee the deceased's Partnership interests passed outside of his estate.

There are no Valuation Provisions in the Agreement for Specific Bequests

The valuation provisions of the Partnership Agreement apply only to (i) lifetime transfers of Partnership interests and (ii) Partnership interests that pass to the estate of a deceased Partner. The Partnership Agreement omits a valuation methodology for Partnership interests that pass at death to a specific devisee. Because the Partnership Agreement fails to state a valuation methodology for Partnership interests that pass to a specific devisee, and because there are no limitations or methods in the Agreement for the valuation of specific bequests, the Agreement does not control the valuation of the Partnership interests held by the Plaintiff.

This Court has Discretion to Grant the Declaratory Relief Requested

Respectfully, under the facts of this case, and based upon the documentary evidence submitted herewith, this Court should enter a declaratory judgment Order holding that (i) there are no waivers of the right to make testamentary bequests stated in the Partnership Agreement that (ii) the deceased was free to make a specific bequest of his Partnership interests to the Plaintiff, that (iii) the deceased did make a specific bequest of his Partnership interests to the Plaintiff, and that (iv) title in the deceased's Partnership interests vested at death in the Plaintiff

as a specific devisee, and that therefore (v) the deceased's Partnership interests passed outside of the deceased's estate, and that (vi) there are no valuation provisions in the Partnership Agreement that apply to Partnership interests that pass to a specific devisee upon the death of a Partner.

I. THIS COURT HAS DISCRETION TO GRANT THE DECLARATORY RELIEF REQUESTED.

Under CPLR § 3001 and applicable case law, this Court has discretion to grant the declaratory relief requested herein. The Court of Appeals has held as follows:

> With reference to declaratory relief, it should first be noted that it is not an extraordinary remedy [citation omitted]. Instead, a declaratory judgment "is a remedy *sui generis* and escapes both the substantive objections and procedural limitations of special writs and extraordinary remedies" [citation omitted]. Unlike prohibition, its use is not limited to reviewing public acts of a judicial nature. Rather, it has broad application, being invoked to declare rights derived from both private and public law [citation omitted], and from both civil [citations omitted] and criminal statutes [citations omitted]. *Matter of Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 147 - 148 (1983).
>
> As with prohibition, granting declaratory judgment is left to the court's discretion (CPLR 3001). In keeping with the remedy's nonextraordinary nature, however, the court has a broader power to grant declaratory judgment than it does with prohibition. (*Id*. at 148).
>
> CPLR 3001 authorizes a court to declare "the rights and other legal relations of the parties to a justiciable controversy," providing a procedure for parties to resolve disputes over existing rights and obligations. What distinguishes declaratory judgment actions from other types of actions or proceedings is the nature of the primary relief sought — a judicial declaration rather than money damages or other coercive relief [citations omitted]. *Lang v. Hanover Ins. Co.*, 3 N.Y.3d 350, 355 (2004).

Similarly, the First department has held:

> "The general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations" [citations omitted] [citation omitted]. While fact issues certainly may be addressed and resolved in the context of a declaratory judgment action [citation omitted], the point and the purpose of the relief is to declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact. *Thome v. Alexander & Louisa*, 70 A.D.3d 88, 100 (1st Dept. 2009).

> [T]he declaratory judgment action has been employed as a way to resolve a relatively unique dispute where the plaintiff is "unable to find among the traditional kinds of action one that will enable her to bring it to court". (*Id*. at 100).

Respectfully, the case law provides that this Court is authorized under CPLR § 3001 to determine the construction and applicability of the Partnership Agreement [or lack thereof]. While findings of fact may not be the primary purpose of a declaratory judgment, the "*general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations"* and "*fact issues certainly may be addressed and resolved in the context of a declaratory judgment action*." (*Id*. at *Thome*, 100).

Respectfully, as provided above and based upon the facts of this case and the documents submitted herewith, this Court may enter an Order holding that (i) there are no waivers of the right to make testamentary bequests stated within the Partnership Agreement that (ii) the deceased was therefore free to make a specific bequest of his Partnership interests to the Plaintiff, that (iii) the deceased did make a specific bequest of his Partnership interests to the Plaintiff, and that (iv) title in the deceased's Partnership interests vested in Plaintiff as a specific devisee upon the death of the testator, and that therefore (v) the deceased's Partnership interests passed outside of his estate, and that (vi) there are no valuation provisions in the Partnership Agreement that apply to the valuation of Partnership interests that pass at death to a specific devisee, and (vii) because the Partnership Agreement states no limitations or methodology for the valuation of specific bequests, the Agreement does not control the valuation of the Partnership interests held by the Plaintiff.

II. A WAIVER OF THE RIGHT TO MAKE TESTAMENTARY BEQUESTS MUST BE IN WRITING AND EXPRESSLY STATED.

Agreements to make testamentary bequests must be in writing. (EPTL 13-2.1 (a) (2)).

New York Courts have long held that the contractual waiver of a right to make a testamentary bequest must be made in writing clearly and expressly stated. The language must be unequivocal. There can be no doubt.

There is well established Court of Appeals case law on this point, which has held:

> For more than a century, we have repeatedly emphasized that because a will is ambulatory in nature and because a testator has the right to freely revoke a will until death, an agreement not to revoke a prior will 'demands the most indisputable evidence of . . . agreement' [citations omitted] [contracts to make testamentary bequests should only be enforced 'when they have been established by evidence so strong and clear as to leave no doubt']; [citations omitted] [because 'the renunciation of the right to alter or revoke a will (is not) a casual matter . . . the Statute of Frauds . . . as well as the decisional law requires clear evidence' of such a promise]; [citations omitted] [intention must be manifested 'clearly and unambiguously']; [citations omitted] ['the law strictly scrutinizes the renunciation of the right to revoke a will and requires a threshold showing of clear and unambiguous evidence to give effect to this surrender of rights']). The reason for this high evidentiary bar is simple: '[s]uch contracts are easily fabricated and hard to disprove, because the sole contracting party on one side is always dead when the question arises'. *Matter of American Comm. v. Dunn*, 10 N.Y.3d 83, 92 (2008).
>
> The Court added: "Accordingly, under our well-settled precedents, requiring that evidence of an agreement to make a testamentary bequest must be indisputable, EPTL 13-2.1's statute of frauds bars petitioner's contract claim." (*Id*. page 94).

In *Blackmon v. Battcock*, the Court held:

> We begin with the fundamental proposition that a will is ambulatory in nature and is ordinarily revocable during the life of the testator (EPTL 1-2.18 [a]; [citations omitted]. Even after due execution of a will, testators also retain unfettered authority to dispose of all property during their lifetimes [citation omitted]. Individuals may by agreement, however, validly surrender their power of revocation [citation omitted]. On the other hand, the law strictly scrutinizes the renunciation of the right to revoke a will and requires a threshold showing of clear and unambiguous evidence to give effect to this surrender of rights [citations omitted]. *Blackmon v. Battcock*, 78 N.Y.2d 735, 739 (1991)

In *Oursler v. Armstrong*, the Court held:

The law does not view the renunciation of the right to alter or revoke a will as a casual matter [citations omitted] and, regardless of whether the Statute of Frauds (Personal Property Law, § 31, subd. 7) controls this case, as quite possibly it does not [citations omitted], the spirit of it as well as the decisional law requires clear evidence of the existence of a promise of this nature [citations omitted]. *Oursler v. Armstrong*, 10 N.Y.2d 385, 389 (1961)

Further, in *Harris v. Harris*, the Court held:

It is well established that because a testator has the right to freely revoke a will until death, an agreement not to revoke a prior will, or an agreement irrevocably making a testamentary bequest, 'demands the most indisputable evidence of ... agreement' and must 'unequivocally renounce [the] testator's right to execute a will making other disposition of [the] property.' [citations omitted] (contracts to make testamentary bequests should only be enforced 'when they have been established by evidence so strong and clear as to leave no doubt.'). *Harris v. Harris*, 2020 N.Y. Slip Op 31570 (NY Sup. Ct., 2020)

In *Rubenstein v. Mueller*, the Court held:

Under the rule that before the right to alter or revoke a will may be curtailed prior to the testator's death his intention to so bind himself must be manifested clearly and unambiguously [citation omitted], the use of language such as "absolutely" barred our finding that the survivor was bound to the testamentary plan found in that joint will. *Rubenstein v. Mueller*, 19 N.Y.2d 228, 232 (1967)

And, in *Matter of Estate of Attanasio*, the Court held:

Pursuant to EPTL 13-2.1 (a) (2), "a contract to make a testamentary provision of any kind" must be "in writing and subscribed by the party to be charged." There is no dispute that these statutory conditions were met here. Such agreements "must further evince a clear and unambiguous manifestation of the testator's intention to renounce the future power of testamentary disposition" [citations omitted]. This requirement derives from the ambulatory nature of wills and a testator's "right to freely revoke a will until death," and applies with equal force to a contract that is testamentary in nature [citations omitted]. *Matter of Estate of Attanasio*, 159 A.D.3d 1180, 1181 (3rd Dept. 2018).

Here, the Partnership Agreement does not state a waiver of the right to make a testamentary bequest. There are no testamentary renunciation provisions stated anywhere in the Agreement.

Moreover, the language of the Agreement at ¶ 4 serves only as an offer of an estate to sell only that which the estate possesses. (See **Exhibit D**, ¶ 4 (A)). The language at ¶ 4 is not a testamentary bequest. This language does not mandate the transfer of Partnership interests to the deceased's estate. It states only that the estate shall sell that which it possesses to the surviving Partner, and nothing more.

There are no testamentary bequests of any kind in the Partnership Agreement, whether to the estate or otherwise. Accordingly, the deceased was free to make a specific bequest of his Partnership interests in his Will.

Respectfully, given the foregoing, and under the facts of this case and upon the documentary evidence submitted herewith, this Court should enter a declaratory judgment Order holding that (i) there are no waivers of the right to make testamentary bequests stated within the Partnership Agreement that (ii) the deceased was free to make a specific bequest of his Partnership interests to the Plaintiff, and that (iii) the deceased did make a specific bequest of his Partnership interests to the Plaintiff.

III. SPECIFIC BEQUESTS PASS OUTSIDE OF THE ESTATE AND VEST IN THE SPECIFIC DEVISEE IMMEDIATELY UPON DEATH.

> *EPTL § 1-2.17 Specific disposition. A specific disposition is a disposition of a specified or identified item of the testator's property.*

Under the EPTL, as a matter of law, specific bequests pass outside of the estate of the testator and title in same vests in the specific devisee immediately upon death.

'Law like nature abhors a vacuum. For this reason, it is the prevalent conception that the rights of those succeeding to property upon a death attach immediately, with no intervening hiatus of ownership [citation omitted]. The effects of the Statutes of Wills, and of Descent are in substance the same. Instead of taking to itself the property of the deceased, the sovereign directs its distribution among persons ascertainable in accordance with its laws. These persons are, by these laws, vested with the ownership of the property from the moment of the death." *In re the Estate of Williams*, 162 Misc. 507, 509 (Surrogate's Ct., NY County, 1937)

An executor takes no title to the real property of his testator, title vesting in the devisees subject to the necessities of administration. [citation omitted]. *Matter of Rich*, 27 Misc. 2d 364, 371 (Surrogate's Court, NY County, 1960).

Historically, title to real property did not pass to the personal representative upon qualification but the title thereto passed directly to the decedent's distributees and devisees. Accordingly a fiduciary was not required to account for real property [citation omitted]. Changes, however, have occurred in our law relative to the powers of a fiduciary in disposing of real property, distributing it in kind and treating some real estate assets as personalty [citations omitted]. While the Temporary State Commission on Estates considered giving the personal representative title to all property of a decedent, this was abandoned in preference to other changes [citations omitted] whereby the distinctions between personal and real property would be virtually eliminated. *Matter of Grace*, 62 Misc. 2d 51, 54 (Surrogate's Court, Nassau County, 1970)

As we have held, "title to real property devised under the will of a decedent vests in the beneficiary at the moment of the testator's death [citation omitted]. Unless otherwise directed by the will, an executor takes no title to the property of the testator since title vests in the devisees subject to the necessities of administration of the estate [citation omitted]. The power to sell the property, without the existence of a valid trust over the proceeds, vests no title in the executor. Rather, the property passes to the devisees subject to the execution of the power to sell by the executor [citation omitted]. Where a will directs an executor to divide the residue into equal parts, title does not vest in the executor, nor does it preclude the vesting of absolute title in the devisee [citation omitted]. The executor's discretionary power to sell the property for purposes of distribution does not cause title to the real property to rest in the executor [citation omitted]." [citation omitted]. *Matter of Seviroli*, 31 A.D.3d 452, 455-456 (2nd Dept. 2006).

EPTL 11-1.1 (b) (5) (A) provides that "[i]n the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized... [w]ith respect to any property or any estate therein owned by an estate or trust, except where such property or any estate therein is specifically disposed of ... [t]o take possession of, collect the rents from and manage the same." (*Id*. at 456).

As the case law shows, under statute and case law, title in specific bequests vests in the specific devisee immediately upon the death of the testator. There is "no intervening hiatus of ownership." (*Id*. at *Estate of Williams*). Thus, specific bequests pass outside of the estate and the fiduciary never takes possession of or control over such assets, unless the estate has liabilities that must be resolved. This is not the case here. Here, the estate has no liabilities.

"The title to the specific testamentary devisee vests in the beneficiary immediately upon the death of the testator. Such vesting is complete except for the limited right of the executor to use the specifically devised real property for the payment of debts if necessary." *Matter of Burke*, 492 NYS2d 892 (Surrogate's Court, Cattaraugus County, 1985).

"Under New York law, which governs estates in probate in New York, title to a specific testamentary devise vests in the beneficiary immediately upon the death of the testator [citation omitted]. The executor has only a limited right to use the specifically devised property for payment of debts of the estate [citation omitted]" *Keoseian v. Von Kaulbach*, 763 F. Supp. 1253 (S.D.N.Y. 1991) (EPTL § 11-1.1(b)(5)).

As stated above, this is not the case here because here, the estate has no liabilities.

Accordingly, under the EPTL, as a matter of law, the deceased's Partnership interests passed outside of the estate and vested in Plaintiff immediately upon death (EPTL § 1-2.17 and § 11-1.1). Additionally, because the estate has no debt or liabilities, the fiduciary is not authorized to take possession of the deceased's Partnership interests on behalf of the estate (EPTL § 11-1.1(b)(5)). As such, the estate possesses no Partnership interests to sell, and the fiduciary is not authorized to take possession of any such Partnership interests for that purpose (EPTL § 11-1.1(b)(5)). Here, the fiduciary is only authorized [and is obligated] to effectuate the terms of the deceased's Will.

Respectfully, given the foregoing, and under the facts of this case and upon the documentary evidence submitted herewith, this Court should enter a declaratory judgment Order holding that (i) as a specific devisee, title in the deceased's Partnership interests vested in Plaintiff immediately upon the death of the testator, that therefore (ii) the deceased's Partnership interests passed outside of the deceased estate, and that therefore, (iii) the deceased Partnership interests are not subject to the estate valuation provisions of the Partnership Agreement.

IV. THE FACTS OF THE PARTNERSHIP AGREEMENT

Plaintiffs' Motion seeks a finding of fact concerning the construction of the Partnership Agreement. Since commencement, Plaintiffs have argued only for a plain reading of the language as it is stated in the Agreement. In contrast, the defendants have argued for interpretations and claimed that the Agreement means something that it does not say. It is a fact of the Partnership Agreement that are no waivers of the right to make testamentary bequests stated and that there are no valuation provisions in the Agreement that apply to specific bequests that pass outside of the estate.

> "…definiteness as to material matters is of the very essence in contract law."
>
> *Martin Deli v. Schumacher*, 52 N.Y.2d 105, 109 (1981).

The Court of Appeals has held:

> We begin our analysis with the basic observation that, unless otherwise mandated by law (e.g., residential emergency rent control statutes), a contract is a private "ordering" in which a party binds himself to do, or not to do, a particular thing [citation omitted]. This liberty is no right at all if it is not accompanied by freedom not to contract. The corollary is that, before one may secure redress in our courts because another has failed to honor a promise, it must appear that the promisee assented to the obligation in question.

> It also follows that, before the power of law can be invoked to enforce a promise, it must be sufficiently certain and specific so that what was promised can be ascertained. Otherwise, a court, in intervening, would be imposing its own conception of what the parties should or might have undertaken, rather than confining itself to the implementation of a bargain to which they have mutually committed themselves. Thus, definiteness as to material matters is of the very essence in contract law. Impenetrable vagueness and uncertainty will not do [citation omitted]. (*Id*. at *Martin Deli*).

"When interpreting contracts, we have repeatedly applied the 'familiar and eminently sensible proposition of law [] that, when parties set down their agreement in a clear, complete document, their writing should ... be enforced according to its terms' [citation omitted]. We have also emphasized this rule's special import 'in the context of real property transactions, where commercial certainty is a paramount concern, and where ... the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length' [internal quotation marks and citations omitted]. In such circumstances, 'courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include' [citation omitted]. Hence, 'courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing' [internal quotation marks and citation omitted])." *VT. Teddy Bear v. 538 Madison*, 1 N.Y.3d 470, 475 (2004).

"The settled rule for the construction of such instruments is that all evidence must be excluded which is offered 'to vary, explain or contradict a written instrument that was complete in itself and without ambiguity in its terms' since, when words in a deed 'have a definite and precise meaning, it is not permissible to go elsewhere in search of conjecture in order to restrict or extend the meaning' [citation omitted]. That is the first rule of construction, and in this case we need no other." *Loch Sheldrake Assocs. v. Evans*, 306 N.Y. 297, 305 (1954).

"'An omission or mistake in a contract does not constitute an ambiguity [and] * * * the question of whether an ambiguity exists must be ascertained from the face of an agreement without regard to extrinsic evidence' [citation omitted]." *Reiss v. FIN Performance Corp.*, 97 N.Y.2d 195, 199 (2001). "Even where a contingency has been omitted, we will not necessarily imply a term since 'courts may not by construction add or excise terms, nor distort the meaning of those used and thereby "make a new contract for the parties under the guise of interpreting the writing" [citation omitted].'" (Id. at *Reiss*, 199).

It is well settled in New York that where contract language is clear and unambiguous, the express language must be enforced. Additionally, agreements may not be modified by adding language that was never included.

Here, the Partnership Agreement is silent as to specific bequests of Partnership interests.

The Partnership Agreement restricts lifetime transfers of Partnership interests (See **Exhibit D**, ¶ 2. A.) and also states also that certain lifetime events constitute an offer by one Partner to sell to the other. (See, **Exhibit D**, ¶ 3). However, none of these lifetime Transfers or other events occurred during the deceased's lifetime. Thereafter, the Agreement provides only that: "The death of a Shareholder or Partner shall constitute an offer of the personal representative of the deceased Shareholder's or Partner's estate to sell all of his Shares or Partnership Interest held by the estate of the deceased Shareholder in the Corporations and Interest in the Partnership." (See **Exhibit D**, ¶ 4 A.) and that the price and purchase terms of this estate sale shall be made pursuant to the terms stated at ¶ 5 and ¶ 6. (See **Exhibit D**, ¶ 4 C.).

Beyond that, the Agreement is silent. There are no terms in the Agreement that either (i) act as a waiver of the right to make a testamentary bequest or (ii) stated a limitation or valuation methodology for specific bequests that pass outside of the estate.

Nothing in the Agreement compels a Partner to bequest or devise his interests to his estate. The Agreement does not compel a specific devisee to sell at any set price.

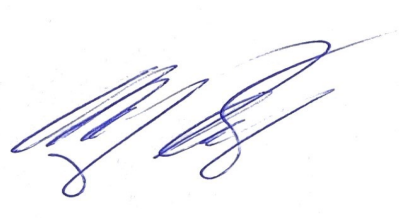
Respectfully, given the foregoing, and under the facts of this case and upon the documentary evidence submitted herewith, this Court should enter a declaratory judgment Order holding that (i) the Agreement does not state a waiver of the right to make a testamentary bequest and that therefore, the decease was free to make a specific bequest of his Partnership interests to the Plaintiff and that (ii) there are no valuation provisions in the Partnership Agreement that apply to the valuation of Partnership interests that transfer as a specific bequest to a specific devisee at death and that therefore, the lifetime transfer and estate valuation provisions of the Agreement do not control the value of the Partnership interests that vested in Plaintiff upon the death of the deceased Partner.

Respectfully, given the foregoing, under the facts of this case, and based upon the documentary evidence submitted herewith, this Court should enter a declaratory judgment Order holding that (i) there are no waivers of the right to make testamentary bequests stated within the Partnership Agreement that (ii) the deceased was therefore free to make a specific bequest of his Partnership interests to the Plaintiff, that (iii) the deceased did make a specific bequest of his Partnership interests to the Plaintiff, and (iv) as such, title in the deceased's Partnership interests vested in Plaintiff as a specific devisee upon the death of the testator, and that therefore (v) the deceased's Partnership interests passed outside of the deceased estate, that (vi) there are no valuation provisions in the Partnership Agreement that apply to the

valuation of Partnership interests that pass to a specific devisee at death, and (vii) because the Partnership Agreement states no applicable limitations or methodology for the valuation of specific bequests, the Agreement does not control the valuation of the Partnership interests held by the Plaintiff.

Dated: April 26, 2024
Warwick, N.Y.

Certified pursuant to Courts Rules 130-1.1(a)



Allan J. Ahearne, Jr.
The Ahearne Law Firm, PLLC
Attorneys for Plaintiffs
25 Railroad Avenue, Second Floor
Warwick, N.Y. 10990
(845) 986-2777

ATTORNEY CERTIFICATION PURSUANT TO THE SUPREME COURT

UNIFORM CIVIL RULE SECTION 202.8-b

Allan J. Ahearne, Jr. an attorney, by signature below, hereby certifies that the forgoing Memorandum of Law is submitted in support of Plaintiffs' Motion for a Declaratory Judgment is in compliance with **22 NYCRR § 202.8-b** in that it is **4,715** number of words in length, exclusive of the cover page, table of contents and table of authorities, but inclusive of this certification.

Dated: Warwick, NY
April 26, 2024

Certified pursuant to Court Rule 130-1.1a

_____
Allan J. Ahearne, Jr.