

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

In the Matter of the Application of

WYTHE BERRY LLC, THE WILLIAM VALE HOTEL LLC, THE WILLIAM VALE FNB LLC, and NORTH 12 PARKING LLC,

Petitioners,

For an Order Staying Arbitration pursuant to Article 75 of the CPLR

- v -

YOEL GOLDMAN,

Respondent .

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO. and values: 655683/2023, (blank), 001

DECISION & ORDER ON MOTION

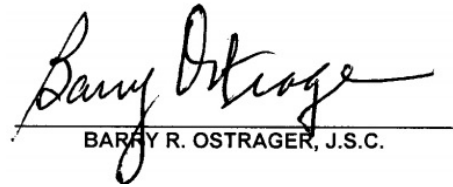
HON. BARRY R. OSTRAGER

On December 14, 2023, the Court heard oral argument on Petitioner’s Order to Show Cause filed pursuant to CPLR § 7503(b) to stay an arbitration commenced by Respondent. The arbitration was initiated by Respondent Yoel Goldman. Respondent commenced a related action captioned Yoel Goldman v. Zelig Weiss, index number 653186/2022, in which this Court previously declined to stay the arbitration relying on the broad arbitration agreement in the Fifth Amendment to the Operating Agreement between Goldman and Weiss (see index number 653186/2022 NYSCEF Doc. No. 104). Goldman subsequently amended his arbitration proceeding to add the Petitioners. On November 14, 2023, Petitioners made the present application to stay the arbitration as against the Petitioners.

Petitioner’s application is denied. The Court relies on the Fifth Amendment to the operating agreement and a so called “side agreement” (NYSCEF Doc. No. 9), the preface of which indicates that Weiss was acting on behalf of Petitioners in signing the “side agreement”

which incorporated the Fifth Amendment to the parties' operating agreement with its broad arbitration clause. Consequently, the Petition to stay the arbitration against the Petitioners is denied without prejudice to the Petitioners' raising with the arbitration panel the issue of whether or not the Petitioners can be bound by any arbitration award. The petition is, accordingly, dismissed.

Dated: December 14, 2023

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: