

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN BRANSTEN
Justice

PART 3

Index Number : 601917/2005
GARBER, HAROLD E.
vs.
STEVENS, TROY D., JR.
SEQUENCE NUMBER : 021
AMEND SUPPLEMENT PLEADINGS

INDEX NO. 601917/2005
MOTION DATE 5/2/12
MOTION SEQ. NO. 21

The following papers, numbered 1 to 3, were read on this motion to/for Amend Complaint and remove general partner

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

Upon the foregoing papers, it is ordered that this motion is

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IS DECIDED

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6-6-12

[Signature] J.S.C.
HON. EILEEN BRANSTEN

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

-----X
HAROLD E. GARBER, RONALD SEIDEN,
SEYMOUR C. NASH, ROBERT C. MAGOON,
GORDON MILLER, STEPHAN M. KULVIN,
STEVEN ZARON and LEE DUFNER, as limited
partners of and in the right of KINPIT ASSOCIATES,
L.P. a New York Limited partnership,

Plaintiffs,

-against-

TROY D. STEVENS, JR., individually and d/b/a
DEVELOPMENT CO., KINPIT REALTY CORP.,
KINPIT REALTY INC., KINPIT REALTY CO.,
and DAWMICH INDUSTRIES, INC.,

Defendants.
-----X

Index No. 601917/05

Motion Date: 5/2/12

Motion Seq. Nos.: 20, 21

BRANSTEN, J.

Motion sequence numbers 20 and 21 are consolidated for disposition.

In motion sequence number 20, defendants Troy D. Stevens, Jr., individually and d/b/a Development Co., Kinpit Realty Corp., Kinpit Realty, Inc., Kinpit Realty Co. and Dawmich Industries, Inc. (“Defendants”) move for an order pursuant to CPLR § 2304 and 22 NYCRR § 202.21, for an order quashing a subpoena served upon JPMorgan Chase Bank by plaintiffs Harold E. Garber, Ronald Seiden, Seymour C. Nash, Robert C. Magoon, Gordon Miller, Stephan M. Kulvin, Steven Zaron and Lee Dufner, as limited partners of and in the right of Kinpit Associates, L.P. (“Plaintiffs” or the “Limited Partners”). The court denied Defendants

motion to quash on the record of April 18, 2012. *See* Transcript of Oral Argument of April 18, 2012 (Margaret Baumann, Official Court Reporter) (“April 18 Transcript”), p. 48, ll. 3-4.

Plaintiffs cross-move for an order requiring Defendants to produce certain documents, to account for certain funds, to require Defendants to turn over certain funds to a court appointed receiver, to permit plaintiffs to serve non-party subpoenas on certain persons and to grant Plaintiffs the right to take additional depositions of Defendants. The court granted Plaintiffs’ cross-motion on the record of April 18, 2012. *See* April 18 Transcript, p. 48, ll. 5-26; p. 49, ll. 1-3.

In motion sequence number 21, Plaintiffs move to amend their Amended Complaint to include a cause of action for an accounting. Plaintiffs motion to amend was granted on the record of April 18, 2012. *See* April 18 Transcript, p. 38, ll. 7-10.

Plaintiffs also move to receive all documents produced to the court appointed receiver in the case. Defendants consented to this request. *See* Michael D. Cassell’s Affirmation in Opposition to Plaintiffs’ Order to Show Cause to Remove Defendants as General Partners (“Cassell Removal Affirm.”), p. 10. The court therefore grants Plaintiffs’ request to receive all documents produced to the receiver on consent.

Plaintiffs further move in motion sequence number 21 to remove defendants Troy D. Stevens, Jr. and Kinpit Realty, Inc., (collectively referred to as the “General Partners” or “Stevens and Kinpit Realty”) from their position as General Partners of Kinpit Associates, L.P. (“Kinpit Associates” or the “Partnership”) and installing Kinpit Holding, LLC (“Kinpit

Holding”), which is wholly owned and controlled by Plaintiffs, as substitute general partner of Kinpit Associates.

Plaintiffs additionally sought to amend the December 1, 2011 order appointing Amy Rothstein (the “Receiver”) as the Receiver for the property owned by Kinpit Associates. Plaintiffs asked the court to extend the receivership by including Kinpit Associates in addition to the property. Defendants and the Receiver consented to the extension on the record of April 18, 2012. *See* April 18 Transcript, p. 38, ll. 16-26; p. 39, ll. 1-5. However, on the record of April 27, 2012, the Receiver indicated that she believed there would be a potential conflict of interest if she was both the receiver for the property owned by Kinpit Associates as well as receiver for the entity Kinpit Associates. *See* Transcript of Oral Argument of April 27, 2012 (Delores Hilliard, Official Court Reporter) (“April 27 Transcript”), p. 11, ll. 25-26; p. 12, ll. 2-26; p. 13, ll. 2-21. As explained herein, on the basis of the potential conflict of interest, the court will not at this time extend the receivership to include Kinpit Associates.

Accordingly, the only issue herein for the court’s analysis is whether the court will remove Stevens and Kinpit Realty as General Partners of Kinpit Associates, L.P. and install Kinpit Holding as substitute general partner.

1. Background

I. Facts

The facts of this matter have been discussed extensively in previous decisions of this court. Thus, only details necessary to this motion are referenced herein.¹

In December 1975, Kinpit Associates acquired title to an apartment building in Brooklyn, New York (the “Property”).

In November 1975, prior to the acquisition of the Property, the parties entered into a Limited Partnership Agreement (the “Partnership Agreement”). Defendants Stevens and Kinpit Realty are the General Partners. The individual Plaintiffs are each Limited Partners. The Partnership Agreement restricts the authority of the General Partners. Pertinent here, the General Partners are not permitted to refinance the Property without approval by fifty-one percent of the Limited Partners. The Partnership Agreement also prohibits the General Partners from receiving management fees for their work as General Partners.

In 2005, Plaintiffs brought their complaint against Defendants. Plaintiffs allege, *inter alia*, that Defendants had breached the Partnership Agreement and breached their fiduciary duty owed to the Limited Partners. Plaintiffs contend that, in contravention of the Partnership Agreement, Stevens had: refinanced the Property six times; failed to distribute any refinancing proceeds to the Limited Partners; diverted the refinancing proceeds to his

¹ Unless otherwise noted, all facts are drawn from this court’s Decision and Order dated August 10, 2011 granting in part Plaintiffs’ motions for summary judgment with regard to Defendants’ liability on Plaintiffs’ second, third and fourth causes of action.

own use; and collected management fees from the Partnership in violation of the Partnership Agreement. Plaintiffs also alleged that Stevens had engaged in self-dealing.

On August 10, 2011, this court held that Plaintiffs were entitled to summary judgment on liability on Plaintiffs' breach of contract, breach of fiduciary duty and breach of RPL § 400 causes of action. The court partially granted Defendants' cross-motion for summary judgment by dismissing Plaintiffs' first cause of action for an accounting. The court otherwise denied the cross-motion. The court found that the only triable issues of fact with regard to Plaintiffs' breach of contract, breach of fiduciary duty and breach of RPL § 400 related to the amount of damages to which Plaintiffs are entitled. The court ordered that the action would continue as to Defendants' counterclaims. On April 4, 2012, the Supreme Court Appellate Division for the First Department affirmed the parts of this court's August 10, 2011 opinion holding Stevens liable for breach of contract and breach of fiduciary duty.

In November 2011, Plaintiffs learned that Stevens had stopped paying the debt service on the mortgage encumbering the Partnership's Property. Stevens' non-payment rendered the mortgage in default. Affirmation of Edward B. Safran in Support of Plaintiffs' Motion for a Preliminary Injunction ("Safran Injunction Affirm."), p. 3; *see* Ex. B thereto.

On November 8, 2011, Plaintiffs moved to enjoin Defendants from, *inter alia*, "engaging in any acts regarding the management, maintenance and repair of the [P]roperty[.]" *See* Plaintiffs Proposed Order to Show Cause (Motion Seq. No. 19). Plaintiffs also moved for the same relief sought herein: to allow Plaintiffs, via a New York limited

liability company, to “undertake all rights, privileges and responsibilities as general partner of [Kinpit Associates] pertaining to the ownership, management and operation of the partnership property and all partnership assets[.]” *Id.* As an alternative to enjoining Defendants from continuing to manage Kinpit Associates, Plaintiffs requested the court appoint a receiver for the Property.

On December 1, 2011, the court appointed Amy Rothstein as the Property’s Receiver. *See* December 1, 2011 Amended Order Appointing Receiver. The court did not, at that time, grant Plaintiffs request to substitute the Plaintiffs, via a limited liability company, as the general partner of Kinpit Associates.

On March 22, 2012, the Receiver informed the court that, in contravention of the mortgage agreement with Capital One, Defendants transferred Kinpit Associates’ proprietary mortgage account out of Capital One and into Signature Bank. Transcript of the Oral Argument of March 22, 2012 (Angela Bonello, S.C.R.), pp. 7, 15. This made it impossible for Capital One to automatically debit Kinpit Associates’ monthly debt service on the mortgage loan from the proprietary account, as it had been doing until that point.

Further, approximately eighty percent of the residential units in the buildings on the Property are subsidized by HUD. Because Stevens ceased paying taxes on the Property, at some time HUD and the IRS jointly commenced an investigation into Defendants and the Partnership. *See id.* at p. 16. This investigation is ongoing. *Id.*

On March 30, 2012, as a result of Defendants’ non-payment of the mortgage loan on the Property, Capital One filed a foreclosure action. *See* Edward B. Safran’s Supplemental

Affirmation, Ex. I. Plaintiffs argue that they will not be able to refinance and/or cure the default on the Property's mortgage loan while Stevens and Kinpit Realty remain as the General Partners of Kinpit Associates. April 27 Transcript, p. 10, ll. 22-26. Plaintiffs argue that without refinancing they will lose their interest in the Property, the sole asset of the Partnership, to foreclosure.

The Receiver and the property manager appointed by the Receiver agree that refinancing of the mortgage loan "would be virtually impossible with Mr. Stevens in place." See April 27 Transcript, p. 18, ll. 24-26; p. 19, ll. 2-4.

In addition, Plaintiffs informed the court in a letter dated May 23, 2012 that HSBC brought an additional action against Stevens, Kinpit Associates and certain other entities that are wholly-owned by Stevens (the "HSBC Action"). See Letter of Edward B. Safran dated May 23, 2012. Plaintiffs contend that, in yet another violation of the Partnership Agreement and Defendants' fiduciary duties, Defendants caused Kinpit Associates to execute a guarantee of a \$250,000 line of credit issued by HSBC in favor of Kinpit Realty. *Id.* Defendants have since caused HSBC's loan to go into default. Accordingly, because Stevens allegedly caused Kinpit Associates to execute a guarantee on the HSBC loan which is now in default, HSBC is seeking \$195,056.50 with continuing interest from Kinpit Associates. *Id.* at Ex. B.

Plaintiffs now move to remove Defendants as General Partners of Kinpit Associates. Plaintiffs also move to install Kinpit Holding, wholly owned and controlled by Plaintiffs, as substitute general partner. Defendants oppose Plaintiffs' motion.

II. Relevant Partnership Agreement Language

The Partnership Agreement states, in relevant part, that the:

General Partners shall manage and control the business and assets of the Partnership and the Limited Partners shall not take part in the management and control of the business and assets of the Partnership nor transact any business whatsoever for and in behalf of the Partnership.

See Affirmation of Edward B. Safran in Support of Plaintiffs' Motion to Remove Defendants as General Partners ("Safran Removal Affirm."), Ex. A to Ex. A (the "Partnership Agreement") at § 14(A). The Partnership Agreement further states that the:

Limited Partners shall not participate in the management or control of the Partnership's business nor shall they transact any business for the Partnership, nor shall they have the power to sign for or bind the Partnership[.]

Id. at § 15.

The Partnership Agreement is silent with regard to the powers of the Limited Partners to remove the General Partners from their position as General Partners.

2. Standard of Law

"The power of equity is as broad as equity and justice require." *Kaminsky v. Kahn*, 23 A.D.2d 231, 237 (1st Dep't 1965) (internal citation omitted). "It is a familiar principle that a court of equity having obtained jurisdiction of the parties and the subject matter of the action will adapt its relief to the exigencies of the case." *Id.* (internal citation omitted).

A court has the power to remove a general partner as general partner from a partnership and elevate a limited partner to general partner where the limited partners have shown that (i) the general partner violated his fiduciary duties to the partnership and that

(ii) removal is necessary to preserve the partnership. *Mitland Raleigh-Durham v. Myers*, 807 F. Supp. 1025, 1059-60 (S.D.N.Y. 1992). Where a partner's breach of his fiduciary responsibility has rendered the partnership into an entity that is no longer viable, a court may take remedial action, including discharging such partner or liquidating the partnership. *Drucker v. Mige Assocs. II*, 225 A.D.2d 427 (1st Dep't 1996). A court has discretion to remove a general partner and elevate a limited partner to the status of general partner as necessary to protect the principal asset of the partnership. *Homburger v. Levitin*, 130 A.D.2d 715 (2d Dep't 1987).

3. Contentions

I. Plaintiffs' Contentions

Plaintiffs point out that this court already found, and the Appellate Division subsequently affirmed, that Defendants are liable to Plaintiffs for breach of fiduciary duty and breach of contract. Safran Removal Affirm., p. 4; see Decision and Order on Motion Sequence Numbers 17 and 18, dated August 10, 2011 (Docket No. 601917/2005); see also *Garber v. Stevens*, 941 N.Y.S.2d 127 (1st Dep't 2012). Accordingly, Plaintiffs contend that, in light of these adjudged breaches and in light of the recent unopposed allegations of other breaches by Defendants of their fiduciary duty that have led the Property into foreclosure, the court should remove Defendants as General Partners of Kinpit Associates.

Plaintiffs argue that under *Drucker v. Mige Assocs. II*, 225 A.D.2d 427 (1st Dep't 1996), the court may discharge a partner where that partner's breach of fiduciary responsibility has rendered the partnership an entity that is no longer viable. Safran Removal

Affirm., p. 3; *see Drucker*, 225 A.D.2d at 429. Plaintiffs argue that, with Stevens and Kinpit Realty in control of the Partnership, the Partnership will lose its sole asset, the Property, and thus become no longer viable. Plaintiffs base their argument on the contention that potential lenders will not consider refinancing the Capital One mortgage loan while Stevens and Kinpit Realty remain as General Partners. *Safran Removal Affirm.*, pp. 6-7. Plaintiffs point to an e-mail sent to the Receiver by Capital One's counsel which states, "[q]uite frankly, we have our doubts as to whether you will find a new lender to refinance a loan to a partnership that is currently in serious default, that has ongoing litigation among the partners, and that is the subject of grand jury investigation."² *Id.* at Ex. F

II. The Receiver's Contentions

The Receiver's and Plaintiffs' positions are aligned. The Receiver asserts, and was told by the manager of the Property as well as a representative of HUD, that refinancing of the mortgage loan would be "virtually impossible" with Stevens and Kinpit Realty still in place as General Partners. *See April 27 Transcript*, p. 18, ll. 24-26; p. 19, ll. 2-4.

III. Defendants' Contentions

Defendants argue that the removal of Defendants as General Partners and substitution of the Limited Partners, in the form of an LLC, as general partner is prohibited by the Partnership Agreement. *Cassell Removal Affirm.*, p. 8. Defendants argue that the Partnership Agreement does not permit removal of the General Partners. *Id.* at p. 9.

² The reference to the grand jury investigation appears to be a reference to the joint HUD and IRS investigation of Defendants and Kinpit Associates.

Defendants further argue that the court cannot substitute the Limited Partners as general partners of the Partnership because the Partnership Agreement prohibits the Limited Partners from managing the Partnership. *Id.*

Defendants argue that *Drucker* is distinguishable from the instant case. Defendants argue that, though the court in *Drucker* did remove a general partner of a partnership, the court did so only after trial of the action. *Id.* at p. 15; *see Drucker*, 225 A.D.2d at 427. Defendants argue that this action has not been tried, and therefore removal of Defendants as General Partners is premature. Further, Defendants contend that *Drucker* did not authorize the substitution of limited partners as general partners. Rather, the court in *Drucker* left control of the partnership in that case to the general partners that remained after one was removed. *Cassell Removal Affirm.*, p. 15; *see Drucker*, 225 A.D.2d at 427-29 (noting that there are other general partners in the partnership).

Defendants also argue that *Mitland Raleigh-Durham* is inapposite to the instant case. Defendants contend that in *Mitland Raleigh-Durham*, the court only removed the general partner from the partnership because the partnership agreement at issue expressly authorized the general partner's removal. *See Mitland Raleigh-Durham*, 807 F. Supp. at 1060. Defendants argue that no such authorization is in the Partnership Agreement at issue. *Cassell Removal Affirm.*, p. 15. Defendants note that, as in *Drucker*, the court in *Mitland Raleigh-Durham* removed the general partner only after a trial.

Finally, Defendants contend that the court cannot remove Defendants as General Partners of the Partnership without dissolving the Partnership entirely. *Cassell Removal*

Affirm., p. 17. Defendants cite to *Wolfson v. Rosenthal*, 210 A.D.2d 47 (1st Dep't, 1994) (holding that the partners in a partnership's decision to reform a partnership less one of the partners constituted a termination of the partnership entitling the one former partner to collect the value of his stake in the partnership) and *Dawson v. White & Case*, 88 N.Y.2d 666 (1996) (noting that, where a partnership agreement lacks a mechanism to remove a partner, such removal can only be accomplished through dissolution of the partnership) in support of their argument.

4. Analysis

I. Receiver's Potential Conflict of Interest

A receiver may be required to resign from an appointed receivership on the basis of a conflict of interest. *Dubiner v. Goldman*, 42 A.D.2d 843 (2d Dep't 1973). The court will not extend the receivership to include receivership of Kinpit Associates if such extension would create a potential conflict of interest for the Receiver.

On the record of April 27, 2012, the Receiver indicated that she believed that there would be a potential conflict of interest if she was appointed both the receiver for the property owned by Kinpit Associates as well as receiver for the entity Kinpit Associates. April 27 Transcript, p. 11, ll. 25-26; p. 12, ll. 2-26; p. 13, ll. 2-21. The Receiver gave two examples of such potential conflicts of interest. First, the receiver stated that, were the Property in need of repair:

with one hat I [the Receiver] could be thinking I have got to keep this building in the best shape I possibly can. And with the

other hat I could be thinking, [] as receiver for the limited partnership I don't know if I should be spending all of this money.

April 27 Transcript, p. 13, ll. 6-10. The Receiver thus believes that there could be a tension between the Property receiver's duty to keep the Property in best repair and Kinpit Associate's interest in conserving money belonging to them. The Receiver contends that she should therefore not be the receiver for both the Property and Kinpit Associates.

The Receiver also told the court that the mortgage lender, Capital One, has indicated that it would like to continue to have the Receiver as receiver of the Property during the foreclosure proceeding related to the mortgage on the Property. On this basis, the Receiver further saw a potential conflict of interest if she played the dual role of receiver of the Property for Capital One and receiver for Kinpit Associates. She stated:

If I'm receiver for the building in that foreclosure action and I'm also the receiver for the limited partnership, I could be fighting with myself. Or I could be required to take a very aggressive litigation posture, for instance, with respect to the validity of the mortgage. And I would be fighting with the bank. And yet, the bank has me there as the receiver.

April 27 Transcript, p. 13, ll. 14-20.

On the basis of these two potential conflicts of interest, the court finds it is not appropriate to extend the receivership. Accordingly, though Defendants consent to Plaintiffs' request, Plaintiffs' motion to extend the receivership to include Kinpit Associates is denied.

II. Removal of General Partner and Substitution of Limited Partners

As a threshold matter, the court does not find that removal of the General Partners in this case necessitates dissolution of the Partnership. The court finds that *Wolfson* and *Dawson* are here inapplicable. Both *Wolfson* and *Dawson* involve situations in which the partners removed or attempted to remove partners from the partnership outside of the judicial system. *Wolfson* and *Dawson* do not discuss the court's power to remove a partner where that partner has been found to have breached his fiduciary duty to the other partners and where such removal is alleged to be necessary to preserve the sole asset of the partnership. For the reasons stated below, the court hereby removes Stevens and Kinpit Realty as General Partners of the Partnership. The court does not hold that Stevens and Kinpit Realty are not entitled to their equitable share of the Partnership. The amount Defendants may recover as their equitable share of the Partnership will be determined after trial.

Further, the court does not find that the language of the Partnership Agreement prohibits this court from exercising its broad powers in equity by removing Defendants as General Partners and substituting the Limited Partners, via an LLC, as General Partners of the Partnership. This court, having obtained jurisdiction of the parties and subject matter in this action must adapt its relief to the exigencies of the case. *Kaminsky*, 23 A.D.2d at 237.

This court has held that Defendants breached their fiduciary duty to the Limited Partners. See Decision and Order on Motion Sequence Numbers 17 and 18, dated August 10, 2011 (Docket No. 601917/2005). Accordingly, Defendants' contention that the court can

only remove the General Partners after a trial holding that Defendants have breached their fiduciary duty is without merit.

Even after this court held Stevens liable for breach of fiduciary duty, the court learned, through its Receiver, that Stevens had ceased paying the mortgage loan on the Property and thereby caused a default. Defendants have not opposed this allegation or attempted to provide any explanation as to why Stevens stopped paying the mortgage, taxes and other payments on the Property. Defendants have also failed and, indeed, have not even attempted, to explain why Stevens removed the Capital One proprietary mortgage account to Signature Bank, making it impossible for Capital One to automatically debit the monthly mortgage payments and causing an additional measure of default on the mortgage loan. The court also understands, through the Receiver, that there is a grand jury investigation of some of the Defendants as well as the Partnership based on Stevens' alleged retention of HUD subsidies and failure to make necessary payments related to the Property.

The Property is now in foreclosure. The Partnership stands near-certain chance to be unable to cure the default on the mortgage by refinancing the loan or exploring other financing options. Lenders are alleged, and this court agrees, to be unwilling to do business with the Partnership while Stevens and Kinpit Realty are in place as General Partners. The court must thus do what is necessary to preserve the Partnership and the principal Partnership assets and remove Stevens and Kinpit Realty as General Partners. *Homburger*, 130 A.D.2d at 718.

Further, the court is not convinced by Defendants argument that *Drucker* does not permit the Court to elevate the Limited Partners, in the form of an LLC, to the role of General Partners. *Drucker* holds that when “a partner’s breach of his fiduciary responsibility has rendered the partnership an entity that is no longer viable, a court may take remedial action such as discharging a partner or liquidating the partnership.” That the *Drucker* court left management control in the hands of the remaining general partners, does not mean that the court cannot here take a varying remedial action necessary to maintain the viability of the Partnership. The court finds it within its equitable power to substitute the Limited Partners, organized as an LLC, as the General Partner in Kinpit Associates. This will allow the Partnership to continue, provide a stronger chance of maintaining the Partnership’s asset in the Property, and will avoid the drastic measure of liquidating the Partnership.

Finally, the court disagrees with Defendants’ argument that *Mitland Raleigh-Durham* holds that the court can remove a general partner only where the partnership agreement expressly authorizes such removal. The court in *Mitland Raleigh-Durham* held that the court has the power to remove general partners and elevate the limited partners to the position of general partners in order to preserve the partnership. *Mitland Raleigh-Durham*, 807 F. Supp. at 1059-60. That the partnership agreement in that case expressly provided for the removal of the general partner was cited by the court as an *additional* ground for removal and was not the sole basis of its holding. *Id.* at 1060 (stating “[a]dditionally, both the Durham and Sacramento Limited Partnership Agreements expressly provide . . . for the removal of the

general partner[.]” The court does not see *Mitland Raleigh-Durham* as preventing the Limited Partners from assuming the general partner position in order to retain the viability of the Partnership.

For the above reasons, the court grants Plaintiffs’ motion to remove Troy D. Stevens, Jr. and Kinpit Realty, Inc., from their positions as General Partners of Kinpit Associates, L.P. and installs Kinpit Holding, LLC, a New York limited liability company wholly owned and controlled by the Plaintiffs, as substitute general partners.

ORDER

Accordingly, it is hereby

ORDERED that defendants Troy D. Stevens, Jr. and Kinpit Realty, Inc., are, as of the date this order is entered and served upon defendants with notice of entry, removed from their respective positions as general partners of Kinpit Associates, L.P.; and it is further

ORDERED that Kinpit Holding, LLC, a New York limited liability company that is wholly owned and controlled by the plaintiffs, is hereby installed as successor and substitute general partner.

The following was granted on the record of April 27, 2012 (Delores Hilliard, Official Court Reporter) and is hereby

ORDERED that defendants' motion to quash a subpoena served by plaintiffs upon JPMorgan Chase Bank is DENIED; and it is further

ORDERED that defendants, to the extent they have not done so already, are to deliver to counsel for the plaintiffs and to the receiver, all banking, financial and business records pertaining to the ownership, management, maintenance and repair of the property owned by Kinpit Associates, L.P. which have not heretofore been delivered, properly categorized and Bates' stamped, within ten (10) days immediately following the entry of this order and service of notice of entry on the defendants; and it is further

ORDERED that defendants, to the extent they have not done so already, are to account in writing, the truth of which shall be duly sworn to by Troy S. Stevens, for all income of Kinpit Associates, L.P. received by any of the defendants, and all funds paid or transferred attributable to that income to any of defendants or to any third person, for the period of January 1, 2011 to the date management of the property was transferred to the receiver within ten (10) days immediately following the entry of this order and service of notice of entry on the defendants, by delivering such accounting to the attorney for the plaintiffs and to the receiver, together with all documentary evidence supporting such accounting; and it is further

ORDERED that defendants, to the extent they have not done so already, are to turn over to the receiver all funds belonging to Kinpit Associates, L.P. which had not been turned over to the receiver prior to the date hereof within ten (10) days immediately following the entry of this order and service of notice of entry on the defendants, including but not limited to funds transferred from accounts maintained by Kinpit Associates, L.P. to any and all other accounts controlled by any of the defendants and to all persons affiliated with or related to any of the defendants; and it is further

ORDERED that plaintiffs are granted leave to serve non-party subpoenas on persons who may have information material to the finances and management of the property and monies of Kinpit Associates, L.P. and the disposition of the partnership's assets from January 1, 2011 to the present; and it is further

ORDERED that Troy D. Stevens, Jr., and the corporate defendants shall appear, pursuant to notice to be served by plaintiffs, for additional deposition pertaining to the receipt and disposition of the partnership's funds since January 1, 2011 to the date of the deposition which shall be completed within 30 days immediately following the entry of this order and service of notice of entry on the defendants; and it is further

ORDERED that the appointment of Amy Rothstein, Esq., as receiver of the real property owned by Kinpit Associates, L.P. pursuant to the Amended Order of December 1, 2011, is continued until further order of this court; and it is further

ORDERED that plaintiffs' motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint within 20 days from said date of service; and it is further

ORDERED that copies of all documents, papers and other materials delivered to the receiver by or on behalf of the defendants be made available to the plaintiffs for inspection and copying, and that defendants, to the extent they deliver or transmit material by e-mail to the receiver, include counsel for the plaintiffs as a recipient.

This constitutes the Decision and Order of the court.

Dated: New York, New York
June 6, 2012

ENTER:


Hon. Eileen Bransten, J.S.C.