

**Lipton v Citibabes LLC**

2011 NY Slip Op 32480(U)

September 15, 2011

Supreme Court, New York County

Docket Number: 102961/2010

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. EILEEN A. RAKOWER

Index Number : 102961/2010

PART 15

LIPTON, TARA GORDON

vs

CITIBABES LLC

INDEX NO. \_\_\_\_\_

Sequence Number : 003

MOTION DATE \_\_\_\_\_

SUMMARY JUDGMENT

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

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

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 9/15/11

HON. EILEEN A. RAKOWER

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
TARA GORDON LIPTON,

Index No.  
102961/10

Plaintiff,

- against -

**DECISION  
and ORDER**

CITIBABES LLC,

Mot. Seq.

**UNFILED JUDGMENT**

Defendants

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-----X  
HON. EILEEN A. RAKOWER

Tara Gordon Lipton ("Plaintiff") states that she is a member and co-founder of defendant Citibabes LLC ("the LLC"), which is "engaged in a unique type of business, which consists of a pre-school educational program, children's and parents' recreational and spa facilities, together with other services offered for children and their parents." Plaintiff states that she was a co-managing director of the LLC with Tracy Frost Rensky, who also co-founded the LLC, until 2008. Plaintiff claims that she resigned due to increasing parental responsibilities, as well as "increased conflict with Rensky." However, Plaintiff states that she remains an owner of more than "300,000 membership units" of the LLC, with a total investment of over \$400,000.

Plaintiff brings this action to obtain access to the LLC's books and records pursuant to LLC Law §1102. Plaintiff claims that, beginning in the summer of 2009, both she and Herbert Feinberg, her father and authorized representative, have made numerous requests, both oral and written, to access, inspect, and copy "pertinent books, records and documents concerning the business affairs of the [LLC]." However, both she and Feinberg were refused access to the LLC's records. Plaintiff states that the purported justification for denial of access was Plaintiff's refusal to sign a confidentiality agreement. Plaintiff states that this is an insufficient basis to deny her access to the LLC's records, and that the LLC's refusal to allow her access to LLC records is actually motivated by Rensky's personal animus towards her. Nevertheless, Plaintiff asserts that both she and Feinberg "are really and willing to sign a confidentiality agreement relating to any of the [LLC's] books, records,

information and/or documents that are legitimately classified as confidential in accordance with the terms of the [LLC's] Operating Agreement.”

Plaintiff now moves for summary judgment. Plaintiff submits her own affidavit, an affidavit from Feinberg, and a memorandum of law in support of her motion. Despite an affirmation of service evidencing that the LLC was served with Plaintiff's motion, the LLC has not submitted any opposition to the motion.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

LLC Law §1102 provides:

(a) Each domestic limited liability company shall maintain the following records, which may, but need not, be maintained in this state:

(1) if the limited liability company is managed by a manager or managers, a current list of the full name set forth in alphabetical order and last known mailing address of each such manager;

(2) a current list of the full name set forth in alphabetical order and last known mailing address of each member together with the contribution and the share of profits and losses of each member or information from which such share can be readily derived;

(3) a copy of the articles of organization and all amendments thereto or restatements thereof, together with

executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed;

(4) a copy of the operating agreement, any amendments thereto and any amended and restated operating agreement; and

(5) a copy of the limited liability company's federal, state and local income tax or information returns and reports, if any, for the three most recent fiscal years.

(b) Any member may, subject to reasonable standards as may be set forth in, or pursuant to, the operating agreement, inspect and copy at his or her own expense, for any purpose reasonably related to the member's interest as a member, the records referred to in subdivision (a) of this section, any financial statements maintained by the limited liability company for the three most recent fiscal years and other information regarding the affairs of the limited liability company as is just and reasonable.

(c) If provided in the operating agreement, certain members or managers shall have the right to keep confidential from other members for such period of time as such certain members or the managers deem reasonable, any information which such certain members or the managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which such certain members or the managers in good faith believe is not in the best interest of the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

In addition, the LLC's Operating Agreement provides as follows:

7.5 Company Books... [T]he Board shall maintain and preserve, during the term of the Company, all accounts, books and other relevant Company documents. Upon reasonable written request, each Member and his or her duly authorized representative shall have the right during ordinary business hours, to inspect and copy such Company document (at the requesting member's expense) for any purpose reasonably related to the requesting Member's Membership Interest.

Section 7.7 defines what the LLC considers "Confidential Information," and provides that, "[t]o the extent a Member receives Confidential Information, he or she shall not disclose such information to any third party."

Based on the foregoing, the court finds that Plaintiff is entitled to inspect the LLC's books and records. Under both the LLC Law and the Operating Agreement, Plaintiff is entitled to inspect the LLC's records for the legitimate purpose of ascertaining the financial condition of the LLC. Moreover, in accordance with Section 7.7 of the Operating Agreement, Plaintiff is already under an obligation not to disclose items deemed confidential to third parties.

Wherefore it is hereby

ORDERED that Plaintiff's motion for summary judgment is granted without opposition; and it is further

ORDERED and ADJUDGED that the LLC shall make available for Plaintiff and/or her duly authorized representative's inspection and copying (at Plaintiff's expense) all records maintained by the LLC pursuant to LLC Law §1102(a), and all financial statements maintained by the LLC for the three most recent fiscal years; and it is further

ORDERED that said inspection shall occur at a time and location mutually agreed upon by Plaintiff and the LLC no later than 30 days after receipt of a copy of this order with notice of entry.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: September 15, 2011

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C.

**UNFILED JUDGMENT**

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