

Tai Huang v Northern Star Mgt. LLC

2016 NY Slip Op 32194(U)

October 24, 2016

Supreme Court, New York County

Docket Number: 652357/2016

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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TAI HUANG and LING LIAN HUANG,

Index No.
652357/2016

Plaintiffs,

- against-

NORTHERN STAR MANAGEMENT LLC and
GOLDEN EAGLE REAL ESTATE LLC,

Defendants.
-----X

Hon. C. E. Ramos, J.S.C.:

In motion sequence 001, the plaintiffs Tai Li Huang and Ling Lian Huang (collectively, the Huangs) move by order to show cause pursuant to CPLR 6313 to enjoin the consummation of a merger between the defendants Northern Star Management LLC (NSM) and Gold Eagle Real Estate LLC (GERE).

NSM owns 3 contiguous lots of real property in Flushing, New York that contain two commercial buildings with commercial and residential tenants (the Property).

This application arises out a previous disagreement between the parties relating to the financing of the Property that resulted in four of the seven members of NSM, collectively holding 67% of NSM's membership interests (the Majority Members), approving a merger to cash out the remaining three minority members (the Minority Members), which includes the Huangs and Jian Chai Qu, who has not asserted any claims against NSM or GERE.

Thereafter, the Huangs commenced this action asserting causes of action for declaratory judgment, injunctive relief, and breach of contract.

The Huangs are each 13.75% members of NSM, holding a collective interest of 27.50% in NSM. They allege that they are being improperly cashed out in the merger between NSM and GERE by the Majority Members. They now seek a preliminary injunction to prevent the merger from going forward.

The granting of a preliminary injunction requires that the Huangs make a clear showing of: 1) a likelihood of success on the merits, 2) irreparable harm in the event the injunction were denied, and 3) a balance of the equities in their favor (*Casita, L.P. v MapleWood Equity Partners [Offshore] Ltd.*, 43 AD3d 260 [1st Dept 2007]).

The Huangs allege that the merger between NSM and GERE breached Section 9.3 of NSM's operating agreement (the NSM Operating Agreement) because the Majority Members did not obtain the consent of a majority of the disinterested members to approve the transfer of each member's interest in NSM.

Section 9.3 of the NSM Operating Agreement provides that:

"[a] Member may freely transfer his interest in [NSM] to another person or entity, except the 1st, 2nd, and 3rd, Preferred new Members as outlined on Section 9.1 and 9.2., only with the prior majority consent of other Members either in writing or at a meeting called for such purpose. If majority Members do not approve of the transfer, the transferee shall have no right to participate in the management of the business and affairs

of [NSM] or become a Operating Member"

(Qu Affidavit, Ex. A, § 9.3).

It is undisputed that GERE is not a 1st, 2nd, or 3rd, Preferred new Member as defined in the NSM Agreement. Thus, only the consent of a majority of NSM membership interests is required to approve the transfer of each Majority Member's respective interest in NSM in connection with the merger.

Despite the Huang's contentions, Section 9.3 of the NSM Operating is completely devoid of the term "disinterested," which is the crux of the Huang's application. The plain language of the provision the Huangs cite to clearly permits a member to transfer their membership interest upon approval by a simple majority of members. It does not state that a majority of the *disinterested* members is required, as the Huangs assert (*emphasis added*).

NSM and GERE clearly establish that for each of the four Majority Members each obtained majority consent from the other three Majority Members for their respective transfers. In each instance, the three non-transferring Majority Members held over 33% of the NSM membership interests, which was the collective NSM membership interest of the Minority Members. Consequently, the Minority Members never held enough membership interest in NSM to prevent or challenge the transfers (Qu Aff., ¶ 7).

Furthermore, the Majority Members properly complied with

Section 5.5(f) of the NSM Operating Agreement, which provides that the "Operating Managers may not...approve the merger of [NSM] with another limited liability company," without "obtaining the consent of majority interest or 65% of the interest of the Members..." (id. at § 5.5 [f]). The Majority Members held 67% of the NSM membership interest at all relevant times.

The Huang's failure to establish that the Majority Members breached any provision of the NSM Operating Agreement in effectuating a merger with GERE is fatal to their motion for a preliminary injunction because they fail to establish that they have a likelihood of succeeding on the merits.

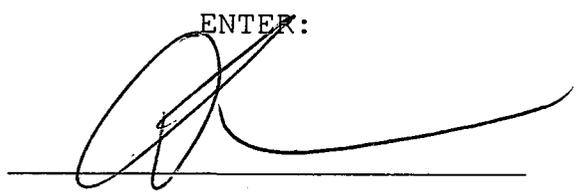
The order to show cause seeking a preliminary injunction is denied.

Accordingly, it is

ORDERED that the plaintiffs' order to show cause for a preliminary injunction is denied in its entirety.

DATED: October 24, 2016

ENTER:



J.S.C.

CHARLES E. RAMOS