

**Golder v 29 W. 27th St. Assoc., LLC**

2017 NY Slip Op 31527(U)

July 17, 2017

Supreme Court, New York County

Docket Number: 652371/2016

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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LOUIS GOLDER,

Petitioner,

- v -

29 WEST 27TH STREET ASSOCIATES, LLC, TAUBER FAMILY  
IRREVOCABLE TRUST DATED DECEMBER 10, 2012, AVIVA  
BIELORY, LARRY TAUBER,

Respondents.

INDEX NO. 652371/2016

MOTION DATE 5/3/2016

MOTION SEQ. NO. 001

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this application to/for Dissolution

HON. SALIANN SCARPULLA:

Petitioner Louis Golder, as Administrator of the Estate of Robert Golder (“Golder”), moves for an order granting judicial dissolution and to wind up the affairs of 29 West 27th Street Associates, LLC (“the LLC”) pursuant to Limited Liability Company Law § 701(a)(1) and 703(a) (motion seq. no. 001).

In addition, Golder Moves To Compel Respondents 29 West 27th Street Associates, LLC, Tauber Family Irrevocable Trust Dated December 10, 2012, Aviva Bielory, and Larry Tauber (collectively, “respondents”) to: (a) produce copies of all current leases, a rent roll, and a statement of income and expenses for the past three months; (b) to make all future payments electronically to Golder’s attorney’s escrow

account; and (c) for sanctions, costs, and fees for the necessity of bringing this motion, pursuant to NYCRR Section 130 (motion seq. no. 002). The petition and motion are consolidated for disposition.

On or about October 2, 1981, Robert Golder, Joshua Tauber, and Eliezer Bielory formed a partnership – 29 West 27th Street Associates.<sup>1</sup> The partnership was established to own and operate a residential building located at 29 West 27th Street, New York, New York. On August 14, 2003, the partnership’s manager, Larry Tauber (“Tauber”), notified Golder that the partnership would be converted into a limited liability company.

Golder now seeks to dissolve the LLC, pursuant to LLC Law § 701(a). Limited Liability Company Law § 701(a) states that a “limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following: (1) the latest date on which the limited liability company is to dissolve, if any, provided in the articles of organization, or the time specified in the operating agreement.”

Golder contends that the LLC should be dissolved per the expiration date set forth in the original partnership agreement – i.e., December 31, 2011. Golder alleges that when Larry Tauber notified him about the conversion of the partnership and

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<sup>1</sup>**Error! Main Document Only.** The partnership interests were divided as follows: Robert Golder held a 45% interest (now represented by Louis Golder as administrator of his estate); Joshua Tauber held a 40% interest (now transferred to Family Irrevocable Trust dated December 10, 2012); and Eliezer Bielory held a 15% interest (now transferred to Aviva Bielory as Trustee of the Eliezer Bielory Residuary Trust Agreement).

asked for his consent, he understood that “the terms contained in the Partnership Agreement would continue, insofar as now governing the LLC, which would, for all intents and purposes, operate in an identical way as the partnership had done.” Golder submits a copy of the partnership agreement, which states that the term of the partnership “shall continue until December 31, 2011, unless the purpose for which the partnership has been formed shall have been completed, or unless terminated pursuant to the terms of this agreement.”

The respondents oppose the petition for dissolution. They contend that the LLC is governed by an operating agreement, which provides that the LLC shall have a perpetual duration. Further, respondents claim that the LLC is “operating well, making substantial profits from the operations of the property and improving the property through renovations and upgrades.” In reply, Golder submits an affidavit stating that Robert Golder understood that the partnership rights would continue under the LLC and that he never signed the operating agreement submitted by the respondents.

Based on the parties’ submissions, I find that a material issue of fact exists as to whether a written operating agreement exists as to the LLC’s term of duration. Accordingly, I order an evidentiary hearing to resolve this material issue of fact.

In a separate motion, Golder moves to compel respondents to: (a) produce copies of all current leases, a rent roll, and a statement of income and expenses for the past three months; (b) to make all future payments electronically to Golder’s attorney’s escrow account; and (c) for sanctions, costs, and fees for the necessity of bringing this motion, pursuant to NYCRR Section 130.

I grant Golder's motion to compel the respondents to produce copies of all current leases, a rent roll, and a statement of income and expenses for the past three months. As a member of the LLC, Golder is entitled to a copy of this information. In addition, I direct respondents to make future payments owed to the Golder by electronic wire transfer to Golder's attorney's escrow account. Golder has demonstrated that he has had difficulty receiving paper checks in a timely manner, and the respondents fail to demonstrate that initiating an electronic wire transfer is unreasonable or overly burdensome.

Section 130-1.1 of the Codes, Rules and Regulations of New York provides, in relevant part, that the court "may award to any party or attorney in any civil action . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct." Conduct is considered frivolous if it is completely without merit or undertaken to primarily harass another party. Upon reviewing the parties' submissions, I find that the respondents' conduct cannot be characterized as completely without merit or undertaken for the primary purpose of harassment. Therefore, Golder's motion for sanctions is denied.

In accordance with the foregoing, it is

ORDERED that an evidentiary hearing is directed to be conducted before a Special Referee to determine whether the LLC's members entered into a written operating agreement and agreed that the Company's term would end on December 31, 2011, or would have a perpetual duration. The Special Referee is to report to this Court with all convenient and deliberate speed, except that, in the event of and upon the filing

of a stipulation of the parties, as permitted by CPLR § 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that Golder Louis Golder, as Administrator of the Estate of Robert Golder's petition for judicial dissolution and to wind up the affairs of 29 West 27<sup>th</sup> Street Associates, LLC (motion seq. no. 001) is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR § 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that counsel for the Golder shall, within 30 days from the date of this order, serve a copy of the order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the Motion Support Office in Rm. 119 at 60 Centre Street, who is directed to place this matter on the calendar of the Special Referee's Part (Part 50R) for the earliest convenient date; and it is further

ORDERED that, upon receipt of the Special Referee's report, I will issue a final decision on the petition for dissolution.

ORDERED that Golder Louis Golder's motion to compel and for sanctions (motion seq. no. 002) is granted only to the extent described above, and otherwise denied.

This constitutes the decision and order of the Court.

7/17/2017  
DATE

*Saliann Scarpulla*  
SALIANN SCARPULLA, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE