

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART

IAS MOTION 53EFM

Justice

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MARK L. STERNLICHT REVOCABLE TRUST, CELINA
ZBOROWSKI,

Plaintiff,

- v -

DANIEL Z. RAPOPORT ASSOCIATES, L.P., URY RAPOPORT,
ESTELLE REALTY LLC, KALIA SHALLECK, TRUST U/W/O
HENRIETTE JACOBSON, BLIMA YOUNG, ZEV MERZEL

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

DECISION AND ORDER

Upon the foregoing documents and for the reasons set forth on the record, the plaintiff's motion for summary judgment is denied and cross motion for summary judgment is granted.

Reference is made to a certain Limited Liability Company Operating Agreement of 333 East 54th Street Realty LLC (the **Agreement**), dated the date of filing of the Articles of Organization or such other date as set forth in the Articles of Organization, by and among the Company the persons executing the agreement.

Section 11.1 of the Agreement titled "Dissociation" of the Agreement provides:

A Person shall cease to be a Member upon of the happening of any of the following events:

- (c) In the case of a Member who is a natural person, the death of the Member or the entry of a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

Section 12.1 titled "Dissolution" of the Agreement provides:

The Company shall be dissolved and its affairs wound up, upon the first to occur of any of the following events (each of which shall constitute a Dissolution Event):

- (a) The expiration of the term of the Agreement, unless the Company is continued with the consent of all of the Members;
- (b) The unanimous written consent of the Members;
- (c) the Dissociation of any Member, unless at the time of such Dissociation there are at least two remaining Members and the Company is continued with the consent of all of the remaining Members within 180 days after such Dissociation;
- (d) at any time where there is but one Member, the Dissociation of such Member, or the transfer of all or part of the Membership Interest of such Member and the admission or attempted admission of the transferee of such interest as a Substitute Member.

Section 1.35 of the Agreement titled "Substitute Member" provides:

An Assignee who has been admitted to all of the rights of membership pursuant to Section 10.3 of the Agreement.

Section 10.3 of the Agreement titled "Transfer of Membership Interest *and Admission of Substitute Member*" provides:

Except for the right to receive allocations of Profits and Losses and to receive Distributions, a Membership Interest of any Member may not be transferred in whole or in part, and a transferee shall not have a right to become a Member unless the following terms and conditions have been satisfied:

- (a) All of the other Members shall have consented in writing to the transfer and substitution, which consent may be arbitrarily withheld by any such Member;
- (b) The transferee shall have assumed the Obligations, if any, of the transferor to the Company, including the obligation to fulfill the pro rata portion of the transferor's then existing or subsequently arising Commitment

allocable to the transferred Unit of Membership Interest or portion thereof;
and

- (c) The transferor and the transferee shall have complied with such other requirements as the non-transferring Members may reasonably impose, including the conditions that the transferee:
 - (i) adopt and approve in writing all the terms and provisions of the Agreement then in effect; and
 - (ii) pay such fees as may be reasonable to pay the costs of the Company in effecting such substitution.
- (d) Notwithstanding the above, if a member desires to transfer their interest to a member's family, or a trust, or partnership for the benefit of a member's family, they may do so at any time without restrictions.

Significantly, transfers to family members do not require compliance with the additional requirements set forth in Section 10.3(a)-(c). In other words, sales to third parties or transfers of interests to unrelated persons are permissible under the Agreement but only as to the economic interest and such transferees do not become Substitute Members unless the requirements of Section 10.3(a)-(c) are complied with including obtaining the consent of the members. Transfers to family members are not subject to the same requirements.

In this case, when Asher Ben-Zvi died in 2007, pursuant to Section 10.3(d), his section was transferred to Blima Young and Zev Merzel, both family members. Accordingly, they were admitted as Substitute Members. Since then, 11 years have gone by without objection and the members have continued the business and have given their tacit consent. Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

5/6/2019

DATE

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE

ANDREW BORROK, J.S.C.