

SUPREME COURT : NEW YORK COUNTY
COMMERCIAL DIVISION : PART 48

CARA ASSOCIATES, L.L.C., HUDSON SOUTH ASSOCIATES, LLC and HUDSON SOUTH SITE B ASSOCIATES, LLC, as the majority in interest of MARINER'S COVE SITE B ASSOCIATES, MARINER'S COVE SITE J ASSOCIATES, and MARINER'S COVE SITE K ASSOCIATES, the latter three entities being New York general partnerships, and MICHAEL L. NELSEN and IVAN G. GOODSTEIN,

Plaintiffs,

-against-

HOWARD P. MILSTEIN and RECTOR PARK ASSOCIATES LLC,

Defendants.

Index No. 651726/2015
(Oing, J.)

**AMENDED
VERIFIED
COMPLAINT**

Plaintiffs, complaining of Defendants, allege as follow.

Preliminary Statement

1. This complaint seeks declaratory relief against defendant Howard P. Milstein, who has refused to relinquish his role as Manager of three New York general partnerships listed in the caption hereof (the "Partnerships"). Pursuant to a written partnership agreement, Milstein could be replaced, at any time, for any reason or no reason, through the action of those partners holding the majority in interest of each of the Partnerships. By Notice dated May 12, 2015, the entity Plaintiffs – representing the majority in interest of the Partnerships owning an aggregate of 60% of each partnership – executed and delivered a written notice removing Milstein as Manager and substituting Plaintiffs Goodstein and Nelsen in his place and stead. Thereafter, on May 29, 2015, this Court determined that Milstein had a common law right to notice and an opportunity to be heard by his partners prior to being removed. The entity Plaintiffs, holding a majority in

interest of the Partnerships, noticed a meeting for and conducted such a meeting on June 11, 2015 – which neither Defendant attended. Despite being a minority owner in the Partnerships through Defendant Rector, and despite the clear contractual language expressly providing for his removal, Milstein has brazenly refused to recognize his removal. This complaint seeks a declaratory judgment that Milstein has been removed as the Manager, that the individual Plaintiffs are now the successor Co-Managers; and that Milstein has no further rights to manage under the Partnership Agreement.

The Parties and their Relationships to Each Other

The General Partnerships

2. Each of the Partnerships listed in the caption is a New York general partnership, with each partnership owning unsold residential and commercial units in condominium buildings in Battery Park City, New York.

3. Plaintiff Mariners' Cove Site B Associates is the owner of unsold units at a residential property commonly known as "Liberty Court," a condominium located at 200 Rector Street, New York, New York.

4. Plaintiff Mariner's Cove Site J Associates is the owner of unsold units at a residential property commonly known as "Liberty House," a condominium located at 377 Rector Street, New York, New York.

5. Plaintiff Mariner's Cove Site K Associates is the owner of unsold units at a residential property commonly known as "Liberty Terrace," a condominium located at 380 Rector Street, New York, New York. (The three partnerships described in paragraphs 3-5 have been and shall continue to be referred to as the "Partnerships.")

6. The Partnerships collectively own approximately 350 unsold residential units, representing in excess of 300,000 square feet of salable residential space. In addition, the Partnerships own valuable commercial units, including a parking garage and above grade space used for health club and other commercial purposes.

The Partners of the General Partnerships

7. Plaintiff Cara Associates, L.L.C. (“Cara”) is a domestic limited liability company that owns a 30% general partner interest in each of the Partnerships.

8. Plaintiffs Hudson South Associates, LLC and Hudson South Site B Associates, LLC (collectively, “Hudson South”) are domestic limited liability companies that severally own a 30% general partner interest in each of the Partnerships as more fully reflected in the table in paragraph 10 below.

9. Defendant Rector Park Associates LLC (“Rector”) is a domestic limited liability company that owns a 40% general partnership interest in each of the Partnerships.

10. The following table shows the ownership interests in each of the Partnerships. In each instance, Rector owns a minority 40%, with Cara owning 30% and Hudson South owning 30%. Together, the Cara and Hudson South interests collectively own 60% of the partnership interests in each Partnership.

Partner	Percentage Share of Interest in Mariner's Cove B Associates	Percentage Share of Interest in Mariner's Cove J Associates	Percentage Share of Interest in Mariner's Cove K Associates
Rector Park Associates LLC	40%	40%	40%
Cara Associates, LLC	30%	30%	30%
Hudson South Site B Associates LLC	30%	0%	0%
Hudson South Associates LLC	0%	30%	30%

The Individual Parties

11. Plaintiff Michael L. Nelsen is at present a resident of Hilton Head Island, SC. For the majority of his adult life, Mr. Nelsen lived and worked in New York. Prior to 2014, Mr. Nelsen served as a Senior Vice President and the Accounting and Financial Principal of Acadia Realty Trust, a publicly-traded real estate investment trust. Previously, from March 2003 to December 2011, Mr. Nelsen held the position at Acadia of Senior Vice President and Chief Financial Officer.

12. Prior to joining Acadia in 2003 (namely, from 1994 – 2003), Mr. Nelsen served as the President of G. Soros Realty, Inc. and as Director of Real Estate for Soros Private Funds Management LLC. His responsibilities included asset/portfolio management of real estate operations, financial reporting, financings, asset acquisitions and dispositions. From 1969 to 1994, Mr. Nelsen was initially an associate and thereafter a partner in the public accounting firm of Berdon LLP (formerly David Berdon & Co.) – an accounting firm specializing in real estate

consulting and auditing. Mr. Nelsen graduated from the Bernard M. Baruch School of Business in 1969, and has been a Certified Public Accountant since 1971.

13. Mr. Nelsen is currently a managing member of Underhill Cara Manager Associates LLC, one of the equity owners of Cara. Cara is a 30% owner of each of the Partnerships listed above.

14. Plaintiff Ivan G. Goodstein is a resident of New York. Following his graduation from the University of Arizona with a Bachelor of Science degree in Regional and Urban Land Development in 1990, Mr. Goodstein joined his family's well-known real estate ownership, construction and development business. By 1992 – after hands on experience in construction management– Mr. Goodstein became an Assistant Vice President of Goodstein Development Corporation, where he supervised the construction of residential development projects and managed portfolios of residential properties. Mr. Goodstein expanded his family's construction and residential management business into other jurisdictions, particularly into South Florida.

15. Mr. Goodstein is currently the President and Chief Executive Officer of Goodstein Development Corporation. In that role, he oversees the management of his family's substantial residential portfolio as well as the family's related commercial triple net leased real estate portfolio.

16. Mr. Goodstein is currently an officer, authorized signatory and part equity owner of each of the Hudson South entities. These entities severally own a 30% interest in each of the Partnerships listed above and described below.

17. Defendant Howard P. Milstein is a resident of New York. Through his affiliate, Defendant Rector, Milstein owns and controls 40% of the partnership interests in each of the

Partnerships. The remaining 60% partnership interests are owned collectively by Cara and Hudson South.

Facts Relevant to Declaratory Relief

18. The Partnerships were formed in or about 1984 for the purpose of developing and improving leased land in Battery Park City with residential condominium buildings. Each of the Partnership leased a separate tract of land and, thereafter, developed residential, “for sale” condominiums units in the buildings known as Liberty Court, Liberty House and Liberty Terrace.

19. On or about June 17, 2010, the partners of the Partnerships entered into a written Agreement of Partnership.

20. Paragraph 2(b) of the Partnership Agreement provides, in relevant part, as follows:

Based upon the agreement of a majority of the Partners as to actions to be taken by the Partnerships and until changed by a majority in interest of the Partners, each of Rector Park Associates LLC [the Milstein 40% entity], Cara Associates, LLC [the Cara 30% entity], Hudson South Site B Associates LLC and Hudson South Associates LLC [each a Goodstein entity owning the remaining 30%] of each Partnership” hereby grant Howard Milstein authority to manage, conduct and operate the Partnerships’ businesses. In the event that Howard Milstein is unable to act on behalf of the Partnerships by reason of death or other incapacity, the Partners shall (by majority vote) designate a successor to act in Howard Milstein’s stead in accordance with this sub-paragraph 2(b). (emphasis added)

21. For the avoidance of doubt, the Partnership Agreement defines “Partners” as those entities, listed in the table in paragraph 10 above, owning collectively 100% of the partnership interests in each of the Partnerships.

22. On or about May 12, 2015, the entity Plaintiffs, holding a 60% majority interest in each of the Partnerships, duly executed a written Notice of Removal of Current Manager and Appointment of Substitute Manager. That Notice was delivered by hand and by certified mail and by email to Howard Milstein, individually, as well as to his owned entity, Defendant Rector Park Associates LLC (by hand and certified mail).

23. Per the terms of the Notice, the majority of the Partners agreed and thereby acted to (a) remove Milstein as Manager of the Partnerships, effective 12:01 am on May 19, 2015 and (b) to replace Milstein as Manager with Ivan Goodstein and Michael Nelsen, the individual Plaintiffs in this action.

24. On May 29, 2015, the Honorable Jeffrey K. Oing entertained oral argument on Plaintiffs' motion for relief arising out of the removal of Milstein. At the end of the hearing, the Court ruled, among other things, that, before Defendant Milstein could be removed, he was entitled under the common law to notice of a meeting of the partners and an opportunity to be heard.

25. On June 1, 2015, Plaintiffs, through their counsel, notified Defendants' counsel of their intent to call a meeting and requested that Defendants provide suitable dates on which to meet. Counsel for Defendants refused to provide any date or time for a meeting.

26. On June 3, 2015 – following ample opportunity to agree upon a date – the entity Plaintiffs duly noticed a meeting of all partners, with copies of such Notice being sent to Milstein and Rector Park Associates via hand delivery and overnight delivery (and, in the case of Milstein, by email.) Pursuant to the Notice, the meeting was scheduled for June 11, 2015 at 10:30 am.

27. On the evening of June 10, 2015, counsel for Defendants submitted a so-called “Notice and Formal Objections” to the meeting.

28. On June 11, 2015, the entity Plaintiffs, representing a majority in interest of the Partnerships, convened the meeting. The entirety of the meeting was recorded via a stenographer. Although set to commence at 10:30 am, Plaintiffs waited until 11:00 am to commence the meeting – in the unlikely event that Defendants intended to appear.

29. Neither Milstein nor another representative of Rector nor counsel for either appeared at the meeting.

30. After a discussion, the entity Plaintiffs, through their duly authorized representatives, voted unanimously to remove Milstein as Manager and to substitute the individual Plaintiffs, Messrs. Nelsen and Goodstein, as Co-Managers.

31. The Secretary of the meeting signed a Certificate reflecting the Resolutions adopted at the meeting, and copies of the same were delivered to Milstein and Rector Park Associates via hand delivery, and overnight mail (and email to Milstein).

32. As of the date of this amended complaint, Milstein has not taken any steps to abide by the determination of the majority in interest to replace him. To the contrary, Milstein has acted in direct contravention of the rights granted to the entity Plaintiffs (owning 60% of each Partnership).

33. Pursuant to CPLR 3001, there is a judiciable controversy as to the rights and legal relations of the parties.

FIRST CAUSE OF ACTION
[Declaratory Judgment]

34. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 33.

35. Pursuant to the Partnership Agreement and following notice and an opportunity to be heard, Milstein was duly removed as the Manager of the Partnerships by those partners holding a majority in interest in each Partnership, and was duly replaced by individual Plaintiffs Nelsen and Goodstein.

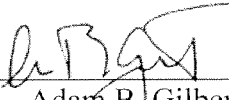
36. Plaintiffs are entitled to a declaration that Messrs. Nelsen and Goodstein are the Co-Managers of the Partnerships with the rights to “manage, conduct and operate the Partnerships’ businesses” as provided for in the Partnership Agreement and that Milstein was removed from his position as Manager.

WHEREFORE, Plaintiffs seek judgment against Defendant for the following relief:

- A. A declaration that Plaintiffs are the duly appointed Managers of the Partnerships and that Milstein was duly removed from such position effective June 11, 2015; together with
- B. Such costs, disbursements and legal fees as may be authorized by contract or statute, and such other and further relief as the Court may find just and proper.

New York, New York
June 23, 2015

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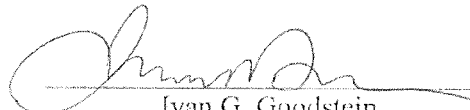
Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

IVAN G. GOODSTEIN, being duly sworn, deposes and says:

I am an individual Plaintiff in this action. I am also an officer of and authorized signatory for and a part equity owner of each of the "Hudson South" entities listed in the caption hereof. All Plaintiffs are united in interest and plead together. I have read the within amended complaint and know the contents thereof. The same is true to the best of my knowledge, information and belief.


Ivan G. Goodstein

Sworn to before me
this 15th day of June 2015


Notary Public

JENNIFER STETTER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ST6233355
Qualified in Nassau County