

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SALIANN SCARPULLA
Justice

PART 39

PATRICK YU,
Plaintiff,

INDEX NO. 656535/2016

MOTION DATE

MOTION SEQ. NO. 001

- v -

GUARD HILL ESTATES, LLC, 33 EAST 38TH STREET, LLC,
RAYMOND YU, CATHERINE YU

DECISION AND ORDER

Defendants.

The following e-filed documents, listed by NYSCEF document number 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16

were read on this application to/for DISMISSAL

Upon the foregoing documents, it is

ORDERED that the motion is determined in accordance with the accompanying decision/order.

8/15/18

DATE

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

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

-----X
PATRICK K. YU,

Plaintiff,

Index No.: 656535/2016

- v -

DECISION AND ORDER

GUARD HILL ESTATES, LLC, 33 EAST 38TH STREET,
LLC, RAYMOND YU, AND CATHERINE YU,

Defendants,

-----X
Saliann Scarpulla, J.

In this action seeking judicial dissolution pursuant to New York Limited Liability Company Law section 702, defendants Guard Hill Estates, LLC (“Guard Hill”), 33 East 38th Street, LLC (“33 East”), Raymond Yu and Catherine Yu move to dismiss the complaint.

In this family dispute which is the subject of several lawsuits,¹ Patrick K. Yu (“Patrick”) commenced an action seeking judicial dissolution of Guard Hill and 33 East, two limited liability corporations owned by the Yu family. Patrick owns 33 1/3 % of Guard Hill, and his siblings Raymond and Catherine own the remaining 66 2/3 %. Patrick owns 20% of 33 East, and Raymond and Catherine own the remaining 80%.

In his complaint, Patrick alleges that Guard Hill and 33 East were formed to be holding companies, to create an easy transition of family property from the Yu parents to their children. Guard Hill was created to hold the remainder interest in the Yu family’s

¹ See the decision/order in *Matter of Yu v. Yu*, Index No. 656611/2016 for a complete recitation of the background facts in this case.

property in Bedford, New York, and 33 East was created to hold title to the Yu family's apartment building in Manhattan. No changes to the LLC operating agreements have allegedly been made for more than ten years.

According to Patrick, after a family dispute arose between him and his parents Bong and May Yu in 2013, his parents and his siblings, have "embarked upon a systematic course of conduct specifically designed to oppress [him], inflict harm on him, and eventually divest him of his ownership interest in the LLCs."

As part of the many retaliatory actions alleged by Patrick to have been taken by his family against him, he claims that (1) on July 9, 2015, Raymond and Catherine amended the two LLCs' operating agreements to remove Patrick as managing member of both LLCs, with no notice or explanation; (2) on January 29, 2016, Raymond and Catherine amended the two LLCs' operating agreements to add a provision stating that managers (Raymond and Catherine) could demand capital contributions from all members, including Patrick, if they determine that such contributions are required, and if such demand is not met, the members' interest in the LLCs may be foreclosed; and (3) on September 22, 2016, Guard Hill announced a capital call and demanded \$590,887, knowing that Patrick was financially unstable and could not afford to make the payment.

The capital call was purportedly exercised to reimburse Bong and May Yu for renovations made to the Guard Hill property, and to pay off the mortgage on the property. Patrick alleges that no explanation was given as to why that demand was made at that time, when no action had been taken for many years. Patrick concludes that the capital call was a retaliatory act taken against him for making certain decisions in his life,

refusing to give up his shares in the Yu family entities, and for demanding access to the books and records of Yu family entities.

On October 14, 2016, Patrick was notified by letter that he was in default on the capital call and that his siblings had submitted their portions of the capital call. On December 12, 2016, Patrick was notified by letter that his siblings had advanced his portion of the capital call to Guard Hill and had executed two promissory notes for the loans given to Patrick. Annexed to the letter were two pledge and security agreements, each pledging half of Patrick's stake in Guard Hill as security for notes. Subsequently, Guard Hill paid off the mortgage owed on the property and reimbursed Bong and May for the cost of the renovations.

Regarding 33 East, Patrick claims that 33 East's tax returns showed many expenses incurred from 2013-2015 which are not consistent with its stated purpose.

In seeking dissolution, Patrick alleges that the actions of his siblings demonstrate that the stated purpose of Guard Hill and 33 East is not being realized or achieved, and instead, they are using the LLCs as "weapons" to oppress him. He maintains that the LLCs are not carrying on their business in accordance with their operating agreements and the continued operation of the LLCs have become financially unfeasible. Defendants now move to dismiss the complaint on the grounds that Patrick has not alleged a sufficient factual basis to support dissolution of the LLCs.

Discussion

Limited Liability Company Law section 702 provides that dissolution of a limited liability corporation may be ordered when it has been proven that "it is not reasonably

practicable to carry on the business in conformity with the articles of organization or operating agreement.” A party seeking dissolution must establish that “the management of the equity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved or that continuing the entity is financially unfeasible.” *Doyle v. Icon, LLC*, 103 A.D.3d 440, 440 (1st Dept. 2013) (internal citations omitted).

Patrick argues that the actions taken by the defendants regarding Guard Hill and 33 East demonstrate the defendants’ unwillingness and failure to promote the purpose of the entities, and that the continued operation of Guard Hill and 33 East is financially unfeasible. He maintains that the LLCs have been used, instead, as tools to further the Yu family’s personal vendetta against Patrick.

The operating agreement for Guard Hill provides that “[t]he Company is formed for the purpose of acquiring a remainder interest in the premises located at 713 Guard Hill Road, Bedford, New York ...and engaging in any other lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing.” 33 East's stated purpose is "acquiring, owning, operating, financing, managing and developing the premises located at 33 East 38th Street, New York, New York . . .and engaging in any other lawful act or activity for which LLCs may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing.”

Given the broad language in the operating agreements, Patrick has failed sufficiently to plead the requisite grounds for dissolution of the LLCs in his complaint.

He does not adequately allege that the LLCs are not operating in a manner within the contemplation of their purposes and objectives as defined in their respective operating agreements, or that continuing their operation would be financially unfeasible. He provides no factual support or basis which would support an allegation that the individual defendants are unable or unwilling to promote the purpose of the LLCs or that it is not reasonably practicable to carry on the business of the LLCs in conformity with the operating agreements.

While Patrick complains that his family members have been engaged in certain activities to further their personal “vendetta” against him, his unflattering characterization of his family’s actions is not sufficient to support a cause of action that his family has abandoned the purpose of the LLCs and/or rendered the operation of the LLCs financially unfeasible.

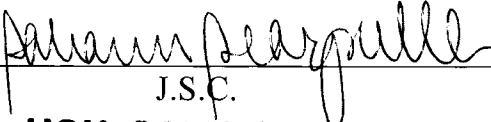
In accordance with the foregoing, it is hereby

ORDERED that defendants Guard Hill Estates, LLC, 33 East 38th Street, LLC, Raymond Yu and Catherine Yu motion to dismiss the complaint is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: August 15, 2018
New York, New York



J.S.C.
HON. SALIANN SCARPULLA