

BV III GP LLC v Bridgeview III Assoc.
2017 NY Slip Op 31923(U)
August 7, 2017
Supreme Court, Queens County
Docket Number: 708317-17
Judge: Leonard Livote
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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote IAS TERM, PART 33
Acting Supreme Court Justice

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BV III GP LLC, a New York limited liability company individually and on behalf of a majority of the limited partners of Bridgeview III Associates, a New York limited partnership, Plaintiffs,

Index No: 708317-17

-- against --

Motion Date: 8/1/17

Bridgeview III Associates, a New York limited partnership, Peter Robert Perpignano, Bridgeview Housing Corp., TUC a/k/a T.U.C. Management Company, Inc. et al,

Seq. No: 1

Defendants.

FILED
AUG 14 2017
COUNTY CLERK
QUEENS COUNTY

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The following papers numbered 1 to 9 were read on this motion by plaintiff for an order of why a stay and preliminary injunction should not be granted pursuant to CPLR §§ 2201 and 3601: (a) staying the defendants Bridgeview III Associates, a New York limited partnership and Bridgeview Housing Corp., a general partner, from proceeding with a transaction consisting of the sale and transfer of substantially all of the partnership property of Bridgeview III Associates (the "Partnership"), in exchange for payment of the liabilities of the Partnership including past due accounts payable and unsecured debt, assumption of the partnership's existing mortgage debt, payment of closing expenses, the withdrawal of Bridgeview III Housing Corp. as General Partner succeeded by the replacement of a new general partner, and ownership interests in a new partnership values at approximately \$250,000 (the "Transfer"); (b) staying the defendants Peter Robert Perpignano as representative of the estate of Peter Perpignano, deceased General Partner; Lillian Eisenberg as representative of the estate of Irving Eisenberg, deceased General Partner and last remaining General Partner; Bernice Eisenberg as representative of the Estate of Leonard Eisenberg, deceased General Partner; and Anita Otton as representative of the Estate of Edward T. Otton, deceased General Partner, from acting as the CP Interest Holders or GP Owners and proceeding with the Transfer without the consent of a majority interest of the Limited Partners; (c) staying the defendant TUC

a/k/a T.U.C. Management Company, Inc., as Managing Agent of the Partnership Property, from proceeding with the Transfer and disbursing any records to the transferee; (d) ordering the defendants Bridgeview III Associates, a New York limited partnership and Bridgeview III Housing Corp., a general partner, and TUC a/k/a T.U.C. Management Company, Inc., to turnover and provide the plaintiff with access to the books and records of the Partnership; (e) ordering the defendants Bridgeview III Associates, a New York limited partnership and Bridgeview III Housing Corp., a general partner, to windup the affairs of the Partnership and provide a full account to the Limited Partners; and (f) ordering the dissolution of the Partnership and the sale of substantially all of the Partnership Property upon consent of a majority interest of the Limited Partners.

**PAPERS
NUMBERED**

Notice of Motion, Affirmation, Affidavits and Exhibits.....	1-4
Answering Affirmations, Affidavits and Exhibits.....	5-7
Reply Affirmations, Affidavits and Exhibits.....	8-9
Other.....	

Upon the foregoing papers, the motion is denied.

Defendant Bridgeview III Associates is a New York limited partnership formed to own and manage a Mitchell-Lama affordable housing complex. The partnership consisted of 8 general partners and 9 limited partners. The general partners consisted of 7 individuals and defendant Bridgeview III Housing Corp.; the limited partners were 8 individuals and 1 corporation. All of the individual partners are deceased and no substitute partners were admitted.

Bridgeview III Associates has entered into a contract to transfer ownership of substantially all of the partnership assets. Plaintiff seeks a preliminary injunction to, inter alia, stay the transfer.

Non-parties Bridgeview III LLC and Axion 335 LLC acquired 60% of the interests of former limited partners. On June 1, 2017, Bridgeview III LLC and Axion 335 LLC held a purported meeting of limited partners, at which they elected plaintiff, BV III GP LLC, as a replacement general partner.

"Preliminary injunctive relief is a drastic remedy that will

not be granted unless a clear right to it is established under the law and upon undisputed facts found in the moving papers, and the burden of showing an undisputed right rests upon the movant" (*Anastasi v. Majopon Realty Corp.*, 181 A.D.2d 706, 707 [2d Dept 1992]).

In order "to prevail on a motion for a preliminary injunction, the movant must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position" (*Apa Sec., Inc. v. Apa*, 37 A.D.3d 502, 503 [2d Dept 2008]).

Plaintiff offers 2 grounds on which it seeks to enjoin the transfer. First, the partnership agreement requires that a majority in interest of the Limited Partners consent to the sale. Second, plaintiff claims to have elected a replacement general partner whose consent is necessary for the transfer to proceed.

As a general rule, the assignee of a partnership interest is only entitled to receive the "distributions and allocations of profits and losses to which the assignor would be entitled" (Partnership Law § 121-702[a][3]). The partnership agreement provides that "[a] person acquiring an interest in the Partnership, including the personal representatives of and heirs of a deceased Partner, shall have only such rights as are set forth in this agreement..." and, "[s]ubject to the applicable requirements of the HDA, the General Partners shall have the power, in their discretion, to admit or refuse to admit as substituted Limited Partners, persons, firms or corporations who acquire the interest in the Partnership, or any part thereof, of a Limited Partner..."

No replacement partners, general or limited, have ever been admitted to the partnership. Thus, the meeting on June 1, 2017, was a meeting of holders of economic interests, not a meeting of limited partners. The economic interest holders do not have authority to elect a general partner. Thus, the purported election is a nullity and plaintiff is a stranger to the partnership, without standing to maintain this action.

Accordingly, the motion is denied and, upon the Court's own motion, it is,

Ordered, that the action is dismissed.

This constitutes the Order of the Court.

Dated: August 7, 2017


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Leonard Livote, A.J.S.C.

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