

**Epstein v Epstein Teicher Philanthropies**

2026 NY Slip Op 30230(U)

January 15, 2026

Supreme Court, New York County

Docket Number: Index No. 654417/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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S. KARIN EPSTEIN, HAL M. EPSTEIN, and VINCENT F. MCGEE,

Plaintiffs,

- v -

EPSTEIN TEICHER PHILANTHROPIES, ALAN SETH TEICHER, JANE E. HEFFNER, and ADRIENNE SIMPSON,

Defendants.

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INDEX NO. 654417/2020

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 009 010

**DECISION + ORDER ON MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 305, 306, 307, 308, 309, 310, 337, 341, 343, 344, 345, 346, 347, 348, 349, 350

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 311, 333, 338, 339, 342, 351, 352, 353, 354, 355, 356, 357, 358

were read on this motion to/for JUDGMENT - SUMMARY.

In motion sequence 009, plaintiffs S. Karin Epstein (Karin), Hal M. Epstein (Hal), and Vincent F. McGee, Jr. move for partial summary judgment, pursuant to CPLR 3212(e), (i) declaring that McGee is a member of the Epstein Teicher Philanthropies (Foundation), (ii) declaring that defendants Jane E. Heffner and Adrienne Simpson are not members of the Foundation, and (iii) removing Heffner as a Foundation Director.

In motion sequence 010, defendants<sup>1</sup> Epstein Teicher Philanthropies, Jane E. Heffner, and Adrienne Simpson move, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

## Background

On April 29, 1976, Emanuel Epstein (Manny<sup>2</sup>) and Thomas Epstein (Tom<sup>3</sup>) signed a Certificate of Incorporation, forming the Foundation.<sup>4</sup> (NYSCEF 191, Joint Statement of Undisputed Facts [JSUF] ¶ 1.) The Certificate listed Manny, Tom, William Epstein (Bill<sup>5</sup>), and Florence Epstein-Teicher (Florence<sup>6</sup>) as the Foundation's board of directors. (*Id.* ¶ 3.) The Foundation's mission is to "receive and administer funds for scientific, educational, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954." (NYSCEF 193, Foundation Certificate of Incorporation at 5.)

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<sup>1</sup> Defendant Alan Seth Teicher (Seth) died on October 21, 2022, thus the parties stipulated to sever the claims against him from this action. (NYSCEF Doc. No. [NYSCEF] 262, Stipulation at 4 ["Plaintiffs' claims against (Seth) Teicher and the counterclaims and affirmative defenses that (Seth) Teicher asserted in the Action which were not dismissed or stricken pursuant to the Court's September 28, 2022 Order (Dkt. No. 86) (together, the 'Teicher Claims') shall be severed from the remainder of the Action pursuant to CPLR 603 and stayed until such time as the proper party is substituted pursuant to CPLR 1015".])

<sup>2</sup> Manny died on June 16, 1982. (NYSCEF 191, JSUF ¶ 5.)

<sup>3</sup> Tom died on June 20, 2003. (*Id.* ¶ 10.)

<sup>4</sup> The Foundation was founded as Epstein Philanthropies. (*Id.* ¶ 1.) In 2008, the Certificate of Incorporation "was amended to rename the Foundation the Epstein Teicher Philanthropies." (*Id.* ¶ 15.)

<sup>5</sup> Bill died on December 10, 1990, and gifted the Foundation \$751,100.49. (*Id.* ¶ 7; NYSCEF 196, William's Estate Tax Returns at 28; see NYSCEF 197, Bill's Will at 4.) Plaintiffs Karin and Hal are Bill's children. (NYSCEF 196, Bill's Estate Tax Returns at 4; NYSCEF 1, Complaint ¶ 33.)

<sup>6</sup> Florence died on February 5, 2005. (NYSCEF 191, JSUF ¶ 14.)

In 1992, Milton S. Teicher (Milton<sup>7</sup>) became a member and director of the Foundation. (NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 7 [admitted].) Upon Florence's death in 2005, Milton became the Foundation's sole member and director. (NYSCEF 191, JSUF ¶ 14.) On August 29, 2005, Milton appointed McGee and Seth<sup>8</sup> as members of the Foundation. (NYSCEF 256, August 29, 2005 Minutes at 2; see NYSCEF 191, JSUF ¶ 17.) The Foundation paid McGee \$4,000 per month in 2005, 2006, and part of 2007. (*Id.* ¶ 21.) McGee's last contact with the Foundation was on February 16, 2007, when he attended a meeting. (*Id.* ¶ 18.) During the February 16, 2007 meeting, Heffner was elected as a director of the Foundation. (*Id.* ¶ 25.) On October 3, 2007, the Foundation held a special meeting attended by Milton, Seth, and Heffner. (*Id.* ¶ 26; NYSCEF 203, Minutes of October 3, 2007 Special Meeting.) At the special meeting, (1) Heffner was appointed as a member of the Foundation, (2) the Foundation's by-laws were amended, (3) elections were held and Milton was named the Foundation's chairman, president, and treasurer, Seth was named the Foundation's vice president, and Heffner was named the Foundation's secretary, (4) the Certificate of Incorporation was amended to change the Foundation from the Epstein Philanthropies to the Teicher Philanthropies, and (5) James Mulcahy, Kenneth Roth, and Vincent McGee were appointed as members of the Foundation's Advisory Committee, established to assist the Foundation's officers. (NYSCEF 203, Minutes of October 3, 2007 Special Meeting.)

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<sup>7</sup> Milton is Florence's husband. (NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 7 [admitted].)

<sup>8</sup> Seth is Milton's son. (*Id.* ¶ 11 [admitted].)

On October 12, 2012, Milton resigned as treasurer and Seth appointed Adrienne Simpson as the Foundation treasurer and member. (NYSCEF 204, October 12, 2012, Special Meeting Board Minutes at 2.) Milton died on December 1, 2012. (NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 32 [admitted].) From 2012 until 2021, all Foundation business was conducted by Heffner, Simpson, or Seth. McGee was absent and did not participate during this time period.

### Columbia

Since 2001, the Foundation has given Columbia University Irving Medical Center (Columbia) grants. (NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 20 [admitted].) Heffner started working for the development office of Columbia on August 26, 2003 (NYSCEF 191, JSUF ¶ 35.) Heffner continued working for Columbia while serving on the Foundation board. (*Id.*) From 2012 to 2019 and in 2021, Heffner received increases in salary and bonuses from Columbia. (NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 42 [admitted].) Between October 2007 and 2022, the Foundation gave Columbia grants totaling \$1,810,000. (NYSCEF 250, 2007-2022 Columbia grants chart; NYSCEF 303, Plaintiff's Counter Rule 19 Statement ¶ 38 [admitted].)

### **Discussion**

#### Legal Standard

Summary judgment is a drastic remedy that will be granted only where the movant demonstrates that no genuine triable issue of fact exists. (See *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) On a motion for summary judgment, "the proponent of a summary judgment motion must make a prima facie showing of

entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted].) In deciding a summary judgment motion, the “evidence must be analyzed in the light most favorable to the party opposing the motion.” (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997] [citation omitted].) The motion should be denied if there is any doubt about the existence of a material issue of fact. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) However, bare allegations or conclusory assertions are insufficient to create genuine issues of fact to defeat the motion. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility.” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citations omitted].) “[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just.” (CPLR 3212 [e].)

### **Motion seq. 009**

#### **McGee’s membership in the Foundation**

Plaintiffs move for partial summary judgment and ask the court for a declaration that McGee is a member of the Foundation. Defendants argue that McGee is not a current member of the Foundation, and the court should find that McGee (1) is barred by the doctrine of laches and the statute of limitations to claim membership; (2) his membership lapsed under the Foundation’s governing documents; and (3) he abandoned the Foundation in 2007.

Under New York Not-For-Profit Corporation Law § 601(e) membership for a non-profit corporation may be terminated only by death, resignation, expulsion, expiration of a term of membership or dissolution and liquidation, unless the certificate of incorporation or by-laws provide otherwise. The Foundation's 1976 by-laws do not provide for termination of membership by inactivity, abandonment, or failure to be re-elected. Rather, under the 1976 by-laws, a member may be removed for conduct detrimental to the interests of the Corporation for lack of sympathy with its objectives, or for refusal to render reasonable assistance in carrying out its purpose. (See NYSCEF 10 at 11.) McGee states he did not resign and was not removed pursuant to the 1976 by-laws. (NYSCEF 7, McGee aff ¶¶7-8.) For a member of the Foundation to be removed, the 1976 by-laws clearly states that

Any such member, officer, or director proposed to be removed shall be entitled to at least five days' notice in writing by mail of the meeting at which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting. (NYSCEF 10 at 11.)

McGee states he did not receive notice of the October, 3, 2007 meeting nor any document removing him from the Foundation. (NYSCEF 227, McGee tr 76:2-9.) Defendants, likewise, have failed to produce any evidence that McGee had been removed as a member. (NYSCEF 245, McGee aff ¶¶ 3, 5.) In fact, Heffner testified that she "didn't find any documents saying [McGee] was no longer a member. (NYSCEF 228, Heffner tr at 131:25-132:4.) Defendants' arguments based on abandonment, long standing non-participation, laches, and statute of limitations do not, as a matter of law, establish termination of membership. While McGee's extended period of inaction may

affect equitable relief, it does not constitute resignation or removal under the N-PCL, nor does it create a termination mechanism through which to apply statute of limitations.

Defendants assert that by October 3, 2007, some eight months after McGee had attended a Foundation meeting as a member, he was removed as a member, only Milton, Seth and Heffner were listed as members. (See NYSCEF 269, 2007 Special Minutes, at (B)(1) [“the members of the Foundation shall consist of Milton S. Teicher, A. Seth Teicher, and Jane E Heffner”].) Defendants have not provided any evidence to establish that fact. McGee was a member in October 2007 but was not given notice as required by the Foundation’s 1976 by-laws. (NYSCEF 10 at 11.)

Accordingly, plaintiffs’ motion for summary judgment finding that McGee is a member is granted.

#### Heffner and Simpson membership in the Foundation

Plaintiffs ask the court to find that Heffner and Simpson are not members of the Foundation because McGee was not noticed about the October 3, 2007 board meeting, thus nullifying the Foundation board’s actions on that day. Defendants argue that McGee is not a member and fails to satisfy the requirements of N-PCL § 618, the mechanism where courts may declare elections invalid. The court has found that on October 3, 2007, McGee was a member.

However, while the Foundation seems to have failed to give notice to McGee, there are issues of fact whether defendants’ failure to give notice constitutes fraud or wrongdoing and whether McGee’s vote or presence would have changed the results of the election of Heffner. It is well-settled that, in reviewing an election pursuant to N-PCL § 618 the court sits as a court of equity and should not interfere with the election unless

a clear showing is made to warrant such action. *Nyitray v New York Athletic Club of City of New York, Inc.*, 195 AD2d 291 [1st Dept 1993]. [internal quotation marks and citations omitted].

Accordingly, plaintiffs' motion for summary judgment finding that Heffner and Simpson are not Board members is denied.

#### Removal of Heffner as a Foundation Director

Plaintiffs ask the court to remove Heffner as a Foundation director, pursuant to N-PCL § 706(d), because she breached her duty of loyalty to the Foundation<sup>9</sup>.

Defendants argue that: (1) the Board's decision to give Columbia grants is protected by the business judgment rule; (2) giving grants to Columbia are not acts of seal-dealing by Heffner or (3) related party transactions. "An action to procure a judgment removing a director for cause may be brought... by ten percent of the members whether or not entitled to vote." (N-PCL § 706[d].) In the absence of proof of that McGee meets the statutory requirement of 10% to seek removal of Heffner under N-PCL § 706(d), plaintiffs' motion for summary judgment seeking removal of Heffner is denied.

#### Motion Seq. 010

##### Karin and Hal's Claims

Defendants seek summary judgment on the breach of fiduciary duty claims and claims and removal of the individual defendants (sixth cause of action), breach of fiduciary duty to the Foundation against Heffner (seventh cause of action), and breach

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<sup>9</sup> In the seventh cause of action, plaintiffs assert a claim for a breach of fiduciary duty to the Foundation under N-PCL §§ 717 and 720 and seek the removal of Heffner under N-PCL §§ 706(d) and 714(c). (NYSCEF 1, Complaint ¶¶ 146-149.) In the eighth cause of action, plaintiffs assert a wrongful related party transaction under N-PCL §§ 112(a)(10), 715(f), and EPTL § 8-1.9(c)(4) against Heffner. (*Id.* ¶¶ 150-153.)

of duty under the Not-for-Profit Law against all defendants (tenth cause of action) because Karin and Hal, as co-successor executors of Bill's estate, do not have standing to bring these causes of action under N-PCL §§ 112, 715 (f), or EPTL § 8-1.9(c)(4).7. Plaintiffs do not respond to defendants' arguments that they lack standing under the N-PCL. Instead, plaintiffs argue that Karin and Hal have standing as co-successor executors to sue because Bill's will created an endowment fund.

As to the sixth, seventh, and tenth causes of action, these causes are premised on a breach under N-PCL § 720(b). N-PCL § 720(b)(1) allows a "director or officer of the corporation," to bring an action for relief against the Foundation's directors for violating their duties. (N-CPL §§ 720[a], [a][1], [b][1].) Here, Karin and Hal are neither directors nor officers of the Foundation, nor can they claim to be. As a matter of law, Karin and Hal do not have standing to bring the sixth, seventh, and tenth causes of action because they are not within the class of people that can bring such an action nor do they purport to be. (See *Consumers Union of U.S., Inc. v State*, 5 NY3d 327, 350–51 [2005].) Accordingly, defendants motion for summary judgment on the sixth, seventh, and tenth causes of action brought by Hal and Karin is granted.

As to the first, second, third, fourth and fifth causes of action, these causes seek declaratory judgment and injunctive relief. Defendants argue that neither Karin nor Hal have standing to challenge the foundation's grant giving process because Bill's gift was unrestricted thus, they cannot enforce Bill's expressed or unexpressed intent. However, this court found that plaintiffs had standing to bring these causes of actions as fiduciaries of Bill's estate. (See *Epstein v Epstein Teicher Philanthropies*, 2021 NY Slip

Op 32460[U], \*10-13 [Sup Ct, NY County 2021].) Accordingly, defendants motion to dismiss the first, second, third, fourth and fifth causes of action is denied.

McGee's claims

Defendants ask the court to find that McGee's claims are not cognizable as a matter of law because he is not a member of the Foundation and therefore he cannot bring claims derivatively on behalf of the foundation. However, the Court has found for the reasons stated above, that McGee is a member. Accordingly, defendants motion for summary judgment is denied as to claims brought by McGee.

The court has considered the parties' remaining arguments and finds them unavailing without merit or otherwise not requiring an alternate result.

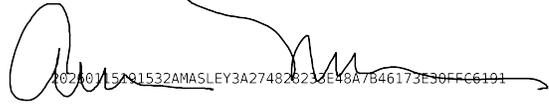
Accordingly, it is

ORDERED that motion sequence 009 is granted in part finding McGee is a member and otherwise denied; and it is further

ORDERED that motion sequence 010 is granted in part to the extent that Karin and Hal have no standing to bring the sixth, seventh, and tenth causes of actions and otherwise denied; and it is further

ORDERED and DECLARED that McGee is a member of the Epstein Teicher Philanthropies; and it is further

ORDERED that the parties shall appear for a trial scheduling conference on January 30<sup>th</sup> at 10am.



1/15/2026

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE