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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: CIVIL TERM: PART 53  
-----X

NANCY LENVIN, JESSICA ROBLES, BURT STEIN,  
BETTY REISS, as partners of 5400 COMPANY,  
ABSAR REALTY CO and ABSAR ASSOCIATES,  
Petitioners,

INDEX NUMBER:  
159885-2014

For an order and judgment dissolving  
5400 COMPANY, ABSAR REALTY CO and  
ABSAR GERARD ASSOCIATES

-against-

EDITH WIENER, LAURA SPAHN, RICHARD WEISMAN,  
DOROTHY (JOAN) LEVINE, SIDNEY NISBET and  
CHAIM SCHWEID, as partners of 5400 COMPANY,  
ABSAR REALTY CO and ABSAR GERARD ASSOCIATES,  
Respondents.  
-----X

Supreme Court  
60 Centre Street  
New York, New York 10007

August 19, 2015

BEFORE:

HONORABLE CHARLES RAMOS,  
Justice of the Supreme Court

*Claudette Gumbs*

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APPEARANCES:

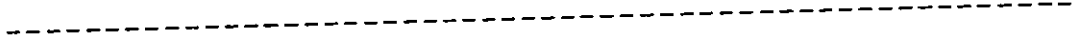
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Claudette Gumbs, Official Court Reporter  
60 Centre Street  
New York, New York 10007  
646.386.3693

## Proceedings

1  
2 THE COURT: We have quite a few parties  
3 hereto and this action is for the dissolution of the  
4 partnership, but this is an application being made I  
5 think by some or one of the partners with regard to a  
6 proposed sale.

7 Who is the moving party on this order to show  
8 cause?

9 MS. JUDELL: So Judge, it is everybody but  
10 Ms. Stein. So that would be respondents Edith Wiener,  
11 Sidney Nisbet, Richard Weisman, Dorothy Joan Levine  
12 Nancy Lenvin, Jessica Robles, Burt Stein and Betty  
13 Reiss.

14 THE COURT: Some of the petitioners and some  
15 of the respondents. The only one against the  
16 application is Ms. Spahn?

17 MS. JUDELL: Yes.

18 THE COURT: The family versus Ms. Spahn.  
19 Who wants to go first? Obviously the movant.

20 MR. GOLENBOCK: Your Honor, I am happy to go  
21 first. My name is Jeff Golenbock. I represent Edith  
22 Weiner and Sidney Nisbet and we are among all of the  
23 parties who are moving here and those are every one but  
24 Ms. Spahn.

25 And what is at issue here involves a proposed  
26 sale of these two buildings for \$54 million and has

## Proceedings

1  
2 been negotiated but could not be finished until the  
3 buyers know that the sellers have the authority to  
4 sell. And the problem is Ms. Spahn opposes it.

5 Now, there is much in the papers that were  
6 submitted by Ms. Spahn that is intended to persuade the  
7 Court that Edith Wiener is a villain, caused problems  
8 for every one, that she has done all of these terrible  
9 things.

10 THE COURT: Believe me -- let's not belabor  
11 this issue.

12 MR. GOLENBOCK: Correct, your Honor.

13 THE COURT: I read right through that. As  
14 far as I am concerned, this is a really simple issue.  
15 Does Laura Spahn as a partner have to consent to the  
16 sale? And I know they don't like each other and i  
17 don't want to hear the history.

18 MR. GOLENBOCK: Very good, your Honor, so I  
19 will pass right over. Ms. Spahn has made a number of  
20 principal arguments that I will discuss. As this  
21 Court has said on prior occasions which have been here  
22 -- and I have only recently been added as counsel in  
23 this case, what is needed here is a divorce.

24 THE COURT: Obviously.

25 MR. GOLENBOCK: And it should be noted that  
26 it was in that vein that the parties hereto have tried

## Proceedings

1  
2 to do just that and to maximize the money they can get  
3 from these buildings. And in that regard, my client  
4 and the other parties who are moving here have done  
5 everything they can in order to effectuate the divorce  
6 by selling the buildings.

7 THE COURT: By the way, I think some of your  
8 clients are here. Off the record for a second.

9 (Discussion off the record.)

10 MR. GOLENBOCK: The parties in fact are  
11 trying to maximize what they can get from the  
12 buildings. Right now, the partners are getting  
13 thousands of dollars a month. They could be getting  
14 millions, tens of millions from the sale and I should  
15 note up front that if the Court rules in favor of Ms.  
16 Spahn and the objections to this sale, that there is at  
17 least a substantial likelihood based on what the Court  
18 has previously said that the partnerships will end up  
19 being dissolved and the buildings will be sold anyhow,  
20 and for a lot less money and the likely result will be  
21 that the partners in both partnerships will never see  
22 anything like what they could see if these sales are  
23 approved.

24 Now, going to what the respondents' arguments  
25 are, first, they argue that pursuant to Section 20(3)  
26 of the New York Partnership Law, the building could not

## Proceedings

1  
2 be sold unless all partners agree. We disagree with  
3 that argument for a number of reasons, including, but  
4 not limited to the fact that the parties in this case  
5 have already agreed in the consent injunction, the  
6 permanent injunction that your Honor knows of, that  
7 going forward a majority in both partnerships had the  
8 right to determine what actions would be taken by the  
9 partnerships and that is exactly what happened here.  
10 But first let me discuss Section 20.(3). Respondents  
11 argue that pursuant to that provision of the  
12 partnership law, no decision to sell the buildings can  
13 be taken without unanimous consent because doing so  
14 would be doing something that "makes it impossible to  
15 carry on the ordinary business of the partnership",  
16 which are the words of 20(3), but that is not the case  
17 here.

18 In fact, the business of the partnerships  
19 here is investment in property with profit being the  
20 business goal.

21 In certain circumstances, the best way to  
22 make such a profit would be to rent out the individual  
23 apartments as the partnership has been doing for many  
24 years, but there are alternatives. The partnership  
25 might, for example, decide to convert the buildings to  
26 condos and make more money doing that, if the market

## Proceedings

1  
2 were such. Clearly, at least in my view, that would  
3 not be doing something that is contravened by  
4 Section 20(3). My view of that provision does not  
5 require unanimous consent because that is the business  
6 of the partnership, to maximize the profit they can  
7 make from the buildings.

8 THE COURT: But as part of a condominium  
9 conversion there would have to be a sale or transfer,  
10 rather, of the property to the condominium corporation.

11 MR. GOLENBOCK: Correct, your Honor, and what  
12 would happen would be the property that the partnership  
13 owned would be exchanged for another set of property,  
14 ie, money, and perhaps some of the apartments. The  
15 partnership still exists, it still would have money and  
16 that is what is happening, or what would happen here.

17 THE COURT: The trouble is the case law is  
18 pretty clear that when you sell the single asset of the  
19 partnership you have sold the business. The  
20 partnership is not in the money management business.  
21 The business is over with once the asset is sold. If  
22 the condominium corporation stock were to be given to  
23 the partnership -- but that is not happening. The  
24 condominium corporation sells off the apartments to  
25 individual buyers.

26 MR. GOLENBOCK: In this case, your Honor, the

## Proceedings

1  
2 money is going to the partners as opposed to stock.  
3 The partnership still exists. They can buy another  
4 building.

5 THE COURT: What you're trying to do is  
6 nullify the effect of the partnership law.

7 MR. GOLENBOCK: Your Honor, I don't think so,  
8 but you understand my argument -- but if the  
9 respondents are correct, a partnership that involves  
10 the ownership of buildings could never sell the  
11 buildings as long as there was a single holdout, even  
12 where as in this case the properties may be worth  
13 millions or tens of millions of dollars more than any  
14 other way that the partnership could maximize its  
15 profits, and that is the business of the partnership.

16 THE COURT: Could you show me one recorded  
17 case where a partnership was -- or a partnership with  
18 this kind of a provision in it is able to sell the  
19 partnership property over the objection of one of the  
20 partners? We are talking about -- these are all  
21 general partners.

22 MR. GOLENBOCK: Yes. This would be a case of  
23 first impression. I don't dispute that, your Honor,  
24 but it is also a case in which it makes sense that --  
25 to do, to rule so here because otherwise, the parties  
26 who are operating the partnership to make profit are



## Proceedings

1  
2 instead being held hostage by one person, so they get  
3 thousands instead of millions and that is not what the  
4 partnership laws intended to have happen in a situation  
5 like this.

6 THE COURT: But aren't you -- isn't  
7 Ms. Wiener estopped from arguing in this case that  
8 unanimous consent is not required in light of the fact  
9 in the litigation before Judge Wright, she argued that  
10 the unanimous consent was required? Judge Wright ruled  
11 in her favor although not on a particular issue but  
12 ruled in her favor and the Appellate Division affirmed.

13 MR. GOLENBOCK: Judge Wright ruled in her  
14 favor on a different ground. He ruled in her favor  
15 that her mother's will required that Ms. Spahn offer  
16 the interest in the partnership to the other members of  
17 the family before selling to a third party and  
18 regardless of the fact that Ms. Wiener made those  
19 argument in that case, that was not the reason why the  
20 court decided as it did and under those  
21 circumstances --

22 THE COURT: No, I am not saying it is law of  
23 the case or res judicata, but she has espoused this  
24 position in litigation where -- against Ms. Spahn. Ms.  
25 Spahn had tried to sell her interest in one of the  
26 properties.

## Proceedings

1  
2 MR. OCHS: Tried to sell three pieces in two  
3 properties to be precise, so there were three lawsuits,  
4 all making the same allegation about the consent  
5 provision, all resolved, all resolved adversely to Ms.  
6 Spahn and in favor of Ms. Wiener, all affirmed by the  
7 Appellate Division First Department and all the subject  
8 of a judgment.

9 The properties were returned back, the sales  
10 were undone, and Ms. Spahn now owns those properties.

11 MR. GOLENBOCK: Your Honor, I don't deny, as  
12 I could not -- there was an argument that was made but  
13 that argument was not the reason why the court  
14 determined as it did and as a result, there is no  
15 estoppel against Ms. Wiener for making that argument.

16 In any event, there is a distinction between  
17 property and an argument that the parties cannot sell  
18 their particular interests without consent of the other  
19 parties, but Ms. Wiener did not prevail on that  
20 argument and therefore she is not estopped. It is  
21 also the case, your Honor, there are other people,  
22 other parties here who are making the same motion as  
23 Ms. Wiener, so whether or not Ms. Wiener is estopped  
24 doesn't really matter. So there is a side issue.  
25 There is a distinction between the business of the  
26 partnership and the property owned by the partnership.

## Proceedings

1  
2 Selling the buildings does not make it impossible to  
3 carry on the business, it means you sell the buildings,  
4 and those are two different things. You can do things  
5 with that money. You could buy another piece of  
6 property.

7 This Court in fact recognized that  
8 distinction last October in connection with the  
9 question of whether a majority of partners could get a  
10 mortgage and you said "there is a difference between  
11 assets and the business. You can sell the business or  
12 you can sell the assets, but they are separable."

13 THE COURT: This is not a real estate  
14 investment trust and an issue of mortgaging. This is  
15 far more serious. This is the sale of the property.  
16 This essentially would render the petition moot because  
17 the partnership would be dissolved by the sale of the  
18 property and we would simply distribute the money to  
19 the partners.

20 MR. OCHS: Correct, your Honor.

21 MR. GOLENBOCK: There would be something  
22 left, \$50 million or whatever is left after the  
23 mortgage. The partnership would not be dissolved.  
24 The partners have the right --

25 THE COURT: Believe me, I would love to  
26 grant your --

## Proceedings

1  
2 MR. GOLENBOCK: I understand that, but at  
3 least let me go further. The partnership would not be  
4 dissolved, that is the point. With that money, the  
5 partnership would have rights and here is the second  
6 point which I will get to, as a majority of the  
7 partners could say let's take that 40 or \$50 million  
8 and buy these other buildings that are in Riverdale or  
9 in Manhattan or wherever and continue the partnership.  
10 The partnership is not dissolved by the sale of the  
11 buildings. Those are two different things, but even  
12 if --

13 THE COURT: But that is just what the  
14 partnership law does not want to see happen. When you  
15 become a partner in a partnership that owns a piece of  
16 real estate, that is the only asset it has. You're not  
17 buying on to becoming a partner of the next ten  
18 buildings that the majority partners or the general  
19 partners want to purchase. Once the deal is finished  
20 and over with, the partnership is dissolved by  
21 operation of law. You have sold the only asset the  
22 partnership has.

23 MR. GOLENBOCK: Your Honor, I disagree, but  
24 let me -- and I have said my piece, let me move on to  
25 my next point because whether or not Section 20(3)  
26 applies here, the sale is still not prohibited. The

## Proceedings

1  
2 majority would still have the right to sell the  
3 buildings.

4 As this Court I am sure is aware, the  
5 partnership law constitutes a default -- there are  
6 partnership rules that apply where the parties have not  
7 otherwise agreed. If they agree otherwise and they are  
8 free to agree on different rules, then 20 will not  
9 block the decision by the majority to sell the  
10 buildings. And that is exactly what happened here  
11 back in 2008 when the parties entered into the  
12 permanent consent injunction and as the Court  
13 recognized the last time the parties were in front of  
14 your Honor, dealing with the language of the consent  
15 injunction, that time involving the mortgage itself,  
16 but as your Honor said, that injunction is very broad  
17 and the parties have the right to determine whether or  
18 not a majority can decide what to do or not to do.

19 THE COURT: Where is that stipulation?

20 MR. GOLENBOCK: The stipulation --

21 THE COURT: Which exhibit is that?

22 MR. GOLENBOCK: I believe it is Exhibit A.

23 MS. JUDELL: It is, Judge.

24 THE COURT: Yes.

25 MR. GOLENBOCK: And that stipulation says the  
26 parties are hereby -- the parties -- the "officers

## Proceedings

1  
2 directors, agents, employees and servants are hereby  
3 enjoined from taking any actions, entering into any  
4 agreements, or making any representations that are  
5 purportedly on behalf of or binding upon any of the  
6 partnerships without the prior, written consent of the  
7 majority in interest of those partnerships."

8 THE COURT: But that is a prohibition.

9 MR. GOLENBOCK: No, your Honor. That is both  
10 a prohibition and a provision that says what the  
11 majority can do. If one person comes in and says he I  
12 wants to sell the buildings, that person cannot sell  
13 the buildings unless a majority in interest of the  
14 partnership agrees, just as that injunction language  
15 was interpreted to mean if one person comes in and says  
16 I want to mortgage the building --

17 THE COURT: This is only enjoining from  
18 taking actions.

19 MR. GOLENBOCK: Your Honor, with respect to  
20 the mortgage, with respect to the mortgage, we were  
21 here. The parties were here.

22 THE COURT: This does not permit the -- for  
23 me to interpret this as a modification or waiver of  
24 what is permitted by the agreement. The agreement  
25 says all the parties. The agreement says the parties,  
26 which we all know absent some modification means all of

## Proceedings

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the parties.

MR. GOLENBOCK: And this is a modification, your Honor, and that was the argument that was made last time as opposed to -- with respect to the mortgage, that the agreement did not allow a mortgage unless all parties were to agree to that.

And what your Honor ruled rightly we believe is that this injunction --

THE COURT: But that was a refinancing. The property had already been mortgaged.

MR. GOLENBOCK: Whether it is a refinancing or not does not make any difference.

THE COURT: It does to me.

MR. GOLENBOCK: I know it does, your Honor. I don't mean to say -- I am not questioning your judgment here. I am just disagreeing with you, your Honor.

THE COURT: I know, but the fact of the matter is, I agree with everything that you are saying except I don't think I can do it. Is there a good reason for it? There are abundant reasons for doing it. Would I love to see it happen? Of course. They need a divorce here, but I have to do something that stands up.

MR. GOLENBOCK: You have to do something that

## Proceedings

1  
2 stands up and I am not asking you to do anything that  
3 doesn't stand up. We believe that this language here  
4 which was interpreted as allows permitting a majority  
5 to mortgage the building should also be interpreted to  
6 permit the majority to sell the building. There is no  
7 difference. There is nothing in the language of this  
8 injunction that makes any distinction between anything  
9 --

10 THE COURT: Where was my determination on  
11 the mortgage?

12 MR. GOLENBOCK: Your determination is set  
13 forth in the paragraph that is Exhibit D.

14 MR. GOLENBOCK: Exhibit D to Ms. Judah's  
15 affidavit.

16 THE COURT: What page?

17 MR. GOLENBOCK: Your Honor, I think -- it  
18 goes over a number of pages.

19 THE COURT: I know.

20 MR. GOLENBOCK: I suppose it starts at 20 and  
21 ends at Page 24 where you said what could be more  
22 germane to this discussion now than the fact that the  
23 issue being determined was what percentage of ownership  
24 was required to take actions on behalf of the  
25 partnerships and that is exactly the subject of the  
26 injunction which I am quoting from Page 24 of the



## Proceedings

1 transcript, lines 16 to 20.

2 Your Honor, the injunction --

3 THE COURT: Hang on. Hang on.

4 MR. GOLENBOCK: Yes, sir.

5 THE COURT: Who is objecting to this? Ms.  
6 Spahn?

7 MR. GOLENBOCK: No. My client, your Honor.

8 THE COURT: And she accepted the check?

9 MR. GOLENBOCK: No. This is a different  
10 mortgage, but she had accepted the check in the  
11 previous mortgage with an objection but that is not --  
12 that is neither here nor there.

13 (Pause in proceedings.)

14 THE COURT: Continue.

15 MR. GOLENBOCK: The injunction does not make  
16 any distinction between mortgaging the buildings and  
17 selling the buildings. If the language of the  
18 injunction allows the majority to determine that the  
19 building could be mortgaged, it also allows that the  
20 buildings should be sold and under the partnership law  
21 if the parties have agreed that a majority can make  
22 determinations as to the actions of the partnership,  
23 then this trumps whatever other provisions there are  
24 that are the default provisions.

25 THE COURT: If only they had done so.  
26

## Proceedings

1  
2 MR. GOLENBOCK: Your Honor, they did do so  
3 and they didn't do so just with respect to mortgages.  
4 The injunction does not say anything about mortgages.  
5 It talks about the majority deciding what the actions  
6 --

7 THE COURT: The injunction was issued  
8 because Ms. Wiener was doing things that the other  
9 partners thought were destructive to the partnership.

10 MR. GOLENBOCK: That was a consent  
11 injunction, not done for any reason to stop any --  
12 everybody agreed with it.

13 THE COURT: I have to understand it in  
14 context of what dispute was going on and that was a  
15 long time ago.

16 MR. GOLENBOCK: It was in 2008, your Honor.  
17 As your Honor knows, there were allegations made by --

18 THE COURT: But again, the property was  
19 already mortgaged. It was just a matter of refinancing  
20 the mortgage.

21 MR. GOLENBOCK: But the point --

22 THE COURT: That is the ordinary course of  
23 business. Does that result in the destruction of  
24 the partnership?

25 MR. GOLENBOCK: This does not result in the  
26 destruction of the partnership.

## Proceedings

1  
2 THE COURT: You want me to say that for the  
3 first time in New York legal history --

4 MR. GOLENBOCK: Section 20(3) is not what I  
5 am talking about. The parties have the right to agree  
6 to their own rules and when they signed this injunction  
7 they agreed to their own rules, the majority rules and  
8 that is what that injunction says, that is what your  
9 Honor has argued, and that is what is --

10 THE COURT: I want to be very clear that is  
11 -- I disagree with you entirely. That was not a  
12 modification of the partnership agreement that would  
13 permit the sale by a majority either in number or in  
14 interest.

15 MR. GOLENBOCK: Your Honor --

16 THE COURT: But I can't.

17 MR. GOLENBOCK: I don't know that I can make  
18 any more argument to persuade you, so I don't want to  
19 waste your time. But if your Honor is correct, this  
20 injunction doesn't really mean anything. All it  
21 means --

22 THE COURT: I don't agree with that, either.  
23 I think it has some meaning, but it certainly does not  
24 -- my ruling is pretty clear now.

25 The agreement requires the consent of all of  
26 the parties. That is the law, that is the agreement.

## Proceedings

1  
2 The injunction as consented to by the parties, worked  
3 out by counsel, in context and even out of context does  
4 not modify that provision.

5 That is my ruling. You can you take it up to  
6 the Appellate Division if you want to. You're free to.  
7 I am not embarrassed by it.

8 The motion is denied.

9 MR. GOLENBOCK: Your Honor, before you deny  
10 it, would you be prepared to hear counsel for other  
11 parties?

12 THE COURT: Any different issues?

13 MR. GOLENBOCK: I will sit down.

14 MR. BIKEL: Judge, I was prepared to address  
15 the other arguments in response to the brief about this  
16 being procedurally defective, it was not a emergency  
17 and the collateral estoppel issue and asking for an  
18 advisory opinion.

19 THE COURT: That is moot. The motion is  
20 denied.

21 Listen again. I would love -- I feel so  
22 strongly that this should be done, that this property  
23 should be sold, but I cannot force Ms. Spahn to agree.

24 Thank you very much.

25 MS. JUDELL: Given the ruling today, I would  
26 like to expedite the dissolution petition. Can we get

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Proceedings

a date to -- it is fully briefed.

THE COURT: Where we are now in the dissolution?

MR. OCHS: There are motions to dismiss the petition by 70 percent.

THE COURT: Are we holding them here or are they downstairs in Room 130?

MS. JUDELL: I think they are all here.

THE COURT: Get in touch with Ms. Artell up in my chambers, and we will find those motions and we will tee them up -- we have not had argument, have we?

MS. JUDELL: No.

THE COURT: There are no releases.

\* \* \*  
Certified that the foregoing is a true and accurate transcript of the original stenographic minutes of this case.

*Claudette Gumbs*  
-----  
Claudette Gumbs  
Senior Court Reporter

*50  
ORDERED  
[Signature]  
11/4/14*

**CHARLES E. RAMOS**

\$	ABSAR [6] - 1:4, 1:8, 1:8, 1:12	10:20, 15:4, 19:18, 21:12	6:18, 6:20, 7:5, 7:19, 7:20, 7:21, 8:15, 10:25, 11:3, 11:11, 18:23	context [3] - 18:14, 20:3
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