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| <b>Liss v Sage Sys., Inc.</b>  |
| 2009 NY Slip Op 33479(U)   |
| February 10, 2009  |
| Supreme Court, New York County   |
| Docket Number: Index No. 100205/2006   |
| Judge: Debra A. James  |
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
Justice

(K)

PART 59

ROBERT LISS,

Index No.: 100205/2006

Plaintiff,

Motion Date: 07/29/08

- v -

Motion Seq. No.: 001

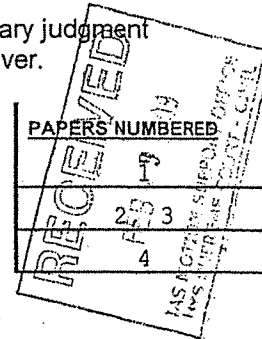
SAGE SYSTEMS, INC.,

Motion Cal. No.: \_\_\_\_\_

Defendant.

The following papers, numbered 1 to 4 were read on this motion for summary judgment dismissing the complaint that seeks dissolution and appointment of a receiver.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_



Cross-Motion:  Yes  No

FILED  
MAR -3 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Upon the foregoing papers,

The court shall GRANT the motion of defendant Sage Systems, Inc. for summary judgment dismissing the complaint pursuant to CPLR 3212.

S-L Properties, a general partnership, owns the shares of stock allocated to the 10<sup>th</sup> floor unit of a commercial cooperative building ("Unit") and is the tenant under a Proprietary Lease for such Unit. On February 17, 1984, the

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

plaintiff and defendant entered into a written partnership agreement of S-L Properties, which was amended on January 1, 1985. By its terms, the written agreement provides that the partnership should 'continue until December 31, 2024, unless sooner terminated pursuant to the provisions hereof." With respect to dissolution, the agreement provides, in pertinent part, that "The Partnership shall be dissolved and its business wound up upon the happening of any of the following events, whichever shall first occur:\*\*\* (d) when required by law."

New York Partnership Law § 63 states, in pertinent part, that "The court shall decree a dissolution. On application by or for a partner whenever: ( c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business," (d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that is not reasonably practicable to carry on the business in partnership with him".

Plaintiff seeks a dissolution of the partnership and an appointment of a receiver based on the claims that (1) sometime in the year of 2004 and 2005, defendant sublet 90% of that portion of its portion of the Unit without the consent of the cooperative corporation, and that such sublet is in violation of the Proprietary Lease and Rider; and (2) that defendant has failed

to comply with lighting requirements of the NYC Building Code in the lobby area of the Unit and refused to correct same.

The defendant has established a prima facie defense entitling it to the dismissal of the plaintiff's complaint in that neither the Proprietary Lease nor any document referenced thereunder contains any condition with respect to subletting that requires one or more of the partners to remain in occupancy of at least 51% of the Unit. It argues that the statement in the Letter dated February 21, 1984, which is signed only by the then president of the cooperative corporation, does not constitute such "condition".

The court concurs with the defendant. The Letter, which forms the gravamen of plaintiff's complaint, does not constitute a condition of subletting because it was not "duly authorized by a resolution of the Directors, or given in writing by a majority of the Directors or by lessees owning 66 2/3 % of the issued shares of the cooperative corporation," as provided under the "Subletting" provisions of the Proprietary Lease Rider. The absence of any board action with respect to this "condition", though plaintiff has persisted in inviting the board to do so, is further evidence that no such condition has been duly authorized or given.

Moreover, plaintiff has unclean hands with respect to his demand for the equitable relief of dissolution. Plaintiff testified at an examination before trial on August 29, 2007 that the sublease agreements, under which he sublet 90% of his portion of the Unit, are each for less than one year in duration, and that the board does "not consider [any such agreement] a real lease". Therefore, even assuming arguendo the existence of a 51% provision in the Proprietary Lease, it would be plaintiff, who would be persisting in placing the partnership in violation of such Proprietary Lease provision. Such is also a concession by plaintiff that no more than 51% of the Unit is sublet, since his subleases "are not real".

Nor does plaintiff come forward with any evidence of any prejudice or lack of reasonable practicability of carrying out the partnership's business that the sublets pose or that defendant has placed the Partnership in violation of any local or state building codes.

Accordingly, it is

ORDERED that the motion of defendant SAGE SYSTEMS, INC. for summary judgment dismissing the Complaint, as a matter of law, is GRANTED; and it is further

ORDERED and ADJUDGED that Clerk shall enter judgment in favor of the defendant and against the plaintiff DISMISSING the complaint, and calculating statutory costs and disbursements to

be awarded to defendant SAGE SYSTEMS, INC. and assessed against plaintiff.

This is the decision and order of the court.

**Dated:** February 10, 2009

ENTER:

*Debra A. James*  
**HON. DEBRA A. JAMES J.S.C.**

**FILED**  
MAR -3 2009  
NEW YORK  
COUNTY CLERKS OFFICE