

<b>Tradesman Program Mgrs., LLC v Doyle</b>
2020 NY Slip Op 32452(U)
July 24, 2020
Supreme Court, New York County
Docket Number: 655520/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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TRADESMAN PROGRAM MANAGERS, LLC,	INDEX NO.	<u>655520/2018</u>
Plaintiff,	MOTION DATE	<u>N/A, N/A, N/A, N/A, N/A</u>
- v -	MOTION SEQ. NO.	<u>002 003 004 005 006</u>
LEO DOYLE and JCB ASSOCIATES NY, INC.		
Defendants.		

**DECISION + ORDER ON MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 93, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 171

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 003) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 173

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR

The following e-filed documents, listed by NYSCEF document number (Motion 004) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 174, 175, 176, 177

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 71, 72, 73, 74, 75, 76, 77, 78, 79, 178, 181

were read on this motion to/for STRIKE JURY DEMAND

The following e-filed documents, listed by NYSCEF document number (Motion 006) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 210, 211, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226

were read on this motion to/for TRANSFER

Upon the foregoing documents, it is

Plaintiff Tradesman Program Managers LLC “is in the business of acting as a managing general agent ... for insurance carriers in the United States . . . and, in connection therewith, develops and markets certain specialty insurance policy programs for sale to insureds . . . , includes directing business from Fronting Carriers to non-United States reinsurance companies.” (NYSCEF Doc. No. [NYSCEF] 1, Complaint ¶ 9.) Plaintiff seeks a declaratory judgment that: (a) the company properly redeemed defendant Leo Doyle's membership interest in the Company for “Cause,” pursuant to Section 11.4(a)(iii) of the Operating Agreement in light of his felony conviction; and (b) the transfer of a membership interest to defendant JCB Associates pursuant to a written “Assignment & Transfer” is null and void, as it failed to comply with Section 11.1 of the Operating Agreement, and thus, that JCB Associates is not a member of the company. (*Id.* ¶¶ 34, 38.)

For the reasons stated on the record on July 22, 2020, motion sequence number 005, to strike defendants' jury demand, and motion sequence number 006, to change venue in the matter of *JCB Associates NY, Inc. and Leo Doyle v Tradesman Program Managers, LLC et al.*, Index No. 2020-51192 (Sup. Ct., Dutchess Co.) are granted. Defendants' jury demand has no factual or legal basis. The Operating Agreement contains a jury waiver clause and the claims are equitable. (NYSCEF 57, Operating Agreement §14.4.) Defendants' attempt to negotiate with the court for more discovery in exchange for withdrawing the specious jury demand was rejected on the record. Accordingly, plaintiff's request for sanctions is granted. Counsel for plaintiff shall submit an affirmation detailing the sanctions requested. If counsel requests attorneys' fees, then he shall submit an affirmation of services with supporting documentation including

a description of the expertise for each attorney who has worked on the case and the work done. Defendants may respond to the request within two weeks after service by email and NYSCEF.

The portion of defendants' motion sequence number 003 to vacate the note of issue is denied for the reasons stated on the record. As to the portion seeking disqualification of plaintiff's counsel, at argument on July 22, 2020, defendants withdrew their request. The motion has no factual or legal basis. Accordingly, plaintiff's motion for sanctions is granted. Counsel for plaintiff shall submit an affirmation detailing the sanctions requested. If counsel requests attorneys' fees, then he shall submit an affirmation of services with supporting documentation including a description of the expertise for each attorney who has worked on the case and the work done. Defendants may respond to the request within two weeks after service by email and NYSCEF.

Both parties move for summary judgment (motion sequence numbers 002 and 004). 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]; *see generally* CPLR 3212.) Initially, "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].) If the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].)

Plaintiff's motion is granted, and defendants' motion is denied. Plaintiff has established that it is entitled to a declaratory judgment under CPLR 3001 which provides: "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed."

Section 11.4(a)(iii) of the Operating Agreement provides that, upon "the vote of a Majority in Interest of the non-offending Members following an event involving a Member and constituting Cause," "the Company shall redeem the Membership Interests of the relevant Member...." "in Interest of the non-offending Members following an event involving a Member and constituting Cause," "the Company shall redeem the Membership Interests of the relevant Member...." (NYSCEF 57, Operating Agreement, § 11.4 [a] [iii].) "Cause," with respect to a Member, is defined by the Operating Agreement to include, among other things: (a) the conviction of such Member, or of the Control Person of a Member that is an entity, of a felony; and (b) any material breach by the Member of the Operating Agreement. (*Id.* at. 2.)

In 2017, Doyle owned a 2.5% membership interest in the plaintiff. (NYSCEF 56, Hickey (manager of Tradesman) aff ¶ 6.) Doyle is a convicted felon. (NYSCEF 58, Doyle Criminal History Record; NYSCEF 53, Doyle Depo Tr at 29:3 - 30:8.) Thus, plaintiff had "Cause" to redeem Doyle's membership interest solely based upon his felony conviction. In a letter delivered to defendants, plaintiff advised Doyle that his membership interest had been redeemed, tendered a check to him; and notified him that the transfer was null and void *ab initio*. (NYSCEF 65, letter.) Plaintiff's 2018 tax

return corroborates that, during that tax year, Doyle's membership interest started at 2.5% and ended at 0%. (NYSCEF 66, tax return.)

The court rejects defendants' contention that Doherty & Associates transferred 16.25% membership interest to JCB Associates because the transfer failed to comply with the operating agreement and JCB did not exist until January 2018, a year after the transfer. The court also rejects defendants' reliance on the 2017 tax return which states that JCB Associates owned 18.75%. According to Hickey, the 2017 tax returns reflect such membership interest because Doherty & Associates told plaintiff's accountants in February 2018 that JCB Associates owned an 18.75% interest. (NYSCEF 61, Doherty 2/20/18 email.) "Tax returns, without any other indicia of partnership, are insufficient" to establish an equity interest in the venture. (*Barrison v D'Amato and Lynch, LLP*, 2019 WL 1502924, \*5 [Sup Ct, NY County 2019]; See also *Cusimano v Strianesse Family LP*, 97 AD3d 744, 745-746 [2d Dept 2012] [party not bound by tax returns prepared by third-party accountant based solely on information provided to him by another party].)

Defendants object to the "Written Action of the Majority of Members of Tradesman Program Managers, LLC," which authorized the redemption of Doyle's 2.5% membership interest for "Cause" based on his felony conviction and participation in the improper assignment of a membership interest from Doherty & Associates to JCB Associates. (NYSCEF 5,<sup>1</sup> Written Action). While the document is signed by Roosevelt Road Capital Partners and 54 Enterprises, which have a majority interest in the company, defendants complain that Bobby Hotaling was not a member of 54 Enterprise

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<sup>1</sup> The written action is filed in NYSCEF several times. For consistency, the court uses NYSCEF 5, the first time it was filed.



when he signed the Written Action on its behalf. He was, however, 54 Enterprise's Manager, and he signed the Written Action in such capacity. (*Id.*). Therefore, the Written Action is valid.

The court finds that plaintiff had grounds to redeem Doyle's shares. Federal law precludes an individual who has been convicted of a felony involving dishonesty or a breach of trust from engaging in the insurance business without the written consent of regulatory officials. (18 U.S.C. § 1033 [e].) Plaintiff is in the insurance business. (NYSCEF1, Complaint ¶ 9.) Doyle was convicted of attempted enterprise corruption and offering a false instrument for filing. (NYSCEF 58, Criminal Record.) Contrary to defendants' argument, the Operating Agreement, is silent on the time frame for the conviction. The company was not required to keep Doyle as a member simply because he was convicted of a felony before he obtained his 2.5% membership interest. Defendants' reliance on Doyle's Certificate of Relief from Disabilities is misplaced. (NYSCEF 104, Certificate.) The Certificate only pertains to his conviction for attempted enterprise corruption and not his conviction for offering a false instrument for filing. (NYSCEF 99, Doyle Depo Tr at 41:5 - 44:14.) Moreover, the Certificate states that it relieves Mr. Doyle of "all forfeitures, and of all disabilities and bars to employment..." (NYSCEF 104, Certificate.) Defendants do not cite any legal authority for the proposition that "forfeiture" includes the redemption of the felon's equity interest in a closely held company pursuant to the express terms of its governing document.

The argument on July 22, 2020 is incorporated into this decision. 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 plaintiff's motion sequence number 002 for summary judgment is granted; and it is further

ADJUDGED and DECLARED that plaintiff properly redeemed defendant Doyle's membership interest in plaintiff for "Cause," pursuant to Section 11.4(a)(iii) of the Operating Agreement considering his felony conviction; and it is further

ADJUDGED and DECLARED the transfer of a membership interest to defendant JCB Associates pursuant to a written "Assignment & Transfer" is null and void, as it failed to comply with Section 11.1 of the Operating Agreement, and thus, JCB Associates is not a member of plaintiff; and it is further

ORDERED that defendants' motion sequence number 003 to vacate the note of issue is denied and sanctions are awarded to plaintiff; and it is further

ORDERED that counsel for plaintiff shall submit an affirmation detailing the sanctions requested within seven days of the court's entry of this decision by email and on NYSCEF. Defendants may respond to the request within two weeks after service by email and NYSCEF; and it is further

ORDERED that defendants' motion sequence number 004 for summary judgment is denied; and it is further

ORDERED that plaintiff's motion sequence number 005 to strike defendants' jury demand is granted and sanctions are awarded to plaintiff; and it is further

ORDERED that counsel for plaintiff shall submit an affirmation detailing the sanctions requested within seven days of the court's entry of this decision by email and



on NYSCEF. Defendants may respond to the request within two weeks after service by email and NYSCEF; and it is further

ORDERED that plaintiff's motion sequence number 006 to change venue of *JCB Associates NY, Inc. and Leo Doyle v Tradesman Program Managers, LLC et al.* (Sup. Ct., Dutchess Co. Index No. 2020-51192) is granted and venue is changed from the Supreme Court, County of Dutchess to Supreme Court, New York County; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of this order on the Clerk of the Supreme Court, Dutchess County, shall pay the appropriate transfer fee, if any, and shall contact the staff of said Clerk and cooperate in arranging the transfer of the file; and it is further

ORDERED that the Clerk of the Supreme Court, Dutchess County shall transfer to the Clerk of the Supreme Court, New York County the file in the action venued in that court; and it is further

ORDERED that service upon the Clerk of the Supreme Court, Dutchess County shall be made in accordance with any applicable protocol or other procedures of said county; and it is further

ORDERED that the Clerk of the Supreme Court, Dutchess County and the Clerk of this Court shall coordinate the transfer of the documents being removed to this court so as to ensure an efficient transfer and to minimize insofar as is practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a copy of this order with notice of entry on the Clerk of this Court (60 Centre Street, Room 141B); and it is further

ORDERED that the Clerk of this Court, upon service of a copy of this order with notice of entry and the transfer of the file to this court, shall, without a further fee, assign a New York County Index Number to the transferred action and record such action in the Clerk's records; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred pursuant to this order under the New York County Index Number of the transferred action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), together with a Request for Judicial Intervention ("RJI") for the transferred action or, if an RJI was filed in the action while pending in Supreme Court, Dutchess County, a copy of that RJI (in which event, no additional fee shall be charged therefor); and it is further

ORDERED that, upon the service of such documents, the Clerk of the General Clerk's Office shall mark the court's records to reflect the transfer and assign the transferred action to a Justice of this court; and it is further

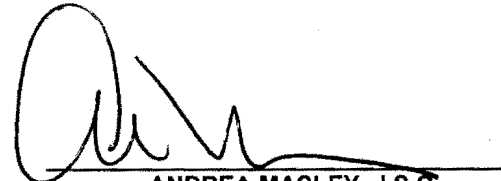
ORDERED that service upon the Clerk of this Court and the Clerk of the General Clerk's Office shall be made in hard-copy form if the application herein has been made in

hard-copy format or, if the application has been electronically filed, shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that plaintiff is directed to submit the July 22, 2020 transcript to be so ordered.

**Motion Seq. No. 002:**


July 24, 2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE

**Motion Seq. No. 003:**

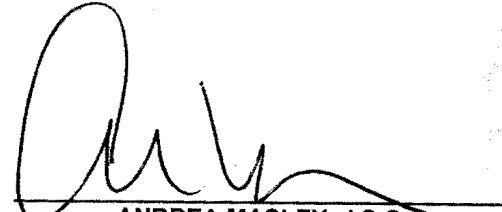
July 24, 2020  
DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE

**Motion Seq. No. 004:**

July 24, 2020  
DATE


  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE

**Motion Seq. No. 005:**

July 24, 2020

DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

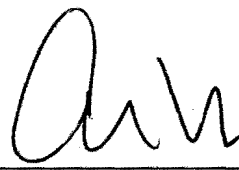
APPLICATION:

CHECK IF APPROPRIATE:

**Motion Seq. No. 006**

July 24, 2020

DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: