

Sternklar v Sternklar-Worenklein

2024 NY Slip Op 34194(U)

November 25, 2024

Supreme Court, New York County

Docket Number: Index No. 651270/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SARAH STERNKLAR, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF NOMINAL DEFENDANT STERNKLAR FAMILY FOUNDATION, INC.,	INDEX NO. <u>651270/2021</u>
Plaintiff,	08/16/2024, 08/21/2024, 09/10/2024
- v -	MOTION DATE
CINDY STERNKLAR-WORENKLEIN, MARK STERNKLAR, STERNKLAR FAMILY FOUNDATION, INC.,	MOTION SEQ. NO. <u>012 013 014</u>
Defendant.	DECISION + ORDER ON MOTION
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 341, 342, 343, 344, 384, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398
were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 386, 399, 400, 401
were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 402, 403, 404, 405, 406, 408
were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, Sarah Sternklar’s motion for summary judgment (Mtn. Seq. No. 012) is granted, and the defendants’ motion for summary judgment (Mtn. Seq. No. 013) is also granted solely to the extent the relief requested overlaps with the relief ordered pursuant to Sarah Sternklar’s motion, as discussed below. The defendants’ motion to reargue (Mtn. Seq. No. 014) is denied.

In her motion (Mtn. Seq. No. 012), Sarah Sternklar seeks an accounting of the Sternklar Family Foundation, Inc. (the **Foundation**) pursuant to New York Not-for-Profit Corporation Law (N-651270/2021 STERNKLAR, SARAH vs. STERNKLAR-WORENKLEIN, CINDY Motion No. 012 013 014 Page 1 of 5

PCL) § 720. The defendants, who bring a counterclaim for an accounting under the same section which is the subject of their own motion for summary judgment (Mtn. Seq. No. 013), do not oppose the relief requested, but argue that the time period and scope of the accounting should be more limited.

As to the time period of the accounting, the defendants argue that because the statute of limitations on a statutory accounting pursuant to N-PCL § 720 is six years, the accounting must date from February 24, 2015, six years prior to the commencement of this action (CPLR 213[1]; *Brooks v Haidt*, 59 AD3d 233, 233 [1st Dept 2009]). However, as the Court previously held, there has been substantial concealment of certain information from Sarah Sternklar, including the existence of certain bank accounts and the Foundation's failure to properly file its tax returns and consequent loss of its tax-exempt status, such that the defendants cannot now rely on the statute of limitations to limit the scope of the accounting. Thus, a full forensic accounting starting from January 1, 2011, as requested by Sarah Sternklar, is appropriate.

In addition, in its prior Decision and Order dated July 25, 2025 (the **Prior Decision**; NYSCEF Doc. No. 340) the Court has already held that Sarah Sternklar "is entitled to understand how certain of the documents were purportedly signed by her father, Jack Sternklar, after his death" in July of 2015 (NYSCEF Doc. No. 340 at 33). For example, Jack Sternklar's signature appears on the Foundation's 2014 Annual Charitable filing, and is dated March 30, 2017, some two years after he died (NYSCEF Doc. No. 311). The accounting must investigate this and other potentially fraudulent filings or transactions. Accordingly, Sarah Sternklar's motion for a statutory accounting pursuant to N-PCL § 720 is granted.

The defendants' motion (Mtn. Seq. No. 013) also seeks an accounting pursuant to N-PCL § 720, however the defendants' motion seeks only to uncover the circumstances surrounding allegedly unauthorized withdrawals of Foundation funds and liquidation of certain Foundation assets made by Sarah Sternklar (*see* NYSCEF Doc. No. 345). Given the substantial questions regarding the propriety of defendants' conduct in relation to the Foundation, as discussed above and in the Court's Prior Decision, such a unilateral accounting would be inappropriate. Thus, and insofar as the defendants do not oppose Sarah Sternklar's request for an accounting, the Court grants the defendants' motion for an accounting pursuant to N-PCL § 720 solely to the extent the relief requested overlaps with that ordered above in connection with Sarah Sternklar's motion.

The defendants' motion for reargument (Mtn. Seq. No. 014) is denied. In its Prior Decision, the Court noted that (i) Etan Mark provided Sarah Sternklar with false information when he denied to her that the Foundation has lost its tax-exempt status, when it had, and (ii) the timing of the defendants' removal of Sarah Sternklar as a director of the Foundation, which coincided with Mr. Mark's admission that the Foundation has indeed lost its tax-exempt status, suggested that Sarah Sternklar's removal as a director of the Foundation was retaliatory (NYSCEF Doc. No. 340 at 5-6, 16-17). The Court did not hold that Mr. Mark had provided this false information *knowingly*, but said only that the information was false, and demonstrated the defendants did not perform satisfactory due diligence in ascertaining the Foundation's tax-exempt status (NYSCEF Doc. No. 340 at 4). In addition, the Court did not hold that Sarah Sternklar's removal was retaliatory. Indeed, the Court has clarified, by way of a Case Management Order dated September 12, 2024, that it would be most appropriate for this Court to consider the issue of the

possibly retaliatory nature of Sarah Sternklar's removal as a director of the Foundation *after* the forensic accounting has been completed, at which point counsel may develop the record as to what the forensic accounting shows (NYSCEF Doc. No. 383) and what relief is appropriate.

Accordingly, insofar as the defendants' motion seeks to have this Court "delete and/or correct" the Court's purported "conclusion" that the defendants retaliated against Sarah Sternklar and the Court's purported finding that Mr. Mark's conduct was "intentional" (*see* NYSCEF Doc. No. 408, at 1), it appears that the defendants' motion is predicated on a simple misunderstanding of this Court's Prior Decision, and thus is denied.

Accordingly, it is hereby

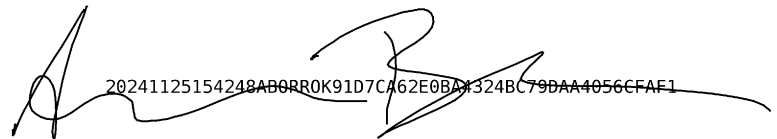
ORDERED that the plaintiff's motion for summary judgment is granted; and it is further

ORDERED that the defendants' motion for summary judgment is granted solely to the extent set forth above; and it is further

ORDERED that the defendants' motion for reargument is denied; and it is further

ORDERED that the Foundation shall engage an independent accounting to perform the accounting; and it is further

ORDERED that if the parties are unable to agree on an accounting within ten business days from the date of this Decision and Order, each party shall submit to the Court the name and curriculum vitae of one proposed independent accountant, from which the Court shall select the independent accountant to perform the accounting, with the accountant’s fees to be apportioned based on a percentage fault, upon application to the Court, or otherwise on a 1/3, 1/3, 1/3 basis among Sarah, Cindy, and Mark Sternklar.


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11/25/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE