

752 N.Y.S.2d 54
300 A.D.2d 152, 752 N.Y.S.2d 54, 2002 N.Y. Slip Op. 09544
(Cite as: 300 A.D.2d 152, 752 N.Y.S.2d 54)

Supreme Court, Appellate Division, First
Department, New York.

Aaron SELIGSON, et al., Plaintiffs-Respondents,
v.
Albert RUSSO, et al., Defendants-Appellants.

Dec. 19, 2002.

Appeal was taken from order of the Supreme Court, New York County, Herman Cahn, J., which declared that partners were not obligated to sell their collective interests in partnership to their co-partners. The Supreme Court, Appellate Division, held that: (1) partners' unsuccessful attempt to sell a partnership asset on terms yet to be negotiated was not sufficient to trigger co-partner's right of first refusal under partnership agreement, and (2) even if term's of attempted sale of building owned by partnership had been negotiated, right of first refusal would not have been triggered since contemplated sale was not of a partnership interest, but rather, a partnership asset.

Affirmed.

West Headnotes

[1] Partnership ⇌ 226

289k226 Most Cited Cases

Partners' unsuccessful attempt to sell a partnership asset on terms yet to be negotiated was not sufficient to trigger co-partner's right of first refusal under partnership agreement, where right of first refusal was triggered only when a partner sought to sell his or her partnership interest to a third party pursuant to specific terms.

[2] Partnership ⇌ 226

289k226 Most Cited Cases

Even if term's of partners' attempted sale of building owned by partnership had been negotiated, co-partners' right of first refusal would not have been triggered, as would obligate partners to sell

their partnership interests to co-partners, since contemplated sale was not of a partnership interest, but rather, a partnership asset.

**55 Peter James Johnson, Jr., Mark A. Berman,
for Plaintiffs-Respondents.

Donald A. Derfner, Lawrence A. Mandelker, for
Defendants-Appellants.

WILLIAMS, P.J., ANDRIAS, BUCKLEY,
LERNER and GONZALEZ, JJ.

*152 Order, Supreme Court, New York County (Herman Cahn, J.), entered September 6, 2001, which, after a framed-issue hearing, inter alia, granted plaintiffs' cross motion for summary judgment to the extent of declaring that plaintiffs are not obligated to sell their partnership interests to defendants, unanimously affirmed, without costs.

[1][2] The court properly granted plaintiffs' cross motion, declaring that plaintiffs are not obligated to sell their collective interests *153 in the partnership to defendants, a group of plaintiffs' co-partners. Contrary to defendants' position, the subject Partnership Agreement contains a right of first refusal, not an option, and the right of first refusal is triggered only when a partner seeks to sell his or her partnership interest to a third party pursuant to specific terms (see generally *LIN Broadcasting Corp. v. Metromedia, Inc.*, 74 N.Y.2d 54, 60, 62-63, 544 N.Y.S.2d 316, 542 N.E.2d 629; compare *Concert Radio, Inc. v. GAF Corp.*, 108 A.D.2d 273, 488 N.Y.S.2d 696, appeal dismissed 65 N.Y.2d 1052, 494 N.Y.S.2d 1060, 484 N.E.2d 1058). The record, fairly construed, indicates merely that plaintiff Seligson unsuccessfully sought permission from the partnership to negotiate a sale of the building owned by the partnership for a price in excess of the \$23 million unilaterally offered by the interested third party. Manifestly, the simple desire of Seligson, even as seconded by Seligson's plaintiff co-partners, to sell a partnership asset on terms yet to be negotiated was not sufficient to trigger defendant's right of first refusal under the Partnership Agreement. Moreover, even if more

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definite terms for the sale of the partnership's building had been negotiated with the third party, the right of first refusal relied upon by defendants would still not be triggered since it is implicated only in situations where a partnership interest is to be transferred. Here, the contemplated transfer was not of a partnership interest but of a partnership asset (see e.g. *5303 Realty v. O & Y Equity*, 64 N.Y.2d 313, 323, 486 N.Y.S.2d 877, 476 N.E.2d 276; *Power Test Petroleum Distribs., Inc. v. Baker-Tripi Realty Corp.*, 190 A.D.2d 845, 594 N.Y.S.2d 266; *Helfand v. Cohen*, 110 A.D.2d 751, 487 N.Y.S.2d 836).

We have reviewed defendants' remaining arguments and find them unavailing.

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