

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

_____	:		RECEIVED
STEPHEN RATNER, et al,	:	MARCH TERM, 2017	OCT - 1 2018
	:		ROOM 521
Plaintiffs	:	NO. 01497	
v.	:		
	:	COMMERCE PROGRAM	
IRON STONE REAL ESTATE	:		
FUND I, L.P., et al	:	CONTROL NOS. 18071784,	
	:	18071781	
Defendants	:		
_____	:		

ORDER

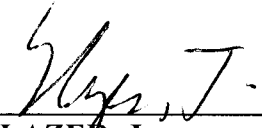
AND NOW, on this 1st of October, 2018, upon consideration of defendants' motion for summary judgment, plaintiffs' motion for summary judgment, and the responses thereto, it is hereby

ORDERED

that:

1. Defendants' motion is **GRANTED**.
2. Plaintiff's motion is **DENIED** and plaintiffs' complaint is dismissed with prejudice.

BY THE COURT:



GLAZER, J.

Ratner Etal Vs Iron Sto-ORDMM



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_____	:	

GLAZER, J.

October 1, 2018

The plaintiffs, Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich (collectively “plaintiffs”), are limited partners of defendant Iron Stone Real Estate Fund I, L.P. (“Iron Stone LP”). Iron Stone Real Estate Group I, LLC (“Iron Stone LLC”) is a general partner of Iron Stone LP and is also a defendant. Iron Stone LP is managed by defendant Andrew V. Eisenstein (“Eisenstein”). Presently before the court are cross motions for summary judgment.

PROCEDURAL HISTORY

In the original complaint filed on March 15, 2017, plaintiffs, Stephen Ratner, Audrey Ratner, and Dr. Robert Ostoyich alleged six claims against defendants: Breach of Fiduciary Duty (Count I), Breach of Implied Duty of Good Faith and Fair Dealing (Count II), Breach of Contract (Count III), Accounting (Count IV), Dissolution of Partnership (Count V) and Conversion (Count VI). Following preliminary objections, this court dismissed plaintiffs’ claims for breach of the implied duty of good faith and fair dealing and conversion. On May 17, 2018, as a result of various discovery disputes, and at the recommendation of the court-appointed discovery

master, this court precluded plaintiffs from “seeking or offering any evidence at trial of any damages other than the *value of their interests* in Iron Stone Real Estate Fund I, LP”. At issue in the cross motions for summary judgment are the remaining counts of the complaint: breach of contract, breach of fiduciary duty, accounting, and dissolution. For the reasons that follow, defendants’ motion is granted and plaintiffs’ motion is denied.

FACTUAL HISTORY

On February 28, 2006, an Agreement of Limited Partnership (the “partnership agreement”) was entered into by defendant Iron Stone LLC and by the plaintiffs. As indicated by the language of the partnership agreement, the purpose of Iron Stone LP was “to acquire, hold, maintain, operate, develop, sell, improve, lease, license, pledge, encumber, dispose of and otherwise invest in, directly or indirectly, real estate and related assets.”

Plaintiffs Stephen and Audrey Ratner purchased two out of 100 total units in Iron Stone, LP. Plaintiff Dr. Robert Ostoyich purchased one unit out of 100. Pursuant to the terms of the partnership agreement which formed Iron Stone, LP, the partnership was designated to expire in December 2015. However, §15(a) of the partnership agreement permitted amendment or alteration of the agreement to extend that date. In April 2016, four months after the partnership was designated to expire, defendant Eisenstein mailed all limited partners a proposed amendment calling for continuation of the partnership. Plaintiffs objected to the proposed eight-year extension as they sought to recoup their investment at the time the anticipated expiration of Iron Stone, LP. Nevertheless, as more than 66.67% of limited partners agreed to the amendment, the partnership was extended until the year 2023. Plaintiffs subsequently filed suit.

STANDARD OF REVIEW

Pursuant to Pa. R.C.P. 1035.2 a court may grant a motion for summary judgment if there is no genuine issue of material fact between the parties or if the party carrying the burden of proof at trial, “has failed to produce evidence of facts essential to [establish a] cause of action.” In considering the motion, the court must view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *See Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001).

DISCUSSION

A. **The term of Iron Stone, LP was extended in accordance with the partnership agreement, and therefore the claim for breach of contract fails.**

Under Pennsylvania law, a breach of contract occurs when a party to the contract fails to perform a contractual duty or violates an obligation or engagement, and that breach is material. *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 896 (Pa. Super. Ct. 2011). To prove such a breach, plaintiffs must prove that a contract existed, that contract was breached, and that damages resulted from that breach. *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 603 Pa. 198, 220 (Pa. 2009).

Paragraph 15.1(a) of the Iron Stone, LP Partnership Agreement provides in part as follows:

“Any alteration, modification or amendment of any Section of this Agreement that materially and adversely affects the economic interests of all Limited Partners, as a class, may be made with the consent of the General Partner and Limited Partners holding 66 2/3% of the outstanding Units held by Limited Partners (including Units held by affiliates of the General Partner), except that no increase in the amount required to be contributed to the Partnership by the Limited Partners, other than as required herein or under applicable law, may be made without the consent of all the Limited Partners.”

Thus, if the proposed amendment “materially and adversely affects” the economic interest of Limited Partners as a class, only the consent of 66.67% of outstanding Units was required to alter, modify, or amend the partnership agreement.

According to documents produced in discovery and made part of this record, limited partners owning 30.75 units agreed to the extension and 4 units disapproved of the extension, including the two units owned by plaintiffs Stephen Ratner and Audrey Ratner. The remaining 65.25 units did not respond, and were considered to have consented according to Paragraph 15(c) of the Partnership Agreement. As a result, 96% of the limited partners consented to the extension of the partnership term.

Since more than 66.67% of the limited partners consented to the extension of the partnership term, the partnership agreement was not breached and plaintiffs’ claim for breach of contract fails.¹

B. Plaintiffs cannot recover under a claim for breach of fiduciary duty.

To establish a claim for breach of fiduciary duty under Pennsylvania law, a plaintiff must prove the following: (1) that a fiduciary duty existed, (2) the defendant negligently or intentionally failed to act in good faith and solely for the benefit of the plaintiff, (3) the plaintiff suffered an injury, and finally (4) that the agent’s failure to act for plaintiff’s benefit was a real factor in bringing about the injuries. *Conquest v. WMC Mortg. Corp.*, 247 F. Supp. 3d 618, 633-34 (E.D. Pa. 2017) (quoting *Dinger v. Allfirst Fin., Inc.*, Fed. App’x 261, 265 (3d Cir. 2003)).

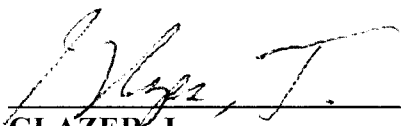
¹ The court does not find persuasive plaintiffs’ relevance upon the term “unanimous” on the consent form for the required vote.

Plaintiffs allege defendant Eisenstein failed to act in good faith for the sole benefit of plaintiffs by improperly extending Iron Stone LP term. As a result of the alleged improper extension, plaintiffs further allege that Eisenstein received excessive compensation in contradiction of the terms of the partnership agreement. This court has already found the eight-year extension of Iron Stone, LP term was proper, therefore a breach of fiduciary duty based on that extension cannot survive. Additionally, the breach of fiduciary duty claim is improper as this court has precluded plaintiff from seeking or offering any evidence at trial of any damages other than the value of their interests in Iron Stone LP. Since the damages alleged by plaintiff for this alleged breach of fiduciary duty are derivative in nature and not personal to them, the claim for breach of fiduciary duty also fails.²

CONCLUSION

Wherefore, for the reasons stated herein, the defendants' motion for summary judgment is granted, plaintiffs' motion for summary judgment is denied, and the complaint is dismissed with prejudice.

BY THE COURT:



GLAZER, J.

² Since the claims for dissolution and accounting are also derivative in nature and not personal to them, the claims for dissolution and accounting are dismissed.