Matter of Capital Enters. Co. v Dworman
2017 NY Slip Op 05192
Decided on June 27, 2017
Appellate Division, First Department
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Decided on June 27, 2017
Friedman, J.P., Webber, Gesmer, Kern, JJ.

4379N 653961/16

[*1] In re Capital Enterprises Co., Petitioner-Appellant,

v

Alvin Dworman, Respondent-Respondent.

Morrison Cohen LLP, New York (Alvin C. Lin of counsel), for appellant.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., New York (Christopher J. Sullivan of counsel), for respondent.

Order, Supreme Court, New York County (Shirley Werner Kornreich, J.), entered March 3, 2017, which, to the extent appealed from as limited by the briefs, upon reargument, adhered to the original determination denying petitioner Capital Enterprises Co.'s motion to compel the arbitration of its partnership dissolution claim (including the distribution of assets), unanimously reversed, on the law, without costs, and the motion to compel granted.

Since the alleged oral agreement to sell or transfer partnership assets attempts to modify several substantive provisions of petitioner's partnership agreement concerning the distribution of partnership assets, the broad arbitration provision of the partnership agreement controls the parties' dispute (*see Matter of Helmsley [Wien]* , 173 AD2d 280 [1st Dept 1991]). The merits of the claims, such as the applicability of the statute of frauds, should be determined by the arbitrator (*see* CPLR 7501; *Matter of Praetorian Realty Corp. [Presidential Towers Residence]* , 40 NY2d 897, 898 [1976]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 27, 2017

CLERK

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