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**Carol Lynn Eden, Order Denying Petitioner's Motion for Partial  
Summary Judgment**

Eric A. Richardson

*Judge, Superior Court of Fulton County by Designation Business Court Division*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

CAROL LYNN EDEN, as Trustee of the 2005  
Schinazi GST Grantor Trust u/a/d August 23,  
2005,

Petitioner,

v.

RAYMOND F. SCHINAZI, Individually, and  
RGS & ASSOCIATES, LLC, as the General  
Partner of RFS Partners, L.P.,

Respondents.

CIVIL ACTION NO. 2012CV224395

**ORDER DENYING PETITIONER'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

On December 7, 2017, Petitioner filed a Motion for Partial Summary Judgment as to Count IV of the Third Amended and Restated Verified Petition. The case was stayed by order of this Court on December 19, 2017, and again on March 7, 2018, during the pendency of various motions and an appeal. The stay was lifted by this Court on October 9, 2020. The parties then completed briefing of the Motion for Partial Summary Judgment, and oral argument was held (via Zoom) on February 25, 2021. The Court, having reviewed and considered all materials submitted by the parties and arguments made during the hearing, hereby **DENIES** Petitioner's Motion for Partial Summary Judgment as follows:

Count IV of the Third Amended and Restated Verified Petition seeks a judgment against Respondent RFS & Associates, LLC for the amounts purportedly due the Trust as a result of distributions RFS & Associates, LLC, as the General Partner of RFS Partners, made to Respondent Schinazi in 2012 and 2013, together with prejudgment interest, because (1) RFS Partners' Amended and Restated Partnership Agreement contractually obligates the General Partner to make a pro rata distribution to the Trust based on the Trust's ownership interest in RFS Partners on the same dates that the General Partner made the distributions to Respondent

Schinazi, and (2) O.C.G.A. § 14-9-606 grants a limited partner the status of a creditor with all attendant rights and remedies “at the time [he] becomes entitled to receive a distribution. . . .”

Respondents argue that all distributions were made at a time when the books and records of RFS Partners reflected that Respondent Schinazi owned the 71.675% disputed limited partnership interest in RFS Partners. After appeals were exhausted regarding this Court’s declaratory judgment order holding that the attempted transfer of the 71.675% interest to Respondent Schinazi was invalid, leaving final the holding that Respondent Schinazi owned only approximately 27.601% of RFS Partners, Respondents contend that they re-evaluated the distributions and that all such distributions were voluntarily returned by Respondent Schinazi to RFS Partners, and accepted by the General Partner on behalf of RFS Partners.

Relevant sections of the Limited Partnership Agreement for RFS Partners provide in pertinent part:

3.1 In General. All decisions relating to the business and affairs of the Partnership . . . shall be made by the General Partner.

4.3 Distributions.

(a) Distributions to Partners. The cash or other assets of the Partnership may be distributed by the Partnership to the Partners, at such times and in such amounts as the General Partner may reasonably determine, in proportion to the positive balances, if any, standing in the Partners’ respective Capital Accounts, taking into account the reasonable capital needs of the Partnership.

Neither party has cited any Georgia authority on point addressing specifically whether a general partner can or cannot claw back with consent, or accept the return of, distributions by the limited partner who received the distributions. None of the statutes cited by Petitioner, including O.C.G.A. § 14-9-606, addresses this question. The only applicable Georgia law provides that “[a] partner is entitled to receive distributions from a limited partnership . . . only to the extent and at the times or upon occurrence of the events specified in the partnership agreement.” O.C.G.A.

§ 14-9-601. Thus, the terms of the Limited Partnership Agreement control the issue before this Court. None of the terms of the Limited Partnership Agreement addresses this question specifically.

This Court holds as a matter of contract construction that Section 3.1 of the RFS Partners Limited Partnership Agreement provides sufficiently broad powers to the General Partner to undo a transaction and “claw back” with consent, i.e., accept the return of, distributions from a limited partner. There is no provision in the Limited Partnership Agreement that prevents or limits the General Partner’s exercise of discretion to accept the return of previously made distributions. The distributions at issue made to Respondent Schinazi therefore can be returned to RFS Partners.

The Court finds that there is a disputed question of material fact regarding whether the claw-back of the distributions was fully effectuated. Dr. Schinazi has provided an affidavit testifying that he repaid all distributions, but Petitioner objects that Respondents have not provided any documentation or paperwork to support that testimony nor demonstrated that RFS Partners had been made whole. The Court does not have to make these determinations now, as this Order is limited to denying the Motion for Partial Summary Judgment.

**SO ORDERED**, this 3rd day of May, 2021.



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Judge Eric A. Richardson  
Superior Court of Fulton County by  
Designation

cc: Served electronically