

**Supreme Court of the State of New York  
Appellate Division: Second Judicial Department**

D20650  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 9, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

2006-04323

DECISION & ORDER

In the Matter of RL Night Star Pub, Inc.  
Sandra Ribeiro, respondent; Roger Moura,  
appellant.

(Index No. 7526/04)

John J. Garzon, Sunnyside, N.Y., for appellant.

Siben & Siben, LLP, South Huntington, N.Y. (Maxwell D. Weinstein of counsel), for  
respondent.

In a proceeding for judicial dissolution of a corporation pursuant to Business Corporation Law § 1104, Roger Moura appeals from an order of the Supreme Court, Suffolk County (Costello, J.), dated April 10, 2006, which denied his motion, inter alia, to vacate the sale of the corporation's assets.

ORDERED that the order is affirmed, with costs.

The motion by the appellant, a 50% shareholder in the subject corporation, to vacate the sale of the corporation's assets, the order of sale, and the appointment of the temporary receiver, made more than 60 days after the sale, 4 months after service of the order of sale and notice of entry, and approximately 9 months after the order appointing the temporary receiver, was untimely (*see* CPLR 5513[a]; *Matter of Sommer*, 177 AD2d 489; *Henegar v Freudenheim*, 40 AD2d 825). The Supreme Court providently exercised its discretion in denying the motion as untimely. In any event, as the court noted, the motion was without merit.

October 14, 2008

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MATTER OF RL NIGHT STAR PUB, INC.

We decline the petitioner's request to impose a sanction upon the appellant for pursuing an allegedly frivolous appeal (*see* 22 NYCRR 130-1.1).

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court