

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS IA Part 4  
Justice

x	Index
In the Matter of the Application of	Number <u>2437</u> 2004
 FRED WEINGARTEN and JACOB POPOVIC for the Dissolution of TRANSIT SYSTEMS LTD., Pursuant to Article 10 and Article 11 of the Business Corporation Law or in the alternative Pursuant to Article 11 of the Business Corporation Law	Motion Date <u>January 23, 2007</u>  Motion Cal. Number <u>47</u>
x	

The following papers numbered 1 to 4 read on this motion by respondent Victor Weingarten, a minority shareholder in Transit Systems Ltd. (TSL), for an order, inter alia, determining that certain "management contracts" are to be treated as TSL assets for the purposes of the receivership order.

	<u>Papers Numbered</u>
<u>Notice of Motion - Affidavits - Exhibits</u> .....	1
Answering Affidavits - Exhibits .....	2
Reply Affidavits .....	3
Other (Memorandum of Law) .....	4

Upon the foregoing papers it is ordered that:

That branch of the motion which is for an order, inter alia, determining that the medallion management contracts and any proceeds therefrom are to be treated as TSL assets for the purposes of the receivership order is granted to the extent that unless the shareholders agree among themselves about the distribution of such corporate assets within seven days after the service of a copy of this order with notice of entry, the receiver shall assume control

over such assets.

That branch of the motion which pertains to a determination of leasehold interests is granted to the extent that (1) the petitioners' attempt to terminate the lease for the premises known as 54-11 Queens Boulevard, Woodside, New York is declared void by the court pursuant to its powers under BCL §§ 1113 and 1117, (2) the receiver is directed to assume control over TSL's leasehold interest in premises known as 54-11 Queens Boulevard, Woodside, New York, and (3) the receiver is directed to assume control over TSL's remaining leasehold interest, if any, in premises known as 34-14 31st Street, Long Island City, New York.

That branch of the motion which pertains to rights to occupy the leased premises is denied without prejudice to any reasonable determination made by the receiver.

The remaining branches of the motion are denied.

(See the accompanying memorandum.)

Dated: April 18, 2007

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J.S.C.

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 4

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In the Matter of the Application of <sup>x</sup>

INDEX NO. 2437/04

FRED WEINGARTEN and JACOB POPOVIC  
For the Dissolution of TRANSIT  
SYSTEMS LTD., Pursuant to Article 10  
and Article 11 of the Business  
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of the Business Corporation Law

BY: GRAYS, J.

DATED: April 18, 2007

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<sup>x</sup>

Respondent Victor Weingarten, a minority shareholder in Transit Systems Ltd. (TSL), has moved for an order, inter alia, determining that certain "management contracts" are to be treated as TSL assets for the purposes of the receivership order.

At the time that the petitioners began this special proceeding, petitioner Fred Weingarten and petitioner Jacob Popovic each owned 30% of the outstanding shares of TSL, a company engaged in the taxi business, and respondent Victor Weingarten and respondent David Beier owned 30% and 10% of the outstanding shares, respectively. The petitioners and respondent Weingarten now each own one-third of TSL. The petitioners sought dissolution of TSL pursuant to BCL §§ 1001(a) (ii) and 1103(a) or, in the alternative, pursuant to BCL § 1104(a) (1) and (3). This court directed the dissolution of TSL pursuant to BCL § 1104(a) by decision and order dated May 11, 2004. After the filing of the order of dissolution

*with the New York Department of State on or about June 9, 2004, the parties began to wind up the affairs of the corporation. By memorandum dated September 21, 2006, this court, finding that the shareholders had failed to reach a negotiated settlement concerning the distribution of company assets since the issuance of the dissolution order, directed the appointment of a receiver to supervise the liquidation of assets. Pursuant to a judgment and order dated November 29, 2006, this court, inter alia, appointed Arthur Lonschein as a receiver "with the usual powers and directions over TSL and all of its respective assets and properties\*\*\*."*

*Respondent Weingarten now alleges that petitioner Fred Weingarten and petitioner Jacob Popovic have illegally transferred some of TSL's assets to other companies that they own and have illegally dealt with TSL's leasehold interests.*

*TSL earns income by managing taxicab medallions owned by third parties and taxicab medallions owned by TSL's shareholders, and such management involves maintaining the taxis, hiring and paying the drivers, and obtaining insurance. In 2004, TSL managed approximately 444 medallions, approximately 202 owned by third parties and the balance owned by TSL shareholders. TSL operates from two leased premises located at 54-11 Queens Boulevard, Woodside, New York and 34-14 31st Street, Long Island*

City, New York.

On or about November 15, 2006, David Beier, TSL's house counsel, sent a letter to Thomas J. Hall, the attorney for respondent Weingarten, informing him, inter alia, that the New York City Taxi and Limousine Commission would not renew TSL's management license due to expire on December 31, 2006 because of the pending dissolution. Beier recommended that respondent Weingarten transfer his shareholder-owned medallions out of TSL, as petitioner Fred Weingarten and petitioner Popovic would do with their shareholder-owned medallions. Beier suggested that the shareholders divide the third party medallion contracts equally among themselves or that the shareholders form a new management company to temporarily manage the medallions. Respondent Weingarten's attorney sent a reply letter opposing any transfer of TSL assets.

By letter dated December 5, 2006, the law firm of Wilson, Elser, Moskowitz, Edelman, & Dicker, representing the petitioners, informed the attorney for respondent Weingarten that, inter alia, "each of the third party management contracts allocated to each of Fred Weingarten and Jacob Popovic as reflected on the attached allocation schedule was duly transferred to a company licensed by the TLC to manage such contracts." Respondent Weingarten alleges that "TSL's most significant assets-management contracts for

242 taxi medallions, are now held by a corporation [Taxi Associates, Inc.] owned by TSL's two majority shareholders in which Victor Weingarten has no interest." On the other hand, the petitioners allege that respondent Weingarten has transferred his share of the third party management contracts to Gotham Yellow, LLC.

Respondent Weingarten further complains that the petitioners have improperly dealt with TSL's tenancies at 54-11 Queens Boulevard, Woodside, New York, and 34-14 31st Street, Long Island City, New York. By letter dated December 1, 2006, David Beier informed WPW Associates, the landlord of 54-11 Queens Boulevard, Woodside, New York, that TSL wished to terminate its tenancy. As this court previously found in its decision dated December 6, 2005 rendered on a motion brought by respondent Weingarten to determine ownership of certain real properties, WPW Associates, a company in which petitioner Fred Weingarten, petitioner Popovic, and respondent Weingarten each hold a one-third interest, owns the premises located at 54-11 Queens Boulevard, Woodside, New York. In regard to the property located at 34-14 31st Street, Long Island City, New York, the petitioners allege that TSL has no right to possession of the premises because of an assignment of a contract of sale.

Reaching the merits of the instant motion, the court

*finds initially that the petitioners had no right to engage in self-help regarding the assets of the corporation undergoing dissolution. As this court specifically noted in its decision dated May 11, 2004, "the only authorized disposition in this proceeding is for [TSL] itself to sell its assets for cash at a public or private sale pursuant to BCL § 1005[a][2] (see, Matter of Sternberg v Osman, [181 AD2d 899])." "Absent an agreement between the parties to sell the shares of the corporation to each other or to an outside buyer, the only authorized disposition of corporate assets is liquidation at a public sale." (In re Oak Street Management, Inc., 307 AD2d 320; see, Sternberg v Osman, supra .) The court is mindful of the licensing problems faced by TSL, but instead of engaging in self-help and making a distribution of corporate assets, fairly or unfairly, the petitioners could have invoked this court's statutory powers to preserve corporate assets during dissolution. (See, e.g., BCL § 1113.)*

*It is now respondent Weingarten who has invoked those statutory powers. This court has broad discretion under BCL § 1113 and § 1115 to issue orders deemed protective of corporate assets pending dissolution. (See , In re 212 East 52nd Street Corp., 185 Misc 2d 95.) BCL § 1113, "Preservation of assets; appointment of receiver," provides in relevant part: "At any stage of an action or special proceeding under this article, the court may, in its*

discretion, make all such orders as it may deem proper in connection with preserving the property and carrying on the business of the corporation\*\*\*." (Emphasis added.) (See, In re Broder, 265 AD2d 218.)

This court also has the power to void, to the extent necessary, the transfers of corporate property made by petitioner Fred Weingarten and petitioner Popovic after the commencement of this action. BCL § 1114, "Certain sales, transfers, security interests and judgments void," provides in relevant part: "A sale, mortgage, conveyance or other transfer of\*\*\*any property of a corporation made, without prior approval of the court, after service upon the corporation of a summons in an action, or of an order to show cause in a special proceeding, under this article\*\*\*for any other or for no consideration,\*\*\*shall be void as against such persons and to such extent, if any, as the court shall determine." (See, In re Musano, 28 AD3d 349; Matter of Rappaport, 110 AD2d 639; 15A NY Jur 2d, "Business Relationships," § 1279.) "[S]ection 1114 operates retrospectively permitting the court to set aside past injurious acts which\*\*\*have come to light only after their commission." (Matter of Schramm, 107 Misc 2d 393, 397.) Moreover, "[i]t is obvious both from the wording of section 1114 itself, and from the general statutory scheme enabling judicial dissolution under BCL Article 11, that 'the court' empowered to

void such transactions is the court before which the dissolution proceeding is pending." (Matter of Schramm, 107 Misc 2d 393, 395.) The court notes that both TSL's management contracts and its leasehold interests are considered corporate assets. (See, e.g., Goldberg v Harwood, 88 NY2d 911.)

Accordingly, that branch of the motion which is for an order, inter alia, determining that the medallion management contracts and any proceeds therefrom are to be treated as TSL assets for the purposes of the receivership order is granted to the extent that unless the shareholders agree among themselves about the distribution of such corporate assets within seven days after the service of a copy of this order with notice of entry, the receiver shall assume control over such assets.

That branch of the motion which pertains to a determination of leasehold interests is granted to the extent that (1) the petitioners' attempt to terminate the lease for the premises known as 54-11 Queens Boulevard, Woodside, New York is declared void by the court pursuant to its powers under BCL §§ 1113 and 1117, (2) the receiver is directed to assume control over TSL's leasehold interest in premises known as 54-11 Queens Boulevard, Woodside, New York, and (3) the receiver is directed to assume control over TSL's remaining leasehold interest, if any, in premises known as 34-14 31st Street, Long Island City, New York.

*That branch of the motion which pertains to rights to occupy the leased premises is denied without prejudice to any reasonable determination made by the receiver.*

*The remaining branches of the motion are denied.*

*Short form order signed herewith.*

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*J.S.C.*