

**Matter of Hancock v Arts4All, Ltd.**

2007 NY Slip Op 31237(U)

May 15, 2007

Supreme Court, New York County

Docket Number: 0604417/2006

Judge: Bernard J. Fried

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED  
*Justice*

PART 60

In the Matter of the Application of  
JUDITH L. HANCOCK

Petitioner *Pro Se*,

INDEX NO. #604417-2006  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. #001  
MOTION CAL. NO. \_\_\_\_\_

For an Order Under  
Sections 725(c) and 1315(c) and (d)  
Of the New York Business Corporation Law  
And New York Common Law  
Directing an Inspection of  
The Stockholder Ledger, Financial Statements,  
And Directing Disclosure of Arts4All's  
Payment of Legal Fees of Its Officers and Directors,  
And For an Order Under Section 211  
Of the Delaware General Corporation Law  
And New York Common Law  
Compelling Arts4All, Ltd. To Hold Timely Annual  
Shareholders Meetings,

against

ARTS4ALL, LTD. a/k/a "A4A MOBILE, LTD.",

Respondent

**FILED**  
MAY 17 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM  
DECISION.

Dated: 5/15/07

[Signature]  
J.S.C.

HON. BERNARD J. FRIED

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 60

-----X

In the Matter of the Applicaton of  
JUDITH L. HANCOCK

Petitioner *Pro Se*,

INDEX NO.: 604417-2006

For an Order Under  
Sections 725(c) and 1315(c) and (d)  
Of the New York Business Corporation Law  
And New York Common Law  
Directing an Inspection of  
The Stockholder Ledger, Financial Statements,  
And Other Books and Recorts of Arts4All, Ltd.  
And Directing Disclosure of Arts4All's  
Payment of Legal Fees of Its Officers and Directors,  
And For an Order Under Section 211  
Of the Delaware General Corporation Law  
And New York Common Law  
Compelling Arts4All, Ltd. To Hold Timely Annual  
Shareholders Meetings,

-against-

ARTS4ALL, LTD. a/k/a "A4A MOBILE, LTD.",

Respondent.

-----X

**APPEARANCES:**

Petitioner *Pro Se*:

For Respondent Arts4All, Ltd.  
a/k/a "A4AMobile, Ltd.":

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**FILED**  
MAY 17 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

**FRIED, J.:**

Plaintiff shareholder, Judith Hancock ("Hancock") moved on February 2, 2007, by Order to Show Cause, against Defendant Arts4All, Ltd. a/k/a A4A Mobile, Ltd. ("Arts4All") for a Temporary Restraining Order, as well as an Order:<sup>1</sup>

1. Directing Arts4All to permit Hancock to inspect and copy the shareholder ledger, financial statements and other documents, identified in Attachment A to her proposed order;
2. Directing Arts4All to provide Hancock various information relating to Arts4All's payments in connection with legal fees from January 1, 2003 through December 31, 2006.
3. Directing Arts4All to hold an annual shareholders meeting to review the year end profit and loss statement and balance sheet for the 2005 fiscal year;
4. Directing Arts4All to provide Hancock with copies of its year-end profit and loss statement and balance sheet for the fiscal year 2006.
5. Directing Arts4All to hold an annual shareholder's meeting to review the year-end profit and loss statement and balance sheet for the 2006 fiscal year;
6. Directing Arts4All, for so long as it conducts business in the State of New York and so long as Hancock is an Arts4All shareholder, to hold annual shareholders meetings;<sup>2</sup>
7. Directing Arts4All to pay Hancock's reasonable pro se attorney's fees, expenses, costs and disbursements incurred in connection with her petition;
8. Directing that this court retain jurisdiction of the matter; and
9. Granting such other and further relief the court may deem just and proper.

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<sup>1</sup> Arts4All is a business providing educational institutions and students with access to performances, exhibitions and lessons from remote locations. Arts4All is located in New York and incorporated in Delaware.

<sup>2</sup> Hancock's sixth request specifies that these meetings begin in 2008 and thereafter occur within 150 days after the end of the immediately prior fiscal year.

Prior to Petitioner bringing this case, extensive litigation took place between the parties before Justice Rolando T. Acosta, who issued a number of decisions as well as multiple orders, verbal and written warnings and, ultimately, sanctions.<sup>3</sup> (Arts4All Ltd. and Richard Humphrey, Plaintiffs, v. Judith Hancock, Defendant and Counterclaimant, v. Daniel Y. C. NG, Robert McBain, Joel Meyerson, and Peter Osgood, Additional Defendants on the Counterclaims, Index #101123-2003).

Of the interminable motion practice from the prior litigation, the following is relevant to the case at hand:

April 18, 2005, Hancock petitioned the court to enforce certain rights as an Arts4All shareholder, and, on May 19, 2005, Justice Acosta entered an order requiring Arts4All to turn over copies of certain documents, including financial records and shareholder meeting minutes to Hancock within thirty days of the order.

August 11, 2005, Hancock moved to hold Arts4All in contempt for failing to produce the documents. Subsequently, Justice Acosta entered a September 29, 2005 order, in which he denied Hancock's contempt motion, except that plaintiff Arts4All was ordered to turn over the April-June 2005 interim profit loss information, if such information existed.

July 11, 2006, Justice Acosta then issued an order dismissing both Arts4All's remaining claim and defendant's counterclaims, pursuant to CPLR 3126(3) and also dismissing Hancock's

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<sup>3</sup> In the prior litigation, Arts4All brought the initial complaint against Hancock, who then brought counterclaims against Arts4All, as well as a third party action against Daniel Y.C. NG, the corporation's Chairman of the Board, Robert McBain, a shareholder and Board member, Joel Meyerson, a shareholder and Board member, and Peter Osgood, a shareholder and Board member, as additional defendants on the counterclaims.

motion for summary judgment as moot.

Following the September 29, 2005 order, Hancock took no action to obtain the documents until she later served a demand for the same documents in July 2006 (February 13, 2007 Tr. p. 27). Then, December 27, 2006, the day before the annual meeting, Hancock brought the present action and also requested a temporary restraining order which I denied.<sup>4</sup>

On February 13, 2007, I heard oral argument on Hancock's petition.<sup>5</sup>

Arts4All argues that the instant case should be dismissed both because Hancock is guilty of laches and because "collateral estoppel" precludes her from bringing this special proceeding between "...the same parties, concerning the same issues, [and] the same fact pattern." (Tr. p. 28).

Counsel for Arts4All noted, at oral argument, that although the 2006 information requested, was obviously not yet in existence when this case was litigated in 2005, Hancock could have requested the information dealing with the 2005 fiscal year when the matter was before Justice Acosta, but chose not to do so. Similarly, Arts4All argues that Hancock, on numerous occasions, requested an order from Justice Acosta directing that an annual meeting be held, and that Justice Acosta declined to issue such an order. (Tr. p. 32).

Arts4All also contends, that it provided Hancock with a draft profit and loss statement for the fiscal year 2006, because final information was not yet available, and that it permitted Hancock to inspect the stockholder's ledger.

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<sup>4</sup> Arts4All submitted no memorandum of law but opposed Hancock's petition in its answer and at oral argument (*See* Arts4All's "Verified Answer," January 25, 2007).

<sup>5</sup> Also discussed, but not litigated at oral argument was Arts4All's CPLR §408 motion to strike Hancock's requests to admit. (*See* Tr. p. 9-10)

Finally, Arts4All asserts that Justice Acosta considered the question of legal fees and related discovery in the previous litigation.<sup>6</sup>

At oral argument, Hancock asserted that her current request was not repetitive of that before Justice Acosta, arguing that many of the items she currently seeks were not requested previously. Nevertheless, nothing raised by Hancock either at oral argument or in her papers has persuaded me that her petition should be granted. Upon reviewing Hancock’s numerous requests alongside the previous litigation, it becomes clear that the instant case is an attempt to evade Justice Acosta’s rulings. Including a laundry list of items that were not, and in large part could have been, requested in the previous action cannot transform this duplicative suit into a new claim. While it is true that Hancock’s current petition includes requests for some documents not yet in existence<sup>7</sup> during the previous litigation and also seeks to compel shareholder meetings for more recent fiscal years, the substance of her requests and basis therefore mirror those in the litigation before Justice Acosta. For example, Hancock pursued the following relief in both actions:

2005 Order to Show Cause	Present Order to Show Cause
<p>Item (1) A certified copy of the shareholder ledger</p> <p>Item (5) Certified copies of minutes of all shareholder meetings since the 2002 annual shareholders meeting and certified copies of Arts4All’s incorporation papers (articles of incorporation and any preferred stock certificates of designation and by-laws, including all amendments thereto</p>	<p>Item (1) The right to inspect and copy the shareholder ledger, financial statements and other corporate documents identified in Attachment A</p>

<sup>6</sup> See Arts4All’s “Verified Answer” at ¶¶20 and 25.

<sup>7</sup> It should be noted that, in her petition before Justice Acosta, Hancock sought profit and loss statements and balance sheets for all future fiscal years.

<p>Item (2) Copies of final non-draft profit &amp; loss balance sheets for fiscal years 2001, 2002, 2003 and 2004, and quarterly profit and loss statements for 2005</p> <p>Item (3) Year end profit and loss statements and balance sheets for all <u>future</u> fiscal years, so long as Hancock is an Arts4All shareholder (Emphasis added)</p> <p>Item (4) Copies of the same interim financial information (such as quarterly profit and loss statements) which Arts4All provides to any other shareholder, at the same times and in the same manner as provided to such other shareholder, so long as Hancock is an Arts4All shareholder</p>	<p>Item (4) Copies of the year end P&amp;L (fiscal year 2006).</p>
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The doctrines of res judicata and collateral estoppel preclude parties from re-litigating matters in situations analogous to that at hand for reasons of both justice and efficiency. As noted in *Siegel's New York Practice* (David D. Siegel, *New York Practice* §442 [4th ed., West Group Online Edition, Current through 2007]), res judicata

“...is designed to put an end to a matter once duly decided. It forbids relitigation of the matter as an unjustifiable duplication, an unwarranted burden on the courts as well as on opposing parties. Its main predicate is that the party against whom it is being invoked has already had a day in court, and, if it was not satisfactory, the proper course was to appeal the unsatisfactory result rather than ignore it and attempt its relitigation in a separate action.” [§442].<sup>8</sup>

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<sup>8</sup> Siegel describes collateral estoppel as “member...of the res judicata family,” which addresses litigation that duplicates less than the entirety of a previous action. (*Siegel's supra* at §443. He also discusses New York’s strong policy against relitigation of matters, noting that “[t]he caselaw consistently serves the theme of the res judicata tribe, manifesting that a resourceful judge will not suffer a blatant disregard of the family’s policy merely because a case dropped by while no one was at home.” (*Id.*).

Similarly, here, where Plaintiff previously sought Arts4All's corporate records before Justice Acosta, the appropriate avenue for relief was to appeal his decisions rather than attempt to re-characterize her requests in a substantively identical proceeding. Furthermore, Hancock actually has appealed Justice Acosta's September 29, 2005 and July 11, 2006 decisions. (See Exhibits B and D of Respondent's "Verified Answer," attaching the notices of appeal). In fact, her appeal of the September 29, 2005 decision further seeks an order directing the respondent to hold its annual shareholder's meeting. If Hancock's appeals are granted, she may receive the relief she seeks here; moreover, if the Court denies her appeals, Hancock may be explicitly denied the same relief encompassed in this action.

For these reasons, Hancock's first, second and fourth requests are DENIED.

Hancock's third, fifth and sixth requests, that certain annual shareholder's meetings be held, are also duplicative of relief previously sought. At oral argument, it was uncontested that Hancock, on numerous occasions, requested an order from Justice Acosta directing that an annual meeting be held, and that Justice Acosta declined to issue such an order. Consequently, these requests are also DENIED.

In light of the foregoing, Petitioner's request directing that this court retain jurisdiction over the matter is DENIED as moot<sup>9</sup>, as is Respondent's §408 motion to strike Petitioner's requests to admit.

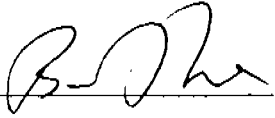
Finally, Petitioner's request for attorneys fees is DENIED, as moot, because the

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<sup>9</sup> In light of the foregoing, Respondent's contempt motion, (#604417-2006, motion sequence #002) is also DISMISSED as moot.

Shareholder's Agreement permits only the prevailing party to recover such fees.<sup>10</sup>

DATED: 5/14/07



J.S.C.

**HON. BERNARD J. FRIED**

**FILED**  
MAY 17 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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<sup>10</sup> See Shareholders Agreement, as dated July 20, 2000 (10)(h), and September 7, 2001 Shareholders Agreement at §(1)(a) (Exhibits 2 and 3 to Hancock Affidavit).