

Matter of Megan's Rose Florist, Inc.

2007 NY Slip Op 32119(U)

July 5, 2007

Supreme Court, Suffolk County

Docket Number: 0011343/2007

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 46 SUFFOLK COUNTY

Present:

HON. EMILY PINES
 Justice Supreme Court

Original Motion Date: 04-24-2007
 Motion Submit Date: 06-06-2007
 Motion Sequence No.: 001- RRH

_____x
 In the Matter of the Application for the Dissolution of
 MEGAN'S ROSE FLORIST, INC., a corporation,

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 Garden City, New York 11530-4701

_____x

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ORDERED, that the within Order to Show Cause seeking the dissolution of Megan's Rose Florist Inc., pursuant to **BCL 1104** is granted to the extent that the corporation be dissolved; and be it further

ORDERED, that Petitioner's request for the appointment of a receiver to windup the corporate affairs is denied; and be it further

ORDERED, that the parties are directed to appear at a hearing on September 4, 2007 9:30 a.m. before the undersigned at 210 Center Drive, Cromarty Court Complex, courtroom 18, Riverhead, New York to resolve the issue of valuation and distribution of the corporate assets.

This action was brought by an Order to Show Cause dated April 5, 2007 by Petitioner, Joseph Patitucci ("Patitucci" or "Petitioner"). It is undisputed that Patitucci is a 50% shareholder in the corporation. The Respondent is Madalena Lorito ("Lorito" or "Respondent") the owner of the remaining 50% of the shares of the corporation.

Megan's Rose Florist Inc. was incorporated on December 7, 2004. The Petitioner alleges that Lorito solicited him to join her in establishing the florist. Patitucci claims that there was an agreement wherein he would lend the business the necessary start-up costs in exchange for 50% ownership rights in the corporation. Patitucci claims that he secured a home equity line of credit on his residence to provide the necessary funds. He alleges that the balance on that line of credit

as of the date of the petition is \$48,850.00. In addition, Petitioner contends that he individually entered into a lease with United Properties Corp., the landlord, for five years in connection with said lease. He advanced a security deposit in the amount of \$5,505.88.

Patitucci further claims that the parties agreed that his entire investment would be paid back from the corporation and he would still retain 50% ownership in the corporation. Patitucci alleges that Lorito repeatedly refused to meet with him and attorneys to formalize the agreement. As a result, there are no signed documents reflecting the actual terms of the parties agreements.

Petitioner claims that problems in the corporation began almost immediately. He claims that Lorito lacked interest in formalizing the shareholders arrangement and executing the promissory note. He alleges that Lorito claimed there were insufficient funds in the business account, to provide him with a check to make the payments on the home equity line of credit. Petitioner claims that as a result of Lorito's failure to make this payment to him, he was forced to enter the store after hours to write a check in the amount of \$3,000 to make a payment on the loan. Following this incident, Lorito opened a second checking account for the corporation at the Bank of New York and did not authorize Petitioner as a signer on this account. In addition, Petitioner argues that Lorito has not been filing the required sales tax returns and has refused to allow him access to review the corporate records. He contends that there is internal dissension among the shareholders and they are so divided that dissolution would be beneficial.

Lorito claims that while she did enter into an agreement with petitioner to be equal partners in the florist, her recollection of the terms are far different. Lorito contends that she did not have the finances to open a business, but had 27 years of experience in the florist industry. She agreed to run the business full time and pay back to Petitioner, one-half of his investment representing her share of the start-up costs. She claims that this amount is \$26,000.00. She further claims that she refused to sign corporation documents presented to her by Patitucci because they did not reflect the agreement made between them. Lorito also claims that there was an agreement wherein she was entitled to a salary of \$900.00 per week for running the business. (Patitucci contends that the amount agreed upon was \$300.00 per week). In her opposition papers, Lorito has affixed a handwritten schedule of payments allegedly made to Patitucci in repayment of her share of the loan. Additionally, Lorito lists inventory sent or taken by Patitucci and deducts its value from the amount allegedly owed to him. This document reflects repayment in the amount of \$13,317.90. Lorito contends that Patitucci wrote a \$3,000 check to himself, and caused the account to be overdrawn. The bank subsequently returned certain checks Lorito had previously given to vendors, for payment of inventory. After this

occurrence, Lorito claims it was necessary for her to open an additional corporate checking which Patitucci did not have access to so that she could continue to pay vendors.

Lorito is opposed to the dissolution of the corporation disputing that there is any internal dissension caused by her, and that dissolution would cause the parties to lose all sums allegedly owed to them. Lorito states that she currently has an investor interested in buying Patitucci's share of the corporation, however the buy-out amount cannot be agreed upon.

A Petition for dissolution may be presented by the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors on the ground "there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders." **BCL §§ 1104(a)(3)**. (see, **In the Matter of Fazio Realty Corp.**, 10 AD3d 363; and **In the Matter of Dubonnet Scarfs, Inc.**, 105 A.D.2d 339).

Courts have held that, "in determining whether a petition for dissolution should be granted, the issue is not who is at fault in creating a deadlock, but whether a deadlock exists." (see, **Matter of Validation Review Associates, Inc.**, 236 A.D.2d 477; **Matter of Kaufmann**, 225 A.D.2d 775, 640 NYS2d 569; **Matter of Goodman v. Lovett**, 200 AD2d 670).

Lorito, offers little evidence to refute Patitucci's claim that there has been a complete breakdown in the shareholders' relationship. The parties herein cannot agree on the basic terms which began their relationship nor how to continue the business going forward. As a result, the court finds that there is sufficient evidence to grant the petition for dissolution¹.

The Court finds that Petitioner's request for the appointment of a receiver is without merit in this matter and is therefore denied. The parties agree that they are equal shareholders in this corporation. However, without written documentation memorializing the terms of the agreement, the Court must look to the record and make its own determination as to the terms of incorporation, and the amount due to each of the shareholders.

Although Petitioner's claim (that he is entitled to a return of his entire investment in the corporation, as well as retention of 50% of the shares) appears to the Court as a somewhat one-sided arrangement, he

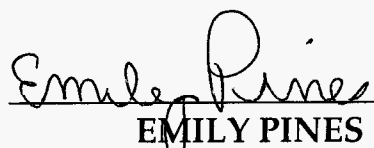
¹ The Court notes that neither party is restricted from pursuing new business opportunities as they may become available nor from forming a new corporation.

is entitled to present evidence of this agreement to the Court. Likewise, Ms. Lorito will also be given the opportunity to present evidence supporting her recollection of the agreement to the Court for determination.

Accordingly, the parties are directed to appear for a hearing to determine the value of the corporation and to proceed with the winding up of corporate affairs and the distribution of corporate assets.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: July 5, 2007
Riverhead, New York



EMILY PINES
J. S. C.