

Matter of Deblinger

2010 NY Slip Op 32311(U)

August 19, 2010

Supreme Court, Nassau County

Docket Number: 001723/10

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 2
NASSAU COUNTY

In the Matter of the Application of
H. CECILE DEBLINGER,

Petitioner,

INDEX No. 001723/10

MOTION DATE: June 21, 2010
Motion Sequence # 001, 002

for a Judgment pursuant to Business
Corporation Law §1102, Dissolving
LEEMAR LEASING CORP.,

Respondent,

and

JAY L. DEBLINGER and JO ANN DEBLINGER,

Additional Respondents.

In the Matter of the Application of
H. CECILE DEBLINGER,

Petitioner,

INDEX No. 001725/10

MOTION DATE: June 21, 2010
Motion Sequence # 001, 002

for a Judgment pursuant to Business
Corporation Law §1102, Dissolving
SANI-PINE PRODUCTS CO. INC.,

Respondent,

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and

JAY L. DEBLINGER and JO ANN DEBLINGER,

Additional Respondents.

The following papers read on this motion:

Order to Show Cause.....	XX
Notice of Motion.....	XX
Affidavit/Affirmation in Opposition.....	XXXX
Affirmation in further Support.....	XXX

Petition by H. Cecile Deblinger to dissolve Leemar Leasing Corp is **granted**. Motion by H. Cecile Deblinger for an order requiring all creditors of Leemar Leasing to present their claims is **denied**. Petition by H. Cecile Deblinger to dissolve Sani-Pine Products Co., Inc is **granted**. Motion by H. Cecile Deblinger for an order requiring all creditors of Sani-Pine to present their claims is **denied**.

These are petitions by a director of two family held corporations for judicial dissolution of the corporations pursuant to Business Corporation Law § 1102. Petitioner H. Cecile Deblinger is the holder of 1/3 of the stock of respondent Leemar Leasing Corp. Cecile's siblings, respondents Jay L. Deblinger and Jo Ann Deblinger, each own 1/3 of the shares. Cecile is the sole officer and director of the corporation. Leemar was engaged in the business of leasing automobiles and also owned two rental properties in Manhasset.

Cecile, Jay, and Jo Ann are also 1/3 owners of another corporation, respondent Sani-Pine Products Co. Inc. Cecile was also the sole officer and director of Sani-Pine. Sani-Pine was engaged in the business of selling disinfectants and cat litter. The corporation owned rental properties in Manhasset and Manhattan.

On December 21, 2007, Cecile, Jay, and Jo Ann conducted a telephone conference purporting to be a stockholders meeting of the two corporations. The minutes of the stockholders meeting, which are signed only by Cecile and Jo Ann, reflect that all three stockholders agreed to the liquidation of the corporations. The minutes state that Cecile would offer the Leemar properties for sale and that, once a bona fide offer was received, any

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of the stockholders would have the right to purchase the property at that price. The minutes provide that the Sani-Pine properties would be disposed of in the same manner and the liquidation of both corporations would begin in 2008.

Shortly after the stockholders meeting, disharmony developed among the shareholders. Nevertheless, Jay purchased the Leemar properties on June 20, 2008. \$300,000 of the proceeds of the sale has been distributed to the shareholders, and approximately \$200,000 remains undisbursed. The Sani-Pine Manhattan property was sold to a third-party on August 12, and the Sani-Pine Manhasset property was sold to a third-party on September 17, 2008. Meanwhile, in May 2008, Jay brought an action seeking to enjoin the sale of the Sani-Pine Manhasset property. Jay brought another unsuccessful action to restrain the sale of the property on September 22, 2008.

Approximately \$1.5 million was realized from the sale of the Sani-Pine properties, but these funds have not been distributed to the shareholders. Petitioner has offered to distribute the monies realized from the liquidation of both corporations, if Jay and Jo Ann sign releases but they have refused to do so.

On February 2, 2010, petitioner brought these proceedings for the judicial dissolution of both corporations on the ground that dissolution will be beneficial to the shareholders. Additionally, petitioner moves pursuant to Bus. Corp. Law § 1008 for an order requiring all creditors, including Jay Deblinger, to present their claims.

Jay Deblinger consents to the dissolution of the corporations, without prejudice to his claims against petitioner. Those claims relate to petitioner's "handling of [the corporations'] day to day business, her depriving me of my rights as one of [the corporation's] ...shareholders and her improper self-dealing..." Jo Ann has no objection to dissolution and has offered to sign a release, provided Jay also releases petitioner from any liability. Jay opposes petitioner's motion for an order requiring him to present his claims. Jay argues that his claims against petitioner are not covered by Bus Corp Law § 1008 because they are personal claims.

Business Corporation. Law § 1102 provides that a majority of the board may present a petition for dissolution if it adopts a resolution that the assets of the corporation are not sufficient to discharge liabilities, or that a dissolution will be beneficial to shareholders. Business Corporation Law § 1111[c] provides that if the judgment or final order provides for

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dissolution of the corporation, the court may, in its discretion, provide therein for the distribution of the property of the corporation to those entitled thereto according to their respective rights.

Because of the acrimony which has developed and the failure of any shareholder to object to dissolution, the court finds that dissolution will be beneficial to the shareholders. Accordingly, the petitions are granted. Petitioner shall submit separate judgments dissolving the corporations on notice to respondents. It does not appear that the corporations owe any significant liabilities to anyone other than the shareholders. Thus, the proposed judgments shall contain provisions that the property of the corporations shall be distributed to the shareholders according to their respective interests.

Business Corporation law § 1117(a) provides that certain provisions applicable in non-judicial dissolution shall also apply in judicial dissolution proceedings. Among those provisions is BCL § 1008, which authorizes the court to supervise dissolution and liquidation of the corporation. Section 1008 authorizes the court to issue orders in connection with the dissolution, including the determination of the validity and amount of any claims which have been presented to the corporation, the barring of all creditors who have not timely filed claims, and the determination of any liability of any officer, director, or shareholder to the corporation (BCL § 1008(a)[3][4] and [5]). Additionally, BCL § 1117[c] authorizes the court to order the corporation to give notice to creditors and claimants at any stage of the dissolution proceeding.

The creditors and claimants as to whom the court may direct that notice be given pursuant to BCL § 1117[c] and BCL § 1008[a][2] appear to be outside creditors not affiliated with the corporation (See *Bryant Elbert Ford v Pulmosan Safety Equip Corp.*, 52 AD3d 710 [2d Dept 2008]). Nevertheless, pursuant to BCL § 1008(a)[5], the court has jurisdiction to determine a claim against a director for breach of a fiduciary duty owing to the corporation. Jay attempts to avoid the applicability of this provision by arguing that his claim is personal rather than a derivative claim which must be asserted on behalf of the corporation. A shareholder may have an individual cause of action, if the wrongdoer has breached a duty owed to the shareholder independent of any duty owing to the corporation (*Abrams v Donati*, 66 NY2d 951 [1985]). However, allegations of mismanagement or diversion of assets to the director's own enrichment, without more, give rise to only a derivative claim (Id).

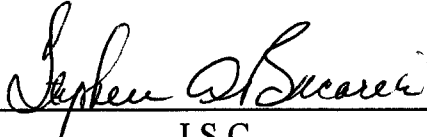
Thus, the court concludes it has discretion to supervise the liquidation of the two corporations and direct all claimants, including respondent, to present their claims. However,

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because Jay's breach of fiduciary duty claims have not been alleged in detail, the court declines to exercise jurisdiction over the claims at this time. Petitioner's motions for an order requiring all creditors to present their claims are denied. The court notes that pursuant to BCL § 1007[a], which is also made applicable to judicial dissolution proceedings pursuant to BCL § 1117[a], the corporations may give notice to creditors after the judgments of dissolution have been entered.

So ordered.

Dated **AUG 19 2010**



J.S.C.

ENTERED

AUG 23 2010

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**