

Matter of Soormaghen
2010 NY Slip Op 33736(U)
August 10, 2010
Supreme Court, New York County
Docket Number: 111242/08
Judge: Paul G. Feinman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HON. PAUL G. FEINMAN**

PART 12

Index Number : 111242/2008

SOORMAGHEN, HERSEL

vs
GLOBAL 2000 CORP.

Sequence Number : 002

RESTORE PRIOR MOTION

INDEX NO. 111242/08

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**PETITION IS DECIDED IN ACCORDANCE WITH
THE ANNEXED DECISION, ~~ORDERED~~.**
Settle order + judgment.

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

Dated: 8/10/10

~~SC~~ 10/27/10 at 2:15 PM

SAF

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Settle order/judgment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X
In the Matter of the Application of Hersel Soormaghen as
holder of one-Half of all outstanding shares, entitled to
vote in an Election of Directors of Global 2000 Corp.,
Petitioner,

Index No. 111242/2008
Mot. Seq. No. 002

For the Dissolution of Global 2000 Corp., a domestic
Corporation

-----X

Appearances:

For Respondent Estate of Joel Press:
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New York, NY 10019
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and
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For Petitioner:
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By: Bruce E. Barnes, Esq.
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**For 3 Stars Enterprise, LLC, Sandi Wallach, and Hersel
Soormaghen in Matter of Estate of Joel Press, Sup Ct, NY County,
Feinman, J., Index No. 118065/09:**
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Papers considered in review of this motion:

Papers:	Document Number:
Notice of Motion	1
Affirmation in support and annexed exhibits	2
Affirmation in opposition	3
Soormaghen affidavit	4
Troyetsky affirmation in opposition	5
Petition	6

PAUL G. FEINMAN, J.:

Respondent Estate of Joel Press moves to restore this matter to the motion calendar and to consolidate this proceeding with two other proceedings. For the reasons discussed below, the motion is only granted to the extent that this proceeding is restored to active status, the petition is granted, and the counterclaim seeking to wind up the affairs is granted.

Background

Global 2000 Corp. was formed in 1993 by petitioner Hersel Soormaghen and Joel Press, each of whom owned one half of the outstanding shares (Doc. 6 ¶¶ 1, 4).¹ Since, then Global 2000 Corp. has acquired a number of real property interests all of which are located in New York County. Press died in 2006 and petitioner alleges that since then he “has repeatedly clashed with the attorneys for [Press’ estate]” (Doc. 6 ¶ 9). Thus, petitioner commenced this proceeding seeking judicial dissolution pursuant to Business Corporation Law § 1104. After ten appearances on the motion calendar and numerous requests for adjournments, ostensibly to foster settlement, the petition was ““marked off” with leave to any party to request” restoration (Doc. 2, Ex. J). Press’ estate has made such a request and now moves to consolidate and/or join for the purposes of discovery and trial this proceeding with two other corporate dissolution proceedings: *Matter of Estate of Joel Press*, Sup Ct, NY County, Feinman, J., index No. 118065/09, which seeks to dissolve 3 Stars Enterprise, LLC, and *Matter of Estate of Joel Press*, Sup Ct, NY County, Feinman, J. index No. 118064/09, which seeks to dissolve Global 2000, LLC.

Analysis

First, the branch of the instant motion which seeks to have this proceeding restored to active status and the petition restored to this court’s motion calendar for determination on the merits is granted. The court’s original order marking this proceeding off calendar while the parties continued settlement negotiations specifically provided for restoration by application of any party.

The court now turns to consideration of the petition on its merits. Petitioner commenced this proceeding seeking judicial dissolution pursuant to Business Corporation Law § 1104 on the grounds of deadlock. More specifically, petitioner raises three types of deadlock which track the

¹ Unless otherwise indicated, references are to the above-listed document number.

Business Corporation Law. The first kind of deadlock alleged is that the “shareholders are so divided that dissolution would be beneficial to the shareholders” (Doc. 6 ¶ 7) (*see* Business Corporation Law § 1104 [3]). The second contention is that the “directors are so divided respecting management of the corporation’[s] affairs that the votes required for action by the board cannot be obtained” (Doc. 6 ¶ 7) (*see* Business Corporation Law § 1104 [1]). The third reason asserted is that the “shareholders are so divided that votes required for election of directors cannot be obtained and no new director has been elected over the last two years” (Doc. 6 ¶ 7) (*see* Business Corporation Law § 1104 [2]).

Respondent, Press’ estate, concedes that there has been internal dissension and a management deadlock, which the record amply demonstrates, and consents to dissolution (Doc. 2, Ex. D ¶¶ 7, 13). Thus, the petition for dissolution must be granted for “the benefit of the shareholders” (Business Corporation Law § 1111). “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” (*Matter of Oak St. Mgt.*, 307 AD2d 320, 320 [2d Dept 2003]). Therefore, the parties shall settle an order and judgment granting dissolution and a winding up of Global 2000 Corp.’s affairs in accordance with the procedures set forth in the Uniform Rules for the New York State Trial Courts, 22 NYCRR 202.48, as well as the Supreme Court, Civil Term, New York County, Local Rule 16(b), available at <http://www.nycourts.gov/supctmanh/UNIFRL-2010-May19%20rite.pdf>, which requires proposed counter-orders submitted to the court pursuant to Uniform Rule 202.48 (c) (2) to be marked to identify all respects in which the proposal differs from the submission to which it responds.

Global 2000 Corp.’s affairs, this court is vested with

the power to appoint a receiver to wind up corporate affairs when there is a potential for waste, dissipation of corporate assets, or other irreparable loss (*see* CPLR 6401; Business Corporation Law § 1113; *Matter of Armenti & Brooks*, 309 AD2d 659, 661 [1st Dept 2003]). Respondent claims that there is no need to appoint a receiver because “all of the properties owned by Global have been managed by Marlboro Realty (Steve Golding) . . . efficiently for many years without any problems” and appointment of a receiver would unduly diminish the amounts to be paid to [both parties]” (Doc. 2, Ex. D ¶¶ 19-20). Initially, respondent asked this court to appoint an independent broker – Mark Zborovsky – to cause the sale of the corporation’s assets (Doc. 2, Ex. D ¶ 21). At first, petitioner had no objection to allowing Marlboro Realty to remain the manager of the properties; nor did petitioner object to appointing Zborovsky to list the apartments for sale (Doc. 2, Ex. F ¶¶ 2-3). Petitioner did ask, however, that he be given the opportunity to match any offer that Zborovsky may receive. Now, respondent submits documentary evidence tending to show that Zborovsky did in fact procure at least one offer since then which petitioner was aware of and refused to match (Doc. 2, Exs. E, G, I). This supports respondent’s allegations that petitioner had no intention of actually exercising the option he sought and continually frustrated negotiations (Doc. 2, Ex. J).

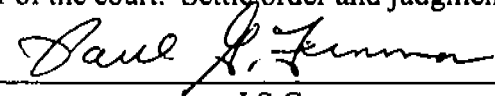
In the event that the parties “cannot reach an agreement amongst themselves with respect to the sale of the corporation’s assets either to one another or to a third party, ‘the only authorized disposition of corporate assets is liquidation at a public sale’” (*Matter of Ravitz v Gerard Furst & Marjorie Ravitz, DPM, P.C.*, 65 AD3d 1049, 1050 [2d Dept 2009]). In such a case, in light of the parties’ history of unsuccessful negotiations during the many months that this case was carried on the court’s open motion calendar before it was marked off, the court will entertain an application

for the appointment of a receiver at a compliance conference to be held on October 27, 2010 at 2:15 p.m. While this involves cost to both parties, appointment of a receiver would be a last resort to facilitate such liquidation, and "to fully protect the business and the financial interests of the parties and to advance the ends of justice by a speedy resolution of this impasse" (*Matter of T. J. Ronan Paint Corp.*, 98 AD2d 413, 421 [1st Dept 1983]; see Business Corporation Law §§ 1113; 1202 [a] [1]). In other words, if the parties are unable to reach an agreement that actually liquidates the corporation's assets before the October 27th compliance conference, it will consider an application for appointment of a receiver. The continued stalemate here is not an acceptable resolution of the proceeding.

Finally, respondent's motion for consolidation and/or joint discovery or trial of this proceeding with *Matter of Estate of Joel Press*, Sup Ct, NY County, Feinman, J., index No. 118065/09 and *Matter of Estate of Joel Press*, Sup Ct, NY County, Feinman, J. index No. 118064/09 is denied as academic. In addition to the fact that the petition at issue here is granted in this decision, the court has, today, issued a decision authorizing dissolution and appointment of a trustee to oversee the liquidation of the LLC's assets. Thus, two of the three matters now have a final disposition of the relief sought in the petitions. The third does not yet have an answer filed. All three matters are currently before this court, and, thus, the court system through use of the "related case" rule in the Request for Judicial Intervention has already accomplished a *de facto* joinder. To the extent necessary, the three will be calendared for conferences together so as to avoid unnecessary duplication of appearances and expense. Should discovery prove necessary at any point, whether pre- or post-judgment, all three cases can be jointly managed by this court.

This constitutes the decision and order of the court. Settle, order and judgment.

Dated: August 10, 2010
New York, New York



J.S.C.