

Matter of Soni v Soni
2013 NY Slip Op 33613(U)
December 16, 2013
Sup Ct, Queens County
Docket Number: 701877/2013
Judge: Orin R. Kitzes
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
COMMERCIAL DIVISION

Handwritten: 12/17/2013
Stamp: JUDGE [illegible]

Present: HONORABLE ORIN R. KITZES IA Part 17
Justice

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In the Matter of the Application of Number 701877 / 2013
CHETAN K. SONI, as Holder of Shares
Representing Forty-Five Percent (45%) of
All Outstanding Shares of House of Motion
Spices (India), Inc., Date September 11, 2013

Petitioner,

Motion Seq. No. 1

For the Dissolution of HOUSE OF SPICES
(INDIA), INC., a Domestic Corporation,
Pursuant to Section 1104-a of the
Business Corporation Law,

-against-

GORDHANDAS L. SONI, NEIL G. SONI,
AMRAPALI SONI, and THE GORDHANDAS &
SOBHANA SONI FAMILY LLC,

Respondents.

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The following papers numbered 1 to 8 read in this special proceeding brought by petitioner Chetan K. Soni pursuant to Business Corporation Law § 1104-a for the judicial dissolution of House of Spices, Inc. (HOS).

	Papers Numbered
Order to Show Cause - Petition - Exhibits.....	1
Answering Affidavits - Exhibits.....	2-4
Reply Affidavits.....	5
Memoranda of Law	6-8

Upon the foregoing papers it is ordered that the petition is disposed of as follows:

Respondent Gordhanas L. Soni (GL Soni) and his younger brother, the late Kumar Soni, founded HOS, a company engaged in the

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importation, production and distribution of ethnic Indian foods, in the 1970's. GL Soni and his wife together owned 55% of the company, and Kumar owned the other 45%. The company grew from a single store in Queens to a business which today has annual sales revenue approaching \$100,000,000. Petitioner Chetan K. Soni and his cousin, Neil Soni, the sons of Kumar and GL Soni respectively, joined HOS in 2003. Kumar died about one year later, and the petitioner assumed his role as Vice President of Operations and eventually inherited his 45% interest in the company. His duties included regulatory compliance and licensing, truck leasing, freight rate negotiations, warehouse equipment maintenance, local purchasing and contracting, and reconciliation of customer accounts. The petitioner alleges that GL Soni has attempted to force him out of the company by: (1) demoting him from an officer in the company to a mere manager without cause, (2) pressuring him to accept a buy-out of his interest at an unfairly low price, (3) cutting him off from all salary, distributions, and financial benefits due him, (4) barring him from the company's premises, (5) denying him access to the company's books and records, and (6) removing him as a signatory on corporate bank accounts. The petitioner also alleges that the respondents have been diverting corporate assets to themselves.

On the other hand, the respondents allege the following: The petitioner did not dedicate himself to HOS and instead chose to work only a few hours per day. Although invited to attend the daily sales meetings, he never did. The petitioner did not participate in marketing presentations at domestic trade shows. His poor customer service ruined the company's relationship with one of its largest local customers. He mismanaged the purchasing department by greatly overpaying for merchandise, by purchasing inferior products, and by failing to adequately stock warehouses. He mismanaged company properties, causing them to operate at losses. The petitioner was not demoted from Vice-President to manager, but he himself requested that his work with the company be limited to purchasing and oversight of the ice cream department. He did not cooperate with efforts made by his cousins Neil and Amrapali to resolve conflicts among the family members, and he eventually ceased to communicate with them. The petitioner was more interested in the buy-out of his shares than in working for the company. In October 2012, he agreed to begin negotiations for the purchase of his shares in the company, and he engaged in a process whereby his duties were transferred to his cousins. In January 2013, the petitioner and GL Soni agreed that the former's interest in the company would be bought out for \$9,750,000, but the petitioner reneged on the deal by demanding in addition the transfer of certain real estate assets to him. GL Soni terminated the petitioner's employment with the company in February 2013. The

petitioner made at least sixty-six unauthorized withdrawals of company funds between 2007 and 2011 amounting to at least \$319,110.

Business Corporation Law § 1104-a, "Petition for judicial dissolution under special circumstances," provides in relevant part: "(a) The holders of shares representing twenty percent or more of the votes of all outstanding shares of a corporation . . . entitled to vote in an election of directors may present a petition of dissolution on one or more of the following grounds: (1) The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders; (2) The property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes by its directors, officers or those in control of the corporation." (See *Matter of Can Plant Maintenance, Inc.*, 270 AD2d 829.) In regard to BCL 1104-a(1), "oppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." (*Matter of Kemp & Beatley, Inc.*, 64 NY2d 63, 73; see, *In re Quail Aero Service, Inc.*, 300 AD2d 800.) The frustration of a shareholder's expectations of continued employment (see *In re Williamson*, 259 AD2d 362; *In re Parveen*, 259 AD2d 389; *Gunzberg v Art-Lloyd Metal Products Corp.*, 112 AD2d 423), of the payment of a salary (see *Cassata v Brewster-Allen-Wichert, Inc.*, 248 AD2d 710; *Matter of Imperatore*, 128 AD2d 707), and of active participation in the affairs of a company (see, *Di Mino v De Veaux Services, Inc.*, 238 AD2d 943; *Burack v I. Burack, Inc.*, 137 AD2d 523) can give rise to a cause of action for the dissolution of a corporation pursuant to BCL 1104-a(1).

In this case, the conflicting allegations of the parties have raised issues of fact concerning whether the majority shareholders have been guilty of oppressive conduct against the petitioner in regard to his expectations of continued employment, the payment of salary, and active participation in the affairs of HOS. The conflicting allegations of the parties regarding the diversion of corporate assets have also raised issues of fact under BCL 1104-a(2). A hearing must be held pursuant to BCL 1109 to resolve disputed issues of fact concerning the merits of the petitioner's application and the appropriate remedy. (See *Matter of Steinberg*, 249 AD2d 551; *Giordano v Stark*, 229 AD2d 493; *Matter of Kournianos*, 175 AD2d 129; *Matter of McDougall [Manhattan Ad Hoc Housewares]*, 150 AD2d 160; *Matter of Ricci v First Time Around*, 112 AD2d 794.)

Accordingly, the petition is granted to the extent that a hearing shall be held to resolve disputed issues of fact concerning

the merits of the petitioner's application and the appropriate remedy. The petitioner is directed to file a note of issue and a certificate of readiness, a copy of which shall also be served on the Clerk of IAS Part 17 together with a copy of this order. The parties shall appear in this Part on **February 5, 2014 at 9:30 a.m.**, at which time a hearing date shall be assigned.

Dated: December 16, 2013



J.S.C.