

**Meagher v Doscher**

2015 NY Slip Op 32814(U)

September 16, 2015

Supreme Court, Suffolk County

Docket Number: 060807/2014

Judge: Jerry Garguilo

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**SHORT FORM ORDER-SUA SPONTE**

INDEX NOS. 060807/2014  
068379/2014  
608165/2015  
605850/2015

**SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY**

**PRESENT:**

**HON. JERRY GARGUILO**  
**SUPREME COURT JUSTICE**

**AMENDED ORDER**

\_\_\_\_\_  
MICHAEL MEAGHER, MICHAEL MEYER, and  
STEPHEN SMITH,

**INDEX NO.: 060807/2014**  
**FINAL SUBMITTED DATE: 9/15/15**  
**MOTION SEQ#006 &007**  
**MOTION: MD**

Plaintiffs,

-against-

**INDEX NO.:068379/2014**  
**FINAL SUBMITTED DATE: 9/15/15**  
**MOTION SEQ#012, 014, 015, 016**  
**MOTION: MD**

DREW DOSCHER,

Defendant,

**INDEX NO.: 608165/2015**  
**FINAL SUBMITTED DATE: 9/15/15**  
**MOTION SEQ#001, 002, 003**  
**MOTION: MD**

and

148 SOUTH EMERSON PARTNERS, LLC,

Nominal Defendant.

**INDEX NO.: 605850/2015**  
**FINAL SUBMITTED DATE: 9/15/15**  
**MOTION SEQ#001, 002**  
**MOTION: MD**

\_\_\_\_\_  
MICHAEL J. MEYER, individually and derivatively  
on behalf of 148 SOUTH EMERSON ASSOCIATES,  
LLC.,

**Attorneys for Meagher, Meyer and Smith:**  
KAYE SCHOLER LLP  
250 WEST 55TH STREET  
NEW YORK, NY 10019  
ATTN: JAMES CATTERSON, ESQ.

Plaintiff,

and

**Attorney for Drew Doscher:**  
DEVEREAUX LAW GROUP  
D/B/A MICHAEL J. DEVEREAUX & ASSOC., PC  
39 BROADWAY, SUITE 910  
NEW YORK, NY 10006

MICHAEL MEAGHER & STEPHEN SMITH,

Nominal Plaintiffs,

-against-

**Receiver:**  
CHARLES RUSSO, ESQ.  
RUSSO KARL WIDMAIER & CORDANO, PLLC  
400 TOWN LINE RD  
HAUPPAUGE, NY 11788

148 SOUTH EMERSON, ASSOCIATES, LLC and  
DREW DOSCHER,

Defendants.

\_\_\_\_\_  
**Attorney for Charles Russo, Esq.**  
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JERICHO, NY 11753  
ATTN: SETH L. BERMAN

**Multo Utilius Est Pauca Indonea Efundere Quam Multis Inutilibus Homines Gravari** (4 coke, 20). “Or it is more useful to pour forth a few useful things than to impress men with many useless things.”

Mr. Justice Breitel noted “it is ancient and undisputed law that courts have an inherent power over the control of their calendars, and a disposition of business before them, including the Order in which disposition will be made of that business. *Plachte v. Bancroft, Inc.*, 3 A.D.2d 437, 161 N.Y.S.2d 892 (1957). Mr. Justice Breitel’s wisdom guides this Court to tap into those inherent powers, *albeit* responsibly, to control the course of this litigation. As noted in *Langan v. The First Trust and Deposit Company*, 27 App Div. 700, *affirmed* 296 N.Y. 1014, “it is our view that courts of record (Judiciary Law § 2) are vested with inherent powers, which are neither derived from nor dependent upon express statutory authority, and which permits such courts to do all things reasonably necessary for the administration of justice within the scope of their jurisdiction. The so-called “Inherent Powers Doctrine” has been described as follows: under the Inherent Powers Doctrine a court has all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the Court exists; the Court is, therefore, it has the powers reasonably required to act as an efficient court. Inherent judicial powers derived not from Legislative grant of specific constitution provision, but from the fact it is a court which has been created, and a court requires certain incidental powers in the nature of things. Carrigan, *Inherent Powers of the Courts*, Nation College of the State Judiciary, Reno Nevada [1973] ( *Matter of People v. Little*, 89 Misc.2d 742, 745, *affirmed* 60 A.D.2d 797). A court’s inherent powers are derived from the very fact that the court has been created and charged with certain duties and responsibilities. They are those powers which a court may call upon to aid in the exercise of its jurisdiction, and the administration of justice, and in the preservation of its own independence and integrity, such powers have been recognized since the days of the Inns of Court in common law English Jurisprudence (*Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398, 399 [Tex.] cited in *Gabrelian v. Gabrelian*, 108 A.D.2d 445, 489 N.Y.S.2d 914.

The manner in which this litigation has been conducted necessitates the Court to pull in the reigns and create order from the chaos that has been cast upon it to the detriment of the parties. All designated motions are hereby *sua sponte* advanced to September 15, 2015 and are determined as set forth herein.

A little history is in order. In its decision of February 19, 2015 the Court noted the following:

Before the Court are petitions involving two Limited Liability Corporations. More particularly, 148 South Emerson Partners, LLC and 148 South Emerson Associates, LLC. Sometime in the past, four sophisticated business persons, Michael Meagher, Michael Meyer, Stephen Smith and Drew Doscher purchased a valuable piece of property in Montauk, New York, and formed an entity known as 148 South Emerson Partners, LLC to take title. It is not disputed that upon formation the four individuals, noted hereinabove, each enjoyed a 25% equity stake in the "Partners" entity. The property is waterfront and was improved with a structure. Thereafter, the four men decided to open and operate a restaurant to be named "The Sloppy Tuna." The LLC (148 South Emerson Associates, LLC) was formed to own, manage and operate The Sloppy Tuna.

The prior decision of this Court, in substance, found that the four (4) individuals named immediately above are equal equity holders (25%) of the real estate. Furthermore, the Court found and held the restaurant business (The Sloppy Tuna) was and is owned equally by Michael Meyer and Drew Doscher through their equity stake in the LLC known as 148 South Emerson Associates, LLC.

Since the Court's earlier determination the parties have filed a barrage of motions including the following: (1) Two motions seeking dismissal by and on behalf of Mr. Doscher and his related interests. (2) A motion seeking sanctions by and on behalf of Mr. Doscher and related entities. (3) Two petitions seeking intervention and related relief. (4) Motions made by Mr. Doscher seeking to vacate, reargue and renew the prior order of this Court. (5) Motions by Mr. Doscher and his related entities to disqualify Plaintiff's counsel in two separate actions. (6) Five separate petitions seeking additional disqualification of Plaintiff's counsel, counsel fees, dismissal, sanctions against another party for seeking sanctions and to vacate a judgment and/or judgments. (7) Discovery applications. These petitions present the Court with thousands of pages of material.

In short, there are fifteen (15) petitions, not to mention petitions by the duly appointed Receiver. Additionally, the Court has been bombarded with correspondence from all sides.

The current posture of litigation breaks down into four (4) separate actions: (1) The action involving the entity known as the "partners action" (Real Estate) (Index No. 060807/2014) commenced February 2, 2014. (2) An accounting action involving the business known as The Sloppy Tuna (Index No. 068379/2014), commenced October 9, 2014. (3) An eviction action (Index No. 605850/20150), commenced June 3, 2015. (4) An action by the Defendant, Mr. Doscher (Index No. 608165/2015), commenced July 29, 2015.

The eviction action noted hereinabove (605850/2015) has been calendared for a summary hearing on October 26, 2015 at 11 a.m. An issue to be heard by the Court concerns the existence or non-existence of a leasehold interest in favor of the Associates entity d/b/a The Sloppy Tuna. The document which purports to be a lease was presented subsequent to the Court's determination in February of this year. From a practical standpoint a determination of no leasehold interest in favor of the business, The Sloppy Tuna, will lead to an eviction of the business. On the other hand, a finding of a viable leasehold interest will require the continuation of the litigation going back in time and forward in time.

All parties have disclosed to the Court the compellingly lucrative nature of the business known as The Sloppy Tuna. It is estimated that approximately Four Million Dollars (\$4,000,000.00) sits in the operating account of the business. Counsel for Mr. Meyer in the presence of counsel for Mr. Doscher and the Receiver requested an interim distribution of monies as none have been distributed. In what the Court perceives as a siege mentality, Mr. Doscher rejected the suggestion claiming that several years of taxes remain unfiled and unpaid. It is somewhat puzzling that Mr. Doscher would rely on the outstanding tax issue when throughout the litigation he has maintained complete and competent management of The Sloppy Tuna. He has also maintained the absolute lack of interest and/or management by Mr. Meyer. Therefore, the Court, *sua sponte*, and an exercise of its inherent powers orders an immediate disbursement of Seven Hundred Fifty Thousand Dollars (\$750,000.00) to Mr. Meyer and Mr. Doscher.

All motions and cross motions are **DENIED**, without prejudice. It should be noted that from strictly a procedural standpoint, the Defendant (Doscher) has routinely failed to comply with the Parts Rules requiring a pre-motion conference. However, the Court will not simply stand on ceremony. The matter has proceeded to date with virtually no progress toward an amicable resolution. In particular, during a conference with all parties, the Court suggested a formula to be used by the parties in an effort to reach a resolution. By way of telephone, the Defendant (Doscher) through counsel notified the Court that there will be no settlement/resolution of this matter. The Court determines that the matters should proceed as set forth hereinafter. Therefore, it is

**ORDERED ADJUDGED AND DECREED** that all motions are **DENIED** without prejudice pending the outcome of the summary proceeding matter pending at Index No. 605850/2015. As noted, that matter is currently scheduled for October 26, 2015 at 11 a.m.

In recognition that is black letter law that disclosure is unavailable as a matter of right in summary proceedings and leave of the court must be obtained to conduct disclosure. N.Y. CPLR 408; *Smilow v Ulrilch*, 806 N.Y.S.2d 392, 395. To obtain leave of the court, a petition must demonstrate "ample need" for the request of discovery *id.*; *Matter of Shore*, 109 A.D.2d 842, 843 (2nd Dept. 1985). Ample need requires a showing that the information requested is carefully tailored and is likely to clarify the disputed facts. *New York University v. Farkus*,

*MEAGHER, MEYER, SMITH v. DOSCHER, ET ANO*  
*INDEX NOS.: 060807/2014 and 068379/2014*  
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468 N.Y.S.2d 808, 811-12.

As noted hereinabove the issue involving the existence and/or non-existence of a lease shall be summarily determined. Although, as noted hereinabove that the hearing on the summary proceeding is currently October 26, 2015 at 11 a.m., the Court now modifies that date and it is **ORDERED** that the summary proceeding be heard on October 8, 2015 at 2 p.m.

It is further,

**ORDERED ADJUDGED AND DECREED** that the petitions of the Receiver, Charles C. Russo, Esq. for compensation shall be returnable on the 30th September, 2015. Any party opposing the petitions must submit any an all opposition on or before September 23, 2015. The Receiver may reply on or before the return date thereof.

The foregoing constitutes the decision and **ORDER** of this Court.

**Dated: September 16, 2015**

  
HON. JERRY GARGUILO, JSC