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SHORT FORM ORDER INDEX NOS. 068379/2014, 600830/2015, 608165/2015

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

PRESENT:

HON. JERRY GARGUILO
SUPREME COURT JUSTICE

ORDER

INDEX NO. 068379/2014: STAYED
INDEX NO. 600830/2015: STAYED
INDEX NO. 608165/2015: STAYED

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

Plaintiff,

and

MICHAEL MEAGHER & STEPHEN SMITH,

Nominal Plaintiffs,

-against-

148 SOUTH EMERSON ASSOCIATES, LLC and DREW DOSCHER,

Defendants.

INDEX NO.: 068379/2014

DREW DOSCHER, individually; DREW DOSCHER, derivatively, on behalf of 148 SOUTH EMERSON ASSOCIATES, LLC; and DREW DOSCHER, derivatively, on behalf of 148 SOUTH EMERSON PARTNERS, LLC,

Third-Party Plaintiffs,

-against-

MICHAEL MEAGHER; STEPHEN SMITH; 148 SOUTH EMERSON PARTNERS LLC; THE SEAPORT GROUP LLC, and ALLAN POVOL, CPA; POVOL & FELDMAN, CPR, PC;

Third-Party Defendants.

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

Plaintiffs,

INDEX NO.: 600830/2015

-against-

MONTAUK U.S.A., LLC et al

Defendants.

DREW DOSCHER, individually, DREW DOSCHER, derivately, on behalf of 148 SOUTH EMERSON ASSOCIATES, LLC, DREW DOSCHER, derivately, on behalf of 148 SOUTH EMERSON PARTNERS, LLC,

INDEX NO.: 608165/2015

Plaintiffs,

-against-

MICHAEL MEYER, ALLAN POVAL, MICHAEL MEAGHER, STEVEN SMITH, THE SEAPORT GROUP, LLC, 148 SOUTH EMERSON PARTNERS LLC,

Defendants.

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Receiver:
CHARLES RUSSO, ESQ.
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400 TOWN LINE RD
HAUPPAUGE, NY 11788

This is a Short Form Order relative to the entire inventory of The Sloppy Tuna matters including, Index No.: 068379/2014 (the "Accounting Action"), Index No.: 600830/2015 (the "License Action"),Index No.: 608165/2015 (the "Seaport Group Action") as well as any and all matters pending.

On August 2, 2017, commencing at 11 a.m., the Court conducted a conference via telephone, with counsel for all parties, as well as the Receiver, Charles C. Russo. Prior to the commencement of the phone conference, the Court was in possession of the following:

1. A July 18, 2017 letter from Michael J. Bowe, counsel for Mr. Doscher.
2. A July 19, 2017 letter from Michael Burrows, submitted on behalf of the Plaintiffs.
3. A July 31, 2017 letter from Mr. Burrows with Exhibits A, B and C. [1]
   A letter on August 1, 2017from Mr. Burrows with Exhibits A, B and C. [2]
4. An August 3, 2017 submission by Mr. Bowe with attachments.

Subsequent thereto, the Court received an August 16, 2017 submission on behalf of the Receiver.

On the issue involving a trademark (The Sloppy Tuna), all counsel agreed that an action involving the trademark (The Sloppy Tuna) was pending before Federal District Court Judge May in Georgia, captioned Montauk U.S. A. v. 148 South Emerson Associates, LLC and Michael Meyer, No. 1:14-cv-04075-LMM (N.D. Ga. filed December 23, 2014). Additionally, as noted in prior short form orders of this Court, Judge Feuerstein of the Eastern District of New York has also heard issues involved in the trademark claims pending before this Court. [3]

The Hon. Leigh Martin May, United States District Judge, Northern District of Georgia

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1. It is alleged in Mr. Burrows' July 31, 2017 correspondence that a person by the name of Ms. Joni Murphy filed an online complaint with the Town of East Hampton, Ordnance Enforcement Department knowing that it was false. Mr. Burrows sought permission to prosecute a contempt petition.

2. It is worthy of remark that the correspondence from Mr. Burrows contains copies of e-mails and/or text messages that were sent directly to Mr. Catterson and Mr. Burrows, counsel for Plaintiffs, by Mr. Doscher. The Court reserves characterization of the nature of the emails at this time.

3. On August 14, 2017, Judge May closed the Georgia Federal Case and transferred it to Judge Feuerstein.

issued a decision on August 14, 2017. A part of that decision is set forth as descriptive of the complex history.

> The procedural history of this—and the related New York and Fulton County cases—is long and complicated. Relevant to the Motions before this Court, Plaintiff Montauk U.S.A., LLC ("Montauk") filed its First Amended Complaint in the instant action on March 9, 2015, seeking a declaratory judgment from the Court on three trademark-related questions that have given rise to various disputes among the parties. Dkt. No. [22]. Defendant Meyer filed an Answer and counterclaim of unjust enrichment on April 23, 2015. [33]. Plaintiff filed an Answer to Defendant Meyer's counterclaim on May 18, 2015. [38].
>
> Plaintiff avers in its Amended Complaint, [22] at 5, that jurisdiction arises out of the license agreement regarding the at-issue trademarks ("License Agreement"), which contains a forum selection clause providing that "[e]xclusive jurisdiction and venue for resolution of all disputes" relating to the License Agreement would lie in Fulton County, Georgia. Dkt. No. [1-4] at 7.
>
> However, on January 28, 2015, Defendant Meyer filed an action in the Supreme Court of New York, Suffolk County (the "New York action"), seeking a declaration from that court that the License Agreement is "invalid and void *ab initio*." Dkt. No. [48-1] at 1. Plaintiff Montauk was the defendant in that action and removed it to the U.S. District Court for the Eastern District of New York ("EDNY"), Civ. A. No. 2:15-cv-853. Dkt. No. [49] at 5. That case was then remanded back to the Suffolk County Court.
>
> In February 2015, the Suffolk County Court, in what the parties refer to as the "Accounting Action," appointed a Receiver for Defendant Associates. This Court then allowed the Receiver to respond to various motions which were pending in this Court. On October 19, 2015, this Court stayed this action pending the

> Suffolk County Court's Licensing Agreement determination; that is, whether the License Agreement's forum selection clause was valid such that it provided this Court jurisdiction and venue.
>
> In the interim, more lawsuits have been filed between the parties. Plaintiff filed and ultimately voluntarily dismissed an action in Fulton County Superior Court (which in the interim was removed to this Court and subsequently remanded). Plaintiff also filed another trademark suit in the Eastern District of New York, but that case was dismissed under the first-filed rule in favor of this action. On May 9, 2017, the Suffolk County Court declared that the License Agreement was null and void, eliminating the forum selection clause that purportedly underlain [sic] this Court's jurisdiction and venue. The next day, Defendant Meyer filed a declaratory judgment action in the Suffolk County Court to declare the ownership of the marks at issue in this case.
>
> On June 30, 2017, this Court lifted the stay in this matter and ordered the parties to file any "motions to transfer, pre-answer motions, or answers, as applicable within 14 days" of that Order. Dkt. No. [93]. The parties have each done so. Plaintiff has filed a Motion to Transfer [94]; Defendant Meyer has filed a Motion for Judgment on the Pleadings, or in the Alternative, to Dismiss for *forum non conveniens* [95]; and Defendant Associates has filed a Motion to Dismiss for Lack of Personal Jurisdiction [96]. The parties all agree that this case should no longer be in this Court; the only question now is whether the case should be transferred to the EDNY or dismissed.

During the course of the phone conference, the Receiver, Mr. Russo, made it clear that he will and/or has produced for Mr. Bowe's inspection, as well as any other party, all records supporting the financial reports he has submitted in connection with his commission as Receiver. Mr. Russo is directed, if not already done, to provide that data within 45 days of receipt of a copy of this Short Form Order with Notice of Entry.

The Court incorporates, as the law of the case herein, the following decisions/short form orders and two (2) Federal District Court Orders:

1. 02/19/15 - Index Nos.: 060807/14 & 068379/14.
2. 04/10/15 - Index No.: 068379/14.
3. 06/05/15 - Index No.: 068379/14.
4. 07/14/15 - Index No.: 068379/14.
5. 09/15/15 - Index Nos.: 060807/14, 068379/14, 608165/15 & 605850/15.
6. 09/16/15 - Index Nos.: 060807/14, 068379/14, 608165/15 & 605850/15.
7. 10/01/15 - Index No.: 068379/14.
8. 10/01/15 - Index No.: 068379/14.
9. 11/23/15 - Index No.: 068379/14.
10. 12/17/15 - Index No.: 068379/14.
11. 03/29/16 - Index No.: 068379/14.
12. 04/14/16 - Index No.: 605850/14.
13. 04/15/16 - Index No.: 605850/14.
14. 04/22/16 - Index No.: 068379/14.
15. 05/11/16 - Index No.: 068379/14.
16. 05/12/16 - Index No.: 068379/14.
17. 07/19/16 - Index No.: 602879/16.
18. 10/19/17 - Index No.: 602879/16.
19. 11/10/16 - Index No.: 600830/15.
20. 11/16/16 - Index No.: 068379/14.
21. 12/21/16 - Index No.: 602879/16.
22. 05/09/17 - Index No.: 068379/14.
23. 05/19/17 - Index No.: 600830/15.
24. 05/22/17 - Index No.: 602879/16.
25. 06/14/17 - Index No.: 600830/15.
26. 06/15/17 - Index No.: 068379/14.
27. Hon. Sandra J. Feuerstein's decision dated 10/19/16.
28. Hon. Leigh Martin May's decision dated 8/14/17.

An action has been commenced by Mr. Doscher against Charles C. Russo, the Court Appointed Receiver and Brook Rail Corporation, the management company engaged by Mr. Russo. Counsel is directed to *Copeland v. Salomon*, 56 N.Y.2d 230, 451 N.Y.S.2d 682. Parenthetically, prior hereto, counsel for Mr. Doscher (Michael Devereaux) following proper procedure, sought permission to commence actions against Charles C. Russo, the Receiver.[4]

4. NYSCEF Doc. No. 851 and 984.

Permission was denied. It appears that current counsel for Mr. Doscher has commenced an action against the Receiver without seeking leave of Court to do so. In the *Copeland* case, the Court of Appeals held:

> The rule that leave of the appointing court be obtained before suing such a receiver was devised in order to protect the receiver and the estate against the harassment and expense of possibly unnecessary litigation and to preserve the estate in the hands of the receiver for the benefit of all creditors equally. It arose also from the fact that, because the property is held by the receiver as an officer of the court, or as it sometimes said, as the hand of the court, interference with the property by the bringing of an action without leave may constitute contempt (*Matter of Directors of Christian Jensen Co.*, 128 NY 550, 553; *People ex rel. Attorney Gen. v Security Life Ins. & Annuity Co.*, 79 NY 267, 270; *Foster v Townshend*, 68 NY 203, 206; *Chautauque County Bank v Risley*, 19 NY 369, 377; *Pruyn v McCreary*, 105 App Div 302, 304, affd 182 NY 568.

If the case is commenced improperly, without permission, the filing party *must* seek to correct the filing *nunc pro tunc* by applying to the appointing court. However, upon such application, the applying court is not required to give permission, then or ever:

> Moreover, the appointing court, upon application to it, could, in its discretion, either [a] grant leave *nunc pro tunc* with or without a contempt penalty, or [b] condition leave, or [c] deny it outright as it found necessary and appropriate for the protection of creditors in and parties to the receivership proceeding.

Id. at 230 (citations omitted)

That action naming Mr. Russo and his managing agent, if same was indeed "commenced," is *sua sponte* dismissed without prejudice. If the preparation and service upon Mr. Russo was meant as merely a suggestion of "commencing" an action and a precursor of seeking permission, the request is denied.

The Commission of the Receiver began quite innocuously. That Commission

continually expanded based solely on the, at times contemptible, conduct of Mr. Doscher. This Court noted on April 22, 2016:

> It should be noted that the responsibilities of the Receiver in this matter did not occur overnight. Noteworthy is the fact... Meyer, a fifty percent (50%) equity holder in Associates d/b/a "The Sloppy Tuna" offers no objection to the appointment of the Receiver. Those responsibilities were augmented, much as an evolution, occasioned by the acts of omission and acts of commission. At the genesis of this case, it was determined that... Drew Doscher, the admitted owner on premises, had avoided filing tax returns for years and was hoarding, without distribution, several million dollars. Also, there arose a question concerning the everyday operations of the business known as The Sloppy Tuna. In order to minimize the impact of a Receiver's intervention, the Court brokered an arrangement between Mr. Doscher and Mr. Meyer, owners of The Sloppy Tuna. Mr. Meyer would hire a manager (Jessica Brantly) to be employed by The Sloppy Tuna with access to all financial matters as well as day to day operations. What occurred hereafter is worthy of remark. Mr. Doscher was heard, on audio tape, harassing, intimidating and otherwise frightening Mr. Meyer's manager, Ms. Brantly. His words wreaked of misogynistic, sexist remarks. His hostility was compellingly offensive. That audio tape... was played in open court and Mr. Doscher acknowledged an understanding of the Court's displeasure. (*emphasis added*)

It was also revealed on the audio tape that Mr. Doscher knew he was being recorded and nevertheless persisted.

This Court attempted to chart a course of lowest impact concerning Mr. Doscher but was continually compelled to expand the Receiver's control due to Mr. Doscher's disobedience. Mr. Doscher need look no further than himself for putting the Receiver in control of The Sloppy Tuna. We should all be reminded that "Our rage and lamentations do more harm than whatever caused our anger and grief in the first place." - *Marcus Aurelius*

On April 22, 2016, this Court issued a Short Form Order in the matter found at index

number 068379/2014, Meagher, Meyer, Smith v. Doscher and 148 S. Emerson Partners. The court noted the following in anticipation of the missives alleging improprieties:

> There is a remedy the Court will engage to consider the various grievances concerning the fees. This Court intends to schedule a hearing, in the absence of an accord, to determine the presence or absence of culpable conduct of any and all parties which have compelled the Court to expand the commission of the Receiver and cause the incurring of fees of all kinds and variety. Should the Court find that excessive fees were incurred as a result of frivolous, vindictive, acrimony and /or calumny, the responsible parties will be made to reimburse the LLC (Associates) all such fees.

Perhaps when the Court suggested that remedy near the conclusion of all litigation, it anticipated the various roads this litigation would take as well as a final mud slinging event.

As noted in prior Short Form Orders as well as in decisions rendered after hearing/trial in the eviction matter, two significant claims remained unresolved; the trademark claim and the accounting claim.

This Court has cited the October 19, 2016 Order of the Honorable District Court Judge Sandra J. Feuerstein. Judge Feuerstein notes the various actions that have been commenced in other courts concerning the trademark known as "The Sloppy Tuna." At page 24 she notes:

> ...that at the time there were two actions pending in Federal District Courts (Georgia and New York), which involve substantially similar issues with regard to the validity, ownership and infringement of The Sloppy Tuna marks, to add substantial overlap between the facts, parties and issues in both cases; and Plaintiffs do not allege, much less establish that the balance of convenience or special circumstances justifies giving priority to this action over the previously-filed Georgia federal action, the "first-filed rule" applies to this case. (*emphasis added*)

Where does that leave the determination of trademark ownership since Judge May in the Federal District Court in Georgia made a determination concerning ownership and use of

the mark by transferring the matter to Judge Feuerstein? It is an articulable probability that Judge Feuerstein may retain the case or remand all issues of ownership and use of the trademark to this Court. Sound application of CPLR § 2201 dictates all action regarding the Trademark issue be stayed pending Judge Feuerstein decision.

CPLR § 2201 Stay:

> Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

The Practice Commentary at C2201:10 Stay Based on Pendency of Another Action notes:

> When another action involving the same parties and cause is pending in a state or federal court, the court can dismiss the present action in deference to the other one. This power is conferred by CPLR 3211(a)(4), which then adds that the court need not dismiss in such a case, but can instead "make such order as justice requires." That omnibus power includes a stay. *See, e.g., SafeCard Services, Inc. v. American Exp. Travel Related Services Co., Inc.*, 203 A.D.2d 65, 610 N.Y.S.2d 23 (1st Dep't 1994) (holding that, in circumstances presented by CPLR 3211(a)(4) motion, New York action "should not have been dismissed and should, instead, be stayed pending resolution of the Florida action"); see also Practice Commentary, CPLR 3211, C3211:20 ("Stay in Lieu of Dismissal"). (*emphasis added*)

It is therefore, **ORDERED ADJUDGED AND DECREED** that all actions and proceedings involving the trademark known as "The Sloppy Tuna" are stayed pending Judge Feuerstein's decision.

Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction (14 Am. Jur. Courts§171, 21 CJS Courts § 14). Moreover, the Judiciary Law encourages judicial resourcefulness and crafting appropriate remedies in the absence of express authority. The Judiciary Law provides that a court of record has power to devise and make new process and forms of proceedings

necessary to carry into effect the powers and jurisdiction possessed by it. In its September 16, 2015 Amended Order, this Court noted:

> 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*, 27App 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, once again, pull in the reigns to maintain order. As it is apparent that the fight over The Sloppy Tuna has less to do with The Sloppy Tuna than the personal animus between parties involved in the transactions and claims stemming from their association at entity known as The Seaport Group.

What options are available to a Court where it is apparent that it has become a battlefield for extraneous matters that bear no relationship to the issues that manifest themselves?

This Court noted early on that the litigation know as "The Sloppy Tuna" involved essentially four subjects:

1. The Land;
2. The Lease;
3. The Trademark; and
4. The Money (accounting).

The Court has issued final Short Form Orders involving The Land and The Lease. Those issues are put to rest pending appeal. The Trademark matter has recently been closed in the Federal Court for the Northern District of Georgia by the way of transfer to the Federal District Court for the Eastern District of New York. All of the issues involved in the trademark litigation are now before Judge Feuerstein. That Court may follow the path of Federal District Court Judge Bianco and remit the same to this Court or, in the alternative, hear and decide.

The claim we refer to as the accounting case had a very humble beginning. At issue were approximately $600,000 in "questionable expenditures." The Court, upon consent of all counsel, appointed a Receiver for a limited purpose to wit; examine the financials and report. That matter could have easily resolved itself with adjustments, up or down. For some reason that plan was confounded. As detailed in the bundle of Short Form Orders referenced herein, the commission of the Receiver evolved. As noted earlier, at one point, the Court brokered a protocol to have an absentee owner's agent present on premises. That person, Ms. Brantly,

was threatened, harassed and otherwise abused. All recorded and not denied by Mr. Doscher. Again, it must be noted that the Court, not looking to exclude Mr. Doscher, specifically authorized him to solicit employees at a job fair with reasonable restrictions that were ignored. Again, the Court was compelled to expand the powers of the Receiver.

Why is it that the Court suggests that its facilities have become a battlefield for extraneous matters? This Court has been presented with a series of e-mails "purportedly" authored by Mr. Doscher, none of which he denies. A small sampling follows:

> From: Drew Doscher <doscherdrew@gmail.com
> Thursday, July 27, 2017 2:21 AM
> To: James.Catterson@apks.com.; Burrows,Michael (Shid-NY-LT) [5]
> Cc: Todd Merolla; Mike Bowe
> Subject: Defendant
>
> I'm the defendant . Let's get to Discovery and depositions , We won't get out processed. Let's get to the Q and A and true discovery in front of the Honorable Justice Garguilo. I can't wait! I'm the defendant and no longer wish to waste tax payers dollars.
>
> Let's get to discovery and a trial. You run out of bow ties???? [6] Come on do your jobs and get to a trail.
>
> No more Stays.
>
> The honorable Justice Garguilo wants this off his docket. You sued me. Like the mini trial, I'11 let you both break the rules and question me because Mr. Burrows was clearly winded. I'll answer every one of your questions 5 times but Meagher, Meyer, and Smith take the oath and we bat second. We are all professionals. You started this. We got last licks, Tick Tock.

5. At 2:21 a.m, Mr. Doscher saw fit to e-mail opposing counsel .

6. Mr. Catterson has a penchant for bow ties.

Happy Labor Day. Make Justice Garguilo and Mr. Russo hard job easier.

I'm ready to take the stand. Not sure how long I can legally be "stayed from my own property but I guess the DOJ SEC and FINRA can decide. [7] If you want my take put me on the stand/ If it plays out in the media so be it!!! You all know how this ends so the "settlement conference" is permanent postponed. Either your boys wear orange [8] or I lose something that has been usurped from me, Either way . Let's get ready for some Football!!!! (*emphasis added*)

Happy August!!!
BEST
Drew Doscher

Btw I have no personal malice to you all. I realize it's just a job and respect you all. Bow ties, Daddy privileges, Pelosi ties and all.

BUT WITH SO MANY REGULATORY BODIES LOOKING INTO SEAPORT I WOULD WATCH HOW YOU PLAY THIS AND PLEASE USE THIS AS A COURT EXTHIBIT ALONG WITH THIS SONG:

https://www.google.com/search?q=johnyy+cash+gods+gonna+cut+you+down&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari

Sent from my iPhone

The second email contained a link to a You Tube video by the rapper "Nelly" performing Here Comes the Boom. The lyrics to that song are annexed hereto as Exhibit C. They state in part:

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7. Clearly a reference to a FINRA ARBITRATION involving the principals at The Seaport Group.

8. One may suppose, a reference to prison garb.

> Here comes the (BOOM!); Here comes the; Ya'll don't really want it now (BOOM!)
>
> I'm dirty, I'm the type of man that might could go for revenge; Have some not so nice friends, kick the door off the hinge; Take the door of ya Benz, p-p-pop 4 of your friends; dissin; Then have no problem till the record started rippin;
>
> I'm dirty, I'm no longer for real; LIKE A HOP SKIP AND A JUMP, a glock grip on the pump; From leavin you in da trunk, so ???; (Ya'II don't really want it) So quit actin like you deaf; I'M LOOKIN TO MY RIGHT, tryna see who's left; So uh, you better watch it fore I stick to the plan;

The Court is in possession of a proposed amended pleading on behalf of Mr. Doscher and his related entities. Within the section of the proposed pleading "factual background on behalf of Mr. Doscher" it can be seen that portion of the pleadings involve the Seaport Global Securities LLC. Within the proposed amendment at page 20 paragraph 25, Mr. Doscher claims he was, "... improperly excluded from the partnership at Seaport as a direct result of his unwillingness to tolerate Seaport's violations of applicable securities laws and FINRA Regulations, as well as other illegal conduct." Furthermore, in the following sentence, Mr. Doscher alleges "illegal conduct" led to "a major fraud investigation" by unnamed federal authorities.

Mr. Burrows, counsel for Mr. Meyer notes, in part, in a submission to the Court:

> Doscher should not be permitted to fight his Seaport battles in this Court and to use the processes and procedures of the CPLR to harass his former colleagues.
>
> The Court may recall Doscher's email threats:
>
> I ain't selling the Tuna. It's mine ... I am also going to get them [Meyer, Meagher, and Smith] back into FINRA for failure to comply with discovery. I want you to take their depositions ... I

want depositions, trial, and discovery....[9] (*emphasis added*)

Might anyone dare deny it would be a dereliction of responsibility by this Court to sit and ignore the import, tenor, and direction of these missives on the issue of motive? The Court asks the foregoing rhetorically as an answer to its question early on, what does the Court do when it is used as a playground/battlefield for litigation and/or grievances unrelated to the actual matters before it?

As noted by this Court prior hereto,

> ...The best solution to any problem is always the simplest solution.
>
> Take this case, take this litigation. And with the exception of the latest foray involving Mr. Burrows, it boils down to three issues that are not difficult.
>
> Issue number one, which was determined by this Court, deals with the title to the real estate. This Court rendered a decision. That decision is up on an appeal. If the Court made a mistake and the Appellate Division sees fit to adjust it, so be it.
>
> Because we all know, everybody in this courtroom who is an attorney, a judge, a stenographer, court officer, clerk, law assistant, knows one thing for damn sure: But for mistakes, none of us have jobs.
>
> So if, in fact, the matter is adjusted, so be it.
>
> Simple issue.
>
> Second issue: Whether or not the LLC known as Associates occupies the premises pursuant to a lease. Right?

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9. Found in the affidavit of Michael J Devereaux, sworn to November 22, 2016, pages 223 index number 602879/2016, NYSCEF Doc number 167.

> Not a hard issue.
>
> ... A little, Blumberg document was produced, and we look three days of testimony concerning that simple, two-page document to make a determination as to whether or not that document bestowed occupancy rights upon the LLC known as Associates d/b/a The Sloppy Tuna.
>
> You should all know that decision has been drafted by the Court. It's on my desk. It requires some editing, some rewrites, whatever. That decision should go out shortly.
>
> Either side may appeal that decision.
>
> Once again: but for mistakes, none of us have jobs.
>
> Now, there's a third issue that's been brought upon this Court by Judge Bianco.
>
> Judge Bianco, I guess approximately a week ago in the Eastern District, moved -- removed a case involving trademark litigation to this Court.
>
> The Court has a feel for that but I don't think it's going to be a difficult case.
>
> Those are three relatively simple issues.

See Index No. 068379/2014, NYSCEF Doc. No. 984, at 2-3 (footnotes omitted).

This Court intends to grant all parties the relief sought. Each party is seeking the identical relief: a dissolution of the LLC. (see Amended Complaint at 22, NYSCEF docket number 340) Amended Answer, Counterclaims and Cross-claims at 46, NYSCEF docket number 1370. The Court intends to close the battlefield and grant that relief to all parties.

It is, therefore

ORDERED ADJUDGED AND DECREED that the entity known as 148 South Emerson Associates, LLC shall be dissolved and liquidated upon the resolution of all open matters. Given the apparent overlap of all issues involved in this Court and the Federal District Court, the Court hereby extends the STAY to all remaining proceedings pending Judge Feuerstein's decision. As noted hereinabove, both parties seek dissolution.

NY CLS LLC § 702 notes as follows:

> On application by or for a member, the Supreme Court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. A certified copy of the order of dissolution shall be filed by the applicant with the department of state within thirty days of its issuance.

There is no scenario, real or imagined, where Messrs. Doscher and Meyer can co-exist as partners.

Limited Liability Company Law § 701 Dissolution

Section 701 (a)(3) of the Limited Liability Company Law

> (a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:
>
> (3) subject to any requirement in the operating agreement requiring approval by any greater or lesser percentage in interest of the members or class or classes or group or groups of members, the vote or written consent of at least a majority in interest of the members or, if there is more than one class or group of members, then by at least a majority in interest of each class or group of members;

All sides are seeking a dissolution. Thus, the "written consent of a majority" requirement of § 701 (a)(3) is satisfied.

As to the issue of winding up the corporate affairs in some circumstances winding up can be done by the members, in amicable situations. The situation herein is the polar opposite of an amicable situation. In a matter such as that before the court when the parties are at odds, the court itself can perform the winding up or it can appoint a Receiver or liquidating trustee.

In order to do equity, imagination requires the formulation of a protocol to wind-up the affairs of The Sloppy Tuna, (Associates). To that extent, the Court directs the parties to submit plans for an orderly dissolution. The Court shall opt to either accept the protocols as submitted or appoint an independent economist/evaluator/forensic person to provide the Court with data in order to arrive at a fair market value of Associates. Nevertheless, the Court will consider all viable alternatives. The Court expects all sides to suppose assumptions in their respective submissions. This is necessitated by the matters subject to appeal: Ownership of the real estate, a leasehold and trademark ownership.

This Court will not countenance abuse of an orderly discovery process for ulterior and irrelevant claims involving the parties at The Seaport Group. That case belongs elsewhere, not before this Court. Such is the case until a showing is made that the presumptively extraneous matters bear some relation (in an evidentiary sense) to the cases that pend.

In furtherance of this Short Form Order, it is therefore

ORDERED ADJUDGED AND DECREED that the actions commenced by Mr. Doscher against Charles C. Russo and Brook Rail Corporation are **DISMISSED**, without prejudice pending a lifting of the stay and an appropriate application to this Court for permission.

It is further,

ORDERED ADJUDGED AND DECREED that all other actions are stayed pending the determination of Judge Feuerstein to either retain the trademark action or remand it to this Court as litigation pending in separate courts involving similar, if not identical issues, warrant a stay. Upon determination, any party may petition the Court to lift the stay and seek reasonable, material and relevant items as per the Discovery provision of the CPLR. For control purpose all open matters will appear on the Court's calendar on October 25, 2017.

It is further,

ORDERED ADJUDGED AND DECREED that the Stay[s] ordered herein shall be deemed vacated upon Judge Feuerstein's determination at which time the parties shall appear before this Court to settle any open discovery issues.

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

Dated: August 18, 2017

HON. JERRY GARGUILO, JSC