

Loreti v Lorcress Enters., Inc.

2021 NY Slip Op 34274(U)

March 31, 2021

Supreme Court, Westchester County

Docket Number: Index No. 53885/2019

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JOHN M. LORETI, as Administrator of the Estate
of JOHN LORETI,

Petitioner,

-against-

Index No.: 53885/2019

LORCRESS ENTERPRISES, INC., SEBASTIAN A.
LORETI a/k/a SAL LORETI, MARIA LORETI,
MARIA LORETI as custodian for SEBASTIAN
LORETI, MARIA LORETI as custodian for ANDREW
LORETI, GINA LORETI FORGIONE,

DECISION and ORDER

Motion Sequence Nos. 12 & 13

Respondents.

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RUDERMAN, J.

The following papers were considered on the motion by petitioner John Loreti for injunctive relief against respondent Maria Loreti and all persons acting under her authority and control (sequence 12), and the motion by respondent Maria Loreti for an order striking the notice of appearance filed in this action by Ira Goldenberg, Esq. and Goldenberg & Selker, LLP (sequence 13):

<u>Papers - Sequence 12</u>	<u>Numbered</u>
Order to Show Cause, Petitioner's Memorandum of Law, Loreti Affidavit, Pires Affidavit, Berkey Affirmation, Exhibits 1 - 7 (re TRO)	1
Nicotera Affirmation in Support, Exhibits A - C (re TRO)	2
Locke Affirmation in Opposition, Exhibit A - B (re TRO)	3
Petitioner's Memorandum of Law, Loreti Affidavit, Pires Affidavit, Berkey Affirmation, Exhibits 1 - 7	4
Nicotera Affirmation in Support, Exhibits A - C	5
Penachio Affirmation in Opposition, Exhibits A - F	6
Locke Affirmation in Opposition, Memorandum of Law, Exhibits A - N	7
Nicotera Reply Affirmation in Further Support, Exhibits A - D	8
Petitioners Reply Memorandum of Law, Berkey Reply Affirmation, Exhibits 8 - 9	9

<u>Papers - Sequence 13</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Exhibits A - C	1
Affirmation in Opposition	2

Petitioner's application for a preliminary injunction preventing respondent Maria Loreti from taking any action on behalf of Lorcross Enterprises, Inc. with respect to Lorcross Enterprises's real property located at 44 and 50 Fountain Place, New Rochelle, NY (the "Buildings"), and in other corporate actions, arises out of actions taken jointly by petitioner and Gina Forgione, who together own 60% of the shares of stock in Lorcross Enterprises. They rely on the results of a Special Meeting held on September 22, 2020, at which a new Board of Directors was elected and new corporate officers appointed. Thereafter, on October 15, 2020, the new Board held a Special Meeting at which it resolved to terminate Costa Realty LLC as Lorcross's property manager and retained Gramatan Management, Inc. instead, and resolved as well to terminate Penachio Malara LLP as counsel and to retain Goldenberg & Selker, LLP as new counsel.

Petitioner failed to demonstrate in his moving papers that the September 22, 2020 Special Meeting was properly noticed. He relies on a demand he made on the Board in June 2019, noticing a meeting for August 20, 2019, which meeting was postponed by agreement in the context of the litigation. After this Court's August 19, 2020 decision and order determining ownership shares, on September 3, 2020, he re-noticed the meeting by email and by certified mail through his attorney, scheduling the meeting for September 22, 2020.

The authority on which petitioner relies for the September 22, 2020 Special Meeting is Business Corporation Law § 603, which permits a shareholder to demand and then call a special meeting to elect directors when the existing Board has failed or refused to call an election. He

acknowledges that the provision directs that shareholders may “demand the call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than sixty nor more than ninety days from the date of such written demand.” Here, Petitioner relies on the demand he made on the Board in June 2019 and an in-court conference before Judge Gerald Loehr on July 24, 2019.

The Court rejects petitioner’s position that, having once made a demand in June 2019, he could then simply notice a meeting for any date, irrespective of the amount of time between the notice and the meeting. Judge Loehr did not authorize petitioner to call a meeting independently of the Court at any time and on any amount of notice. Judge Loehr said, on July 24, 2019,

“Right now, the meetings are being deferred. The dates are suspended. New dates can be set either on October 2nd or thereafter and there will be no need to re-serve or re-notice the meetings. It’s all going to be done in court on the record.”

Judge Loehr’s point in making this statement was his plan to handle in court the issues petitioner’s original notice was intended to address. In noticing a Special Meeting independently of the Court, petitioner was required by the Business Corporation Law to schedule the meeting for a date sixty to ninety days from the notice date. The existence of a notice from over a year earlier may not be relied on to render inapplicable the timing required by the statute. Since the actions taken in that Special Meeting were not valid, the actions taken thereafter were also invalid.

Because petitioner’s moving papers did not establish that the election of new directors was properly accomplished, this Court denied the sought temporary restraining notice, and it similarly denies the sought preliminary injunction. Additional legal arguments supporting petitioner’s claims that are raised for the first time in reply papers will not be considered.

In view of the foregoing determination, the purported hiring on November 23, 2020 of Ira

Goldenberg, Esq. and Goldenberg & Selker, LLP as counsel for Lorcross in this matter was similarly unauthorized.

Accordingly, it is hereby

ORDERED that petitioner's motion sequence 12, for injunctive relief, is denied, and it is further

ORDERED that Maria Loreti's motion sequence 13 is granted, that the notice of appearance filed by Ira Goldenberg, Esq. and Goldenberg & Selker, LLP as counsel for Lorcross in this matter is stricken from the court files, and the Clerk is directed to take action accordingly, and it is further

ORDERED that the parties are shall appear in the Compliance Conference Part on a date and in a manner directed by that Part.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
March 31, 2021


HON. TERRY JANE RUDERMAN, J.S.C.