

Matter of Garcia v People's Acc. Info. Servs. Inc.

2022 NY Slip Op 31261(U)

March 28, 2022

Supreme Court, New York County

Docket Number: Index No. 157463/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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IN THE MATTER OF THE APPLICATION OF JOSEPH GARCIA AND LISA SPENA-GARCIA, HOLDERS OF TWENTY PERCENT OF ALL OUTSTANDING SHARES OF PEOPLE'S ACCIDENT INFORMATION SERVICE, INC., D/B/A SECURIT PETITIONERS,

Plaintiffs,

- v -

FOR THE DISSOLUTION OF PEOPLE'S ACCIDENT INFORMATION SERVICE, INC., D/B/A SECURIT, A DOMESTIC CORPORATION

Defendant.

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INDEX NO. 157463/2021
MOTION DATE 09/22/2021, 10/25/2021
MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION (AMENDED)

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10 were read on this motion to/for DISSOLUTION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, it is

The following reads on an Order to Show Cause where the parties virtually appeared through Microsoft Teams on October 25, 2021. A Verified Petition seeks to dissolve, per New York Business Corporation law § 1104 – a, the closely held corporation of People’s Accident Information Services Inc., d/b/a Securit, which provides guard and security services in New York. The Petition alternatively seeks an Order appointing a Receiver to oversee the sale of Securit and distribution of sale proceeds among the shareholders.

The Order to Show Cause seeks to i) enjoin Securit from i) terminating employment of minority shareholders, ii) terminating salaries of minority shareholders, iii) from moving its office to a new physical location, iv) from terminating the employment of any other employees, v) requiring Securit to continue paying rent to its current landlord, and vi) to enjoin ... any third parties to take steps ... to set up or operate a business in competition with Securit.

Petitioner does not submit a reading of New York Business Corporation law § 1104 – a. However, a review of said law establishes,

- (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 of 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 NY BSC § 1104 – a).

Per the Verified Petition, Petitioners are minority shareholders where Joseph Garcia holds 24.5% stock, and Lisa Spena – Garcia holds 24.5% stock. Lisa Dolan owns 51% of the stock. All three were board members. “On or about July 28, 2021, the Garcia’s were involuntarily removed from the board of directors, over their objection, by the majority shareholder. Sometime in July 2021 Dolan resigned her employment, position on the board of directors, and position as President. Dolan gifted her 51% stock ownership to [Brooke] Olivieri.” Brooke Olivieri is Lisa Dolan’s daughter (see NYSCEF Doc. No. 1 Pars. 16, 19, 21, 23, 26, 29).

Petitioner – Lisa Spena – Garcia submits an affidavit highlighting the relationship (see NYSCEF Doc. No. 14), along with Petitioner – Joseph Garcia (see NYSCEF Doc. No. 48), and Brooke Olivier also submits an affidavit (see NYSCEF Doc. No. 24).

The affidavit of Lisa Spena – Garcia affirms, “[i]n 2009, the three shareholders ... purchased a building located at 25 – 18 Francis Lewis Boulevard, Flushing, NY 11358. Because the Company and the Building are essentially two parts of the same overall business, the Company’s rent has always been set at whatever amount was sufficient to pay the building’s operating expenses. In September 2021, the new majority shareholder Brooke Olivieri ... suddenly stated that she was moving the Company to a new location in Corona, NY, on or before October 1, 2021. The new location is highly undesirable for several reasons, including ... a) [t]here was a street shooting near the new location in August, b) [t]here is far less parking at the new location, c) [t]he new location would require a longer and/or more difficult commute by our key employees (see NYSCEF Doc. No. 14 Pars. 5, 8, 20, 21).

The affidavit of Brooke Olivieri affirms, “[o]ne client is responsible for approximately seventy (70%) percent of Securit’s gross revenue. Many of the security guards that are employed by Securit cannot travel to Securit’s current office, which is not served by subway and is a bus ride away from the nearest LIRR stop. The new location offers easy subway access to current and potential employees who are overwhelmingly security guards. Securit has always had a problem getting security guard candidates to show up for interviews due to the location of the building being not easily accessible for public transportation. The only reason the Garcia’s refuse to move the license for the new location is because they rely on Securit to continue to pay the bills so they do not have to go into their pocket to support the 25 – 18 Francis Lewis Boulevard building (see NYSCEF Doc. No. 24 Pars. 5, 7, 8)

The court having considered the arguments of the parties, and having determined that no party has “been guilty of illegal, fraudulent or oppressive actions” nor has it been shown that “the

property or assets of the corporation are being looted, wasted, or diverted for non – corporate purposes;” it is now

ORDERED that the Petition (mot. seq. no. 001) to dissolve the Corporation is DENIED; and it is further

ORDERED that Petitioner’s Order to Show Cause (mot. seq. no. 002) to enjoin Securit and Respondent is DENIED in its entirety.

3/28/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE