

<b>Matter of Bakr v Shaker</b>
2022 NY Slip Op 33777(U)
October 31, 2022
Supreme Court, New York County
Docket Number: Index No. 651293/2022
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

*Justice*

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IN THE MATTER OF THE APPLICATION OF HATIM BAKR,  
ONE-THIRD OWNER OF THE VENDING BUSINESS  
LOCATED AT 1528 BROADWAY, MANHATTAN,

Petitioner,

- v -

AHMED M. SHAKER and ALI S. ALI,

Respondents.

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INDEX NO. 651293/2022

MOTION DATE 06/21/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, petitioner's motion for summary judgment on the petition is denied in accordance with the following memorandum decision.

**Background**

Petitioner Hatim Bakr ("Bakr") commenced this special proceeding to enforce or dissolve a partnership agreement. Pursuant to Partnership Law § 63:

"The Court shall decree a dissolution

1. On application by or for a partner whenever:

- c. A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business
- d. A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him."

Further, where “no definite term or particular undertaking is specified” in the partnership agreement, the partnership may be dissolved at any time “by the express will of any partner” (Partnership Law § 62[1][b]).

Bakr alleges in his petition that on July 16, 2020, he purchased a one-third share of a mobile food vendor business operating at 1528 Broadway, New York, New York, for \$60,000 (Petition, NYSCEF Doc. No. 1, ¶ 2). The “Sale Agreement” submitted in this proceeding provided that respondents Ahmed M. Shaker and Ali S. Ali (“respondents”) agreed that the sale is final, and recited that the respondents received the full purchase price of \$60,000 (*see*, Sale Agreement, NYSCEF Doc. No. 20). Bakr claims that the parties would alternate weeks working at the location, but that since September 2021 respondents have not allowed Bakr to work at the location or to receive the one-third share of the profits from the business promised under the Sale Agreement (NYSCEF Doc. No. 1, ¶¶ 6-7).

In conjunction with the petition, Bakr moved, by order to show cause (motion seq. no. 001), for an injunction that respondents permit Bakr to work at the location, and for respondents to provide certain information regarding the business (Order to Show Cause dated March 31, 2022, NYSCEF Doc. No. 8). This court denied that motion, holding that by seeking an order that Bakr be allowed to work at the location, Bakr was essentially seeking, through provisional motion practice, the dispositive relief sought in his petition (Decision and Order dated April 28, 2022, NYSCEF Doc. No. 12). This court, however, allowed Bakr to make a later motion for summary judgment on the petition (*id.*). This decision and order disposes of such motion (seq. no. 002).

On May 19, 2022, respondents filed what they termed a memorandum of law in opposition to the already denied motion, but which the court considers to be respondents’ answer

to the petition. Respondents claim that the Sale Agreement does not actually provide for the operation of the business in any way; that it illegally purports to convey public space; and that Bakr did not actually pay respondents the \$60,000 specified in the Sale Agreement. Bakr now moves for summary judgment.

### Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of N.Y.*, 49 NY2d 557, 562 [1980]). The opposing party must proffer its own evidence to show disputed material facts requiring a trial (*id.*). However, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assocs. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

### Discussion

Respondents attempt to dispute the reliability of the Sale Agreement by submitting two notarized letters from non-parties – one stating that he “witnessed . . . the sale agreement,” but that it was the respondents who tendered the \$60,000 to Bakr (NYSCEF Doc. No. 16); and the other stating that he notarized the Sale Agreement, but “didn't see any money that was paid while they signed the agreement” (NYSCEF Doc. No. 15). But irrespective of the fact that those letters are not in proper affidavit form, the petition must be denied because the Sale Agreement, even if deemed to be reliable evidence of an intended acquisition of a partnership interest in the subject mobile food vendor business, is unenforceable as an unlawful contract, as follows.

Section 17-307 of the New York City Administrative Code provides that: “It shall be unlawful for any individual to act as a food vendor without having first obtained a license therefor from the commissioner [of the New York City Department of Health and Mental Hygiene].” The record is devoid of any evidence that Bakr has obtained any such license; nor is there any allegation or attestation to that effect in the record. Consequently, this court cannot possibly conclude that a lawful partnership was created by virtue of the Sale Agreement, thus mandating denial of the petition’s request for an order dissolving the purported partnership or enforcing the Sales Agreement. Neither can this court grant the petition’s request for a judgment awarding Bakr any share of the profits derived from the subject mobile food vendor business as an equity owner, for the same reason. The lack of proof of licensure also precludes any grant of the petition’s remaining request for an order compelling respondents to “[a]llow[] the Petitioner to occupy the location of” respondents’ mobile food vendor enterprise, which is an outdoor public area in Midtown Manhattan.

Because Bakr cannot possibly succeed on any aspect of relief sought in the petition, the petition is dismissed (CPLR 3212 [b] [“If it shall appear that any party other than the moving party is entitled to summary judgment, the court may grant such judgment without the necessity of a cross-motion”]).

Accordingly, it is

ORDERED petitioner’s motion for summary judgment is denied; and it is further

ORDERED that the petition is dismissed.

This constitutes the decision and order of the court.



<u>10/31/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
<b>DATE</b>				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE