

Matter of Mohamed (BJ Org. of N.Y., Inc.)
2022 NY Slip Op 33850(U)
November 1, 2022
Supreme Court, Kings County
Docket Number: Index No. 522187/2022
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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In the Matter of The Application of
AHMED N. MOHAMED and YASIN MOHAMED,

Petitioners, Decision and order

Index No. 522187/2022

for Dissolution of BJ Organization of
New York Inc., For Judicial Dissolution of

BJ ORGANIZATION OF NEW YORK INC., A Domestic
Corporation,

November 1, 2022

Pursuant to Section 1104(a) of the
Business Corporation Law

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PRESENT: HON. LEON RUCHELSMAN

The petitioners have moved seeking dissolution pursuant to BCL §1104(a). The respondents have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

On December 29, 1994 BJ Organization of New York was formed. According to the petition Ahmed Mohamed owns 72.17% of the company and Yasin Mohamed owns 22.17% of the company which combined equals 94.87% of the company. The corporation is the owner of a mixed use building located at 2017 Church Avenue in Kings County. According to the corporation's certificate of incorporation the corporation may issue up to two hundred shares and one hundred shares were issued to Yasin Mohamed on November

23, 2004. The petitioners seek the dissolution of the company on the grounds the shareholders cannot agree how best to run the company and hence a deadlock exists.

Conclusions of Law

It is well settled that when considering the dissolution of a corporation "the issue is not who is at fault for a deadlock, but whether a deadlock exists" (Matter of Kaufmann, 225 AD2d 775, 640 NYS2d 569 [2d Dept., 1996]). Thus, ignoring the conduct or fault of any particular party "the critical consideration is the fact that dissension exists and has resulted in a deadlock precluding the successful and profitable conduct of the corporation's affairs" (Matter of Dream Weaver Inc., 70 AD3d 941, 895 NYS2d 476 [2d Dept., 2010]). Therefore, when there is really no dispute that a deadlock exists then a hearing is not required and dissolution should be granted (In re Dream Weaver Realty, 70 AD3d 941, 895 NYS2d 476 [2d Dept., 2010]).

In this case there is no real dispute that a deadlock exists and the parties cannot work together in one corporation. Rather, the respondents argue the petitioners do not represent a majority of the shares of the corporation that is a pre-requisite to any dissolution action pursuant to BCL §1104(a). The respondents point to three contradictory statements of the petitioners which

question their true percentages of ownership. The first is deposition testimony of Ahmed Mohamed who testified that he is a fifty percent shareholder together with his brother petitioner Yasin (see, Deposition of Ahmed Mohamed, page 14 [NYSCEF Doc. No. 14]). However, later in the deposition Mr. Mohamed explained that the corporation was formed along with Yasin and Abdo and that there were no specific percentages awarded each party since the familial nature of the relationship between the three and the informal nature of the corporate formation necessarily meant each party was an equal owner (see, Deposition, page 50). However, in 2004 following a disagreement with Abdo, a document was executed by Mohamed, Yasin and Abdo wherein Mohamed and Yasin's older brother Ali was given a fifty percent ownership interest in the corporation. Ahmed repeatedly testified that such ownership interest was not accurate and was effectuated simply to punish Abdo for borrowing money without informing the other two shareholders. Further, Ahmed testified that the certificate awarding 100 shares to Yasin was really intended to be held in trust for all three owners (see, Deposition, page 98).

Second, pursuant to a board meeting that took place on November 23, 2014 Ahmed Mohamed owned 180 shares and Yasin owned 20 shares which means Ahmed owns ninety percent of the corporation while Yasin owns ten percent. Third, the petition

itself lists different percentages, namely 72.17% for Ahmed and 22.17% for Yasin. These amounts contradict the deposition testimony of Ahmed wherein the three owners were all equal shareholders. Thus, there are inconsistencies regarding the ownership of the corporation.

The petitioners assert that in any event the petitioners own more than a majority of the shares and thus dissolution is proper. They assert that notwithstanding any discrepancies concerning ownership they surely own a majority of the shares.

In Singer v. Evergreen Decorators Inc., 205 AD2d 694, 613 NYS2d 667 [2d Dept., 1994] the court held that when there were questions of fact regarding ownership of the stock of a corporation then a request for dissolution could not be granted without first resolving outstanding issues of ownership. As the court stated in Jedrzejcyk v. Gomez, 116 AD3d 632, 985 NYS2d 18 [1st Dept., 2014] "the parties' conflicting assertions and the inconsistent information in the corporate documents raise issues of fact, including the validity of the documents, that preclude a summary determination of petitioner's ownership status" (id).

Thus, even if it is true that petitioners own a majority of the shares, nevertheless, dissolution cannot be granted until the precise percentages of ownership of each party is established.

This will further streamline the dissolution process and will enable the parties to receive their respective and appropriate shares upon dissolution.

Therefore, the motion seeking dissolution is denied at this time to enable proper determinations of ownership to be established.

So ordered.

ENTER:

DATED: November 1, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC