

Matter of Jankowski v Café NY 05, Inc.

2024 NY Slip Op 35151(U)

November 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 608273/2024

Judge: John J. Andrews

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

INDEX NO.: 608273/2024

***Supreme Court of the State of New York
County of Suffolk
Commercial Division Part 44***

PRESENT:

HON. JOHN J. ANDREWS
Justice of the Supreme Court

MOTION DATE: 04/04/24 Mtn #001
07/30/24 Mtn #003
SUBMITTED: 10/27/24 Mtn #001
10/27/24 Mtn #003
MOT. SEQ. #: 001 & 003 MOT D

-----X
**In the Matter of
Laura Jankowski,**

Petitioner,

-against-

**Café NY 05, Inc. a New York corporation
TSCNY13, Inc., a New York corporation
TSCNY21, Inc., a New York corporation
TSCNY38, Inc., a New York corporation
TSCNY43, Inc., a New York corporation
TSCNY44, Inc., a New York corporation
TSCNY45, Inc., a New York corporation
TSCNY46, Inc., a New York corporation
TSCNY47, Inc., a New York corporation
TSCNY59, Inc., a New York corporation**

**Marco D'Alessandro, as Officer and Director of
Café NY 05, Inc. a New York corporation
TSCNY13, Inc., a New York corporation
TSCNY21, Inc., a New York corporation
TSCNY38, Inc., a New York corporation
TSCNY43, Inc., a New York corporation
TSCNY44, Inc., a New York corporation
TSCNY45, Inc., a New York corporation
TSCNY46, Inc., a New York corporation
TSCNY47, Inc., a New York corporation
TSCNY59, Inc., a New York corporation
And holder of 50% of the outstanding shares of
Café NY 05, Inc. a New York corporation
TSCNY13, Inc., a New York corporation
TSCNY21, Inc., a New York corporation
TSCNY38, Inc., a New York corporation
TSCNY43, Inc., a New York corporation
TSCNY44, Inc., a New York corporation
TSCNY45, Inc., a New York corporation
TSCNY46, Inc., a New York corporation**

**TSCNY47, Inc., a New York corporation and
Café NY 59, Inc., a New York corporation**

**For Judicial Dissolution of
Café NY 05, Inc. a New York corporation
TSCNY13, Inc., a New York corporation
TSCNY21, Inc., a New York corporation
TSCNY38, Inc., a New York corporation
TSCNY43, Inc., a New York corporation
TSCNY44, Inc., a New York corporation
TSCNY45, Inc., a New York corporation
TSCNY46, Inc., a New York corporation
TSCNY47, Inc., a New York corporation
TSCNY59, Inc., a New York corporation
Pursuant to Business Corporation Law §1104,**

New York State Attorney General, and

New York State Tax Commission,

Respondents.

-----X

Upon the following papers read on these motions for Order to Show Cause and supporting papers by petitioner, filed on April 3, 2024 (17, 19, 20, 21, 22); Affirmation in Opposition to Order to Show Cause and supporting papers by respondents, filed on May 13, 2024, 2024 (34-39); Notice of Motion to Dismiss Counterclaims and supporting papers by petitioner, filed on July 30, 2024 (58-60); Affirmation in Opposition to Motion and supporting papers by respondents, filed on August 8, 2025 (61-63); Affirmation in Reply by petitioner, filed August 14, 2024 (64-65); it is

ORDERED, that the Order to Show Cause in this matter is denied in part and granted in part to the extent that the Court appoints Steven E. Losquadro, Esq., having an office located at 649 Route 25A, Ste 4, Rocky Point, New York 11778 and telephone number 631-744-9070, as Temporary Receiver in this matter, without bond, for the purpose of determining the value of the subject corporations at a rate of \$400.00 per hour; and it is further

ORDERED, that Plaintiff and Respondent shall bear the burden of paying the Receiver and each shall receive a credit for their apportioned payments at the end of this litigation; and it is further

ORDERED, that the Receiver shall have authority to cause an accounting to be performed and a valuation of the corporations to be made by the expert of his choice; and it is further

ORDERED, that by accepting this appointment the referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to Section 36.2(c) (disqualifications from appointment) and Section 36.2(d) (limitations on appointments based upon compensation); and it is further

ORDERED, that Petitioner’s first motion to dismiss Respondent’s counterclaims pursuant to

CPLR Rule 3211 (motion sequence:002) is denied as academic; and it is further

ORDERED, that Petitioner's second motion to dismiss Respondent's counterclaims pursuant to CPLR Rule 3211 (motion sequence:003) is denied for the reasons stated in this decision and Order.

Petitioner, Laura Jankowski, brings this action pursuant to NY Business Corporations Law §1104 for dissolution of ten corporations and injunctive relief against her fifty percent partner Respondent, Marco D'Alessandro. Petitioner has also filed and served an Order to Show Cause (motion sequence:001) seeking, *inter alia*, her appointment as temporary Receiver to the entities for the purpose of wrapping up and dissolving the entities as well as injunctive relief. Respondent answered the petition and Petitioner brought a motion seeking dismissal of Respondent's counterclaims pursuant to CPLR Rule 3211 (motion sequence:002). Respondent filed an amended answer to which Petitioner has filed a second CPLR Rule 3211 motion (motion sequence:003). The Court will consider all three motions together in this decision and Order.

At the outset, motion sequence:002 has been rendered academic by Respondent's filing an amended answer and is denied as such.

As to the relief requested in Petitioner's Order to Show Cause, the Court finds that the injunctions sought are premature. In order to prevail on a motion for a preliminary injunction, the movant must demonstrate, by clear and convincing evidence, (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of the equities favors the movant's position, *Blinds and Carpet Gallery, Inc. v E.E.M. Realty, Inc.*, 82 AD3d 691, 692 (2d Dept 2011). This three-pronged approach to temporary injunctive relief is a well-established rule in New York. An injunction, which is used to compel the performance of an act, is an extraordinary and drastic remedy which is rarely granted and then only under unusual circumstances where such relief is essential to maintain the status quo pending trial of the circumstances where such relief is essential to maintain the status quo pending trial of the action, *Matos v City of New York*, 21 AD3d 936, 937 (2d Dept 2005). The Court finds that Petitioner has not met her burden to warrant such drastic relief. The Court does, however, find that appointing a Temporary Receiver would be beneficial to resolving the issues presented in this dissolution action. The Court appoints Steven E. Losquadro, Esq., having an office located at 649 Route 25A, Ste 4, Rocky Point, New York 11778 and telephone number 631-744-9070, Temporary Receiver in this matter for the purpose of having an accounting performed and having the corporations valued by the accountant or expert of his choosing. Petitioner and Respondent shall bear the cost of the Receiver and any experts retained by the Receiver equally and the Receiver shall be compensated at a rate of \$400.00 per hour.

Finally, Petitioner's motion to dismiss Respondent's Counterclaims pursuant to CPLR Rule 3211 (motion sequence:003) is denied. When considering a CPLR Rule 3211 motion to dismiss for failure to state a cause of action, the Court must afford the pleading a liberal construction, accept the facts as alleged in the pleadings to be true, accord Plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory, *Leon v Martinez*, 84

NY2d 83, 87-88 (1994), citing *Morone v Morone*, 50 NY2d 481, 484 (1980); *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 (1976). When viewed through the lens as provided by the New York Court of Appeals in those seminal decisions, this Court finds the pleadings in this matter sufficient to sustain those causes of action. That portion of the motion is denied.

The foregoing constitutes the decision and Order of the Court.

Dated: November 18, 2024
Riverhead, New York



JOHN J. ANDREWS, J.S.C.