

**Matter of Kluger v K&G Indus. Supply Corp**

2025 NY Slip Op 34882(U)

December 15, 2025

Supreme Court, Kings County

Docket Number: Index No. 508294/2025

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 15<sup>th</sup> day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

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In the Matter of the Application of JACK KLUGER, Owner of 65% of all the outstanding shares of K&G INDUSTRIAL SUPPLY CORP d/b/a MAZEL SUPPLY.

**DECISION & ORDER**

Index No.: 508294/2025

Motion Seq.: 001

*Petitioner,*

Pursuant to Section 1104 of the Business Corporation Law, for a Judicial Dissolution of

K&G INDUSTRIAL SUPPLY CORP d/b/a MAZEL SUPPLY,

*Respondent.*

=====

*Recitation of the following papers as required by CPLR 2219(a):*

**NYSCEF  
Papers Numbered**

MS 001	
Order to Show Cause and Supporting Documents .....	1-6, 13-19
Respondent’s Reply Memorandum.....	10-13

*Upon the foregoing papers, the decision and order of the Court is as follows:*

**Facts**

Jack Kluger (Petitioner) commenced this special proceeding per Section 1104 [a] [3] of the Business Corporation Law seeking (A) a Judicial Dissolution of K&G Industrial Corp. d/b/a Mazel Supply (“the corporation”), which was incorporated in 1981 to engage in the sale of packaging supplies to businesses, and (B) appointing petitioner as the temporary receiver of the property and effects of the corporation. Its principal place of business is 1439 Ocean Avenue, Brooklyn, New York. Petitioner is the owner of 65% of all outstanding shares of this closely held corporation. Non-party, Harvey Greenfeld (Greenfeld) owns the remaining 35% of the

capital stock. After 40 years in business, the parties are now in their 70's - - Petitioner is 73 years old and Greenfeld is 78 years old.

In 2010, petitioner's son, Michael Kluger (Michael), was hired as a sales representative for the corporation. Then, in August 2023, Michael left this position and started his own business. However, Michael agreed to (1) continue to manage the corporation's accounting and books, and (2) pay the rent, utilities and other expenses of the corporation. On 2/17/2025, Michael gave notice that he was discontinuing all "association with the corporation."

Petitioner alleges that before and after Michael's affiliation with the corporation, Greenfeld did not contribute to the business or solicit business as agreed to when the corporation was formed. After Michael's department, it is alleged that due to Greenfeld's "utter failure and refusal to attempt to bring revenue into the corporation," and petitioner's advanced age, he had no alternative but to seek dissolution of the corporation. On 2/27/2025, petitioner notified Greenfeld that it was impossible to continue conducting business and, as a result, the corporation must be dissolved. Instead of cooperating with the dissolution, petitioner alleges that Greenfeld filed "a frivolous lawsuit" against the corporation, Michael Kluger and petitioner in the United States District Court for the District of New Jersey. The complaint alleges that Michael diverted business from the corporation to his own business. Therefore, as there is extensive dissention between the shareholders, the corporation must be dissolved.

Greenfeld's attorney served a Memorandum of Law in Reply to the petition wherein he answered the allegations of the petition. Greenfeld requests that this Court deny the petition for dissolution or, in the alternative, that this Court stay this special proceeding pending the outcome of the federal court action in New Jersey. Within the memorandum, respondent included a "Motion to Stay Proceedings Pursuant to NY CPLR § 2201." Although, Greenfeld did not serve

a formal notice of motion or cross-motion requesting the affirmative relief, petitioner did not raise this procedural issue in reply to Greenfeld's papers. Petitioner also did not raise the substantive issue that the Memorandum in Reply was not verified by Greenfeld. In response, petitioner only argued that nothing prejudices Greenfeld's right to maintain the federal court action if a judicial dissolution is granted.

### **Legal Standard and Analysis**

Section 1104 [a] [3] of the Business Corporation Law provides that a shareholder representing one-half of the votes of all shares of a corporation may present a petition for dissolution because there is "internal dissension and two or more factions of the shareholders are so divided that dissolution would be beneficial to the shareholders." Sections 1105 and 1106 provide a one-half shareholder shall present such a petition to the Court with an order to show cause to commence a special proceeding per CPLR § 403 [d]. The verified petition acts as the pleading (CPLR § 402 [a]) and all subsequent pleadings shall be verified (CPLR § 3020). Where a pleading is served without a sufficient verification, the party entitled to a verified pleading may treat it as a nullity upon notice to their adversary (CPLR § 3022). Where relief is demanded by anyone other than the moving party, a party may serve a cross-motion on at least three days prior to the return date of the initial motion or order to show cause (CPLR § 2215 [a]).

The decision whether to dissolve a corporation lies within the Court's discretion (BCL §1111 [a]). When making the determination, the Court must determine whether a deadlock exists, and not who is at fault (*In re Kaufman*, 225 AD2d 775, 775 [2d Dept 1996]). An evidentiary hearing per BCL § 1109 is "required only if there is some contested issue determinative of the validity of the petitioner's application" (*In re Kaufman*, 225 AD2d 776). If the Court finds that a deadlock exists, it must next determine whether the demonstrated

“dissension between the two shareholders posed an irreconcilable barrier to the continued functioning and prosperity of the corporation” (*Matter of ANO, Inc. v Goldberg*, 167 AD3d 731, 732 [2d Dept 2018]). Moreover, in a closely held corporation “the relationship between the shareholders is akin to that of partners and when the relationship begins to deteriorate, the ensuing deadlock and dissension can effectively destroy the orderly functioning of the corporation” (*Matter of Cellino v Cellino & Barnes, P.C.*, 175 AD3d 1120, 1122 [4<sup>th</sup> Dept 2019] [internal quotations and citations omitted]).

It is also within the Court’s discretion to appoint a temporary receiver to preserve the corporation’s property and carry on the business of the corporation (BCL § 1113, BCL § 1202 and § 1203). A temporary receiver is appropriate where there are allegations of two competing and “entangled” corporations (*Matter of Cellino v Cellino & Barnes, P.C.*, 175 AD3d 1122-1123).

The allegations in this proceeding and the federal court action in New Jersey, six months before this proceeding, establishes that there is internal dissension among the shareholders constituting an irreparable deadlock between the two shareholders of this closely held corporation (*In re Kaufman*, 225 AD2d 775; *Matter of Cellino v Cellino & Barnes, P.C.*, 175 AD3d 1122), without any determination at this juncture as to who is at fault for deadlock (*In re Kaufman*, 225 AD2d 775). Therefore, the Court is granting the petition to dissolve the corporation and appoint a temporary receiver (*Matter of Cellino v Cellino & Barnes, P.C.*, 175 AD3d 1123). However, due to the allegations that petitioner’s son diverted assets, a Court appointee shall serve as the temporary receiver. Jack Kluger, as the petitioner, is disqualified to act as the temporary receiver due to a conflict of interest. If the temporary receiver determines that the recovery of assets per BCL § 1209 is necessary, Jack Kluger as the temporary receiver

would be required to request that the Court conduct a hearing to take the sworn testimony of Michael Kluger or appoint a referee to conduct it, concerning the diversion of assets claims by Greenfeld (BCL § 1209).

The appointment of a temporary receiver does not prejudice either party because any discovery exchanged in the federal court action can also be provided to the temporary receiver and vice versa. Therefore, Greenfeld's request for a stay of this action is denied.

A final judgment of dissolution will not be entered until the receiver files for settlement of their final accounts at which time, "the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order" or refer the final accounts to a referee to hear and report their findings after a hearing (BCL § 1216 [c]). Once the final accounts are filed, either party upon a proper application, may seek a stay of the hearing based on the status of the federal court action (CPLR § 2201 and § 2211 through § 2215).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that the petition to dissolve the respondent corporation is GRANTED, and it is further

ORDERED that the petitioner shall settle a proposed order on notice appointing a temporary receiver in compliance with Business Corporation Law § 1113, §1203 [b], § 1204, § 1206 and § 1207.

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**  
**Dated: 12/15/2025**

For Clerks use only:
MG _____
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Motion seq. # _____