

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. LOUISE GRUNER GANS

PRESENT:

Justice

PART 61

Simon Tlapardo

INDEX NO.

1194181

- v -

MOTION DATE

MOTION SEQ. NO.

1

MOTION CAL. NO.

Las Poblancas Inc.

SCANNED

The following papers, numbered 1 to _____ were read on this motion to/for _____
MAR 12 2013

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is defined per unreversed decision
and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE _____

Dated: _____

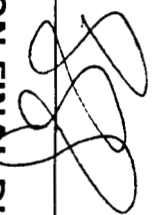
3/6/03

J.S.G.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

HON. LOUISE GRUNER GANS



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

-----X

In the Matter of the Application of

SIMEON TLAPANCO

For the Dissolution of : Index No. 119418/02

LAS POBLANITAS INC.

Pursuant to Sec. 1104 and 1104(a) of
the Business Corporation Law.

-----X

GANS, LOUISE GRUNER, J.

In this proceeding pursuant to Business Corporation Law §§ 1104, 1104(a), petitioner Simeon Tlapanco moves for the judicial dissolution of Las Poblánitas, Inc., a close corporation. Respondent Emerencia Ruiz cross-moves, pursuant to CPLR § 7503(a), for a stay of said proceeding and an order compelling petitioner to proceed to arbitration in accordance with the parties' shareholders agreement.

The parties are each 50% shareholders of Las Poblánitas, Inc., a family-run restaurant located at 301 West 38th Street, New York, New York. Respondent and her husband formed the corporation and began operating the restaurant in May 1998. On April 5, 2001, respondent sold one-half of the corporation's outstanding shares of stock to petitioner for \$12,000 and a commitment to contribute work, services and labor.

A shareholders agreement, dated April 5, 2001, provides:
"Any dispute arising under the terms of this Agreement shall be

resolved by arbitration in accordance with the rules of the American Arbitration Association then obtaining in New York, New York and judgment on the award of the arbitrators may be entered in any court having jurisdiction thereof. Such arbitration shall be a condition precedent to any suit upon or by reason of such claim or controversy."

Petitioner contends that judicial dissolution is required in that petitioner is now employed at a different restaurant, the corporation has never shown a profit and petitioner is not interested in returning. However, respondent points out that petitioner's specific claims allege breaches of the parties' shareholders agreement and thus arise therefrom. For example, petitioner claims that respondent failed to give him authority to sign checks on behalf of the corporation (inbreach of § 3.2(c)); the corporation failed to distribute income to him (inbreach of § 3.2(a)) and the corporation distributed in excess of \$50 per day to its push-cart vendor business (inbreach of § 18.7).

State policy favors arbitration as a means of resolving disputes and conserving judicial resources (*Nationwide Gen. Ins. Co. v Investors Ins. Co. Of America*, 37 NY2d 91, 95 [1975]). When parties adopt a "'broad' arbitration clause agreeing . . . to submit to arbitration all disputes arising out of the contract," the court's inquiry is limited to determining whether there is a reasonable relationship between the dispute and the

contract (*id. at 95-96*). Even a judicial dissolution proceeding has been submitted to arbitration on the ground that the issues of whether and how "shareholders should sever their corporate ties, is more than reasonably related to the general subject matter of the agreement establishing those ties" (*Ehrlich v Stein*, 143 AD2d 908,910 [2nd Dept 19881]). This court thus finds that the parties' broad arbitration provision encompasses both the alleged breaches of the shareholders agreement and the application for judicial dissolution.

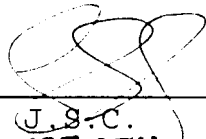
Accordingly, it is

ORDERED that petitioner Simeon Tlapanco's application for judicial dissolution is held in abeyance pending arbitration; and it is further

ORDERED that respondent Emerenciana Ruiz's cross-motion for a stay of this proceeding and an order compelling arbitration under the parties' shareholders agreement is granted and the parties are directed to proceed to arbitration within 14 days of service of a copy of this order with notice of entry.

This constitutes the decision and judgment of the court.

DATED: 3/6/03

ENTER: 

J.S.C.

HON. LOUISE GRUNER GANS