Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

***PRESENT*:**
HON. JAMES HUDSON
Acting Justice of the Supreme Court

----------X

In the Matter of the Application of

MARCOS RIBEIRO,

Petitioner,

For the Dissolution of CRAFT MASTER HOPS LLC, a domestic limited liability company, Pursuant to Section 702 of the Limited Liability Company Law,

-against-

PAT LIBUTTI,

Respondent.

----------X

INDEX NO.: 615066/2022
MOT. SEQ. NO.: 001 – MD, CaseDisp

SUNSHINE, ISSACSON & HECHT, LLP
Attorneys for the Petitioner
390 North Broadway, Suite 200
Jericho, NY 11753

SMITH, FINKELSTEIN, LUNDBERG, ISLER & YAKABOSKI, LLP
Attorneys for the Respondent
456 Griffing Avenue
Riverhead, NY 11901

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
Rachel C. Anello, AAG
Suffolk Regional Office
300 Motor Parkway, Suite 230
Hauppauge, NY 11788

The Petitioner, Marcos Ribeiro ("Petitioner") requests an Order pursuant to **LLCL 702** granting judicial dissolution of Craft Master Hops LLC, a domestic limited liability company ("Craft Master").

This action arises from a business partnership between the Petitioner and the Respondent, Pat Libutti ("Respondent"); initially equal shareholders in a commercial hops farm and brewery ("Business"). Messrs. Ribeiro and Libutti ("Partners") formed Craft Master for that purpose. On January 27th, 2015, the Petitioner and Respondent executed a

Partnership Agreement which terms regulate the development and operation of their Business ("Agreement", Doc. 18). On August 19th, 2015, the Partners executed an Agreement Addendum ("Addendum") which specifically addresses farmland acquisition, farming methods and future business operations (Doc. 19). Operation of the Business proved problematic and unprofitable from its inception. The Partners were unable to agree upon a course of action for continuance of the Business; which led to the instant request for judicial dissolution.

The Court may decree the dissolution of Craft Master upon a determination that it is not reasonably practicable to carry on its Business in conformity with the Agreement and its Addendum (***Kassab v. Kassab***, 195 AD3d 830, 836, 145 NYS3d 836 [2d Dept 2021]). Unlike the judicial dissolution standards in the Business Corporation Law and the Partnership Law, under the Limited Liability Company Law the Court must first examine the terms of the Agreement for that determination (***In re 1545 Ocean Ave, LLC***, 72 AD3d 121, 128, 893 NYS2d 590 [2d Dept 2010]). Dissolution is reserved for situations in which the LLC management has become dysfunctional or its business purpose is so thwarted that its defined purpose has become impossible to fulfill (***Id.*** at 131). "Despite the standard for dissolution enunciated in **LLCL 702**, there is no definition of 'not reasonably practicable' in the context of the dissolution of a limited liability company" (***Id.*** at 127).

In addition to alleging that it is not reasonably practicable for Craft Master to continue, Mr. Ribeiro calls for an accounting by the company. Disagreements between LLC partners regarding entity accounting are insufficient to warrant dissolution (***Id.*** at 128;

see ***Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Productions, Inc.***, 1992 WL 2511380, *5-6 [Del.Ch. 1992]).

The Court will first examine the Agreement and Addendum to consider their terms and how those terms impact the Business and the instant Petition for its dissolution.

It is well-settled law that the noted documents speak for themselves (***Weg v. Kaufman***, 159 AD3d 774, 776, 72 NYS2d 135 [2d Dept 2018]). The execution of each triggers a presumption that Messrs. Ribeiro and Libutti understood the contents and assent to their terms, provisions and restrictions (***British West Indies Guar. Trust Co., Inc. v. Banque Internationale a Luxembourg***, 172 AD2d 234, 567 NYS2d 731 [1st Dept 1991]). In the absence of any ambiguity, the Court will read the literal language to determine the documents' meaning (***Vermont Teddy Bear Co. v. 538 Madison Realty***, 1 NY3d 470, 475, 775 NYS2d 765, 807 NE2d 874 [2004]). The Court recognizes that the Partners are sophisticated businesspersons who possessed the ability to obtain the benefit of counsel prior to signing. Neither alleges deception or overreaching in their formation, undue influence or coercion in making their respective agreements. In the event that either Mr. Ribeiro or Mr. Libutti disagreed with or objected to any of the language therein or provisions thereof, he need simply have refused to sign. The Court finds the terms of each to be clear and unambiguous. The Court will consider each as written (***Loughlin v. Meghi***, 186 AD3d 1633, 1639, 132 NYS3d 65 [2d Dept 2020]). The rights and obligations of the Partners are fixed by the Agreement and the Addendum (***Napoli v. Domnitch***, 18 AD2d 707, 708, 236 NYS2d 549 [2d Dept 1962], *aff'd* 14 NY2d 508, 248 NYS2d 228, 197 NE2d 623 [1964]).

The Agreement clearly provides that "the farm site will be used exclusively as a hop farm…no storage will be allowed on the farm other than the tools, wares, equipment, and effects directly related to the ongoing functions of the farm" (P. 8). The Addendum states, "The Partners agree that they will move from a previously agreed upon farming method of 'Conventional' farming to 'Organic' farming" (P. 1).

It is uncontroverted that Mr. Ribeiro, while in charge of farm operations, has operated the farm using "conventional" farming methods to grow crops other than hops, including hemp, vegetables, pumpkins and sunflowers and has stored equipment and vehicles associated with other businesses on the farm. Mr. Ribeiro also operated an HVAC/geothermal business on the Business farmland. These activities as well as allegations of financial mismanagement and failure to pay business debt and manage the farm for no less than forty (40) hours per week constitute "significant breaches" by Agreement terms.

The Agreement contains a heading entitled "Significant Breach of This Agreement" (P. 12-13). By its terms, "Should this breach occur, the breaching partner at a minimum will lose a 1% [One Percent] stake and equal control and voting rights in the company…In another example if Marcos [Ribeiro] is unable or unwilling to be present and fully manage the farm for at least 40 to 50 per week (as outlined in the previous sections depending upon farm size), without the express written permission of Pat [Libutti], he will automatically lose 1% of his share in the business as well as voting and control rights."

LLCL 402 Voting rights of members states, in pertinent part, **(d)** "Except as provided in the operating agreement, whether or not a limited liability company is managed

by the members or by one or more managers, the vote of at least a majority in interest of the members entitled to vote thereon shall be required to:

(1) approve the dissolution of the limited liability company…"

Mr. Ribeiro is a minority member of the LLC as a consequence of his actions. His recourse arguably is limited to a petition for judicial dissolution. That avenue for relief is precluded by his violation of the Agreement. He has forfeited his voting and control rights and therefore cannot support his allegations of a voting deadlock between himself and his Partner. Mr. Libutti eliminates the possibility of a member deadlock on management decisions by his status as the sole voting member and majority shareholder of the LLC.

The Court does not find that it is reasonably impracticable for Craft Master Hops LLC to carry on its Business in conformity with the Agreement and the Addendum.

Accordingly, it is

ORDERED, that the motion (seq. no. 001) by the Petitioner, Marcos Ribeiro, which requests pursuant to **LLCL 702**, judicial dissolution of Craft Master Hops LLC, is denied.

This memorandum also constitutes the Order of the Court.

Dated: August 9th, 2023
Riverhead, NY

HON. JAMES HUDSON
Acting Justice of the Supreme Court