At an IAS Term, Comm 2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 29th day of June 2026.

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P R E S E N T:
HON. CENCERIA P. EDWARDS, CPA,
Justice.

---X
ALEX WEINBERGER,

Plaintiff(s),

-against-

INDUSTRIAL TEMPERING GLASS, LTD,
Defendant(s).
---X

ORDER

Calendar Date: 3/10/2026

Calendar #(s): 3, 4

Index #: 529874/2025

Mot. Seq. #(s): 1, 2

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits ______	1, 5, 16-18
Opposing Affidavits (Affirmations) and Exhibits ______	19, 70
Reply Affidavits (Affirmations) and Exhibits ______	

Petitioner Alex Weinberger ("Petitioner") commenced this Commercial Division action on August 29, 2025, by filing a verified petition against Respondent Industrial Tempering Glass, Ltd., a closely held corporation with three shareholders ("Respondent" or "the Corporation") (NYSCEF Doc. # 1). Petitioner seek~~s~~ dissolution of the Corporation on the grounds that the remaining two shareholders maintain control of the Corporation and have acted oppressively toward Petitioner, and that the controlling two shareholders have looted, wasted, and diverted the Corporation's assets (*id.* ¶¶ 56, 61). Petitioner also asserts a cause of action for injunctive relief to prevent the Corporation's remaining shareholders from taking actions to harm the Corporation (*id.* ¶¶ 54-67).

Petitioner now moves by order to show cause ("OSC") to (1) dissolve the Corporation; (2) appoint a receiver to manage the Corporation's assets during the dissolution; (3) enjoin the remaining shareholders from misappropriating the Corporation's assets; (4) directing the remaining shareholders to post a bond in an amount to be fixed by Court as security for the preservation of the Corporation's assets; (5) order an accounting of all funds, transactions, and distributions of the Corporation since October 2020; and (6) award Petitioner costs and disbursements (NYSCEF Doc. # 16).

Respondent opposes Petitioner's motion and cross moves pursuant to CPLR 3211(a)(7) to dismiss the petition's judicial dissolution claims, or in the alternative, permit Respondent to file an answer to the petition pursuant to CPLR 404 and further permit discovery pursuant to CPLR 408 (NYSCEF Doc. # 19).

BACKGROUND

The Corporation is a closely held New York corporation in the building and home improvement business (NYSCEF Doc. # 1 ¶¶ 1-2). It has three shareholders, each owning one-third of the outstanding voting shares: (1) Petitioner; (2) Semen Sandler; and (3) Roman Dakh (*id.* ¶ 2). The Corporation was formed by the three shareholders in an operating agreement, dated July 25, 2006 (*id.* ¶ 25). In October 2014, the shareholders executed a new operating agreement which modified certain terms but did not change their equal shareholder interests (*id.* ¶ 26).

Petitioner claims that beginning in October 2020, he has been "systematically excluded from the active management, decision-making, and operations of the Corporation by shareholders Sandler and Dakh" (*id.* ¶ 4). Petitioner bases his claims on a pattern of misconduct by shareholders Sandler and Dakh, including (1) refusing to organize a shareholder or board meeting; (2) denying Petitioner access to the Corporation's books, records, and financial documents; (3) preventing Petitioner from participating in the Corporation's affairs; and (4) excluding Petitioner from all decisions made by the Board of Directors (*id.*). Petitioner claims that these actions have "effectively removed [him] from his role as Secretary of the Corporation" in violation of the Corporation's operating agreement (*id.* ¶ 5).

Specifically, Petitioner claims that shareholders Sandler and Dakh, without consulting Petitioner, increased the employee workweek to six days, implemented a 25% reduction in pricing, renewed a lease for the Corporation's warehouse, removed books and cash from the Corporation without recording it in a journal or ledger, blocked Petitioner's access to the Corporation's tax and financial documents, removed office surveillance cameras (*id.* ¶¶ 29-53).

Petitioner further asserts that, aside from removing him from the Corporation's governance, shareholder Sandler and Dakh have fired Petitioner's spouse and son, cut off Petitioner's weekly salary, made hiring and firing decisions unilaterally, and removed and concealed books, records, and other equipment (*id.* ¶ 6). Petitioner claims that the remaining shareholders' actions have made it impracticable to carry on the Corporation's business in accord with the governing documents (*id.* ¶ 8). Accordingly, Petitioner asserts it is necessary to dissolve the Corporation and issue injunctive relief to protect Petitioner's rights and the Corporation's assets (*id.*).

PROCEDURAL HISTORY

Petitioner filed this OSC on August 29, 2025, requesting dissolution of the Corporation and a temporary restraining order ("TRO") to prevent Respondent and shareholders Sandler and Dakh from disposing, transferring, concealing, or altering corporate funds, accounts, inventory, machinery, corporate books, records, tax documents, or surveillance equipment (NYSCEF Doc. #

5). Additionally, Petitioner seeks to require Respondent to preserve all machinery and equipment, including the Corporation's delivery truck, and prevent Respondent from permitting the use of the delivery truck without "adequate compensation to the Corporation" (*id.*).

The OSC was signed on September 11, 2025, and Petitioner properly served the verified petition and OSC to Respondent, Sandler, and Dakh by overnight mail on September 16, 2025 (NYSCEF Doc. # 17). Petitioner also served Respondent by Secretary of State on September 23, 2025 (NYSCEF Doc. # 18). Respondent filed its pre-answer motion to dismiss the petition on December 2, 2025 (NYSCEF Doc. # 19).

On February 4, 2026, this Court issued an order vacating roman numeral (ii) of the TRO, which prevented shareholders Sandler, and Dakh from "removing, concealing, or altering any corporate books, records, ledgers, tax documents, or surveillance equipment" (NYSCEF Docs. # 16, 18).

DISCUSSION

Respondent opposes Petitioner's motion by OSC and cross moves to dismiss the verified petition pursuant to CPLR 3211(a)(7) on the grounds that the petition fails to state a cause of action for judicial dissolution (NYSCEF Doc. # 19). In the alternative, Respondent moves to file an answer to the petition pursuant to CPLR 404 and further permit discovery pursuant to CPLR 408 (*id.*).

I. RESPONDENT'S MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION

Respondent's motion to dismiss is considered first. "On a motion to dismiss for failure to state a cause of action, 'the pleading is to be afforded a liberal construction,' the facts alleged must be accepted as true, and the plaintiff is afforded the benefit of every favorable inference (*Nassau Operating Co., LLC v DeSimone*, 206 AD3d 920, 925 [2d Dept 2022]). The pleading must be dismissed "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*id.* quoting *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). Moreover, bare legal conclusions without factual support are not sufficient to state a cause of action (*see Schwartz v Genfit, S.A.*, 212 AD3d 96, 100 [1st Dept 2022]).

A. Judicial Dissolution Pursuant to Section 1104-a(a)(1) of the BCL

Petitioner first brings a cause of action for judicial dissolution of the Corporation pursuant to section 1104-a(a)(1) of the New York Business Corporation Law ("BCL"). To plead a cause of action for dissolution under section 1104-a(a)(1), Petitioner must adequately plead that (1) holders of twenty percent or more of the outstanding shares of a corporation petition for dissolution and (2) "[t]he directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders" (BCL § 1104-a [a] [1]; *Kassab v Kasab*, 195 AD3d 832, 836 [2d Dept 2021]). Further, "oppressive actions" include "conduct that substantially defeats the 'reasonable expectations' held by minority shareholders in committing their capital to the particular enterprise" (*Kassab*, 195 AD3d at 836-37, quoting *Matter of Kemp & Beatley*, 64 NY2d 63, 72 [1984]).

Petitioner has adequately pleaded a cause of action for judicial dissolution pursuant to this section. Petitioner asserts that it holds one-third of the Corporation's outstanding shares, exceeding the threshold set in the statute, and that shareholders Sandler and Dakh maintain control of the Corporation by holding the remaining two-thirds of the Corporation's outstanding shares (NYSCEF Doc. # 1 ¶¶ 2-3). Moreover, Petitioner claims that shareholders Sandler and Dakh engaged in a series of "oppressive conduct," such as refusing to organize a shareholder or board meeting, excluding Petitioner from hiring and firing decisions, cutting off Petitioner's salary, denying Petitioner access to corporate records and documents, and removing surveillance equipment designed to protect the Corporation (*id.* ¶¶ 56-57). Petitioner alleges that because of these actions, the Corporation can no longer conduct its business in a reasonably practicable way nor in conformity with the governing documents (*id.* ¶ 58). Petitioner's allegations certainly rise to the level of "conduct that substantially defeats the 'reasonable expectations' held" by Petitioner (*see Kassab*, 195 AD3d at 836-37).

Respondent argues that Petitioner has not provided evidence to bolster the claims in the petition and provides only conclusory statements (NYSCEF Doc. # 70 ¶ 3). However, at the motion to dismiss stage, only the petition is considered and the claimant must merely show that it "states a cause of action," not proves one (*see Houtenbos v Fordune Assn., Inc.*, 200 AD3d 662, 663-64 [2d Dept 2021]; *see also Cardinale v New York City Dept. of Educ.*, 204 AD3d 994, 997 [2d Dept 2022]). Moreover, Petitioner asserts more than just conclusory statements in the petition. As previously explained, Petitioner recounts several instances of specific alleged misconduct by the controlling shareholders from October 2020 to present. Accordingly, Petitioner has adequately pleaded a cause of action for judicial dissolution under section 1104-a(a)(1).

B. Judicial Dissolution Pursuant to BCL § 1104-a(a)(2)

Petitioner's second cause of action seeks judicial dissolution of the Corporation pursuant to section 1104-a(a)(2) of the BCL. To plead a cause of action for dissolution under section 1104-a(a)(2), Petitioner must adequately plead that (1) holders of twenty percent or more of the outstanding shares of a corporation petition for dissolution and (2) "[t]he property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes by its directors, officers or those in control of the corporation." (BCL § 1104-a [a] [2]; *Kassab*, 195 AD3d at 836)

As previously explained, Petitioner asserts that it holds one-third of the Corporation's outstanding shares, exceeding the threshold set in the statute, and that shareholders Sandler and Dakh maintain control of the Corporation by holding the remaining two-thirds of the Corporation's outstanding shares (NYSCEF Doc. # 1 ¶¶ 2-3). Moreover, Petitioner contends that shareholders Sandler and Dahk committed several wasteful acts since at least May 2025, including removing cash from the Corporation's safe without recording it in a journal or ledger, removing the Corporation's books without explanation, preventing Petitioner's access to the Corporation's financial statements and tax returns, unilaterally implementing a 25% reduction in pricing on the Corporation's services, refusing to hire employees qualified to operate the Corporation's equipment, and permitting the Corporation's delivery trucks to be used without adequate compensation (NYSCEF Doc. # 1 ¶ 62). The allegations sufficiently plead a cause of action for dissolution under section 1104-a(a)(2) because, taken as true, show that the Corporation's assets were wasted or diverted for purposes other than promoting the Corporation's interest.

Respondent makes a similarly unavailing argument that Petitioner's evidence does not bolster its claims (*see* NYSCEF Doc. # 70 ¶¶ 13-17). As explained above, the claimant must simply "state a cause of action" at the motion to dismiss stage and Petitioner does so in the verified petition (*see Houtenbos*, 200 AD3d at 663-64). Accordingly, Petitioner has adequately pleaded a cause of action for judicial dissolution under section 1104-a(a)(2) of the BCL.

Petitioner sufficiently pleads a cause of action for judicial dissolution on both grounds. Thus, Respondent's motion to dismiss is denied.

II. RESPONDENT'S MOTION TO FILE AN ANSWER PURSUANT TO CPLR 404 AND PERMIT FURTHER DISCOVERY PURSUANT TO CPLR 408

Respondent moves in the alternative to permit Respondent to file an answer to the verified petition pursuant to CPLR 404, and to permit further discovery pursuant to CPLR 408 (NYSCEF Doc. # 19).

Under CPLR 404, if the court denies a respondent's motion to dismiss a petition in a special proceeding, the court may permit the respondent to answer, "upon such terms as may be just" (CPLR 404; *see also Cardinale v New York City Dept. of Educ.*, 204 AD3d 994, 997 [2d Dept 2022]). Moreover, if the court permits the respondent to file an answer, it must be served within five days after service of the order with notice of entry unless the court states otherwise. (*see* CPLR 404).

The Court notes that little evidence in the record supports or substantiates Petitioner's claim for dissolution based on the conduct alleged in the petition. Specifically, no evidence substantiates Petitioner's claims that shareholders Sandler and Dakh refused to organize a shareholder or board meeting, made unilateral board decisions, excluded Petitioner from hiring and firing decisions, cut off Petitioner's salary, denied Petitioner access to corporate records and documents, and removed surveillance equipment designed to protect the Corporation (NYSCEF Doc. # 1 ¶¶ 56-57).

Because Petitioner has not opposed Respondent's motion in the alternative and considering New York's strong public policy favoring the resolution of cases on the merits (*see Bansi v Nugacon Bldg. Servs., LLC*, 218 AD3d 723, 723 [2d Dept 2023]), Respondent's motion to file an answer is granted. Respondent will have five days from service of the notice of entry to file its answer.

Moreover, under CPLR 408, discovery is available only by leave of court (*see* CPLR 408), and the court has broad discretion in granting or denying such discovery (*see Doran Constr. Corp. v New York State Ins. Fund*, 241 AD3d 101, 109 [2d Dept 2025]; *Tinsley v New York City Taxi and Limousine Commn.*, 228 AD3d 672, 674 [2d Dept 2024]; *Park Knoll Owners, Inc. v Park Knoll Assoc.*, 175 AD3d 1410, 1411 [2d Dept 2019]). Because further discovery would serve to resolve this matter on the merits, this Court grants leave to the parties to conduct further discovery.

Respondent's motion to file an answer and conduct further discovery pursuant to CPLR 404 and 408 is granted, and Petitioner's motion to dissolve the corporation will be held in abeyance until discovery is completed.

Accordingly, it is hereby:

ORDERED that Respondent's motion to dismiss the petition for failure to state a cause of action **(mot. seq. # 1)** is **DENIED**; and

IT IS FURTHER ORDERED that Respondent's motion in the alternative to file an answer is **GRANTED (mot. seq. # 2)** as such the Respondent's time to answer is extended 30 days after notice of entry of this Order; and

IT IS FURTHER ORDERED that Respondent's motion for discovery **(mot. seq. # 2)** is **GRANTED**; and it is further

IT IS FURTHER ORDERED that Petitioner's motion to dissolve the Corporation **(mot. seq. # 1)** is held in abeyance until further discovery is conducted.

The Foregoing Constitutes the Decision and Order of this Court.

E N T E R,

Dated: June 29, 2026

Hon. Cenceria P. Edwards, JSC, CPA