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To be Argued by:
JACQUELINE A. RAPPEL
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New York Supreme Court

Appellate Division—Second Department

Docket No.: 2025-04900

DIVANEA COVEN, Personal Representative of the Estate of WALTER I. COVEN, a/k/a Walter Irving Coven, a/k/a Walter Coven, Deceased,

Petitioner-Appellant,

– against –

NEPTUNE EQUITIES INC.,

Respondent,

– and –

STACI BRODER,

Respondent-Respondent.

BRIEF FOR PETITIONER-APPELLANT

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PRELIMINARY STATEMENT

Petitioner-Appellant Divanea Coven, as personal representative of the Estate of Walter I. Coven ("Petitioner") respectfully submits this brief in support of her appeal of the decision of the Supreme Court, Nassau County (Murphy, J.) dated April 7, 2025 which denied Petitioner's petition for dissolution of the corporation known as Neptune Equities, Inc. ("Neptune") and dismissed the action (the "Decision").

The sole issue before the Supreme Court at trial was whether Neptune should be dissolved pursuant to N.Y. Bus. Corp. Law §1104(a)(2).

The facts and evidence at trial demonstrated that dissolution of Neptune is warranted because the shareholders of Neptune have been and are "so divided that votes required for the election of directors" of Neptune cannot be obtained. Business Corporation Law ("BCL") §1104(a)(2).

Here, the two shareholders - Petitioner and respondent Staci Broder ("Broder") cannot agree on the size of the board and/or who should be elected as the director(s). As such, dissolution is appropriate and should be ordered.

The Supreme Court's Decision was based upon the erroneous finding that a proper meeting was not held; that (i) only "directors" may hold meetings by electronic communication and Petitioner, who was not a director, had no right to set up the Special Meeting to be held by Zoom, and (ii) that there was no showing that the by-laws would allow for a Zoom meeting, and therefore, any actions purportedly

taken place at the Special Meeting are void (R[1]. 5). Moreover, the Supreme Court's Decision was based upon the erroneous finding that even had a proper meeting been held, the Court had discretion not to dissolve Neptune (R. 6).

These findings overlook the critical facts that Neptune has *no board of directors* and *no by-laws*. Therefore, there was no "director" that could have called the meeting and no "by-laws" that could have addressed protocol for noticing a special shareholders' meeting. Furthermore, because Neptune has *no board of directors*, the Supreme Court did not have discretion in this matter not to dissolve the corporation. A corporation cannot function without a board of directors.

For these reasons, which are discussed in detail below, the Supreme Court's Decision was erroneous and should be reversed; the corporation should be dissolved as a result of the shareholders' deadlock and inability to elect a director.

[1] All references to R. shall refer to the Record on Appeal.

QUESTIONS PRESENTED

1. Did the Supreme Court err in finding that the Special Meeting was improperly noticed?

   A: *Yes, particularly because the evidence at trial demonstrated that Neptune does not have a Board of Directors or by-laws.*

2. Did the Supreme Court err in finding that Neptune should not be dissolved, despite the evidence showing that the shareholders are so divided that the votes required for the election of a Board of Directors cannot be obtained?

   A: *Yes*, *pursuant to Business Corp. Law §1104(a)(2), this deadlock constitutes grounds for dissolution.*

3. Did the Supreme Court err in finding that it had discretion to not dissolve Neptune once there was deadlock?

   A: *Yes, the Court does not have discretion where, as here, the corporation has no duly elected Board of Directors.*

STATEMENT OF FACTS

Petitioner is the surviving spouse and personal representative of the estate of Walter I. Coven ("Walter"). Walter died on May 31, 2016. (R. 186 lines 29-10). Prior to his death, Walter owned 50% of the issued and outstanding shares of common stock of Neptune (R. 423-426).

Petitioner is the present owner of 50% of the shares of Neptune and Respondent Broder (Walter's sister) owns the remaining 50% shares of Neptune (R. 423-426).

Neptune engages in the business of owning, holding, and managing the commercial real property located at 1711 Neptune Avenue, Brooklyn, New York 11224 (the "Premises") (R. 275: 6-10).

Petitioner is the widow of Walter. Walter had two sons from a previous marriage, Ross Coven ("Ross") and Alec Coven ("Alec"). Broder is Walter's sister. Walter and Broder's father, Stanley Coven ("Stanley"), owned 100% of the shares of Neptune up until his death in 2011.

There are no validly-elected directors or officers of Neptune. Despite Broder's claim that she is the sole director and officer of Neptune, there are no corporate records to support Broder's position in that regard.

Indeed, on or about January 19, 2022, Petitioner requested from Broder any and all corporate documents that might have supported Broder's allegation that she

is the president and sole director of Neptune (R. 434-438 and R. 195-198). However, the only documents provided in response to that request for corporate records were the form documents that come in the corporate book; they were never completed for Neptune (R. 439-499). Broder confirmed that she had no other corporate documents than those provided (R. 253:8 to R. 254:6).

That is, there are no corporate resolutions of Neptune, there are no minutes of any formal meetings of Neptune, and there are no adopted by-laws of Neptune.

Thus, there is no evidence that Neptune had a duly-elected Board of Directors or any duly-elected officers.

By notice to Broder dated January 19, 2022, Petitioner, as 50% shareholder of Neptune, called a special shareholders' meeting for the election of a Board of Directors, to be held on March 30, 2022 via the Zoom platform (the "Special Meeting") (the "Notice of Special Meeting") (R. 434-438).

Pursuant to the Notice of Special Meeting, Petitioner notified Broder that the purpose of the Special Meeting was to fix the size of the Board of Directors and elect a Board of Directors (R. 434-438).

The Special Meeting was held on March 30, 2022. Petitioner and Broder attended, along with their respective counsel (R. 506).

At the Special Meeting, Neptune's two (2) shareholders – Petitioner and Broder – each made a proposal as to the size of the Board and proposed Board

nominee(s). At first, the shareholders both proposed that the Board of Directors consist of one (1) director. However, each shareholder nominated herself as sole director; each rejected the other's vote. Then, Broder proposed that the Board of Directors consist of two (2) directors, and nominated herself and Ross. Petitioner rejected this proposal with a "no" vote as well. As such, the vote on the size and appointment of a Board of Directors was deadlocked. R. 506.

Because a Board of Directors was not established at the Special Meeting, Neptune would continue to be managed by the two shareholders as a matter of law. However, despite this, Broder has continued to act unilaterally in connection with all Neptune management and business, and continued to take compensation and benefits for herself, all without Petitioner's authorization or approval (R. 376:21 to R. 377:3; R. 379:7-13).

Petitioner therefore petitioned for dissolution pursuant to BCL §1104(a)(2), which provides that dissolution is appropriate when the shareholders are so divided that the votes required for the election of a Board of Directors cannot be obtained (R. 8-21). The only cause of action that proceeded to trial was that portion of the First Cause of Action that sought dissolution under BCL §1104(a)(2), all other causes of action having been withdrawn by stipulation prior to trial. *Id*.

After a two-day trial conducted on January 7, 2025 and January 8, 2025, the Supreme Court (Murphy, J.) issued the Decision and Order on April 7, 2025 denying

Petitioner's petition for dissolution under BCL §1104(a)(2) and dismissing the petition (R. 4-6).

For the reasons discussed herein, the Decision was erroneous and should be reversed.

ARGUMENT

POINT I

THE TRIAL COURT'S FINDING THAT THE SPECIAL MEETING WAS INVALID WAS ERRONEOUS AND SHOULD BE REVERSED

Pursuant to BCL §1104(a)(2), a corporation may be dissolved on the grounds that "the shareholders are so divided that the votes required for the election of the directors cannot be obtained." BCL §1104(a)(2). This matter is a textbook case for dissolution under BCL §1104(a)(2).

The Supreme Court's Decision was erroneously premised upon the finding that a proper meeting was not held; that only the board of directors are allowed to hold a meeting by electronic communication and, therefore, "the petitioner, who is not a director, had no right to set up this meeting to be held by Zoom." (R. 5). The Supreme Court went on to note that Petitioner "has not shown the Court that the by-laws would allow for a Zoom meeting either" and, therefore, "any actions that are claimed to have taken place at the meeting are void and cannot serve as a basis to dissolve the corporation." (R. 5).

Critically, however, the evidence at trial established that (i) Neptune does not have any validly-elected director(s) and (ii) Neptune never adopted any by-laws. As such, the Supreme Court's Decision was erroneous and should be reversed.

For these reasons, which are discussed in detail below, the Special Meeting was valid. The meeting was properly called by a shareholder; both shareholders

actively participated in the Special Meeting; and the vote that took place therein resulted in deadlock. This deadlock warrants dissolution under BCL § 1104(a)(2).

A. NEPTUNE HAS NO DIRECTORS OR BY-LAWS

As established at trial, there is no evidence that Staci Broder, or anyone else, is a director of Neptune.

After receiving the Appellate Division, Second Department decision affirming the holding that Walter Coven died a 50% shareholder of Neptune, Petitioner requested that Broder supply her with a copy of Neptune's corporate records, including by-laws, amendments, shareholder meeting minutes, and other documents (R. 252:3-13; R. 434-438). In response, Broder produced the "corporate records" (R. 439-499).

The corporate records that were produced showed that there were no duly-elected officers or director(s) of Neptune. With the exception of three (3) old stock transfer certificate acknowledgements, the "corporate records" were mere pre-printed forms that come in every corporate book; they were never completed for Neptune (R. 439-499; R. 253:5-17). For the avoidance of doubt, the form "by-laws" included in the corporate kit are entirely blank; they do not even reflect the corporation's name, much less any officers or directors (R. 447, 466-490). These uncompleted, blank form by-laws in a generic corporate book do not constitute "Neptune By-Laws".

There were no minutes or other documents in the corporate book showing that any officer or director had ever been duly elected or appointed (R. 278:15 to R. 279:2).

Broder testified that she is not in possession of any other documents that were not turned over in this litigation (R. 253:18-22). Broder also testified that she never attended any other "formal shareholder meeting" (R. 254:7-17) and that she and Walter did not hold any formal shareholders' or directors' meetings after their father died (R. 279:16 to R. 280:9).

With respect to officers after Stanley's death, Broder testified that informally, through discussion, her and Walter allegedly agreed that she would be President or secretary or he would be secretary (R. 279:16 to R. 280:9). However, the testimony and evidence at trial established that the owners of the corporation have used officer titles interchangeably, as no officer or director had ever been formally elected or appointed.

For example, Walter signed the lease agreements with tenant Mandalay Bay Auto as president (R. 595; R. 282-283), while Broder signed a different lease as president during the period when Walter was alive (R. 941; R. 284). During the same period, when Walter was alive, Broder signed other documents, including a different lease, as secretary (R. 75; R 283-284). In addition, during the period when Walter was alive, while the documents do not contain an actual signature and while Broder

testified that Walter was the one who primarily dealt with Neptune's accountant, Broder testified that she signed the Neptune tax returns as secretary (R. 285:2 to R. 286:12; R. 718; R. 767).

The tax returns for the years Walter was alive list both Broder and Walter as officers; Broder was identified as secretary and Walter was identified as president (R. 763; R. 823; R. 833). Yet, Broder testified that she was president, *supra*, and the corporate signature card for Neptune's account at Bank of America lists Broder as president and Walter as "authorized signer" (R. 1061; R. 294:25 to R. 295:9). The corporate resolution which was part of that same document, however, was signed by Broder as secretary (R. 1073; R. 297:11-19).

The evidence also showed that Broder signed documents as "president" of Neptune since as far back as 2006, even though it is undisputed that prior to Stanley's death in 2011, Broder was <u>not</u> president – Stanley was (R. 359:6 to R. 360:2; R. 1060).

Curiously, Broder also signed a document as *secretary* in 2017 – after Walter passed away and the shares passed to Petitioner herein – which purported to reflect a resolution adopted by the "Board of Directors" of Neptune "at a meeting duly held on the 25th day of February 2017 at which a quorum was present" (R. 1076-1077), yet Broder testified that there was no such meeting; she was the only person present (R. 361:22 to R. 362:1; R. 362;9-14).

Similarly, in 2006 (when Stanley was alive), Broder signed a bank document stating that she was owner of 100% of the shares of Neptune, which was not true at any point in time, much less in 2006 when *Stanley* was the *100%* shareholder of Neptune (R. 550; R. 370:3-9).

In other words, Broder signed corporate documents without regard for the truth of their contents; the documents that Broder purported to sign as "president" or "secretary" should not have been given any weight and most certainly do not evidence that she was a duly elected or appointed officer of Neptune. Indeed, Broder testified that she merely signed what was put in front of her, whether the title contained therein was accurate or not (R. 353:2-12; R. 357:11 to 358:24; R. 362:15-20).

By reason of the foregoing, the evidence and testimony at trial established that the title of president, secretary or otherwise was never "official" when Stanley was alive or after his death. Broder testified "we did not have an official meeting" to elect new officers and directors after Stanley died in 2011 (R. 370:15-18). Broder testified that she had never attended a formal shareholders' meeting other than the Special Meeting in March 2022 (R. 254:7-17).

Broder's testimony was inconsistent throughout regarding the issue of officers. It is clear that Broder's testimony was not credible, and the documents she submitted are inconsistent with her testimony, and even with each other. Therefore,

there was no evidence put forth at trial that evidenced any duly elected officers of Neptune ever existed or still exist.

Simply put, there has never been a validly-elected board of directors of Neptune; in fact, there has never been a validly-elected director or officer of Neptune whatsoever. As Petitioner testified at trial, the reason she did not make a demand on the Neptune board of directors is because it "[doesn't] have a board of directors." (R. 250:25 to R. 251:4).

Thus, while the Supreme Court found that a proper meeting was not held because only "directors" are allowed to hold meetings by electronic communications, and it was not established at trial that "the by-laws" would permit a Zoom meeting (R. 5), (i) there are no directors of Neptune and (ii) there are no by-laws of Neptune. Accordingly, the Supreme Court's finding was erroneous.

B. THE SPECIAL MEETING WAS VALIDLY NOTICED AND HELD

Because Neptune has no by-laws (as discussed *supra*), the BCL governs. BCL §603 provides, in pertinent part, as follows:

> § 603. Special meeting for election of directors. (a) If, for a period of one month ….. or if no date has been so fixed, for a period of thirteen months after the formation of the corporation or the last annual meeting, there is a failure to elect a sufficient number of directors to conduct the business of the corporation, the board shall call a special meeting for the election of directors. If such meeting is not called by the board within two weeks after the expiration of such period or if it is … holders of ten percent of the votes of the shares entitled to vote in an

> election of directors may, in writing, demand the call of a special meeting for the election of directors ….

As established above, there has never been a validly-elected board of directors of Neptune; in fact, there has never been a validly-elected director of Neptune whatsoever. As such, Petitioner properly called the meeting under the BCL.

Without by-laws or an action of the shareholders fixing the board, the number of directors is required to be one. BCL § 702. Again, the evidence at trial demonstrates that Broder was never duly elected as a director of Neptune. There is no evidence of any previous election or any minutes of any meetings or corporate resolutions electing any director of Neptune.

Section 602(a) of the Business Corporation Law provides as follows:

> Meetings of shareholders may be held at such place, within or without this state, as may be fixed by or under the by-laws, or if not so fixed, as determined by the board of directors. If, pursuant to this paragraph or the by-laws of the corporation, the board of directors is authorized to determine the place of a meeting of shareholders, **the board of directors may, in its sole discretion, determine that the meeting be held solely by means of electronic communication, the platform/service of which shall be the place of the meeting for purpose of this article**. (emphasis supplied).

The Supreme Court incorrectly held that the Special Meeting was not properly held. The Notice of Special Meeting specifically called for the meeting to be held via Zoom, and Broder did not object to same at any time prior to the meeting. Instead, she attended the Special Meeting, and objected *during the Special Meeting* that the meeting was called in contravention of the "by-laws" because it was not

called by a majority shareholder or by the board of directors (R. 506 at 7:00 and 18:56). However, there are no by-laws, there are no board of directors and there is no majority shareholder, so Broder's objections were without basis in fact or law.

Notwithstanding these meritless objections, Broder had actual notice of the meeting, attended the meeting, participated in the meeting, with her counsel present, and voted in the election that resulted in a deadlock. As discussed *infra*, this constitutes a waiver of any objections to notice in any event.

Here, in its Decision and Order, the trial court cited *Nelkin v. H. J. R. Realty Corp.*, 25 N.Y.2d 543, 549-50 (1969) and *In re Parveen*, 259 A.D.2d 389 (1st Dep't 1999) for the premise that a "proper meeting" must have been held as a prerequisite for dissolution under BCL § 1104(a)(2). However, neither of those cases support a finding that the Special Meeting was not properly held. Rather, in both of those cases, the respective corporation had failed to hold meetings whatsoever, and the respective court held that such failure to hold a shareholders' meetings is not sufficient grounds for dissolution of a corporation on the basis that its directors are deadlocked. By contrast, here, a special meeting was, in fact, held, and the shareholders are, in fact, "so divided that they have failed to elect directors." *Id*.

As Neptune has no validly appointed or elected directors or officers, Petitioner (as a 50% shareholder) properly provided notice of the meeting. The procedure employed by Petitioner was the only procedure that was available to her.

C. BRODER WAIVED ANY OBJECTION TO THE MEETING

The purpose of the notice provisions of the BCL is to ensure the shareholders have actual notice of the meeting. The fact that Broder attended the Special Meeting, with counsel, and actively participated in the meeting and the vote, constitutes a waiver of any objection to the notice of the meeting.

BCL § 606 provides, in pertinent part: "The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such shareholder." No question of the validity of action taken at a meeting can thereafter be raised by any stockholder who waived the requirement of notice. 15 N.Y. Jur. 2d Business Relationships § 907.

Broder was given over sixty (60) days' notice of the meeting and while counsel objected at the start of the meeting, he only objected "to this meeting in that it was called in contravention of the terms of the by-laws of the company, that this meeting was not called by the board President or shareholder owning a majority of the shares or by the board itself and that's specifically in the by-laws and just note our objection and otherwise you called the meeting so we're ready to (inaudible)." (R. 506 at 7:00 to 7:31).

At no time did Broder object to the Special Meeting on the basis of any lack of notice.

Moreover, at no time before or during the Special Meeting did Broder object to the meeting being conducted via the Zoom platform. It was not until her trial testimony that Broder argued that the meeting was improper in that it was noticed to be held by "Zoom without any authority or consult with Broder, the corporation or any officers or directors" (R.181:25 to R. 182:3). Not to belabor the point, but, again, there are no validly-elected directors, and there are no by-laws of the Corporation.

Broder's participation in the meeting should have been deemed a waiver of any objection to notice technicalities, if any. BCL § 606. *See* *Petition of Stylemaster Dept. Store, Inc.,* 7 Misc 2d 207 (Sup Ct Westchester Co. 1956) (where petitioners, who were directors of corporation, received notice and actively participated in special meeting of stockholders without protest as to the failure to comply with certain formalities, the court held that petitioners could not later complain as to those omissions); citing "Participation at Board Meetings binds a participant to the action taken and denies to him the right to question the validity of the meeting". *Matter of Willoughby Walk Coop. Apts.,* 104 Misc.2d 477, 479 (Sup.Ct. Kings Co. 2980) citing *Handley v. Stutz,* 139 U.S. 417, 423 (1891).

Indeed, even in cases where a stockholder is present at a shareholders' meeting and objects to a deficiency of notice, that stockholder "may nevertheless be deemed to have waived the deficiency if, despite such objections, the stockholder enters into and takes part in discussions, by the shareholders, of items of business coming before

the meeting." 15 N.Y. Jur. 2d Business Relationships § 907 (emphasis added) (citing *Frankel v. 447 Central Park West Corp.*, 176 Misc. 701 (Sup Ct N.Y. Co. 1941), *order aff'd*, 263 A.D. 950 (1st Dep't 1942)). In *Frankel*, a stockholder participated in a discussion of financial statement that was presented at a stockholders' meeting, made suggestions regarding same, and moved through his attorney that such statement be spread upon the minutes. The Court held that the stockholder "must be deemed to have participated in the meeting and to have waived any right he might otherwise have had to question the validity of the meeting for lack of sufficient notice", and that "Petitioner should either have disregarded the notice and not attended the meeting, or if he attended, should have left the meeting immediately after voicing his objection to the validity thereof without further participation." *Id.*

D. THE DEADLOCK WARRANTS DISSOLUTION

Dissolution is the appropriate remedy where, as here, the relationship between the shareholders deteriorates and "the ensuing deadlock and dissension…effectively destroy[s] the orderly functioning of the corporation." *Greer v. Greer*, 124 A.D.2d 707, 708 (2d Dep't 1986) (citing *Matter of Ronan Paint Corp.*, 98 A.D.2d 413 [1st Dep't 1984]).

Here, the dissension between Petitioner and Respondent has led to the inability to establish a Board of Directors for Neptune. It is undisputed that both Petitioner and Broder participated in the vote at the Special Meeting (R 506). The

vote was deadlocked as to both (i) the size of the Board of Directors and (ii) the appointment of a director. As such, no director(s) were appointed at the Special Meeting.

A corporation cannot properly function without a board of directors. Here, Neptune not only has no board of directors, but it also has no by-laws, and, thus, no formal governance whatsoever. This scenario presents the precise circumstances contemplated by BCL §1104(a)(2). As such, Neptune must be dissolved and the Court did not have discretion to deny dissolution.

In a recent decision by the Third Department, *Amici v. Mazza*, 234 A.D.3d 1170 (3d Dep't 2025), the Court was faced with facts substantially similar to those herein, albeit involving an LLC. The Third Department *sua sponte* granted judgment directing the dissolution of a profitable, functioning company, focusing on the fact that "no operating agreement was ever executed and no manager has ever been appointed by the members." *Id* at 1171. The Court found that this was critical. "Certainly, plaintiff and Mazza are deadlocked, with plaintiff wanting to dissolve the LLC and Mazza wanting it to operate. However, as neither of them has legal authority to act on behalf of the LLC, we find that it is not reasonably practicable for the LLC to carry on its business." *Id.* "Although Mazza has continued to lease the properties, file income tax returns, and take other actions ostensibly on behalf of the LLC, he clearly lacks any legal authority for doing so." Id. The Third Department

found that while the company was operating and profitable, ultimately the company was technically without "legal authority" to act.

Where no board of directors is properly elected, an individual shareholder lacks authority to act for the corporation. In *Concrete Const. Systems, Inc. v. Jensen*, 65 A.D.2d 918, 919 (4th Dep't 1978), the Court found that officers of a corporation are "appointed or elected by the board of directors unless the certificate of incorporation provides that officers shall be elected by the shareholders [citing BCL §715(a) and (b)]." The Court held that, since "neither body came into existence", Parks (who "describe[ed] himself as president") was not properly designated, and thus, he lacked authority to direct the commencement of this action" on behalf of the corporation. In *Ginzburg v. Poretsky*, 2021 WL 878902, *2 (Sup.Ct. Kings Co. Mar. 8, 2021) the Court found that since no by-laws for the corporation exist, "there is no authority for the corporation to fund defendant's litigation."

Similarly, in the instant matter, there is no board of directors, or any director whatsoever, of Neptune. The BCL requires that a corporation be managed by its board of directors, or at least one director. Therefore, as we stand today, there is no director of Neptune that can manage the day-to-day business of the corporation and there was (and will continue to be) deadlock in electing any such director. Accordingly, pursuant to the BCL and well-settled case law, it is respectfully

submitted that the Supreme Court incorrectly denied dissolution under BCL §1104(a)(2) as Neptune cannot properly function without a board of directors.

Here, while the Supreme Court noted that, under New York law, dissolution should only be used as a last resort, the evidence established that Broder exclusively controls this corporation despite the fact that she is not the majority shareholder, there is no officer, no director, and no by-laws, and a corporation needs such governance in order to function. Again, this scenario presents the precise circumstances contemplated by BCL §1104(a)(2); dissolution is warranted here.

i. **The Estate's Creditor in Florida is not a Bar to Dissolution**

In the Decision and Order, the Supreme Court held, in *dicta*, that there is a "strong possibility" that dissolution would have been denied even if the Special Meeting had been proper, because there is an action pending in Florida concerning a creditor of the Estate and dissolution is unnecessary to satisfy the estate's debt (R. 5).

First, Petitioner never claimed that the Estate's debt to the Florida creditor, Walter Embry, was a basis for dissolution. In fact, in a prior related proceeding, Judge Driscoll found, in his decision after trial, that "[w]hile Divanea's desire to obtain funds to pay off her late husband's creditor may be understandable, and even noble, it is of no moment to the question of whether Neptune should be dissolved."

(R. 429-230). However, the Supreme Court in the instant matter considered Embry's judgment and, thus, we address it briefly herein.

No evidence was put forth at trial to support the Supreme Court's finding that the stock could be sold or borrowed against to satisfy the debt. Rather, Petitioner testified at trial that she tried to sell the shares but was not successful in finding a buyer (R.206:9-13; R. 229:11-21).

The possibility of what might happen to the shares in the future is pure speculation and should not have been considered by the Supreme Court. *Ramsey v. St. Barnabas Hospital*, 57 A.D.2d 521 (1st Dept. 1977) (Court upheld trial court's exclusion of hypothetical question where answer would have substituted speculation for fact).

Moreover, while the trial court suggested that the shares should be distributed to the beneficiaries in order to resolve the deadlock (R. 6), Petitioner is unable distribute the shares while Embry's debt remains unsatisfied, in accordance with Florida law. Specifically, Florida Statute § 733.802 subsection 1, provides that in order to compel a personal representative, such as Petitioner, to make beneficiary distributions, the beneficiaries (here, Ross and Alex) must establish that the property will not be required for the payment of debts, claims, etc. Here, the Neptune shares, which are the primary asset of the Estate, cannot be distributed to the beneficiaries as it will be required for the payment of the debt to Embry.

Indeed, Embry made a motion to compel a sale of the stock, wherein he stated that he was willing to accept the Estate's 50% interest in Neptune to satisfy his judgment (R. 536).[2] However, the Estate's 50% interest in Neptune is equivalent to approximately $3.7 million (R. 208:8-11) – well in excess of the value of the judgment. Thus, any such sale would constitute a waste of Estate assets and, thus, a breach of Divanea's fiduciary duty to the Estate.

Notably, the Court's findings in this regard are inconsistent in that the Decision and Order suggests that the stock should be sold in order to satisfy this debt, while also stating – in the same paragraph - that Ross will receive his share of stock and resolve any deadlock as to directorship issues. R. 5-6. However, if the Estate's shares are sold to satisfy the Florida creditor's debt, there will be no stock remaining to be distributed to Ross. Furthermore, the Supreme Court's decision overlooked the fact that Ross isn't the only son and beneficiary of Walter, Alex is also the son of Walter, a beneficiary of his estate and he testified at the trial yet he is not mentioned at all in the Supreme Court's decision and order. Moreover, Petitioner is a beneficiary of the Estate.

[2] The motion was denied without prejudice to renew based upon Petitioner's showing to the Court that she was attempting to liquidate the shares by sale or dissolution (R. 500-503).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the trial court erred in denying Petitioner's petition for dissolution and, as such, the Decision should be reversed in its entirety.

Respectfully Submitted,

/s/ *Jacqueline A. Rappel*

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I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: September 16, 2025

STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court

Appellate Division—Second Department

DIVANEA COVEN, Personal Representative of the Estate of WALTER I. COVEN, a/k/a Walter Irving Coven, a/k/a Walter Coven, Deceased,

Petitioner-Appellant,

– against –

NEPTUNE EQUITIES INC.,

Respondent,

– and –

STACI BRODER,

Respondent-Respondent.

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1. The index number of the case in the court below is 613931/22.

2. The full names of the original parties are as set forth above. There have been no changes.

3. The action was commenced in Supreme Court, Nassau County.

4. The action was commenced on or about October 14, 2022 by filing of a Verified Petition. Issue was joined by filing a Verified Answer on or about December 7, 2022.

5. The nature and object of the action involves dissolution of the New York Corporation.

6. This appeal is from the Decision and Order of the Honorable Jerome C. Murphy, dated April 14, 2025, which denied the verified petition to dissolve the corporation pursuant to BCL §1102(a)(2).

7. This appeal is on the full reproduced record.