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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.

REPLY BRIEF FOR PETITIONER-APPELLANT

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PRELIMINARY STATEMENT

Petitioner[1] respectfully submits this reply brief in further 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 ("BCL") §1104(a)(2).

Respondent's Brief ("Respondent's Brief" or "Resp. Br.") does not meaningfully address the central question on this appeal: whether the shareholders of Neptune are "so divided that the votes required for the election of directors cannot be obtained" under BCL §1104(a)(2). Instead, Respondent advances arguments that are contradicted by the Record, and offers a narrative of corporate governance that is unsupported by the evidence in the Record.

The arguments in Respondent's Brief are replete with red-herring arguments that have no bearing on the ultimate legal questions here, or are otherwise misguided and unsupported by the record. Indeed, Respondent's arguments are largely reliant on (i) the incorrect premise that Neptune has a board of directors and/or by-laws (it has neither), and/or (ii) the unsupported assertion that after Walter Coven's death,

[1] Capitalized terms herein shall have the same definition as those utilized in Petitioner's Initial Appellate Brief ("Petitioner's Initial Brief").

Staci Broder "became the sole remaining officer and director of Neptune." Resp. Br. p. 4.

However, Respondent's smokescreens cannot hide the undisputed facts and evidence establishing that no validly-elected Board of Directors exists for Neptune and that there is a deadlock between the two (2) 50% shareholders in electing a Board of Directors, warranting dissolution.

For these reasons, discussed further below, and in Petitioner's initial brief, 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, all of which warrants reversal of the Trial Court's decision and an order directing dissolution of Neptune under BCL § 1104(a)(2).

ARGUMENT

PETITIONER HAS ESTABLISHED THAT A DEADLOCK EXISTS AND WARRANTS DISSOLUTION UNDER BCL § 1104(a)(2)

It is undisputed that pursuant to the clear language of 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 directions cannot be obtained." BCL §1104(a)(2). The instant set of facts is a textbook example of deadlock under BCL §1104(a)(2).

A. NEPTUNE HAS NO DIRECTORS OR BY-LAWS

Critically, the evidence at trial established that (i) Neptune does not have any validly-elected director(s) and (ii) Neptune never adopted any by-laws. Respondent seems to disregard this fact throughout her Brief.

While Respondent argues that she and Walter "were both officers of the company" and that "[a]fter the death of Stanley Coven, Staci Broder and Walter Coven also acted as the directors of Neptune, and upon Walter's death, Staci Broder became the sole remaining officer and director of Neptune" [Resp. Br., p. 4], there is no evidence whatsoever in the Record that Broder was ever validly appointed or elected a director of Neptune. Broder's claim is nothing more than an unsupported, naked, self-serving assertion.

Further, while Respondent points to various documents she signed wherein, she proclaimed herself an officer of Neptune, such as tax returns, leases and banking documents, such self-serving documents do not prove that she was ever validly appointed or elected as a director or officer. More importantly, what Respondent fails to mention is that the contents of those documents are *all inconsistent with one another.*

As detailed in Petitioner's Initial Brief, the testimony and evidence at trial established that the owners of the corporation have used officer titles totally

inconsistently and interchangeably, as no officer or director had ever been formally elected or appointed. *See* Petitioner's Initial Brief at pp. 9-10.

Similarly, it is undisputed that there are no validly adopted by-laws for Neptune. Indeed, Respondent acknowledges that Neptune's corporate book contains only pre-printed by-laws which contain a number of blanks; that the corporate book was not updated after the death of Stanley Coven; and that there are no minutes of the meetings between Broder and Walter. *See* Resp. Br. p. 4. Certainly, there were no minutes or other documents showing that any officer or director had ever been duly elected or appointed (R. 278:15 to R. 279:2).

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 MEETING WAS PROPERLY NOTICED AND HELD, AND RESPONDENT'S ATTENDANCE AND PARTICIPATION IN THE MEETING CONSTITUTES A WAIVER OF ANY OBJECTIONS THERETO

i. The Meeting was Properly Noticed and Held

Respondent's argument that the action taken at the meeting should be deemed void because the meeting was improperly noticed or called is wholly misplaced. This is particularly true given that Ms. Broder actually attended the meeting, with

counsel, and actively participated in the meeting, thereby waiving any objections to the notice of the special meeting.

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. While Respondent argues, and the Supreme Court improperly held, that the notice of special meeting and the meeting itself were improper in that BCL §602 authorizes shareholder meetings by electronic means only if authorized by the corporation's board of directors or by-laws,[2] again, *Neptune does not have a Board of Directors or validly adopted By-Laws*. Incomplete, blank form by-laws in a generic corporate minute book do not constitute "Neptune By-Laws", and Respondent cites to no authority that it does. It is impossible to comply with the "by-laws of Neptune" when none exist. Similarly, as established above, Neptune *has no validly appointed or elected directors or officers*. It is impossible to make any requests for special meeting to a board of directors that does not exist. Thus, Petitioner (as a 50% shareholder) proceeded in the most reasonable manner available under the circumstances, and demanded the special meeting and provided notice of the meeting, as permitted under BCL §603(a).

[2] Notably, prior to Walter's death, he conducted business from Florida, remotely, without objection from Broder. R. 377:24 – 378:4.

Respondent's argument that the actions taken at the meeting should be deemed "void" because Petitioner's attorney did not allow Alex and Ross Coven to join the meeting is absurd, at best [Resp. Br. p. 16]. Neither Alex nor Ross Coven is a shareholder; they are certainly not required to be present at a meeting in order for the meeting to be deemed valid. Both of Neptunes two (2) shareholders (and their respective counsel) attended the meeting and participated in the meeting. No Neptune shareholder was prevented from attending the meeting.

ii. *Broder's Attendance and Participation in the Special Meeting Constitutes a Waiver*

Perhaps most critically, Broder had sufficient notice of the meeting and actually attended and participated in the meeting with her counsel. Indeed, Respondent acknowledges that she attended the meeting with her counsel. Resp. Br. p. 15. Although Respondent "objected…to the meeting, the manner in which it was held and the manner in which it was noticed" [*id*], 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.

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.

Under the clear, well-settled law, 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)).

Here, Broder's participation in the meeting must be deemed a waiver of any objection to notice.

C. THE COURT CANNOT PROPERLY EXERCISE ITS DISCRETION TO DENY DISSOLUTION WHERE A DEADLOCK EXISTS

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]).

In this case, Neptune's only two (2) 50% shareholders attended the meeting with their respective counsel and participated in the meeting. No Board of Directors was able to be elected and that constitutes, under the clear terms of the statute, deadlock.

Respondent's argument relating to BCL 603, i.e., that Neptune "already had a sufficient number of directors to conduct the business of the corporation" [Resp. Br. p. 19] is unpersuasive. First, to the extent this argument is based on the premise that "the by-laws of Neptune contained within its corporate book…does not specify the number of directors" [*id*], again, there are no duly-adopted by-laws of Neptune. Second, to the extent Respondent bases this contention on the incorrect premise that Broder is a director, the evidence in the Record establishes that Broder was never appointed as director.

Respondent argues that *Petition of Williamson,* 85 N.Y.S.2d 93 (Sup.Ct. NY Cty. 1948) addressed the issue of an "imminent" issuance of additional stock to break a perceived deadlock in denying a petition for dissolution. Here, however, there is no imminent issuance of additional stock.

The fact that Ross and Alex Coven testified that *if* the shares were distributed and issued to them, they would break any perceived deadlock, is irrelevant. The hypothetical question of what Ross and Alex Coven would do in the event they received the 50% interest in Neptune is irrelevant. Indeed, if Petitioner was to distribute the shares, they would be subject to the Florida creditor's judgment and, in turn, would dilute the Estate's shares in Neptune.

This is not a "bad-faith dissolution" as Respondent suggests [Resp. Br., p. 30]. Rather, Petitioner, as fiduciary, is simply acting in the best interest of the Estate.

Respondent's repeated contention that Neptune is "a thriving and profitable company" [Resp. Br. p. 30] is irrelevant in the face of the deadlock. Indeed, BCL §1111, quoted in Respondent's Brief [p, 23], provides that "dissolution is not to be denied merely because it is found that the corporate business has been or could be conducted at a profit."

The dissension between Petitioner and Respondent has led to the inability to establish a Board of Directors for Neptune. 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.

Thus, despite Respondent's contention to the contrary, the Trial Court should not have exercised its discretion to deny dissolution here, as there is simply no one with legal authority to act on behalf of Neptune. *See* *Amici v. Mazza*, 234 A.D.3d 1170 (3d Dep't 2025); *Concrete Const. Systems, Inc. v. Jensen*, 65 A.D.2d 918, 919 (4th Dep't 1978); *Ginzburg v. Poretsky*, 2021 WL 878902, *2 (Sup.Ct. Kings Co. Mar. 8, 2021).

Notwithstanding the notion that dissolution should only be used as a "last resort", the evidence here has established that Broder exclusively controls Neptune despite the fact that she is not the majority shareholder, there is no officer, no director, and no by-laws. A corporation needs such governance in order to function. Again, this scenario presents the precise circumstances contemplated by BCL

§1104(a)(2) and, thus, dissolution is warranted here. As such, Neptune must be dissolved.

CONCLUSION

For all of the foregoing reasons and the reasons set forth in Petitioner's Initial Brief, 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.

Dated: Uniondale, New York
December 19, 2025

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