SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:
HON. JEROME C. MURPHY,
Justice.

TRIAL/IAS PART 5

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

Index No. 613931/2022

Petitioner,

- against -

TRIAL
DECISION AND ORDER

XXX

NEPTUNE EQUITIES INC. and STACI BRODER,

Respondents.

This petition was brought by Divanea Coven as the personal representative of Walter I. Coven, who passed away on May 31, 2016. Mrs. Coven was appointed as the personal representative in the Florida Probate Court to represent her deceased husband's estate. That estate owes approximately $1,100, 000 concerning a judgment, including interest, to a Mr. Embry.

In her representative capacity, Divanea Coven currently controls 50% of the stock in Neptune Equities Inc. This 50% of the Neptune Equities Inc. stock includes Ms. Coven's 25% interest and the 25% interest in the stock for Walter Coven's two sons, Ross Coven and Alex Coven, from his first marriage; before his second marriage to the petitioner. Neptune Equities Inc. is a profitable New York Corporation that owns property in Brooklyn that is fully rented. The testimony at trial showed that this corporation was running well. The petitioner's appraisal estimated that that corporation is worth approximately $7,400,000.

The petitioner has brought this petition before this Court to dissolve the New York Corporation. The petitioner has the burden on these issues.

On January 19, 2022, the petitioner served a notice in reliance of §602(a) and §603(a) of the New York Business Corporation Law that allegedly sought to hold a meeting to elect directors. That proported meeting was held on March 30, 2022. The petitioner has now sought to have the corporation dissolved pursuant to §1104(a)(2) of the Business Corporation Law. However, before there can be a dissolution under that section, there must have been a proper meeting that was held. (See *Nelkin v H.J.R. Realty Corporation*, 25 N.Y. 2d 543[1969] and In re Parveen 259 A.D. 2d 389 [1st Dept. 1999]). Since §602 of the BCL only allows directors to hold meetings by electronic communication, the petitioner, who is not a director, had no right to set up this meeting to be held by Zoom. It is also noted that the petitioner has not shown the Court that the by-laws would allow for a Zoom meeting either. Therefore, any actions that are claimed to have taken place at that meeting are void, and that protested meeting can not serve as a basis to dissolve the corporation. For this reason, the petitioner's petition to dissolve the corporation must be denied.

It is important to note that, even if the petitioner had held a properly constituted meeting, given: (1) the facts of this case; (2) the law in New York; and (3) that there is a prior action pending in Florida concerning the estate and its debts, there is a strong probability that petitioner's request for dissolution would have been denied in any event.

In the Florida estate action, Mr. Embry, a judgment creditor, is owed approximately $1, 100,000. It also appears that the Florida Court has been waiting to see what this New York Court would do in this action. For the aforementioned reasons, this action is now dismissed. Additionally, under the law of New York, dissolution should only be used as a last resort. (See In re Parveen 259 A.D. 2d 389 [1st Dept. 1999]; and *Matter of Imperator*, 128 A.D. 707 [2nd Dept. 1987]).

In this New York action, dissolution is unnecessary to satisfy the estate's debt, where there is plenty of value available to the estate from the Neptune Equities, Inc., stock to resolve the debt issue. Also, the testimony elicited in this case makes it clear that at least Ross Coven, who is one of the beneficiaries of the Neptune stock in the Florida action, does not want Neptune Equities Inc. dissolved or its corporation's assets sold. Thus, after Mr. Embry's debt is paid, either by selling some stock or by borrowing against the estate's stock, Ross Coven will receive

his proportionate share of the stock distribution. After that occurs, with Ross Coven's shares, and Staci Broder's 50% interest, any alleged directorship issues will be easily resolved since Staci Broder's side of any dispute will control more than a 50% stock interest.

Given this practical solution, the corporation should not be dissolved and the estate can pay its debts by selling some Neptune Equities Inc. stock or by borrowing against that stock. New York law allows the Court to fashion a less dramatic remedy then to utilize dissolution. (See In re Parveen, supra.).

In view of the above, and given the Court's discretionary powers, the petition to dissolve the corporation pursuant to BCL §1102(a)(2) is denied and dismissed.

Also, in view of this Decision and Order, the Court does not need to decide the other arguments that were also raised concerning the Petition.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York

April 7, 2025

ENTER:

Jerome C. Murphy

JEROME C. MURPHY, J.S.C.

ENTERED

Apr 14 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE