

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

INDEX No. 014027/12

MOTION DATE: Jan. 14, 2013
Motion Sequence # 001

In the Matter of the Application of
CANDLEWOOD HOLDINGS, INC., by its
Directors, Arieh Yemini, Amir Yemini and
Nethaniel Zabari, for Dissolution pursuant
to New York Business Corporation Law
§1102, and for Other Relief,

Petitioners,

-against-

ANO, INC. and ROSALIE MOORE,

Respondents.

The following papers read on this motion:

Order to Show Cause..... X
Affidavit in Opposition..... X

Petition for the judicial dissolution of Candlewood Holdings, Inc. is **granted**.

This is a directors' petition for judicial dissolution of a corporation pursuant to § 1102 of the Business Corporation Law. Petitioners Arieh Yemini, Amir Yemini, and Nethaniel Zabari allege that they are the duly elected directors of Candlewood Holdings, Inc. Respondent Ano, Inc. owns 2/3 of the Candlewood stock, and respondent Rosalie Moore owns 1/3 of the shares. Arieh Yemini owns 50 % of Ano, and Oded Goldberg indirectly owns the other 50 % of that company.

The present proceeding is but the latest chapter in a long standing business dispute between Arieh Yemini and Goldberg (See Yemini v Goldberg, 88 AD3d 695 [2d Dept 2011]; Yemini v Goldberg, 60 AD3d 935 [2d Dept 2009]).

Candlewood owns 90% of the stock of Valle Auto Mall, Inc., which owns a commercial property in Roslindale, Massachusetts, which is improved with a gasoline station, convenience store, and car wash facility. The property was acquired pursuant to a tax free exchange of other property located in the Bronx, which also contains car wash (See 26 USC § 1031).

The Massachusetts gasoline station is Candlewood's only active business operation. Petitioners allege that the gasoline station's revenue has declined significantly in recent years, and the station is in need of renovation. Petitioners further allege that there is a \$900,000 mortgage on the property which is in danger of foreclosure.

Goldberg, who has appeared in the action without an order of intervention, objects to dissolution on the grounds that petitioners lack standing because they were not validly elected as directors of Candlewood. In a related action, Yemini v Goldberg, Index No. 12402/05, the court issued a declaratory judgment that a board of directors resolution issued by Yemini on September 4, 2008, purporting to increase the number of directors of Ano from two to three, was null and void (See order of May 31, 2012). The effect of the court's decision was to create deadlock on the Ano board. Thus, Goldberg argues that although Ano holds a majority interest in Candlewood, it could not lawfully cast a vote for dissolution of Candlewood over Goldberg's objection. Moreover, Goldberg argues, that there is no deadlock as to Candlewood shareholders because of the interest held by Rosalie Moore. Moore, who is aligned with Goldberg, also opposes dissolution of the corporation.

Alternatively, Goldberg argues that dissolution of Candlewood is not in the best interests of the shareholders because the corporation may be operated profitably. Goldberg claims that Candlewood's decline in income is due to mismanagement on the part of Yemini.

On September 14, 2012, Moore issued a notice calling for a special meeting of the shareholders of Candlewood for November 15, 2012. The purpose of the special meeting was to elect the two members of Candlewood's board of directors.

By order to show cause dated November 13, 2012, petitioners commenced this proceeding for the judicial dissolution of Candlewood. In the order to show, the court stayed the shareholders meeting pending determination of the dissolution petition.

Business Corporation Law § 1102 provides that if a majority of the board adopts a resolution finding that the assets of a corporation are not sufficient to discharge its liabilities or that a dissolution will be beneficial to the shareholders, it may present a petition for dissolution.

Because of the deadlock between the Ano shareholders, Arieh Yemini and Goldberg, Ano could not lawfully elect Amir Yemini and Nethaniel Zabiri as directors of Candlewood. Thus, a majority of Candlewood directors did not vote in favor of dissolution and Business Corporation Law § 1102 does not by its terms apply.

However, in the absence of statutory authority, a minority shareholder may be granted standing to seek dissolution of a corporation when the controlling shareholders have engaged in egregious conduct (*Matter of Kemp & Beatley, Inc.*, 64 NY2d 63, 69 [1984]). Similarly, a shareholder-director in a close corporation may seek common law dissolution, if the corporation is insolvent or a dissolution will be beneficial to the shareholders.

Pursuant to Sec. 8.1 of the shareholder agreement dated August 7, 2002, Arieh Yemini was one of the two initial directors of Candlewood. Since Arieh Yemini is a lawful director of Candlewood, he has standing to seek common law dissolution of the company.

Candlewood's corporate income tax return for 2011 shows total assets of \$1,494,874. Thus, Yemini has not shown that Candlewood has insufficient assets to discharge its liabilities or is insolvent in any other sense.

Nevertheless, the court concludes that dissolution of Candlewood will be beneficial to the shareholders. The business dispute between Arieh Yemini and Goldberg is bitter and longstanding and has poisoned at least two other business ventures. Although respondents allege that the Massachusetts gasoline station can be returned to profitability, they do not put forward a concrete business plan. Neither Goldberg nor Moore relies upon Candlewood for employment. Indeed, it is not clear on what factors their opposition to dissolution is based.

"It is not the interests of the majority stockholders alone which determine the desirability or need for dissolution" (*Leibert v Clapp*, 13 NY2d 313, 316 [1963]). Thus, the fact that Goldberg and Rosalie Moore hold a 2/3 beneficial interest in Candlewood does not entitle them to frustrate dissolution of the corporation.

Accordingly, the petition for the judicial dissolution of Candlewood Holdings, Inc. is **granted**. Petitioners are directed to settle a final order of judicial dissolution on notice to respondents (See BCL § 1111).

So ordered.

Dated MAR 05 2013


J.S.C.

ENTERED
MAR 07 2013
NASSAU COUNTY
COUNTY CLERK'S OFFICE