

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
THEATRE DISTRICT REALTY CORP.,

Plaintiff,

v.

ILANA APPLEBY,

Defendant.
----- X

Index No.

**VERIFIED COMPLAINT
FOR DECLARATORY
JUDGMENT**

Plaintiff, Theatre District Realty Corp., by its attorneys MARKEWICH AND ROSENSTOCK LLP, for its verified complaint, alleges:

1. Theatre District Realty Corp. ("Theatre District"), is a domestic corporation of the State of New York, with its principal place of business at 39 W. 19th Street, Suite 609 New York, NY 10011.

2. Theatre District is now, and always has been, in the business of real estate rental, sale and development.

3. There are two shareholders of Theater District: a trust under Article Fifth of the Will of Sol Lieberman ("Trust"), owning 55% of the shares, and Defendant Ilana Appleby, owning 45% of the shares. The Board of Directors of Plaintiff consists of Isabel Baumgarten and Abraham Lieberman, who are two of the three discretionary income beneficiaries of the Trust.

4. Theater District is the owner of a building located at 602 Tenth Avenue, New York, New York 10036 (the "Building").

5. The Building is in need of significant reconstruction in order to be reasonably profitable. Even if reconstruction and renovation is accomplished, the Building will not yield the profit an asset of its worth should yield, in large part because 12 of 14 its apartments are regulated by the New York City Rent Stabilization Code, resulting in unnaturally deflated rents.

6. Theatre District wishes to enter into an Internal Revenue Code § 1031 exchange by which Theatre District will sell the Building and, within a statutorily limited 180 day period, contract to use such proceeds to acquire other real property to develop or lease for the purpose of generating income. Theater District conservatively estimates that engaging in such exchange will increase annual profits by 300% compared to an average of the last three years' profits.

7. Theater District has marketed the Building and has come to sales terms on more than one occasion. Potential buyers have been reluctant to enter into sales contracts without the consent of all shareholders, because of the possibility that the sale is governed by § 909(a) of the Business Corporation Law, which requires a two-thirds majority consent of all shareholders in order to sell all or substantially all of a corporation's assets, unless such sale is in the usual or regular course of business actually conducted by the corporation.

8. Minority shareholder Defendant Ilana Appleby has refused to consent to sale of the Building except on terms that will make it unsalable.

9. Theatre District's Board of Directors contends that the proposed sale is not subject to the super-majority consent of § 909(a) of the Business Corporation Law because the sale will be made in the usual or regular course of the business actually conducted by Theatre District, and will not result in the liquidation or distribution of the corporate assets. However, upon information and belief no purchaser will agree to buy the Building without either consent of Ilana Appleby, which she refuses, or a declaration from this Court providing that the sale does not require the super-majority consent of § 909(a) of the Business Corporation Law.

10. Theatre District has no adequate remedy at law.

11. Accordingly, Theater District asks this Court to issue a declaration that the super-majority consent of § 909(a) of the Business Corporation Law is not required for sale of the Building.

Dated: New York, New York
October 15, 2012.

MARKEWICH AND ROSENSTOCK LLP
Attorneys for Plaintiff

By: 

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(212) 542-3156


VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

Zachary Baumgarten, being duly sworn, deposes and says that he is the President of Plaintiff Theatre District Realty Corp., that he has read the foregoing complaint and knows the contents thereof; that the same is true to his knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.



Sworn to before me this 11th
day of October 2012



Notary Public

JUDITH ST. CLAIR
Notary Public, State of New York
No. 01ST6249124
Qualified in Kings County
Commission Expires October 3, 2015