

Renwick, J.P., Manzanet-Daniels, Feinman, Gische, JJ.

12553 Theatre District Realty Corp., Index 653614/12
Plaintiff-Respondent,

-against-

Ilana Appleby,
Defendant-Appellant.

Sargent, Sargent & Jacobs, LLC, New York (Hale C. Sargent of
counsel), for appellant.

Markewich and Rosenstock, New York (Lawrence M. Rosenstock of
counsel), for respondent.

Order, Supreme Court, New York County (Melvin L. Schweitzer,
J.), entered on or about August 22, 2013, which granted
plaintiff's motion for summary judgment declaring that the sale
of its building does not require the consent of a super-majority
of its shareholders pursuant to Business Corporation Law (BCL) §
909(a), and so declared, unanimously reversed, on the law, with
costs, the motion denied, and it is declared that the sale of the
building requires the consent of a super-majority of the
shareholders pursuant to BCL § 909(a).

BCL § 909(a) governs the disposition of all or substantially
all of a corporation's assets, "if not made in the usual or
regular course of the business actually conducted by such
corporation." Since plaintiff has never been engaged in the
business of selling real estate, the sale of its building would

FILED

MAY 22 2014

COUNTY CLERK'S OFFICE
NEW YORK

not be made in the regular course of the business it "actually conduct[s]" (see *Matter of McKay v Teleprompter Corp.*, 19 AD2d 815 [1st Dept 1963], appeal dismissed 13 NY2d 1058 [1963]; *Vig v Deka Realty Corp.*, 143 AD2d 185 [2d Dept 1988], lv denied 73 NY2d 708 [1989]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 22, 2014


CLERK

FILED
MAY 22 2014
COUNTY CLERK'S OFFICE
NEW YORK