

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
Application of Joseph Yahudaii,

Index No. 654014/2012

Petitioner,

**AMENDED PETITION OF
DISSOLUTION OF TRUE GATE
HOLDING, LTD. PURSANT TO
BUSINESS CORPORATION LAW
SECTIONS 1104 AND 1104-A**In the Matter of the Application for Dissolution
Of True Gate Holding, Ltd., a New York
Domestic Corporation

v.

Mehry Noghrei,

Respondent.
-----X**TO THE SUPREME COURT OF THE STATE OF NEW YORK:**

The amended petition of Joseph Yahudaii respectfully alleges as follows:

1. True Gate Holding, Ltd. is a domestic corporation (the "Corporation") organized under the Business Corporation Law of the State of New York and has its offices c/o Toback, Bernstein & Reiss LLP, 15 West 44th Street, 12th floor, New York, New York 10036.
2. Petitioner resides at 37 Piccadilly Road, Great Neck, New York 11023 and is the owner of fifty (50%) percent of the outstanding shares of the Corporation. There are issued and outstanding a total of ten (10) shares of the Corporation's stock, which is the stock entitled to vote at the election of directors and Petitioner is the holder of five (5) shares thereof.
3. The names and addresses of all shareholders and all officers/directors of the Corporation are as follows:

Joseph Yahudaii ("Petitioner" or Yahudaii")
37 Piccadilly Rd
Great Neck, NY 1102350% Shareholder and
Chief Executive Officer

Mehry Noghrei ("Noghrei")
14 Clover Drive
Great Neck, New York 11021-1819

50% shareholder and
Principal Executive Officer

4. The Corporation is a single asset corporation. Its only asset is the mortgage (the "Mortgage") it holds on property located at 75-79 East 115th Street, New York, New York. The Mortgage was purchased and assigned to the Corporation in 1997.

5. The Petitioner is the owner of one-half of the shares of stock of said Corporation, entitled to vote and files this petition for voluntary dissolution of the Corporation on the grounds specified in Sections 1104 and 1104-A of the Business Corporation Law.

6. The Corporation was formed on November 19, 1997. Its status is active and its Chief Executive Officer or Chairman is your Petitioner, Joseph Yahudaii, and the Corporation's Principal Executive Officer is shareholder Mehry Noghrei. Each of these individuals (together, referred to herein as the "Shareholders") holds fifty (50%) percent of the outstanding and issued stock of the Corporation.

7. The Corporation has no employees and does no business. It has no income or assets, except the mortgage sought to be foreclosed.

8. The Corporation's office is located at 15 West 44th Street, New York, New York 10036, where True Gate's attorneys' office and corporate documents are located. The Corporation has no physical office in Nassau County. Nassau County is the county where I reside.

9. The records of the Corporation were previously corrected to reflect its correct address in New York County. See NYS Department of State, Division of Corporations Entity Information Report, a copy of which is annexed hereto as Exhibit "A".

10. The Shareholders signed a Shareholders' Agreement dated November 1997, (a copy of which is annexed hereto as Exhibit "B"). pursuant to which they acknowledge that they each own five (5) shares of stock in the Corporation and agreed that in the event of default of the Mortgage, the Corporation, without further notice, may foreclose on the Mortgage.

11. The Mortgagor is in default under the Mortgage, and the Mortgage has matured. The Mortgagor's last payment on the Mortgage was January 2007.

12. The Court dismissed a prior foreclosure action, without prejudice, to the Petitioner's right to bring a new action consistent with a decision; namely, on behalf of True Gate Holding, Ltd., the party that holds the Mortgage. A copy of the Court's decision (J. Marcy S. Friedman) is annexed hereto as Exhibit "C".

13. In accordance with the by-laws of the Corporation, a copy of which is annexed hereto as Exhibit "D", a Notice of Special Meeting of Shareholders of the Corporation was served on November 6, 2012 to the Shareholders of the Corporation, scheduling the meeting for November 19, 2012 at 10:00 A.M. to appoint and/or elect Joseph Yahudaii as President of the Corporation and authorize the Corporation and Joseph Yahudaii to execute any and all documents necessary, or on in connection with, the commencement and maintenance of a foreclosure action on the Mortgage, consistent with Justice Friedman's Order. A copy of the Notice of Special Meeting is annexed hereto as Exhibit "E".

14. The Notice of Special Meeting was issued at the direction of Joseph Yahudaii, as holder of fifty (50%) percent of the Corporation's outstanding shares entitled to vote.

15. Noghrei failed and/or refused to attend the special meeting, despite the fact the Mortgage is due, the Mortgage is in default for more than thirty (30) days, and any action to foreclose the Mortgage had to be commenced by January 4, 2013 or otherwise be time barred.

16. ~~In fact, although she has filed several affidavits in this proceeding, Noghrei has not appeared in Court for any of the Court appearances.~~

17. As the Court is aware, Noghrei is the mother-in-law of the mortgagor, namely, Nourallah Baroukhian. While Noghrei has not attended any Court sessions, her son-in-law has appeared at each Court session. Noghrei's actions have created a deadlock among the directors and shareholders of the Corporation who are equally divided regarding the management of the affairs of the Corporation; including the foreclosure of the Mortgage held by the Corporation. The Corporation has no other assets and does no other business.

18. The deadlock between the sole shareholders and officers of the Corporation would result in the loss of the ability to foreclose on the Mortgage, if such action is not pursued. The action was filed but the Court stayed service of the pleadings pending the hearing of this motion.

19. The foreclosure action was filed on December 19, 2012 and the papers must be served by April 18, 2013. Accordingly, we respectfully request that the Court permit the Petitioner to serve the foreclosure papers immediately.

20. While paragraph "4" of the Shareholders' Agreement (Exhibit "B") authorizes the foreclosure action, any attack on the commencement of such action by Noghrei after

commencement may result in a statute of limitations issue. As such, we filed the instant motion with the Court.

21. The amount owed to the Corporation, pursuant to the Mortgage and underlying note exceeds \$800,000. A copy of the notice regarding the default and referencing the debt is annexed hereto as Exhibit "F".

22. Since Petitioner and Noghrei are the only officers and sole equal shareholders of the Corporation, and they are deadlocked regarding the foreclosure of the Mortgage held by the Corporation, the conduct and management of the business affairs of the Corporation are at a standstill. Such deadlock will result in a loss to the Corporation of its only asset and its ability to recover more than \$800,000 due to it.

23. The reasons which compelled the Petitioner to ask for a dissolution of the Corporation pursuant to BCL 1104 are herein before specified.

24. In addition, the Petitioner is entitled to a judicial dissolution of the Corporation pursuant to special circumstances pursuant to BCL 1104-A. The Petitioner is the holder of fifty (50%) percent of the outstanding shares of the Corporation, which corporation is not an investment company under the Investment Company Act of 1940 nor is the stock listed on any National Securities Exchange or quoted in an over the counter market.

25. Shareholder/Director/Officer Noghrei is guilty of oppressive actions towards the Petitioner/Shareholder and the assets of the Corporation are being wasted or diverted for non-corporate purposes by Noghrei since she is attempting to interfere with the foreclosure on the Mortgage and benefit her son-in-law at the expense of the Corporation and the Petitioner.

26. It is respectfully submitted that the liquidation of the Corporation and foreclosure of the Mortgage, the preservation of the foreclosed proceeds to then be distributed to the Shareholders, in accordance with the Shareholder's Agreement and as directed by the Court, are the only means by which the Petitioner will recover his investment and the Corporation will preserve, and not lose, its only asset.

27. It is in the beneficial interest of the Petitioner that the Corporation be dissolved so that the other shareholder/officer/director can no longer frustrate the Petitioner's ability to realize the value of the Corporation's sole asset and to commence the foreclosure action before the statute of limitations has run.

28. By refusing or impeding the Corporation from foreclosing on the Mortgage, Noghrei has breached her fiduciary duty owed by her to Petitioner and the Corporation.

29. Based upon the foregoing, it is respectfully submitted that the Court grant the Petition to dissolve the Corporation and for such other and further relief as the Court deems proper, together with the costs of this proceeding.

Dated: New York, New York
February 12, 2013

TOBACK BERNSTEIN & REISS LLP

By: 

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