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

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In the Matter of

CRISTINA QUAZZO, Index No.: 652282/2010

Petitioner,

- against -

9 CHARLTON STREET CORPORATION, et al.,

Respondents.

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MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY JUDGMENT DISMISSING THE PETITION

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PRELIMINARY STATEMENT

This dispute arose after petitioner Cristina Quazzo ("Cristina") asked her father respondent Ugo Quazzo ("Ugo") for a distribution from a family trust, but was refused. Since that time, Cristina has sought what she feels is her rightful inheritance – one-third of her father's assets – and has, therefore, commenced this proceeding and a series of related actions seeking, among other things, to dissolve the corporations her father has spent his lifetime building – corporations for which Cristina has never worked a day in her life, and to which she has never contributed a single dollar. The ostensible focus of this involuntary judicial proceeding – the governance of respondents 9 Charlton Street Corporation, Pearlbud Realty Corporation, Orbis International Corporation (collectively, the "Corporations," and together with Ugo, the "Respondents") – is, in reality, of absolutely no concern to Cristina.

Indeed, the indisputable facts of this proceeding are that Cristina has never contributed any money, time, or expertise to any of the Corporations. She has never possessed any share certificates in any of the Corporations. She has never worked for any of the Corporations. She has never expressed any interest in managing the Corporations. The Corporations, like many closely held companies, never issued any dividends prior to the commencement of this case, and Cristina never expressed any opinion on that policy. And while the Corporations, like many closely held companies, have been informally governed, Cristina knew of and benefited from the very arrangements she now asserts mandate the dissolution of the Corporations.

Cristina is not, and has never been, a shareholder of any of the Corporations, and does not, therefore, have standing to maintain this proceeding. Even if the Court finds

that an issue of fact exists as to her claimed status as a shareholder, the Court may nevertheless dismiss this proceeding, as Cristina has not been "oppressed" or wronged by the Respondents. Cristina's allegations of oppression are: (1) indisputably refuted by the record; (2) irrelevant to this proceeding; and/or (3) barred by the relevant statute of limitations.

In addition to failing to state a cause of action, the proceeding should be dismissed because it has been brought in bad faith. Cristina has absolutely no interest in the Corporations, and is improperly using this equitable proceeding for leverage in a family dispute. Indeed, for this very reason, longstanding precedent requires the dismissal of the proceeding.

FACTUAL BACKGROUND

The facts relevant to this motion are set forth in the Affidavit of Ugo Quazzo, sworn to on October 8, 2012 (the "Quazzo Aff."), the Affirmation of John Holden, affirmed on October 8, 2012 (the "Holden Aff."), and the exhibits annexed thereto, and will not be repeated herein at length. Briefly, however, the salient facts are as follows.

Ugo immigrated to the United States from Italy in the 1950s. He has three adult children: Stephen Quazzo ("Stephen"), Marco Quazzo ("Marco"), and Cristina. Since moving to the United States, Ugo has been involved in various business ventures, including the Corporations ostensibly at issue in this proceeding. (Quazzo Aff., ¶ 2.)

The Corporations

Cristina has named three of Ugo's corporations as Respondents in this proceeding. Each is described briefly as follows:

(a) Orbis International Corporation

Orbis is an operating company that services commercial espresso machines in the New York metropolitan area. Ugo has always exercised complete control over Orbis, and has always managed its day-to-day affairs. Orbis has never issued dividends to Cristina.[1] (*Id.*, ¶ 3.)

(b) Pearlbud Realty Corporation

In 1973, Ugo acquired Pearlbud, which owned a building on West 44th Street in New York City. Since that time, Ugo has been the sole shareholder of Pearlbud, and has built the company to a point where it owns 6 properties in New York City. In that time, Ugo has exercised complete control over Pearlbud, by managing its day-to-day affairs, identifying new properties to purchase, securing financing for the acquisitions, and managing the properties after they were acquired. Pearlbud has never issued dividends to Cristina. (*Id.*, ¶ 4.)

(c) 9 Charlton Corporation

Ugo acquired 9 Charlton in the early 1990s, which also owns real property in New York City located at 9 Charlton Street. Ugo has always been the sole shareholder of, and exercised complete control over, 9 Charlton. 9 Charlton has never issued dividends to Cristina. (*Id.*, ¶ 5.)

[1] Cristina concedes that she has never received any dividends from any of the Corporations. (Affidavit of Cristina Quazzo, sworn to on December 16, 2010, ¶ 21.) None of the Corporations issued any dividends until 2010. (Quazzo Aff., ¶ 3, 4, 5, 8.)

Stocks Issued in Children's Names, But Never Delivered

In the 1970s, Ugo was advised by counsel, as a substitute for estate planning, to issue shares to the Corporations in his children's names. As a result, shares were prepared in the children's names as follows: (1) on March 13, 2001 for Orbis; (2) on April 10, 1976 for Pearlbud and (3) on August 29, 1990 for 9 Charlton. (*Id.*, ¶ 6.) Importantly, however, the shares were never delivered to any of the children. (*Id.*, ¶ 7.) Indeed, it was not Ugo's intention to transfer any present interest in the Corporations at the time the shares were issued,[2] but rather, it has always been Ugo's understanding that he is the sole shareholder of the Corporations and that the shares would pass upon his death. (*Id.*, ¶ 7). As a result, Ugo has always exercised complete control over the Corporations. (*Id.*, ¶ 7.)

Cristina Has No Involvement In Corporations

After her graduation from college in 1988, Cristina moved to Europe, and has lived there ever since. (*Id.*, ¶ 8.) Cristina has never had any involvement in the Corporations in any way. Cristina has never invested money, time, or expertise in the Corporations.[3] She has never been employed by the Corporations, participated in the management of the Corporations, or received any dividends from the Corporations. (*Id.*, ¶ 8.) Moreover, Cristina has never sought any involvement in the Corporations, or even so much as expressed any opinion as to their management or governance, prior to commencing this proceeding. (*Id.*, ¶ 8.) Ugo and Cristina did, at various times, discuss a

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[2] Apparently, the Corporations' accountants did not realize that the share certificates had never been delivered, and mistakenly sent K-1 tax forms to Cristina for 9 Charlton. This, however, does not reflect any intent by Ugo to have transferred a present interest in 9 Charlton or any other of the Corporations. (Quazzo Aff., ¶ 7, fn. 1.)

[3] *See also*, Petitioner's Responses and Objections to Respondents' First Set of Interrogatories, dated May 3, 2011, Responses 9 – 11. (Holden Aff., Ex. C.)

transfer of stock in the Corporations in exchange for Cristina returning from Europe and working for them. But Cristina never actually returned from Europe or worked for any of the Corporations. (*Id.*, ¶ 9.)

Since Cristina graduated from college, Ugo has given her at least $857,564.00 in financial support. (*Id.*, ¶ 10.) The money was transferred to Cristina from accounts (*id.*, ¶ 10) which she now claims are used by Ugo to loot the Corporations' resources. (Holden Aff., Ex. A, ¶ 54.) Cristina had no problems with Ugo's governance of the Corporations – at least until she stopped receiving money from Ugo.

In 2010, Cristina asked Ugo for a distribution of money from a family trust, which Ugo denied. (Quazzo Aff., ¶ 11.) That denial – and not the Corporations' governance – is the impetus of this proceeding, and Cristina's only purpose is to extract what she feels is her share of her father's wealth.

ARGUMENT

JUDICIAL DISSOLUTION PROCEEDINGS

BCL § 1104-a provides that a shareholder with at least 20% of the shares in a closed corporation may petition for judicial dissolution of the corporation "under special circumstances." Specifically, a shareholder may seek dissolution on the grounds that: (1) the directors "have been guilty of illegal, fraudulent, or oppressive actions towards the complaining shareholders" or (2) the "property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes." BCL § 1104-a(a)(1), (2).

In the case of *Matter of Kemp & Beatley*, 64 N.Y.2d 63, 70-74 (1984), the Court of Appeals examined the purpose of the judicial dissolution proceeding created in BCL §

1104-a. According to the Court of Appeals, the Legislature instituted this proceeding in recognition of the unique "predicament" in which minority shareholders of closely held corporations often find themselves. At the time they invest in a closely held corporation, shareholders often expect employment and a voice in management decisions. If those expectations are frustrated, the shareholder of a closely held corporation, as opposed to a publicly traded corporation, generally cannot readily sell the shares on the open market, and would be forced to abandon their investment – of time and/or money – in the corporation. Accordingly, the purpose of BCL § 1104-a is to provide a remedy to minority shareholders who have invested time and money in a company, but have been wrongfully denied the fruits of that investment. *See Id.*

POINT I

CRISTINA DOES NOT HAVE STANDING TO BRING THIS PROCEEDING

To have standing to bring a judicial dissolution proceeding, the petitioner(s) must own at least 20% of the corporation's outstanding shares. BCL § 1104-a(a). If the petitioner does not own at least 20% of the outstanding shares, the petition must be dismissed. *Artigas v. Renewal Arts Realty Corp.*, 22 A.D.3d 327, 327 (1st Dep't 2005). Because Cristina is not a shareholder of any of the Corporations, this proceeding must be dismissed.[4]

[4] In their Answer, Respondents asserted, as their Second Affirmative Defense, that "Petitioner lacks standing to bring the Amended Petition." (Holden Aff., Ex. B, ¶ 72.)

A. Cristina Has Never Purchased Shares in Any of the Corporations

As noted, at various times, Ugo and Cristina did discuss a transfer of shares of the Corporations in exchange for Cristina working for the Corporations. (Quazzo Aff., ¶ 9.) Importantly, however, Cristina has never worked for any of the Corporations in any capacity, at any time. (*Id.*, ¶ 9.) Indeed, Cristina has not paid any consideration, of any kind, for any shares in the Corporations. (*Id.*, ¶ 8.) Cristina has not paid cash for any shares; Cristina has never invested any capital in any of the Corporations; Cristina has never offered any expertise to the Corporations; Cristina has never worked for any of the Corporations. (*Id.*, ¶ 8.) In short, it is undisputed that Cristina has never purchased any shares in any of the Corporations.

B. Ugo Has Never Transferred Any Shares to Cristina By Gift

Given, as shown above, that Cristina never purchased shares in the Corporations, Cristina's claim to be a shareholder in the Corporations must rely upon a claim that Ugo transferred shares to her by an *inter vivos* gift. To prove an *inter vivos* gift, the donee must demonstrate, by clear and convincing evidence, that: (1) the donor intended to give the gift; (2) the donor "delivered" the property purportedly given; and (3) the donee accepted the gift. *See*, *Matter of Szabo*, 10 N.Y.2d 94, 98 (1961). To show intent, the donee must prove that that donor had the intent to "transfer some present interest." *McCarthy v. Pieret*, 281 N.Y. 407, 409 (1939). A "mere intention to make a gift *in futuro* is not sufficient." *Gruen v. Gruen*, 104 A.D.2d 171, 174 (2d Dep't 1984). Cristina is unable to carry her burden as to *any* of the three requirements for proof of an *inter vivos* gift of shares.

Cristina's claim rests on the fact that, at various points, Ugo had shares prepared containing his children's names for each of the Corporations. (Quazzo Aff., ¶ 6.) Importantly, however, Ugo did not intend, at the time the shares were prepared, to transfer ownership in the Corporations. (*Id.*, ¶ 7.) This intent is shown by Ugo's consistent statements throughout this litigation, and his consistent behavior since the shares were prepared in his children's names. At no time has Ugo ever relinquished any authority or control over the Corporations. (*Id.*, ¶ 3, 4, 5, 7.) Ugo has never asked Cristina, nor her brothers, for authority to consummate any transaction or implement any policy at any of the Corporations. (*Id.*, ¶ 7.) Ugo's complete and unquestioned management over the Corporations demonstrates that he never intended to transfer any present interest in the Corporations to Cristina.

Further, Ugo has never delivered any shares to Cristina. (Quazzo Aff., ¶ 7.) Cristina has never alleged any delivery of shares in any pleading filed herein (Holden Aff., Ex. A, *passim*), or produced any original share certificates for any of the Corporations. Ugo's decision not to deliver the shares to Cristina demonstrates that no gift of a present interest in the Corporations was ever effectuated or completed, and that Ugo could – and did – cancel the shares prepared in Cristina's name. (Quazzo Aff., ¶ 7.) Finally, as Ugo did not give the shares to Cristina, she could not have accepted them.

The matter of *Lichtenstein v. Eljohnan, Inc.*, 161 A.D.2d 397 (1st Dep't 1990) is instructive. There, the plaintiff's father organized two companies, of which his daughter, son, and nephews were officers. *Id.* at 397. Starting in 1946, the father occasionally issued stock certificates in the corporations in the names of his daughter, son, and nephew. *Id.* Following their issuance, "he retained exclusive possession, custody, and

control of the certificates issued." *Id.* As in this case, the children and nephews never paid anything for the stock issued in their names, and never received any dividends. *Id.* In 1982, the father had a falling out with the daughter, and transferred all stock in the companies to his son. *Id.*

The daughter sued, arguing that her father had told her that he was giving her half of the two corporations, that he only kept the share certificates for safe keeping, and that she was listed as a shareholder in the corporations' records. *Id.* at 397-98. The Court held that "there was no delivery of the property to plaintiff," as she "was never in physical possession of the stock certificates, nor did she ever exercise any of the incidents of ownership of the stock." *Id.* at 398. The Court found that, *inter alia*, the father's retention of the stocks was evidence that he intended to remain the owner of the stock. *Id.*

In this case: (1) Ugo never intended to give Cristina shares of the Corporations (Quazzo Aff., ¶ 7); (2) Ugo never delivered share certificates to Cristina (*id.*, ¶ 7); (3) Cristina never received any dividends from the Corporations (*id.*, ¶ 3, 4, 5); and (4) Cristina never participated in the management of any of the Corporations. (*Id.*, ¶ 8.) Thus, Cristina never "exercised any incidents of ownership in the stock." *Lichtenstein, supra* at 398. As such, Cristina is not a shareholder of any of the Corporations, (*Lichtenstein, supra* at 398), and this proceeding should, therefore, be dismissed. *Artigas*, 22 A.D.3d at 327.

POINT II

PETITIONER HAS NOT BEEN "OPPRESSED" WITHIN THE MEANING OF BCL § 1104-a(a)(1)

It is well settled that a shareholder is "oppressed," for the purposes of a judicial dissolution proceeding pursuant to BCL § 1104-a, "only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." *Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d 63, 73 (1984). Because a finding of "oppression" is dependant upon the particular petitioner's expectations, and whether they were reasonable, "much will depend on the circumstances of the individual case." *Id.*

In her Amended Petition, Cristina claims that she has been oppressed in that "she has been denied access to all corporate information and records, has never received any remuneration or distributions from her ownership in the Corporations, and her very status as a minority shareholder has been denied." (Holden Aff., Ex. A, ¶ 58.) Cristina further claims that her name was forged on corporate documents to change her shareholder status. (*Id.*, 59.) According to Cristina, such actions purportedly constitute a "freeze-out from the business and affairs of the Corporations" and defeated her reasonable expectations to a share in the corporate earnings and management. (*Id.*, ¶ 59, 60.) Cristina's allegations are either indisputably contradicted by the facts, would not constitute oppression even if proven to be true, or are barred by the applicable statute of limitations.

A. Cristina Had No "Reasonable Expectations"

Preliminarily, Cristina did not have any "reasonable expectations" that Respondents could have defeated. A shareholder is oppressed only when the majority defeats expectations that "were both reasonable under the circumstances and *were central to the petitioner's decision to join the venture*." *Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d at 73 (emphasis added). As set forth above, Cristina has never decided to join the Corporations; if Cristina is a shareholder at all, it is pursuant to gifts made by Ugo. As such, she never made a conscious decision to become a shareholder in the Corporations, and so could never have had any "reasonable expectations" that were central to a decision to join, and could not have been oppressed.

B. Cristina Has Not Been Oppressed

Cristina claims to be a one-third shareholder of each of the Corporations. Nevertheless, she has never paid any consideration for "her" shares, has never contributed any capital to any of the Corporations, has never worked for any of the Corporations, and has never sought any involvement in the management of the Corporations. (Quazzo Aff., ¶ 8.) The Corporations never issued dividends (other than in 2010), and Cristina never requested that dividends be issued. (*Id.*, ¶ 3, 4, 5, 8.)

Under these circumstances, even if Cristina were held to be a shareholder, the Corporations' failure to issue dividends to her or involve her in management decisions does not constitute "oppression." In *Matter of Schlacter*, the petitioner sought the dissolution of "two closely-held family corporations" after her husband's employment at the companies was terminated. 154 A.D.2d 685, 685 (2d Dep't 1989). Petitioner in that case alleged – as Cristina has here – that the respondents were "guilty of oppressive

conduct by, *inter alia*, failing to pay dividends to her, eliminating her from the day-to-day operations of the corporations, and by frustrating her reasonable expectations of sharing in the corporations' management and profits." 154 A.D.2d 685, 685-86 (2d Dep't 1989). The Court, however, noting that petitioner's "stock interest was a gift," held that no oppressive conduct occurred because:

> [T]he record reveals that the corporations have never paid any dividends. The record is also devoid of any evidence suggesting that the petitioner ever sought a role in the day-to-day operations of the corporations or their management. Thus, it cannot be said that the petitioner's reasonable expectations in that regard to the above matters have been frustrated.

Id.

Similarly, in *Brickman v. Brickman Estate at Point, Inc.*, the petitioners were "passive shareholders" who "did not seek responsibilities in the day-to-day management of the corporation. They did not express an interest in shareholders' meetings or in electing the corporate officers." 253 A.D.2d 812, 813 (2d Dep't 1998). The Court held that the "petitioners here were not oppressed within the meaning of the statute," despite the petitioners' proof that respondents "fail[ed] to regularly account to them concerning corporate operations, laxness in maintaining certain records, and failure to allow them to access corporate records." *Id.*

The facts of the instant case are substantially similar. Cristina has never invested time, money, or expertise of any kind in any of the Corporations. (Quazzo Aff., ¶ 8.) She has never sought any involvement in the Corporations' management. (*Id.*) As in the *Schlacter* case, the Corporations never issued dividends (other than in 2010, and even then, not to Cristina) (*id.*, ¶ 3, 4, 5), the Corporations have never promised to do so, and

Cristina, prior to this lawsuit, never suggested that they should. (*Id.*, ¶ 8.) Cristina has *never* had any expectation to receive dividends or participate in the management of the Corporations, and so Respondents could not, as a matter of law, frustrate expectations that did not exist.

C. Respondents' Refusal to Grant Access to Corporate Records and Their Position that Cristina is not a Shareholder does not Constitute "Oppression"

Cristina's complaint that she has been denied access to corporate records and that her "very status as a minority shareholder has been denied" is completely irrelevant to whether Cristina has been "oppressed." For instance, in *Matter of Farega Realty Corporation*, the petitioner had sought access to the corporation's records, but was refused on the grounds that he was no longer a shareholder. 132 A.D.2d 797, 797-98 (3d Dep't 1987). The respondent asserted that she was the sole shareholder after petitioner's default on a loan that was secured by his stock. *Id.* at 798. There, the Court held that petitioner was in fact a shareholder, as respondent had never notified him in writing of his default or her intention to retain the collateral. *Id.* Going on, however, the Court held that the respondent's "laxness in maintaining certain records, her failure to consult with petitioner, the erroneous belief that she was the sole owner of the corporation, and her failure to cooperate with him in allowing him access to the corporate records" did not constitute oppressive actions. *Id.* at 798. Accordingly, even if the Court finds that Cristina is a shareholder, Respondents did not "oppress" Cristina by holding a reasonable position as to her shareholder status or by, in reliance upon that position, denying her access to corporate records.

D. Petitioner's Remaining Allegations Are Barred by the Statute of Limitations

The allegations made in support of a dissolution petition are subject to a six-year statute of limitations.[5] CPLR 213; *Matter of Paris*, 160 A.D.2d 541, 542 (1st Dep't 1990); *Pappas v. Fotinos*, 28 Misc.3d 1212(A), *3 (Sup. Ct. Kings Co. 2010) ("The period of limitation is measured from the 'instances of alleged wrongdoing adverted to by the [petitioners] as grounds for dissolution.'"). Many of the allegations made in support of Cristina's dissolution proceeding occurred, if at all, more than six years prior the commencement of this proceeding on December 17, 2010. For instance, Cristina alleges that her signature was forged on corporate documents regarding her shareholder status in 2003. (Holden Aff., Ex. A, ¶¶ 31, 32, 59.) Accordingly, such allegations must be disregarded.

* * * * *

In short, because Cristina cannot make any showing that she has been oppressed by Respondents, the proceeding should be dismissed even if an issue of fact exists as to whether or not Cristina is a shareholder of the Corporations.

POINT III

CRISTINA'S ALLEGATIONS OF FINANCIAL IMPROPRIETY ARE INSUFFICIENT TO STATE A CAUSE OF ACTION

In this proceeding, Cristina has sought to aggrandize Ugo's informal governance of the Corporations, common among closely held corporations, into a massive, Enron-style corporate fraud scheme, with three separate lawsuits asserting countless causes of action and propounding scorched-earth discovery demands. Such actions are entirely

[5] In their Answer, Respondents, as and for their Fourth Affirmative Defense, asserted that "The relief sought is barred in whole or in part by the applicable statute of limitations." (Holden Aff., Ex. B, ¶ 74.)

inappropriate, as this type of proceeding was designed specifically for closely held corporations in recognition of their unique circumstances. Thus, in analyzing Cristina's allegations, one should be mindful of the informal governance typical of family-run closely held corporations, and the fact that Cristina never objected to Ugo's governance until her recent disagreement with him.

The facts of this case are reminiscent of *Application of Ng*, a dispute over two closely held family businesses that owned adjacent buildings. 174 A.D.2d 523, 524 (1st Dep't 1991). Petitioners sought dissolution of the corporations, alleging "failure to observe corporate formalities, failure to collect rents, or pay dividends." *Id.* at 526. The Court noted that "the financial management of the corporations had been conducted somewhat loosely," but pointed out that "family members had from time to time occupied many of the apartments without paying rent" – including the petitioners until "relations soured." *Id.* The Court held that it was "doubtful against this factual background" that respondents engaged in oppressive actions under BCL § 1104-a. *Id.* In other words, the Appellate Division, First Department reviewed the corporations' financial management in the context of a family-run closely held corporation, which are often operated for the benefit of the entire family and rather than just the shareholders of record.

In this case, Cristina has alleged that the Corporations' assets have been improperly transferred to bank accounts held by various members of Ugo's extended family. (Holden Aff., ¶ 51-55, 61.) Ugo's financial management of the Corporations is now described by Cristina in sordid terms of corporate fraud and raiding, though she has long known of Ugo's management style and benefited from the arrangements. Over the years, Cristina has sought and received literally hundreds of thousands of dollars of

support from Ugo. (Quazzo Aff., ¶ 10.) Ugo's transfers to Cristina were made from the very accounts that she now asserts require the Corporations' dissolution. (*Id.*, ¶ 10.) Like the petitioners in *Application of Ng* – who benefitted from the corporation's informal governance before they brought suit – Cristina cannot have her cake and eat it too.[6]

POINT IV

CRISTINA HAS BROUGHT THIS PROCEEDING IN BAD FAITH, AS PART OF A BLATANT ATTEMPT TO EXTRACT MONEY FROM UGO

Because the involuntary dissolution statute was intended to protect minority shareholders, courts have long held it "contrary to this remedial purpose to permit its use by minority shareholders as merely a coercive tool." *Matter of Kemp & Beatley*, 64 N.Y.2d at 74. Furthermore, a petitioner may not seek dissolution merely to enable her to obtain a share of the corporation's assets. *See Matter of Murphy*, 120 A.D.2d 733, 736 (2d Dep't 1986). As shown above, Cristina has not been "oppressed," and her claims of financial mismanagement are merely a pretense. Rather, the real purpose of this proceeding is to coerce Ugo into giving Cristina one-third of his wealth. As such, this proceeding must be dismissed.

There is a "smoking gun" in this case, and it is Cristina's own pleadings which reveal her true purposes. The Amended Petition's substantive allegations begin as follows: "During the past few years, Petitioner sought a distribution from a family trust account of which she is a beneficiary and Ugo Quazzo is the Protector. Ugo Quazzo orally assured Petitioner during that time that she would receive the requested

[6] In their Answer, Respondents asserted, as their Seventh Affirmative Defense, that "The relief sought is barred in whole or in part by Petitioner's unclean hands." (Holden Aff., Ex. B, ¶ 77.)

distribution. Ugo Quazzo thereafter recanted and refused to approve the requested distribution unless Petitioner agreed to sign a General Release." (Holden Aff., Ex A, ¶ 14.) The refused distribution from the trust has absolutely no relevance to the Corporations' governance, and so should have no relevance to this proceeding. That being said, the refused distribution is central to Cristina, whose only purpose in commencing this proceeding is to seek a payoff because her father discontinued her lifetime of support.

Cristina's behavior in this action shows that she has no interest in the Corporations' governance, but only wishes to force a monetary settlement – a settlement that is substantially larger than one-third of the Corporations, which is clear evidence of her bad faith. For instance, Cristina has subpoenaed the bank accounts of Ugo's close friends, hoping to embarrass him into settling with her.[7] (*See* Respondents' Motion to Quash and/or for a Protective Order.) During Ugo's many attempts to resolve this dispute, Cristina has not even pretended to care about the Corporations – indeed, outside of boilerplate allegations in the proceedings, it is unlikely that Cristina has *ever* made any statement concerning the Corporations' governance or profitability. Rather, her only statements to Ugo regarding this proceeding, reiterated as recently as September of 2012, are that she wants one-third of his entire estate to be paid to her in cash – which amount is to include more than just the value of the Respondent Corporations, but also one-third of the family trusts, not to mention an additional $2 million for Cristina's "expenses." (Quazzo Aff., ¶ 11.)

[7] Similarly, in 2011, Crisitina commenced a second lawsuit, currently pending in this court, alleging largely the same allegations, against not only Ugo and the Corporations, but also against her two brothers, Ugo's administrative assistant, and Ugo's long-time companion. Not satisfied there, Cristina recently commenced yet another lawsuit in Vermont, where Ugo owns property, against largely the same defendants.

In short, Cristina seeks to invoke the Court's remedial and equitable powers in this judicial dissolution proceeding, which were specifically created to protect minority shareholders, in a bad faith effort to compel her father to deliver one-third of his entire net worth to her. The Court should not countenance such a boldface abuse of the proceeding or the Courts, and should, therefore, dismiss the Amended Petition.

CONCLUSION

For the foregoing reasons, Ugo and the Corporations respectfully request that the Court grant their motion for summary judgment, dismissing the Amended Petition in its entirety, and granting such other, further relief as the Court deems just and proper.

Dated: New York, New York
October 8, 2012

Respectfully submitted,

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