

SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY



*Present:*

HON. EMILY PINES  
J. S. C.

Original Motion Date: 12-17-2013; 01-28-2014  
Motion Submit Date: 02-04-2014  
Motion Sequence No.: 001 MDCASEDISP  
002 MGCASEDISP  
003 MGCASEDISP

Final  
 Non Final

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**In the Matter of the Application of ALBERT V.  
BIANCHI, PHILIP INCORVIA, RICHARD BIANCHI  
and KAREN BIANCHI,**

**Petitioners,**

**- against -**

**FRAGRANCE SYSTEMS INTERNATIONAL, INC.,  
LAURENCE MILLE and DIANE BREIDENBACH,**

**Respondents,**

**Pursuant to § 1104-a of the Business Corporation Law.**

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Attorney for Petitioners  
Berger, Fischhoff and Shumer, LLP  
Laurie Sayevich Horz, Esq.  
40 Crossways Park Drive  
Woodbury, New York 11797

Attorney for Respondent Fragrance  
Systems  
Joel M. Markowitz, Esq.  
Lamb & Barnosky, LLP  
534 Broadhollow Road, Suite 210  
P. O. Box 9034  
Melville, New York 11747-9034

Attorney for Respondents L. Mille and  
D. Breidenbach  
Robinson & Cole LLP  
Joseph L. Clasen, Esq.  
885 Third Ave, Suite 2800  
New York, New York 10022

Petitioners, minority shareholders in respondent Fragrance Systems International, Inc. ("FSI"), a Delaware corporation, commenced this proceeding (Mot. Seq. 001) pursuant to Business Corporation Law § 1104-a seeking dissolution of FSI. The respondents move to dismiss the Verified

Petition pursuant to CPLR 3211(a)(2) for lack of subject matter jurisdiction (Mot. Seqs. 002 and 003). Petitioners oppose the motions.

Although there is conflicting case law as to whether New York courts lack subject matter jurisdiction over a claim for dissolution of a foreign corporation, absent a decision from the Court of Appeals, this Court is bound to follow the decisions of the Appellate Division, Second Department (*see* 28 NYJur2d *Court and Judges* § 221). There is no decision from the Court of Appeals on this issue. The law in the Second Department is that New York courts lack subject matter jurisdiction over proceedings to dissolve foreign corporations (*see Matter of Warde-McCann v Commex, Ltd.*, 135 AD2d 541, 542 [2d Dept 1987]; *Matter of Porciello v Sound Moves*; 253 AD2d 467 [2d Dept 1998]) and foreign limited liability companies (*see Matter of MHS Venture Mgt. Corp. v Utilisave, LLC*, 63 AD3d 840 [2d Dept 2009]). The Petitioners fail to address, or even acknowledge, the Second Department decisions on this issue in their opposition papers. Although this Court has read significant First Department decisions permitting New York Courts to hear these cases, it is constrained to follow the current rulings of the Second Department. Accordingly, the respondents' motion is granted and the Verified Petition is dismissed.

This constitutes the **DECISION** and **ORDER** of the Court.

**Dated: April 22, 2014**  
Riverhead, New York

  
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EMILY PINES  
J. S. C.

Final