

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

REINA V. CARRILLOS,

INDEX No. 023142/10

Plaintiff,

MOTION DATE: Sept. 26, 2014
Motion Sequence # 003, 004

-against-

SUYAPA GOMEZ and ARLINGTON
BODDEN CORP.,

Defendants.

The following papers read on this motion:

- Notice of Motion..... X
- Cross-Motion..... X
- Affirmation in Support..... XX
- Affirmation in Opposition..... X
- Affirmation in Further Support..... X
- Affirmation in Further Opposition..... X
- Reply Affirmation..... X

Motion by defendants to strike plaintiff's jury demand is **granted**. Cross-motion by plaintiff to compel discovery and for the appointment of a forensic accountant is **granted** to the extent indicated below.

This is an action for a declaratory judgment. In June of 2010, plaintiff Reina Carrillos and defendant Suyapa Gomez formed a joint venture to operate a bar and restaurant at 387

Fulton Avenue in Hempstead. Plaintiff alleges that the parties agreed that they would lease the bar and that a corporation to be 50 % owned by each of them, defendant Arlington Bodden Corp., would be the tenant. The bar opened for business in November 2010 under the name of Gusto Latino Bar & Restaurant, but a dispute soon arose between the parties.

This action was commenced on December 17, 2010. Plaintiff seeks a declaratory judgment that she is a 50 % shareholder of Arlington Bodden and an accounting with respect to the affairs of the corporation.

While Gomez does not dispute forming a joint venture with plaintiff, Gomez asserts that she was to be the majority shareholder with a 60 % interest in the corporation. The liquor license application, tax forms, and other documents show Carillos as a 50 % shareholder. However, Gomez asserts that these documents were prepared by the corporation's attorney, Lawrence Goldstein, without Gomez' knowledge and in violation of Goldstein's professional obligation. On March 4, 2013, plaintiff filed a note of issue and demanded a jury trial.

In order to determine whether a jury trial is available in a declaratory judgment action, the court must examine what traditional common law action would most likely have been used to present the claim had declaratory judgment not been created by the legislature (*Strachman v Palestinian Authority*, 73 AD3d 124, 127 [1st Dept 2010]). Had declaratory judgment not been available, plaintiff would most likely have sought the remedy which she actually seeks in the present case, an accounting. Since accounting is an equitable remedy, it does not entitle plaintiff to a jury trial. Accordingly, defendants' motion to strike plaintiff's jury trial demand is **granted**.

Plaintiff cross-moves to compel discovery of financial information concerning Arlington Bodden, including monies received since defendant's deposition on July 8, 2012. Since the obligation of discovery is on-going, plaintiff's motion to compel discovery is **granted**. Defendants shall produce all financial records of Arlington Bodden, to the extent not previously produced, within 15 days of the date of entry of this order.

Plaintiff further requests the appointment of a forensic accountant to report on the issue of valuation on the ground that plaintiff's expert has taken seriously ill and is unable to complete the assignment.

"[C]ourts are generally loath to intercede in squabbles between partners that result in piece-meal adjudications, preferring that partners either settle their own differences amicably

or dissolve and finally conclude their affairs by a full accounting” (Gramercy Equities Corp. v Dumont, 72 NY2d 560,564-65 [1988]). The same reluctance to intercede absent dissolution applies to disputes between shareholders of a close corporation. Thus, the availability of an accounting must be incident to the dissolution of Arlington Bodden, or a buyout of plaintiff’s interest. In either scenario, the valuation of the company is a vital consideration.

The unanticipated illness of plaintiff’s expert is an unusual and unanticipated circumstance requiring additional pretrial proceedings (See 22 NYCRR § 202.21[d]). Accordingly, plaintiff’s motion for the appointment of a forensic accountant is **granted** only to the extent that plaintiff may retain a new expert, and serve discovery pursuant to CPLR § 3101(d), within 60 days of the date of this order.

So ordered.

Dated OCT 15 2014

Joseph A. Bucaria
J.S.C.

ENTERED

OCT 17 2014

NASSAU COUNTY
COUNTY CLERK’S OFFICE