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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MARAT NOVIKOV,

Index No.: 506282/2013

Petitioner,

-against-

OCEANA HOLDINGS CORP.,

Respondent.
-----X

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER’S ORDER TO SHOW
CAUSE TO COMPEL RESPONDENT TO PRODUCE CUSTOMARY CORPORATE
RECORDS PURSUANT TO BCL §624 AND COMMON LAW**

PRELIMINARY STATEMENT

Petitioner Marat Novikov (“Novikov”) seeks production pursuant to the common law and Business Corporation Law §624 (“BCL”) of certain routine, customary and usual business records maintained by Respondent Oceana Holdings Corp. (“Oceana”) or (“Respondent”) in the usual and customary operations of its business. Novikov has demonstrably sought to comply with the procedural requirements under the common law and BCL §624.

As will be stated in greater detail hereinafter, Respondent fails to distinguish Petitioner’s reasonable demand and Petition, pursuant to the common law and BCL §624, from that of the standard needed to support a claim for mismanagement or breach of fiduciary duty in an actual lawsuit against a corporation or other entity.

Respondent further fails to adequately the nature of the earlier disputes between the parties and the objective and results sought therein.

Respondent's highly technical, contrived and procedural objections appear to indicate a desperate need to avoid producing the corporate and financial material requested by Petitioner.

One can certainly understand the attempt by the Respondent to divert attention from the individuals now running the day-to-day operations of Oceana and their past fiduciary failings.

It is of course extremely reasonable, that aside from what would be normal concerns of any shareholders of a closely held corporation, such concerns would be even more intense, wherein a convicted felon and suspended attorney are operating a rental and leasing real estate business in which one has a minority interest.

In a transparent effort to divert attention from the real issues herein, and subsequent to the Demand and Petition duly served, Respondent through its officers and directors have belatedly attempted to manufacture and contrive a claim of Novikov or his agents "interfering" with the operations of Oceana. These accusations are made based upon unverified assertions and multiple hearsay. This blatant and false scenario directed by Respondent is an after the fact and sorry attempt to manufacture a theory of bad faith on Petitioner behalf demanding routine production.

Few if any substantive reasons for objecting to Petitioner's application are contained in the affidavit of Aron Bronstein ("Aron"). He does not deny in any fashion his or his sister's sad documented history or improper behavior. Aron and Diana Bronstein ("Diana") cannot contest Aron's guilty plea of stealing from the elderly and infirm or Diana's "converting" monies belonging to clients.

Instead, upon information and belief, playing fast and loose with the facts, Respondent manipulates and uses a "frightened" third-party tenant of Oceana to make wild and unsupported allegations and accuse Novikov and his respected family of being part of the "Russian Mafia."

Oceana, not satisfied with its work of fiction disguised as opposition, imputes a motive on the part of Novikov, that he wants “management responsibility.” These lame excuses, including bald claims of a request for “extensive and intrusive documentation,” defy reality.

Petitioner respectfully asks that the “strawman” arguments made by Respondent are nothing more than “protesting too much.” They do not constitute genuine opposition to Petitioner’s BCL §624 Demand.

STATEMENT OF FACTS

Oceana, a domestic corporation, owns and manages a former movie theatre located at 1029 Brighton Beach Avenue, Brooklyn, New York. The building was converted to use for retail, commercial and office purposes. Located at the premises are a number of retail stores, a supermarket, a catering hall, a concert hall and office space.

There is no dispute that Novikov owns twenty (20%) percent of the outstanding and authorized two hundred (200) shares in Oceana. He is the last of the original owners to hold stock in his own name. Apparently the current owners are the JAS Family Trust B/JAS Family Trust V, which owns ten (10%) percent, gifted from an original owner, Yury Ben, and the Scorpio Family Trust, which owns fifty-two and a half (52.5%) percent of Oceana, along with the Oceana Family Trust, which holds a seventeen and a half (17.5%) interest. Novikov has never seen the Bronstein Family Trust documents.

It appears that over time Michael Bronstein, who was one of the original founders with thirty-five (35%) percent of the authorized and outstanding stock, acquired the stock interest of Leonid Zeldovich, originally owned twenty (20%) percent and Isaac Bronstein who owned fifteen (15%) percent. (The corporate stock book, transfer book and minutes are under the control of Respondent).

There is no shareholder agreement to provide for normal corporate formalities, procedures, protocol and minority rights. There is no shareholder agreement to arbitrate disputes or require redemption or sale of Oceana's shares upon the death or disability of a shareholder. The only change to the By-Laws, which in fact resulted from the Bronstein's control, was a requirement in that a majority of shareholders vote in favor of any sale or transfer of stock, and that approval shall not be unreasonably withheld (May 31, 2006).

Previous attempts at transfer of a stock interest caused Novikov to seek in the 1999 Action a prohibition on the part of the defendants in that action, from changing the by-laws or taking any action in any other manner, which would improperly and/or unlawfully restrict the alienation of Novikov's stock interest. (Missing from Respondent's exhibit are pages indicating the complete relief sought by Novikov in that action...) Marat Novikov –against- Michael Bronstein, Leonid Zeldovich, Isaar Bronstein, Yury Beyn, Oceana Holding Corp. and M.A.Y. Entertainment Group, Inc., Supreme Court of the State of New York, County of Kings 126/99. Respondents Exhibit "1".

On May 11, 2006, Justice Martin Schneier, in his Decision and Order, held that "The plaintiff's motion is granted to the extent that the defendants are enjoined from adopting any resolution that would unlawfully restrict the alienation of the stock interest of the plaintiff in the defendant Oceana Holding Corporation. The court notes that the second proposed Amendment, which contains the language 'not to be unreasonably withheld' does not constitute and (sic) unlawful restriction on the alienation of stock (Rafes v. Hindin, 29 A.D. 2d 481)" Respondent's Exhibit 3. With this determination, Novikov no longer pursued that action, which was not otherwise determined on the merits. Respondent's Exhibit 4.

2009 ACTION

The pleadings in JAS Family Trust, et. al. v. Oceana Holdings Corp., et. al., Supreme Court of the State of New York, County of Kings, are Respondent's Exhibit 5.

In its Decision & Order issued June 3, 2013 (exhibit 8) 109 AD3d 639 (2nd Dept. 2013), the Appellate Division dismissed the Novikov claim in that matter on purely procedural grounds, as to standing and pleading deficiencies. The dismissal was made without any finding as to the material allegations of the complaint, after a CPLR §3211 motion by the Defendants, which alleged a failure to state a cause of action.

Moreover, the primary purpose of that litigation was to compel Oceana to pay certain distributions to either the JAS Family Trust B or the JAS Family Trust V. These trusts created by Yuri Beyn (an original 10% owner) of Oceana for his family) and their claim for distributions resulted in Oceana claiming that it did not know which trust to pay. Upon information and belief, a new trust had been created upon the birth of another one of Beyn's grandchildren. Petitioner is unaware if payment has been made to either trust, although there were discussions between the Trustee and Oceana at the recent shareholders meeting on October 10, 2013. Petitioner's demand for inspection was made on September 16, 2013. Notice of a shareholders meeting was sent on or about September 30, 2013.

2013 PETITION

The Order to Show Cause and Verified Petition before the Court is not a lawsuit against Oceana or the Bronsteins; rather it is a good faith Petition and a bona fide effort to learn about the business operation and finances of Oceana. Novikov has sought to comply with the requirements of the common law and BCL and succinctly outlined in his Demand, Verified Petition and Affidavit in Support the reasons for his request.

In addition to this new demand, it appears that based upon a vote at the shareholders meeting, Oceana and the Bronsteins are in the process of converting the Corporation to an LLC.

As the Court is no doubt aware, a Merger and Consolidation pursuant to Article X of the Limited Liability Law §1001-1005 whereby a corporation becomes an LLC, is a highly sophisticated and tax oriented procedure. There are specific issues as to valuation and dissenting members rights relating to such a conversion. Moreover, there is a substantial interplay of a shareholders rights under the Limited Liability Law and BCL §623, which deal with procedures attendant to a shareholder's rights as to valuation and to enforce payment for shares. The importance and concerns of this proposed structural change is made even more difficult and convoluted by the lack of any shareholder agreement or proposed operating agreement. It is not possible for Novikov to credibly address this situation without full financial disclosure by Oceana and valuation of the Novikov shares. Respondents Exhibit "A" are the "Minutes of the Annual Shareholders' Meeting" of October 10, 2013 states in part:

"Change of Corporate Form

Diana Bronstein proposed that OHC convert from an S Corp to an LLC, the generally preferred corporate form for holding real property assets like those held by OHC

Shareholders Voting In Favor: Rosa Bronstein, Diana Bronstein and Svetlana Yusifov

Shareholders Voting Against: Marat Novikov

The shareholders agree to explore the possible benefits of a change in corporate form."

This important and new consideration was never an issue in any of the prior litigation or dealings among the parties or the Bronsteins. Respondent merely glosses over this new critical issue.

ARGUMENT

There is no serious disagreement that a shareholder has both a statutory and common law right to inspect the books and records of a corporation, wherein the inspection is sought in good faith and for a valid purpose. *Matter of Liaros v. Teds Jumbo Red Hots, Inc.*, 96 AD3d 1464, 1464-1465 (4th Dept. 2012). At no time has Novikov waived or relinquished his common law right to such information or materials. *Edward S. Tatko v. Tatko Brothers Slate Company, Inc.*, 173 A.D.2d 917 (3rd Dept. 1991). This is particularly true where a shareholder seeks to examine documents to determine the true value of his stock. The statutory right of inspection under BCL §624 was intended to expand the common law right of inspection and was not in substitution thereof. *Rockwell v. SCM*, 496 F. Supp. 1123 (SDNY 1980). As in *Tatko*, Respondent merely speculates that the request is made in bad faith. Bad faith or improper purposes are those purposes “inimical to the corporation.” These include attempts to discover business secrets to aid a competitor; to secure prospects for the shareholder’s personal business; to pursue personal, social or political goals, to search for technical defects to corporate transactions. None of which applies herein.

Proper purposes, as alleged by Novikov, are these reasonably related to the shareholder’s interest, including but not limited to: ascertaining the financial condition of the corporation; to learn the propriety of dividend distributions; to calculate value of stock; and to investigate managements conduct and to obtain information in aid of legitimate litigation (*Tatko*). Respondent has not even asked or sought any protective order of confidentiality stipulation as to the items requested. Novikov’s request is specific and contains a temporal limitation of 2010 to the present.

As stated in the very case cited by Respondent, *In the Matter of Joan Appele, Petitioner v. Careerco, Inc.*, 82 Misc.2d 468 (Onondaga County 1974), “The financial condition of a corporation cannot be considered confidential when a stockholder is concerned. It is when the stockholder attempts to misuse the financial information to the detriment of the corporation. *In the Matter of Shirley Botwin, Appellant v. Central Structural Steel Co., Inc.*, 28 A.D.2d 522 (1st Dept. 1967), the court permitted inspection of the stock records, stock books, minutes of proceedings of stockholders and directors, general ledgers, book of original entry including journals and cash books, and books of account for a period of approximately five (5) years.

Assuming arguendo that Oceana raises a substantial question of fact as to Petitioner’s good faith, at the minimum, a hearing may be required to determine Petitioner’s good faith. In such case, it is the corporation which bears the burden of showing improper purpose or bad faith on the part of the Petitioner. *In the Matter of Robert A. De Paula, Respondent v. Memory Gardens, Inc., Appellant*, 90 A.D.2d 886 (3rd Dept. 1982) citing *Matter of Crane Co. v. Anaconda Co.*, 39 NY2d 14 (1976). No such credible showing has been made herein.

Respondent’s arguments as to a lack of good faith on Petitioner’s part are to no avail. Conclusory terms such as harassment, interference with business decisions of Oceana are a contrived, after the fact effort, to defeat a palpably reasonable and relational request. Olga and Marat have absolutely denied the speculative unsupported, and in great part hearsay allegations of the Alon Maman (“Maman”) affidavit. That affidavit does not allege that Maman ever met Novikov or Olga, or knows their voice or actual identity. Upon information and belief, it is completely conceivable that Maman’s story could have been made up by him or in conjunction with the Bronsteins or the result of some scam perpetuated against him and the Novikovs with a “spoof app”.

It is not difficult with various “apps” and other devices to create this fraud. Respondent acknowledges that the Novikov telephone number is readily available on a simple internet search. Aron admittedly has no personal or actual knowledge with the real Novikov or Olga. Petitioner should not be limited to a belated response of a copy of the Corporation’s annual balance sheet and profit and loss statement for a) the preceding fiscal year, b) any interim balance sheet or profit and loss statement that has distributed to its shareholder or made publicly available, and c) the current profit or loss statement all pursuant to BCL §624(e) or shareholder lists or minutes under BCL §624(b).

Novikov has outlined, with specificity, the additional good faith basis of his reasons for review, in that the wife of Aron was a shareholder of corporations, which are or were tenants of Oceana. Petitioner should be able to determine if a fair market rental was actually paid to Oceana and what other benefits, directly or indirectly were received by the Bronsteins, and who in day-to-day control of the business and finances of Oceana, e.g., whether these tenants were treated at arms-length, while having Bronstein family members as owners. This is a legitimate concern as to the fair dealing and fiduciary duty of the Bronsteins.

COMMON SENSE AND REASONABLE BASIS FOR PETITIONER REQUEST

Attached as Exhibits “B” and “C” to Novikov’s Verified Petition, are the SEC summary confirming the undisputed guilty plea of Aron to numerous counts of securities fraud among other charges; his sentence of forty-six (46) months in prison and the Three Million Two Hundred Nine Thousand Dollars (\$3,209,000.00) ordered in restitution as a result of stealing money, from among others, many elderly and infirm customers of modest means. Aron and his partner from 1997-1999 took exorbitant compensation and payments of Six Million Six Hundred Thousand Dollars (\$6,600,000.00). This, combined with Diana’s prima facie guilt of

professional misconduct in “converting” client’s funds, would put a reasonable person on heightened notice to carefully monitor the financial circumstances of a closely held corporation of which one is a minority owner, but actually run by these unscrupulous individuals. At the same time, without shame, the Respondent’s papers unfairly and without basis in fact, allude to Novikov and the Russian mafia in the same sentence.

Although Respondent can run but not hide from Aron and Diana’s track record, Respondent seeks to minimize this reality in a tiny footnote at page 10 of Respondent’s Memorandum of Law. The Molineaux rule has no application herein. The Bronsteins are not on trial. Moreover, CPLR §4153, while permitting one convicted of a crime to testify, acknowledges that a conviction goes to the weight and credibility of such a witness. Moreover, in light of Aron having to pay Three Million Two Hundred Nine Thousand Dollars (\$3,209,000.00) in restitution, including fifteen (15%) percent of his gross income and Diana’s apparent serious financial problems, the Bronsteins certainly had motive to any in an unscrupulous matter.

Likewise, the unanimous finding by the Appellate Division, Second Department, based upon “controverted evidence”, followed by immediate suspension from the practice of law, is not the same as a civil judgment, a finding of a “civilian complaint” or a mere pattern of behavior.

Wouldn’t any owner want to check an entities records with all of the facts and circumstances now known?

CONCLUSION

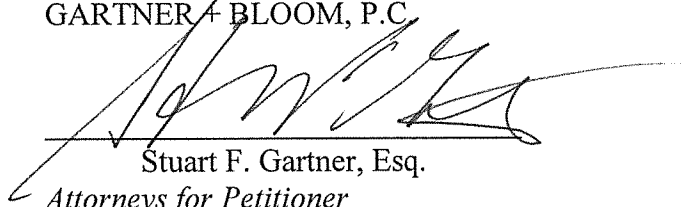
Based upon the reasons asserted herein and in all of Petitioners moving papers, Petitioner Novikov respectfully requests that his application be granted in total, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
December ____, 2013

Yours, etc.,

GARTNER + BLOOM, P.C.

By:

A handwritten signature in black ink, appearing to read 'Stuart F. Gartner', is written over a horizontal line. The signature is fluid and cursive.

Stuart F. Gartner, Esq.

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