

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

MATTHEW J. O'CONNOR,

Petitioner/Plaintiff,

-against-

COCCADOTTS, INC., COCCADOTTS EXPRESS, INC.,
PANAJI, INC., RACHEL DOTT and LUKE DOTT,

Respondents/Defendants.

**VERIFIED PETITION
AND COMPLAINT**

Index No.: _____

Petitioner/Plaintiff Matthew J. O'Connor, by and through his attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, as and for a Verified Petition and Complaint, alleges as follows:

THE PARTIES

1. Petitioner/Plaintiff Matthew J. O'Connor ("Petitioner" or "O'Connor") is a resident of the State of New York and resides at 709 Second Avenue, Troy, New York 12180.
2. Petitioner is a minority shareholder of Respondents Coccadotts, Inc. ("CI"), Coccadotts Express, Inc. ("CEI"), and Panaji, Inc. ("Panaji" – CI, CEI and Panaji will hereinafter be collectively referred to as the "Coccadotts Entities").
3. Respondent CI is a domestic business corporation with a principal place of business located at 1179 Central Avenue, Albany, New York 12205 (the "Central Avenue Location"). At the Central Avenue Location, CI operates a cupcake and pastry retail store. In addition, to this location, CI also operates an additional cupcake and pastry shop at the University of Albany Campus Center located at 1400 Washington Avenue, Albany, New York

12222. Furthermore, up and until the last month, CI operated warehouse facility for production located at 19B Vatrano Road, Albany, New York 12205 (the “Warehouse Facility”).

4. Respondent CEI is a domestic business corporation with a principal executive office located at 1179 Central Avenue, Albany, New York 12205. In addition, CEI operates a cupcake and pastry shop located at 22 Clifton Park Road, Clifton Park, New York 12065 (the “Clifton Park Store”).

5. Respondent Panaji is a domestic business corporation with a principal executive office located at 1179 Central Avenue, Albany, New York 12205. In addition, Panaji operates a cupcake shop and pastry shop, as well as a party room called “Sparkleville”, located at 584 New Loudon Road, Loudonville, New York 12110 (the “Loudon Plaza Store”).

6. The Respondent Coccadotts Entities operate under the DBA “Coccadotts Cake Shop”. The “Coccadotts” name is owned and trademarked by Respondent CI.

7. Respondent/Defendant Rachel Dott (“Rachel” or “Mrs. Dott”) is a resident of the State of New York, residing at 30 Maria Drive, Albany, New York 12211.

8. Respondent/Defendant Lucas Dott (“Lucas” or “Mr. Dott”) is a resident of the State of New York, residing at 30 Maria Drive, Albany, New York 12211.

9. Mr. and Mrs. Dott are husband and wife.

NATURE OF PROCEEDINGS

10. Petitioner commences this special proceeding for judicial dissolution, pursuant to Business Corporation Law (“BCL”) § 1104-a, of the Coccadotts Entities on account of the oppressive conduct of the majority shareholder of the Coccadotts Entities directed toward the minority shareholder Petitioner. Additionally, Petitioner seeks an injunction, pursuant to BCL

§1115 preventing the majority shareholders from taking any actions to change or affect the corporate structure, management or value of the Coccadotts Entities prior to dissolution.

11. Further, Petitioner brings this special proceeding to remedy the oppression from the majority shareholders through their waste of corporate assets, breach of fiduciary duties, illegal termination of the Petitioner's employment and shareholder's unjust enrichment resulting from the oppression of Petitioner.

FACTUAL BACKGROUND

12. In 2007, O'Connor and Mrs. Dott, former best friends who worked together at a former pastry shop in the area, realized a dream opening the first of the Coccadotts Entities, CI. Accordingly, O'Connor and Mrs. Dott, along with Mrs. Dott's husband, Luke Dott, joined forces to create the first Coccadotts location at the Central Avenue Location.

13. The Central Avenue Location is adjacent and attached to Mr. Dott's other business, Dott's Garage, an automotive service and towing business.

14. When CI was created, O'Connor was issued 49% of the shares of CI (49 shares). Rachel was issued the remaining 51% of the shares of CI, making her the majority shareholder (51 shares)(a copy of the minutes of the first Board of Directors of CI and the Share certificates for CI are attached hereto and incorporated herein as Exhibit "A").

15. When CI was created, Mrs. Dott was elected President and Treasurer of CI, and O'Connor was elected the Vice-President and Secretary.

16. O'Connor invested countless hours into developing the successful Coccadotts brand with Mrs. Dott. The two worked many long hours in pursuit of operating a successful

bakery business, starting off with one store (the Central Avenue Location) and some used baking equipment and no employees aside from themselves.

17. Soon enough, the “Coccadotts” brand became very popular in the Capital Region, and the business grew and expanded.

18. As the business grew, additional employees and locations were added. Eventually, this included CEI (the Clifton Park Store) and Panaji (the Loudon Plaza Store).

19. CEI was incorporated on October 15, 2012, followed shortly thereafter with the opening of the Clifton Park Store. Upon the creation of CEI, O’Connor was issued 49% of the shares of CEI (49 shares), Mrs. Dott was issued 26% of the shares of CEI (26 shares) and Mr. Dott was issued 25% of the shares of CEI (25 shares) (a copy of the minutes of the first Board of Directors meeting and the Share certificates for CEI are attached hereto and incorporated herein as Exhibit “B”).

20. O’Connor was named the President of CEI. Mr. Dott was named Vice-President, Secretary and Treasurer of CEI.

21. Panaji was incorporated on October 17, 2013, followed shortly thereafter with the opening of the Loudon Plaza Store. Upon the creation of CEI, O’Connor was issued 49% of the shares (49 shares) of Panaji, Mrs. Dott was issued 26% of the shares of Panaji (26 shares) and Mr. Dott was issued 25% of the shares of Panaji (25 shares)(a copy of the share certificates are not available, but a copy of the minutes of the First Board meeting are attached hereto and incorporated herein as Exhibit “C”).

22. Mrs. Dott was named President of Panaji. Mr. O’Connor was named Vice-President of Panaji. Mr. Dott was named Secretary and Treasurer of Panaji.

23. To date, O'Connor has been, by any measure, a fully-invested partner, with direct participation in the affairs of the business. O'Connor has worked full-time (indeed, more than full-time) in the production side of the business, helping the Coccadotts Entities grow to what they are today. From inception, O'Connor and Mrs. Dott have managed the business jointly, and have deliberated on business and strategic issues, such as expansion of locations and the hiring and termination of employees, and the possibility of franchising the business both regionally and nationally.

24. The Coccadotts' Entities have gross sales that are well over \$1,200,000.00 a year.

25. Due in large part to O'Connor's input and commitment, the Coccadotts Entities became not only a Capital Region success, but gained national acclaim. Indeed, over the past several years, Mrs. Dott and O'Connor made 3 appearances on the nationally televised show on The Food Network's called *Cupcake Wars*. Coccadotts' products were also featured on Good Morning America, the Tonight Show and Anderson Live to name a few.

26. From its inception in 2007 through until several months ago, O'Connor, Mrs. Dott and Mr. Dott worked together and shared profits without issue.

27. Seven years after the inception, the Coccadotts Entities now encompass five (5) retail locations, (formerly) a Warehouse Facility, a cupcake truck, and delivery vehicles. The Warehouse Facility is where O'Connor worked most often assisting in the production side of the business, although O'Connor has worked in all aspects of the businesses.

28. O'Connor's and Mrs. Dott's partnership blossomed into a wildly successful business venture, with its sights set on future growth and continued success. However, because of Mrs. Dott's actions, all this came to a screeching halt last month.

29. In early October 2014, without adequate warning, justification or explanation, Mrs. Dott and Mr. Dott took action to lock O'Connor out of the Coccadotts Entities that they built together. Mrs. Dott, in no uncertain terms, told O'Connor he is no longer welcome at any of Coccadotts Entities' locations, and that she intended to "change the locks" to deny him entry. Simultaneous with the physical lock out, Mrs. Dott changed the password to O'Connor's work email account freezing him out from all remaining access to the Coccadotts Entities. Further, Mrs. Dott removed O'Connor as a administrator on the company's *Facebook* page.

30. Approximately four (4) months ago, O'Connor disclosed to Mrs. Dott that he is gay. O'Connor disclosed his sexual orientation to Mrs. Dott because Mrs. Dott had questioned O'Connor about his close relationship with another male employee of the Coccadotts' Entities.

31. After this disclosure, Mrs. Dott's close friendship with O'Connor soured, and her attitude towards O'Connor completely changed. Upon information and belief, Mrs. Dott's sudden and abrupt about-face concerning O'Connor's work ethic, commitment to their business venture and their long-standing personal friendship was the result of O'Connor's disclosure of his sexual orientation and relationship.

32. Upon information and belief, Rachel's offensive actions ultimately caused the former Coccadotts' employee that O'Connor has a relationship with to quit his employment with the Coccadotts' entities. Additionally, Mrs. Dott's actions made O'Connor feel unwelcome and uncomfortable prior to her attempt to formally oust O'Connor from the Coccadott's Entities.

33. Not only has O'Connor been forced out of corporate control, he has also lost his employee privileges. All of Mrs. Dott's actions and attempts to oust O'Connor were confirmed by a letter, either she or someone on her behalf drafted, which seeks to illegally "terminate"

O'Connor from any involvement in the Coccadotts Entities (a copy of Mrs. Dott's draft letter is attached hereto and incorporated herein as Exhibit "D").

34. On October 6, 2014, Mrs. Dott called O'Connor on the telephone. Mr. O'Connor took the call, believing that Mrs. Dott was calling to discuss routine business. Instead, Mrs. Dott proceeded to scream at O'Connor, and told him that he was not welcome back at the Coccadotts Entities from that point forward. This is when Mrs. Dott shut off O'Connor's business email account, and attempted to lock him out of the Coccadotts Entities. Additionally, Mrs. Dott ceased paying O'Connor as of October 6, effectively terminating his employment.

35. Mr. Dott has done nothing to prevent Mrs. Dott from taking the illegal actions she has taken with respect to O'Connor.

36. O'Connor is not a silent partner, and has tirelessly worked to create the local cupcake and pastry success the Coccadotts Entities have grown to today. Mrs. Dott has illegally and unfairly refused to allow the O'Connor to perform his normal functions (or any functions) either at the Warehouse Facility or at any of the facilities, and ceased virtually all communication with O'Connor, thus freezing him out of business decisions.

37. Since O'Connor has been frozen out of access to the Coccadotts Entities locations and prevented from participating in the daily operation of the Coccadotts Entities, Mrs. Dott and Mr. Dott have made substantial changes the structure of the business of the Coccadotts Entities.

38. Upon information and belief, Mrs. Dott has unilaterally decided to close Warehouse Facility and have removed all of the bakery production equipment and other contents of the Warehouse Facility, and has attempted to relocate all the equipment to the Central Avenue Location.

39. The Warehouse Facility and the equipment contained therein have significant value and, upon information and belief, any reconfiguration of the Coccadotts Entities' operations or assets unilaterally will cause damage to the value of the Coccadotts Entities' shares and the businesses in general.

40. Upon information and belief, Mrs. Dott has also recently wasted corporate assets by undertaking the repaving of the Central Avenue Location. Quotes obtained several years ago estimated the cost to repave the parking lot to be approximately \$40,000. At that time, with the input of O'Connor, it was decided that repair work would be more appropriate and a better use of corporate assets. O'Connor's input has not been solicited regarding this large expenditure.

41. Upon information and belief, Mrs. Dott is currently having extensive renovations performed to the interior of the Central Avenue Location. The cost, purpose and extent of the renovations are unknown to O'Connor as he has not been permitted access. This type of action is exactly the type of decision O'Connor, as the 49% shareholder of the Coccadotts Entities, should be involved in.

42. Upon information and belief, Mr. and Mrs. Dott have also terminated employees without the input of O'Connor.

43. It is clear Mr. and Mrs. Dott are taking many actions without the input of and vote of O'Connor, and ignoring the By-Laws of the Coccadotts Entities and O'Connor's respective roles with the Coccadotts Entities. These actions significantly affect the Coccadotts Entities value, longevity and future success.

44. As O'Connor has been locked out of the Coccadotts Entities, his only means of monitoring his investment is access to the Coccadotts Entities website and their social media footprint.

45. Rachel and Lucas have in fact admitted to many of the corporate structural changes noted above, and have announced these changes on the Coccadotts' "Facebook" page (<https://www.facebook.com/CoccadottsCakeShop>).

46. The fruits of O'Connor's labor have been unjustly stripped and his ability to control and protect his 49% ownership interest in the Coccadotts Entities has been stymied.

AS AND FOR A FIRST CLAIM FOR RELIEF

47. O'Connor re-alleges, re-states and incorporates by reference the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth in this paragraph.

48. O'Connor seeks judicial dissolution of the Coccadotts Entities in accordance with BCL §1104-a(a)(1), on account of the "oppressive actions towards the complaining shareholder[].".

49. Additionally, upon information and belief, since O'Connor has been locked out of the Coccadotts Entities, "the property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes by . . . those in control of the corporation" [BCL §1104-a(a)(2)].

50. As a result of the conduct of Mrs. Dott and Mr. Dott, O'Connor's investment has been jeopardized and he has been frozen out of the Coccadotts Entities.

51. The actions of Mrs. Dott and her husband constitute oppressive grounds supporting dissolution under BCL § 1104-a.

52. Further, upon information and belief, the recent transfer or sale of property and the expenditure of large sums of corporate funds were undertaken with the intent to waste or divert the Coccadotts Entities assets for a non-corporate purposes.

53. Judicial dissolution is O'Connor's only recourse, as demands for reentry and/or a fair value buy-out have gone unanswered. Judicial dissolution is O'Connor's only means of recourse.

54. Liquidation is the only feasible means, by which O'Connor can reasonably expect to obtain a fair return on his investment.

55. As O'Connor is a 49% shareholder, and the only shareholder with no familial ties to Mrs. Dott, liquidation is necessary for the protection of the rights and interest of any substantial number of shareholders or of O'Connor's.

AS AND FOR A SECOND CLAIM FOR RELIEF

56. O'Connor re-alleges, re-states and incorporates by reference the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth in this paragraph.

57. O'Connor requests an injunction in accordance with the provisions of BCL §1115 enjoining and restraining the other shareholders (who constitute a majority) from taking any actions to change or affect the corporate structure, management or value of the Coccadotts Entities prior to dissolution, including but not limited to the disbursement or expenditure of and corporate fund or property in favor of attorneys, shareholder, or officers or directors of the corporation.

58. As set forth fully above, O'Connor has been frozen out of the Coccadotts Entities.

59. Upon information and belief, Mrs. Dott and Mr. Dott have already undertaken activities that will impact the value of the Coccadotts Entities and impair its liquidation value.

60. It is apparent that Mrs. Dott is undervaluing the Coccadotts Entities and trying to dispose of corporate assets to devalue O'Connor's shares.

61. To allow the Coccadotts Entities to continue to be controlled by an oppressive party, who is, upon information and belief, wasting, concealing and/or divesting the Coccadotts Entities of assets and who has already altered the successful corporate structure by ousting O'Connor, would be unjust.

62. It is imperative the this court grant an injunction to preserve what is left of the Coccadotts Entities and ensure no actions are taken unilaterally by the oppressors to continue to erode the value of the O'Connor's shares and his investment and commitment to the Coccadotts Entities for the last seven years.

AS AND FOR A THIRD CAUSE OF ACTION

63. O'Connor re-alleges, re-states and incorporates by reference the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth in this paragraph.

64. Mrs. and Mr. Dott, in addition to being shareholders, are also officers and directors of the various Coccadotts Entities as detailed above.

65. As such, Mrs. and Mr. Dott owe fiduciary duties to O'Connor, as the minority shareholder, to manage the corporate assets of the Coccadotts Entities in a reasonable manner that does not result in the waste or misappropriation of the corporate assets.

66. As set forth above, Mrs. and Mr. Dott have liquidated or removed assets of the Coccadotts Entities from the Warehouse Facility and have expended corporate assets to remodel and repave the Central Avenue Location without justification or approval from O'Connor.

67. Defendants have breached their fiduciary duties to O'Connor.

68. Upon information and belief, Mrs. and Mr. Dott's actions constitute corporate waste and misappropriation of assets.

69. Accordingly, Mrs. and Mr. Dott should be required to account for and return these wasted and misappropriate corporate assets to O'Connor and/or the Coccadotts Entities.

70. Additionally, Mr. and Mrs. Dott shall be enjoined from making any further use or disposal of corporate assets.

71. O'Connor has suffered damages, in an amount to be determined.

AS AND FOR A FOURTH CAUSE OF ACTION

72. O'Connor re-alleges, re-states and incorporates by reference the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth in this paragraph.

73. O'Connor was unlawfully terminated from his employment with the Coccadotts Entities as a result of his sexual orientation.

74. O'Connor has been an employee of the Coccadotts Entities since the inception of the Coccadotts brand in 2007. From 2007, through the present, O'Connor has worked tirelessly along side Mrs. Dott to grow the Coccadotts Entities.

75. Prior, to O'Connor's revelation of his sexual preference to Mrs. Dott, there were neither issues nor mention of his termination. In fact, as a part owner, O'Connor was an active participant in the decision to hire and fire employees.

76. Upon revealing his sexual orientation to Mrs. Dott, Mrs. Dott and Mr. Dott took actions to make O'Connor and his boyfriend feel uncomfortable.

77. Prior to his formal ouster and employment termination, O'Connor was discriminated against and not treated equally as a result of his sexual preference. Ultimately, O'Connor was terminated as a result of sexual orientation.

78. Upon termination, O'Connor ceased receiving his salary.

79. Defendants actions in terminating O'Connor's employment violated New York State Human Rights Law (Executive Law §291 *et al.*).

80. O'Connor should be awarded compensatory and punitive damages as a result of his employer, the Coccadotts Entities, willful and wrongful discrimination and termination of his employment, as well as his attorneys' fees incurred.

AS AND FOR A FIFTH CAUSE OF ACTION

81. O'Connor re-alleges, re-states and incorporates by reference the allegations set forth in all preceding paragraphs of this Petition, as if fully set forth in this paragraph.

82. As set forth above, Mrs. and Mr. Dott have undertaken unilateral acts to change the operations and value of the Coccadotts Entities.

83. Additionally, Mrs. and Mr. Dott have fired O'Connor all resulting increased profits to the Coccadotts Entities, which O'Connor has not been permitted to share in.

84. Mrs. & Mr. Dott have been unjustly enriched in an amount to be determined at trial.

85. Under the circumstances, it would be unfair, unjust and inequitable to allow Mrs. & Mr. Dott to retain said enrichment.

86. Accordingly, O'Connor is entitled to a judgment of money damages against Mrs. & Mr. Dott in equity.

WHEREFORE, Petitioner respectfully requests an Order from the Court:

(i) Dissolving Coccadotts, Inc., Coccadotts Express, Inc., and Panaji, Inc. pursuant to BCL §1104-a;

(ii) Issuing a preliminary and permanent injunction, restraining and enjoining Coccadotts, Inc., Coccadotts Express, Inc., and Panaji, Inc. from taking any action or making any changes that would affect the corporate structure, the value, or operation of Coccadotts, Inc., Coccadotts Express, Inc., and Panaji, Inc.;

(iii) Requiring Mrs. Dott and Mrs. Dott to account for and reimburse O'Connor and the Coccadotts Entities for wasted and misappropriated corporate assets seeming from their breach of fiduciary duty; and

(iv) Awarding O'Connor punitive and compensatory damages as a result of his unlawful termination, as well as his reasonable attorneys' fees; and

(v) Awarding O'Connor a money judgment, in an amount to be determined at trial, as a result of the unjust enrichment received and retained by Mrs. Dott and Mr. Dott; and

(vi) Awarding such other relief in favor of Petitioner as the Court deems just and proper.

DATED: November 21, 2014
Albany, New York

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**



PETER A. LAURICELLA, ESQ.

Attorneys for Plaintiff Matthew J. O'Connor

677 Broadway

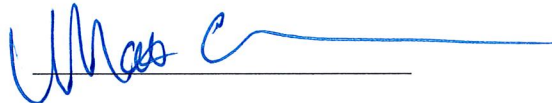
Albany, New York 12207-2996

Telephone: (518) 449-8893

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF RENSSELAER) ss.:

Matthew J. O'Connor, being duly sworn, deposes and says that deponent is the Petitioner in the within proceeding, that deponent has read the foregoing Petition, and knows the contents thereof to be true of deponent's own knowledge, except those matters that are stated on information and belief and as to those matters deponent believes them to be true.



Matthew J. O'Connor

Sworn to before me this
21st day of November, 2014.



Notary Public – State of New York

BENJAMIN F. NEIDL
Notary Public, State of New York
Qualified in Albany Co., No. 02NE6163226
Commission Expires: ~~05-19-20~~

7/13/15