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April 9, 2015

Via NYSCEF and Hand Delivery

Hon. Jeffrey K. Oing
Supreme Court, Commercial Division Part 48
60 Centre Street
New York, NY 10007

Re: *In re Application of Activity Kuafu Hudson Yards LLC, for the Dissolution of Reedrock Kuafu Development Company LLC*, No. 650599/2015 (Mot. Seq. No. 002)

Dear Justice Oing:

This firm was recently engaged to represent Petitioner Activity Kuafu Hudson Yards LLC ("Activity Kuafu") in the above-referenced action. *See* Consent to Change Attorney, filed on the NYSCEF system on April 9, 2015 at Document Number 67. This case concerns Activity Kuafu's Petition for dissolution of Reedrock Kuafu Development Company LLC ("Reedrock"), on the grounds of a complete deadlock among Reedrock's members and managers. Respondent Siras Partners LLC ("Siras") has moved to dismiss the Petition on the basis that this Court purportedly does not have subject matter jurisdiction to entertain a dissolution action concerning Reedrock, a Delaware limited liability company. Siras's motion is scheduled to be heard on April 14 at 11:00 am. We respectfully submit this letter in an attempt to narrow the issues to be addressed at the upcoming hearing.[1]

As Siras noted in its opening memorandum of law in support of its motion to dismiss (NYSCEF Doc. No. 24 at 4 n.2), two First Department cases have rejected the very jurisdiction-based argument upon which Siras's motion relies, holding that New York courts have jurisdiction over dissolution claims concerning foreign entities. *See In re Dissolution of Hosp. Diagnostic Equip. Corp.*, 205 A.D.2d 459, 459 (1st Dep't 1994) ("We have considered the litigants' remaining arguments, including the Attorney General's [argument] that the courts of New York lack subject matter jurisdiction to dissolve a foreign corporation, and find them to be without merit[.]"); *Herskowitz v. Tomkins*, 184 A.D.2d 402, 403 (1st Dep't 1992) (rejecting assertion that "respondent is acting in excess of the court's subject matter jurisdiction by purporting to dissolve

[1] Although we recognize that briefing on Siras's motion has already been submitted, we respectfully request the Court's consent to submit this brief letter, given that we have only very recently become involved in this case. Notably, our firm was not engaged in this case until after Activity Kuafu's outgoing counsel submitted its opposition brief to Siras's motion.

the New Jersey corporation and to appoint a receiver over its assets") (citations omitted); *see also Museum Partners L.P. v. Edelman*, No. 650950/2011, 2013 WL 435449, at *3 (Sup. Ct. New York County Jan. 31, 2013) (rejecting defendant's argument that "New York courts lack the power to dissolve a Delaware limited partnership," recognizing that the First Department's decision in *Hospital Diagnostic Equipment Corp.* is "binding appellate authority").

These First Department cases are, as the court recognized in the recent *Museum Partners* case, "binding appellate authority" and require denial of Siras's motion. Siras argues these cases are distinguishable because, with respect to *Herskowitz*, the Court "did not address any New Jersey statutory scheme requiring dissolution actions to be brought in that state" and, with respect to *Hospital Diagnostic*, the Court's language was non-controlling *dicta*. Doc. No. 24 at 4 n.2. Siras's attempt to distinguish these cases is unavailing. The Delaware statute at issue permitting judicial dissolution of Delaware limited liability companies does not, as Siras suggests, "requir[e] dissolution actions to be brought" in Delaware; rather, it provides that Delaware chancery courts "***may***" decree dissolution of such companies. 6 Del. Code § 18-802(a). Like Delaware law, New York law also permits judicial dissolution of a limited liability company where it is not reasonably practicable to carry on the company's business. *See* N.Y. Ltd. Liab. Co. Law § 702.

Significantly, the First Department's *Hospital Diagnostic* decision relied upon *Broida v. Bancroft*, 103 A.D.2d 88, 90 (2d Dep't 1984), in which the court recognized that although many "[o]lder cases" had "[a]t one time" dismissed claims concerning foreign corporations for lack of jurisdiction under the internal-affairs doctrine — under which courts of one State "would not 'interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another State'" — that doctrine has been "abrogated" in more recent case law. *Id.* at 90-92. The *Broida* court held that the proper analysis in determining whether to hear an action involving the affairs of a foreign entity is the application of the factors of the *forum non conveniens* test. *Id.* at 91; *see also In re NYSE Euronext Shareholders/ICE Litig.*, 39 Misc. 3d 619, 625-26 (Sup. Ct. New York County Mar. 1, 2013) (same); *In re The Topps Co., Inc. Shareholder Litig.*, 19 Misc. 3d 1103(A), at *14-16 (Sup. Ct. New York County June 8, 2007) ("The vague principle that courts will not interfere with the internal affairs of a corporation whose foreignness is at best a metaphysical concept, must fall before the practical necessities of the modern business world.") (citation omitted); *In the Matter of Edward A. Dohring for the Dissolution of CVC Products, Inc.*, 142 Misc. 2d 429, 431-32 (Sup. Ct. Monroe County Jan. 25, 1989) (recognizing "[a]n action for dissolution is deemed an internal dispute of a corporation," and that while the "older view was that the internal affairs of foreign corporations were not to be litigated in courts of a State other than that of incorporation," the "trend" is "in the direction of expanding jurisdiction over foreign corporations") (citations omitted).

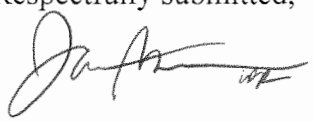
Siras cannot dispute, and has not disputed, that, under each of the *forum non conveniens* factors, New York is the proper forum for this proceeding involving an entity whose sole asset is New York real property, particularly given the forum selection clause and the fact that Siras has brought other litigation in New York concerning the same property. *See* Doc. No. 56: Activity Kuafu's Opposition Brief at 9-10. Indeed, courts have explicitly recognized that New York

courts should resolve actions concerning the internal affairs of foreign corporations where, as here, the company's assets and members are located in New York and the company's operating agreement contains a forum selection clause requiring any litigation to be commenced in New York. *See, e.g.*, *Am. Int'l Gp., Inc. v. Greenberg*, 23 Misc. 3d 278, 284 (Sup. Ct. New York County Dec. 3, 2008) (denying defendants' motion to dismiss on *forum non conveniens* grounds, recognizing that the parties were located in New York and that, as here, "New York is already the forum for another pending, related action"); *Topps*, 19 Misc. 3d 1103(A), at *9-11 (holding New York was "a highly appropriate forum" in part because the conduct at issue "occurred almost exclusively in New York" and the agreement at issue contained a "choice of forum clause requiring any suit to be heard in the state or federal courts of New York," while "the only connection with Delaware is that Topps is presently incorporated in that state"); *see also Broida*, 103 A.D.2d at 93 (recognizing that *forum non conveniens* analysis warrants venue in New York where, as here, the only nexus with Delaware is that the company is incorporated there); *Dohring*, 142 Misc. 2d at 432-33 (same).

In its motion papers, Siras relies on a First Department case, *Appell v. LAG Corp.*, 41 A.D.3d 277 (1st Dep't 2007), which merely affirmed without discussion the lower court's rejection of plaintiff's "other arguments" in the decision appealed from. *Id.* at 278. Siras contends one of those arguments was an argument by plaintiff concerning the Court's lack of jurisdiction to entertain a dissolution proceeding over a foreign company. However, there is no reference to any such argument by plaintiff in the lower court's decision, which also noted that defendants did not raise a jurisdictional objection. *See Appell*, 2006 WL 6468394, at *5 (Sup. Ct. New York County Dec. 20, 2006) ("defendants do not raise the issue of subject matter jurisdiction"). Moreover, there is no indication that the agreement at issue in *Appell* contained a forum selection clause requiring any action in connection with the operating agreement to be commenced in New York, as here. Significantly, Siras has all but promised to seek dismissal of any dissolution action Activity Kuafu may commence in Delaware Chancery Court on the basis of the parties' forum selection clause — which, if successful, would leave Activity Kuafu with no judicial forum in which to seek judicial dissolution. *See* Doc. No. 63 at 9. In any event, were the Court inclined to dismiss the Petition under *Appell* notwithstanding the weight of contrary authority, and despite Siras's promise to seek to dismiss a judicial dissolution action commenced in Delaware based on the parties' forum selection clause, Activity Kuafu would respectfully request leave to amend the Petition so as to alternatively request judicial dissolution under New York's judicial dissolution statute for limited liability companies, N.Y. Ltd. Liab. Co. Law § 702.

For these reasons, we respectfully request that the Court deny Siras's motion to dismiss.

Respectfully submitted,



Janice Mac Avoy

cc: Counsel of Record (via Email and NYSCEF)