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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER
Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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In the Matter Of The Application of

MITCHELL ROSS,

Petitioner,

For the Judicial Dissolution of

427 OLD COUNTRY ROAD, LLC,

and Related Relief Pursuant to Sections 702-704
of the New York Limited Liability Company Law,

-against-

DAVID ROSS and PHILIP ROSS,

Respondents.

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TRIAL/IAS PART: 14

NASSAU COUNTY

Index No. 605338-15
Motion Seq. Nos. 1, 2, 3, 4
Submission Date: 11/4/15

Papers Read on these motions:

Notice of Petition and Verified Petition.....x
Memorandum of Law in Support.....x
Notice of Cross Motion, Affidavit in Support and Exhibits.....x
Memorandum of Law in Support.....x
Affidavit in Opposition.....x
Memorandum of Law in Opposition to Cross Motion.....x
Petitioner's Reply Memorandum of Law.....x
Notice of Motion, Affirmation in Support,
Affidavit in Support and Exhibits.....x
Memorandum of Law in Support.....x
Affirmation in Opposition, Affidavit in Opposition and Exhibits.....x
Memorandum of Law in Opposition.....x
Reply Affidavits and Exhibit.....x
Reply Memorandum of Law in Further Support of Cross Motion.....x

Papers Read (cont.)

Order to Show Cause, Emergency Affirmation,
Affidavit in Support and Exhibits.....x
Memorandum of Law in Support.....x
Affirmation in Opposition.....x
Memorandum of Law in Opposition.....x

This matter is before the court on 1) the motion filed by Petitioner Mitchell Ross ("Mitchell" or "Petitioner") on August 19, 2015, 2) the cross motion filed by Respondents David Ross ("David") and Philip Ross ("Philip") (Respondents") on October 7, 2015, 3) the motion filed by Petitioner on October 14, 2015, and 4) the motion filed by Respondents on October 19, 2015, all of which were submitted on November 4, 2015, following oral argument before the Court. For the reasons set forth below, the Court 1) denies Petitioner's motion for dissolution of the limited liability company at issue (motion sequence number 1); and 2) grants Respondents' cross motion to dismiss the Verified Petition (motion sequence number 2) and dismisses this action. In light of the Court's dismissal of this action, the Court denies, as moot, Petitioner's motion to discontinue this action (motion sequence number 3) and Respondents' motion to stay the pending arbitration (motion sequence number 4).

BACKGROUND

A. Relief Sought

Petitioner moves for an Order 1) pursuant to New York Limited Liability Company Law ("LLCL") § 702, dissolving 427 Old Country Road, LLC (the "Company") on the grounds that its principal asset has been sold, that it has no active business, and that it is not reasonably practicable to carry on any further business in conformity with its articles of organization; 2) pursuant to LLCL § 703(a), winding up the affairs of the Company and, in connection therewith, appointing a receiver or liquidating trustee; 3) directing an accounting by Respondent David, as manager, for the affairs and assets of the Company; and 4) pursuant to LLCL § 704, directing the distribution of the assets of the Company.

Respondents cross move for an Order, pursuant to CPLR § 409, dismissing the Verified Petition in its entirety.

Petitioner moves for an Order 1) pursuant to CPLR §§ 406 and 3217(b)(2), voluntarily discontinuing the above-captioned action ("Instant Action") upon terms and conditions as the

Court deems proper on the grounds that the subject matter of the Instant Action is subject to a pending arbitration proceeding under an arbitration agreement in the parties' operating agreement ("Operating Agreement") for the Company; 2) pursuant to CPLR § 405, curing an omission in the record of this Action as originally commenced, specifically omission of the existence of the Operating Agreement and an arbitration agreement contained therein, the existence of which was unkown to Petitioner at the outset of the Instant Action; and 3) pursuant to CPLR § 7503(a), compelling arbitration of the issues raised in the Instant Action pursuant to an arbitration agreement contained in the Operating Agreement.

Respondents move for an Order, pursuant to CPLR §§ 7502(a) and 7503(b), permanently staying an arbitration purportedly pending before the American Arbitration Association ("AAA") initiated by Petitioner by a Demand for Arbitration filed October 6, 2015 under AAA Case No. 01-15-0005-2100, and enjoining Petitioner from taking any steps to proceed with said arbitration.

B. The Parties' History

The Verified Petition ("Petition") alleges as follows:

Petitioner and Respondents are the members and managers of the Company and each holds a one-third membership interest in the Company. The Company was formed on or about October 6, 2004 as a single purpose entity for the primary purpose of acquiring, owning and operating commercial real property ("Property") located at 427 Old Country Road, Westbury, New York in which to house, pursuant to a lease, a "patio.com" retail store (Pet. at ¶ 9) operated by Patio.com LLC (NY) ("Patio"), a related entity. On December 28, 2004, the Company acquired the Property by deed from Motiva Enterprises LLC and subsequently leased a substantial portion of the Property to Patio from January 2005 to June 2014. The Company leased the remainder of the Property to Metro PCS, an unrelated entity.

On June 4, 2014, the Company sold the Property to 427 Old Country Road Developers Inc. ("427 Inc."), an unrelated entity, for $6,625,000. 427 Inc. continued leasing the Property to Patio briefly, through October 2014, at which time the leasehold was terminated and Patio's operations ceased at the Property. The Property no longer houses a patio.com retail store, which was the original purpose for the Company's acquisition of the Property. The lease with Metro PCS was assigned to 427 Inc. as part of the sale. Since October 2014, the Company has had no

active business operations, either at the Property or elsewhere. The Company no longer conducts business and has no plans to operate any other business.

Petitioner alleges that David, as manager, handled the sale of the Property and receipt of the proceeds ("Proceeds") of the sale, but has failed and refused to account for or distribute the Proceeds, or any other remaining assets of the Company, including rental income collected prior to the sale, to the Company's members, including Petitioner, in accordance with their interests in the Company. Petitioner alleges, further, that the Company's assets, which consist primarily of the Proceeds and rental income collected prior to the sale, are being wasted and are not being devoted to any business purpose for the benefit of the Company, which no longer has a business purpose agreed to by the parties. Petitioner also alleges that 1) the Company's management is unable or unwilling to reasonably permit or promote the stated purpose of the Company to be realized or achieved; 2) continuing the Company is financially unfeasible because it has no present revenue, business plan or business purpose; and 3) disagreement and conflict among the members regarding the Company's operations is "so fundamental and intractable" (Pet. at ¶ 21) as to make it unfeasible for the Company to carry on its business as originally intended. Petitioner alleges that the foregoing constitutes grounds for dissolution and cause for the appointment of a receiver or liquidating trustee for the Company pursuant to LLCL § 703(a).

In support of Respondents' cross motion to dismiss the Instant Action, David submits that there is no grounds for dissolution of the Company. David affirms that he and his brothers Mitchell and Philip have been involved in business together for the last 25 years and own Patio, one of the largest, independently owned outdoor furniture companies. For the last 15 years, the parties have also invested in real estate, acquiring and developing properties for investment purposes and for profit. To that end, they have formed approximately 10 different LLCs, all of which own and manage real estate for profit and investment purposes. It has been their practice to use profits from their investments in various properties to help fund the acquisition, development and construction of other properties. By maintaining large amounts of cash in liquid accounts, the LLCs are able to successfully complete transactions quickly because they have funds readily available.

David affirms that the Company is one of the LLCs formed and organized on October 6, 2004, as reflected by the Articles of Organization provided (Ex. C to David Aff. in Supp.). On November 23, 2004, the Company acquired the Property. Each of the Company's members made initial capital contributions in 2004 and 2007 totaling $437,260 each, for a total investment of $1,312,860. The Property contained 6,000 square feet of leasable space. In December 2008, the Company entered into the lease with Metro PCS (Ex. D to David Aff. in Supp.), pursuant to which Metro PCS leased 63.34% of the building at a monthly rent of nearly $30,000. The remaining space was leased to Patio for use as a showroom at a monthly rent of approximately $17,000 (*see* lease, Ex. E to David Aff. in Supp.). Both tenants took possession of the Property in 2009 and began paying rent. From its inception, the Company was profitable and made regular distributions to its members between 2009 and 2014, including a $330,000 distribution in 2014. Since the Company's formation in 2004, David managed and operated the Company and performed all functions relating to it, and Mitchell and Philip were "passive members" of the Company (David Aff. in Supp. at ¶ 15).

In 2014, the parties received an offer for the Property from a prospective purchaser and, due to the favorable terms of that offer, the parties decided to sell the Property. The Company entered into a contract of sale on March 21, 2014 for a sales price of $6,625,000. In anticipation of the closing, an attorney or title company requested a copy of the Operating Agreement. As the parties had not previously executed an operating agreement, the Operating Agreement (Ex. F to David Aff. in Supp.) was drafted in May 2014, days before the closing. Section 5.1 of the Operating Agreement, titled "Management," provides that the managers of the Company are "authorized and empowered to carry out and implement any and all actions to accomplish the purposes and objectives of the Company." The Operating Agreement sets forth a list of conduct in which the managers are authorized to engage, which includes the power to 1) "cause the Company to maintain, finance, improve, develop, expand, own, grant options with respect to, mortgage or lease any property and to cause to have constructed any other improvements necessary, convenient or incidental to the accomplishment of the purposes of the Company" (Operating Agreement, § 5.1(b)), and 2) "cause the Company to expend funds in connection with the acquisition, financing, development, improvement, management, maintenance and operation of any property the Company comes to own in the future" (Operating Agreement, § 5.1(l)).

Section 8.1 of the Operating Agreement provides that the Dissolution Date is "Perpetual." Section 8.3 of the Operating Agreement, titled "Termination," provides that the Company shall terminate when a) the Articles of Organization have been cancelled; and b) all property owned by the Company has been disposed of and the assets, after payment of or provision for all liabilities to the Company's creditors, have been distributed to the Members as provided in Section 8.2 of the Operating Agreement. Section 11.1 of the Operating Agreement, titled "Arbitration Clause," provides, in pertinent part, that "[i]n the event any controversy or claims arising out of this Agreement cannot be settled by the Members, or their legal representatives, the controversy or claim shall be settled by arbitration in accordance with the then current rules of the [AAA], and judgment on the award may be entered in any court having jurisdiction of the controversy or claim."

David affirms that the new owners of the Property permitted Patio to remain as a tenant. Thereafter, Patio decided to buy itself out of its lease so that it could move to a different space and the Company loaned Patio $380,407 to do so ("Patio Loan"). Following the closing, the LLC paid $330,000 to each of its members in July 2014. The Company currently has assets in excess of $5 million, which includes the Proceeds plus the Patio Loan. David provides copies of the Company's most recent statements from Oppenheimer & Co. and Chase Bank (Ex. G to David Aff. in Supp.). David affirms that the Company has been "extremely profitable" (David Aff. in Supp. at ¶ 28) and that the parties have realized a 500% return on their investment. To date, the Company has earned gross profits of $2,969.517 for each member and, less the initial capital contributions of $437,260, the Company has earned net profits in excess of $2.5 million for each member to date.

David affirms that the Company has other potential deals pending for which they will soon need funds, including the acquisition of other real estate, development and construction. David submits that the stated purpose of the Company is very broad and affirms that the Company intends to use these assets to invest in other transactions, and potentially acquire more properties for the Company, as it has done for the last 15 years. David submits that dissolution of the Company is unwarranted in light of its tremendous profitability, and further contends that no event of termination has occurred under Section 8.3 of the Operating Agreement. David also affirms that, as evidenced by the documentary evidence provided, the Company leased 2/3 of the Property to Metro PCS, not to Patio, thereby disproving Petitioner's contention that leasing the

property to Patio was the Company's primary purpose. David disputes other allegations in the Petition, including the allegation (Pet. at ¶ 15) that the Company has had no active business operations since October 2014. David affirms that the Company is currently pursuing tenants and investing in the development and construction of a site located at 1 Montauk Highway, and pursuing the acquisition of other properties on Old Country Road. Philip also provides an affidavit in which he expresses his agreement with David's affirmations. Philip affirms that he and David are promoting the stated broad purpose of the Company for the benefit of the Company and its members and that the Company is profitable.

In opposition to Respondents' motion to dismiss, Petitioner describes the history of Patio, which the parties operated since the mid-1980s. Petitioner affirms that, although it is true that the parties purchased real estate through separate LLCs, each LLC was capitalized and funded by the members personally, in equal amounts, and the funds of one LLC were never used to capitalize or fund another. Petitioner affirms that there are certain "non-owned" Patio stores that are leased from unrelated third parties (Mitchell Aff. in Opp. at ¶ 5), and today there remain six owned locations. Mitchell affirms that there are no plans to open any additional Patio locations, nor to purchase any additional real estate, and there have been no such plans since 2012. The last new real estate acquisition in which the parties were the only members of an LLC was a parcel immediately adjacent to their 1 Montauk Highway, Southampton location over eight years ago, in 2007, to accommodate the planned expansion of the Southampton store that never materialized.

Mitchell also affirms that the Proceeds from the sale of the Property have not been distributed, except as necessary to pay tax liabilities. David is retaining the Proceeds, he maintains (*see* David Aff. in Supp. at ¶ 20), because the Operating Agreement contemplated that, after the sale of the Property, the net profits realized would be used to engage in other deals and investments, as they have done with their other LLCs over the last 15 years. Mitchell affirms that the parties never contemplated such a result, and further affirms that the parties have never used the profits from the sale of an LLC's property for another deal or investment. Mitchell affirms that the Operating Agreement was generated solely because it was needed for the closing on the Property, and further affirms that it "was not a negotiated agreement; it was prepared for one purpose, to satisfy the purchaser in order to close the sale" (Mitchell Aff. in Opp. at ¶ 11). Mitchell reiterates his position, as set forth in the Petition, that the Company was formed to purchase the Property, to develop the Property into a Patio store and to lease it to a related

operating company and, now that its purpose is fulfilled, its continued existence serves no purpose.

In support of Petitioner's motion for a voluntary discontinuance of this action, counsel for Petitioner ("Petitioner's Counsel") affirms that, following Petitioner's filing of the Petition in August 2015, Petitioner's Counsel learned for the first time about the existence of the Operating Agreement, including its arbitration provision, during his conversations with counsel for Respondents ("Respondents' Counsel") in late September and early October of 2015. On October 6, 2015, Petitioner commenced an arbitration proceeding ("Arbitration") in which he sought dissolution and related relief, as reflected by the Arbitration documentation provided (Ex. D to Saulitis Aff. in Supp.). Petitioner's Counsel spoke with Respondents' Counsel about Petitioner withdrawing the Petition and the Instant Action being discontinued but Respondents' Counsel did not agree to that proposal. Petitioner disputes that he waived his right to arbitration by filing the Instant Action in light of the fact that, at the time of the filing of the Petition, Petitioner was unaware of the Operating Agreement and its arbitration provision, and Petitioner exercised his right to arbitrate immediately upon learning of its existence.

Petitioner affirms that when he filed the Instant Action, he was unaware of the Operating Agreement. Petitioner affirms that he did not attend the closing on the Property and, shortly before the closing, was provided with counterparts of closing documents to sign as a managing member of the LLCs which "apparently included a pro forma operating agreement" (Mitchell Aff. in Supp. at ¶ 5). Petitioner affirms that he does not have a "distinct recollection" of signing the Operating Agreement) (*id.*) but, in any event, was not provided with a fully executed version of the Operating Agreement containing all of the parties' signatures. Petitioner does not dispute that he signed the Operating Agreement. Petitioner affirms that he did not intend to waive or relinquish his right to arbitrate when he filed the Petition but, rather, was unaware of the arbitration provision in the Operating Agreement at the time.

In opposition to Petitioner's motion to discontinue the Instant Action, David affirms that, following the filing of the Petition, Respondents filed a Verified Answer and their cross motion. David submits that Petitioner's filing of the Petition constitutes a waiver of his right to arbitrate the issue raised in the Petition. David contends, further, that the Court should stay arbitration because the arbitration clause in the Operating Agreement does not cover dissolution

proceedings. David submits that the relief sought in the Arbitration Demand, specifically dissolution of the Company pursuant to the LLCL, does not constitute a dispute "arising out of" the Operating Agreement and, therefore, is not subject to arbitration. David notes that Section 13.1 of the Operating Agreement expressly contemplates the existence of other disputes between the parties that are not governed by the arbitration clause and were to be litigated in court. Under these circumstances, Respondents contend, the arbitration provision does not apply to dissolution proceedings. On October 19, 2015, the Court issued a temporary restraining order ("TRO") directing that, pending the determination of Respondents' motion to stay the Arbitration and further Order of this Court, 1) all further proceedings before the AAA, pursuant to Petitioner's Arbitration Demand, are stayed; and 2) Petitioner is enjoined and restrained from taking any steps to proceed with the Arbitration. In opposition to Respondents' motion to stay the Arbitration, Petitioner reaffirms his position that, in light of the circumstances under which Petitioner became aware of the Operating Agreement's arbitration provision, he did not waive his right to arbitration by filing the Petition.

C. The Parties' Positions

In his Petition, Petitioner submits that judicial dissolution of the Company pursuant to LLCL § 702 is warranted because, following the sale of the Property, there is no further business purpose for the Company. Petitioner also alleges that the disagreement and conflict among the parties, the members of the Company, regarding the Company's operations is to fundamental as to make it unfeasible for the Company to carry on its business as originally intended.

Petitioner affirms that, subsequent to the filing of the Petition, he became aware of the Operating Agreement. Petitioner concedes that he signed the Operating Agreement but submits that, considering the circumstances under which he signed that document, he should not be bound by its terms. Petitioner disputes that he waived his right to arbitration, as provided for in the Operating Agreement, by filing the Petition, arguing that he was unaware of the arbitration provision in the Operating Agreement and, therefore, could not have knowingly waived it. Petitioner also suggests that, in consideration of the circumstances under which he signed the Operating Agreement, the Court should not look to that Agreement in determining whether dissolution of the Company is appropriate. Petitioner also disputes David's contention, *e.g.*, that the parties have used the profits from one LLC to fund other properties that they acquired.

Respondents cross move to dismiss the Petition submitting that there are no contractual

grounds for dissolution in the Operating Agreement. Respondents note, *inter alia*, that 1) the Operating Agreement does not define any events that would trigger dissolution; and 2) the stated events that would result in the termination of the Company pursuant to the Operating Agreement, even if arguably applicable, were not triggered in this action. Moreover, there are no statutory grounds to dissolve the Company because it is indisputably profitable, successful and financially feasible and is promoting its purpose as stated in the Operating Agreement. Respondents dispute Petitioner's contention that the Company was formed for the singly purpose of owning and operating the Property and submit that this assertion is contradicted by the express terms of the Operating Agreement which provides an "expansive description" of the Company's purpose (Resps. Memo. of Law in Supp. at p. 10). In addition, Petitioner's conclusory allegation of a deadlock among the parties does not provide a basis for dissolution. Respondents also contend that Petitioner's motion to compel arbitration is without merit, in part because Petitioner clearly waived his right, if any, to arbitrate when he commenced this litigation by filing the Petition which seeks the same relief sought in the Arbitration.

RULING OF THE COURT

A. Dissolution of LLC

LLCL § 702, titled "Judicial dissolution," provides as follows:

> On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. A certified copy of the order of dissolution shall be filed by the applicant with the department of state within thirty days of its issuance.

For dissolution of an LLC pursuant to LLCL § 702, the petitioning member must establish, in the context of the terms of the operating agreement or articles of incorporation, that 1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved; or 2) continuing the entity is financially unfeasible. *Matter of 1545 Ocean Avenue, LLC v. Ocean Suffolk Properties, LLC*, 72 A.D.3d 121, 131 (2d Dept. 2010). The appropriateness of an order of dissolution of an LLC is vested in the sound discretion of the court hearing the petition. *Matter of Extreme Wireless, LLC v. Molina*, 299 A.D.2d 549, 550 (2d Dept. 2002).

Despite the standard for dissolution enunciated in LLCL § 702, there is no definition of

"not reasonably practicable" in the context of the dissolution of an LLC. *Matter of 1545 Ocean Avenue, LLC v. Ocean Suffolk Properties, LLC*, 72 A.D.3d 121, 127 (2d Dept. 2010). Most New York decisions involving LLC dissolution issues have avoided discussion of this standard altogether. *Id.*, citing, *inter alia, Matter of Extreme Wireless*, 299 A.D.2d 549, 550 (2d Dept. 2002). The standard is not to be confused with the standard for the dissolution of corporations pursuant to Business Corporation Law ("BCL") §§ 1104 and 1104-a, or partnerships pursuant to Partnership Law § 62. *Matter of 1545 Ocean Avenue, LLC v. Ocean Suffolk Properties, LLC*, 72 A.D.3d at 127. Unlike the judicial dissolution standards in the BCL and Partnership Law, the court must first examine the LLC's operating agreement to determine, in light of the circumstances presented, whether it is or is not "reasonably practicable" for the LLC to continue to carry on its business in conformity with the operating agreement. *Id.* at 128.

B. Relevant Arbitration Principles

Generally, it is for the courts to make the initial determination whether a particular dispute is arbitrable, that is whether the parties have agreed to arbitrate the particular dispute. *Nationwide General Insurance Company v. Investors Insurance Company of America*, 37 N.Y.2d 91, 95 (1975) quoting *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 570-71 (1960). The ultimate disposition of the merits, however, is reserved for the arbitrator and the courts are expressly prohibited from considering whether the claim regarding which arbitration is sought is tenable, or otherwise passing on the merits of the dispute. *Nationwide General Insurance Company v. Investors Insurance Company of America*, 37 N.Y.2d at 95, citing CPLR § 7501.

Like contract rights generally, a right to arbitration may be modified, waived or abandoned. *Matter of Waldman v. Mosdos Bobov, Inc.*, 72 A.D.3d 983 (2d Dept. 2010), *lv. app. den.*, 15 N.Y.3d 715 (2010), quoting *Sherrill v. Grayco Bldrs., Inc.*, 64 N.Y.2d 261, 272 (1985). Where a party affirmatively seeks the benefits of litigation, in a manner clearly inconsistent with its later claim that the parties were obligated to settle their differences by arbitration, the right to arbitrate has been waived. *Matter of Waldman v. Mosdos Bobov, Inc.*, 72 A.D.3d at 983, quoting *Stark v. Molod Spitz DeSantis & Stark, P.C.*, 9 N.Y.3d 59, 66 (2007) (internal quotation marks omitted).

C. Relevant Contract Principles

When the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms. *Henrich v. Phazar Antenna Corp.*, 33 A.D.3d 864 (2d

Dept. 2006). A contract will be interpreted in accordance with the intent of the parties as expressed in the language of the agreement. *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002). The best evidence of what parties to a written agreement intend is what they say in their writing. *Id.* at 569, *quoting Slamow v. Del Col*, 79 N.Y.2d 1016, 1018 (1992).

A party who executes a contract is presumed to know its contents and to assent to them. *Choung v. Allstate Ins. Co.*, 283 A.D.2d 468 (2d Dept. 2001), citing *Metzger v. Aetna Ins. Co.*, 227 N.Y. 411 (1920); *Renee Knitwear Corp. v. ADT Sec. Sys.*, 277 A.D.2d 215 (2d Dept. 2000); *Ciaramella v. State Farm Ins. Co.*, 273 A.D.2d 831 (4th Dept. 2000).

D. Application of these Principles to the Instant Action

The Court denies Petitioner's motion for dissolution of the Company, grants Respondents' cross motion for dismissal of the Petition, and dismisses this action. In light of the dismissal of the Instant Action, the Court denies, as moot, Petitioner's motion to discontinue this action and Respondents' motion to stay the Arbitration.

Petitioner has failed to demonstrate grounds for dissolution of the Company pursuant to LLCL § 702. The Operating Agreement, which Petitioner concededly signed and whose contents Petitioner is presumed to know and assent to, provides that the Company is authorized to engage in a broad spectrum of activities and does not support Petitioner's contention that it existed solely to own the Property. Moreover, the Company is indisputably profitable. Under these circumstances, Petitioner has not adequately alleged that 1) the management of the Company is unable or unwilling to reasonably permit or promote the stated purpose of the Company to be realized or achieved; or 2) continuing the Company is financially unfeasible. Under these circumstances, dismissal of the Petition, and the Instant Action, is appropriate. The Court also concludes that Petitioner waived his right to arbitrate this dispute by filing the Petition, thereby seeking the benefits of litigation.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

This action is dismissed.

ENTER

DATED: Mineola, NY
December 10, 2015

ENTERED

DEC 17 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE

HON. TIMOTHY S. DRISCOLL
J.S.C.

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