

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of

NYSCEF

MITCHELL ROSS,

Index No. _____/2015

Petitioner,

For the Judicial Dissolution of

427 OLD COUNTRY ROAD, LLC,

VERIFIED PETITION

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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The verified petition of Mitchell Ross, petitioner, by his attorneys the Law Offices of Andrew P. Saulitis P.C., respectfully shows:

Nature of Proceeding

This is a proceeding pursuant to Sections 702-704 of the New York Limited Liability Company Law for the dissolution of 427 Old Country Road, LLC on the grounds that its principal asset has been sold, that it has no active business, and it is not reasonably practicable to carry on any further business in conformity with its articles of organization; for the winding up of its affairs and appointment of a receiver or liquidating trustee pursuant to Section 703 (a) of the New York Limited Liability Company Law and accounting for its assets; and for the distribution of its assets in accordance with Section 704 of the New York Limited Liability Company Law.

Parties/Jurisdiction/Venue

1. Respondent 427 Old Country Road, LLC (the “LLC”) is a limited liability company created under the laws of the State of New York formerly having its office at 427 Old Country Road, Westbury, New York 11590 and 8 Sandpiper Lane, Westport, Connecticut 06880, of which petitioner and the individual respondents are the members and managers. The LLC is named as a nominal respondent as the limited liability company sought to be dissolved, and assets thereof distributed.

2. Petitioner, Mitchell Ross, an individual residing at 10 Nickerson Lane, Darien, Connecticut 06820, is a member and manager of the LLC and holder of a one-third membership interest therein.

3. Respondent David Ross, an individual residing at 43 Peninsula Road, Belvedere, California 94920 and at 8 Sandpiper Lane, Westport, Connecticut 06880, is a member and manager of the LLC and holder of a one-third membership interest therein.

4. Respondent Philip Ross, an individual residing at 10 Moss Ledge, Westport, Connecticut 06880, is a member and manager of the LLC and holder of a one-third membership interest therein.

5. Petitioner and respondents comprise all of the members and managers of the LLC and, upon information and belief, no other person or entity has an interest in the LLC or membership interests therein.

6. Personal jurisdiction over the LLC is based upon CPLR 302 by virtue of its presence and formation in the State of New York.

7. Personal jurisdiction over the individual respondents is based upon CPLR 302 (a) (1) by virtue of their transaction of business as members of the LLC from which this proceeding arises.

8. Venue is proper in the County of Nassau as the judicial district in which the office of the LLC was located pursuant to N.Y. Lim. Liability Company Law § 702.

Grounds for Dissolution of the LLC and for Related Relief Sought

9. The LLC 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 at 427 Old Country Road, Westbury, New York 11590 (the “Property”), for which to house, under lease, a “patio.com” retail store operated by a related entity.

10. In keeping with such purposes, on December 28, 2004, the LLC acquired the Property by deed from Motiva Enterprises LLC.

11. In turn, the LLC leased a substantial portion of the Property to Patio.com LLC (NY), a related entity, from January 2005 to June 2014, which operated a “patio.com” retail store at the Property.

12. The remainder of the Property was leased by the LLC to Metro PCS, an unrelated entity.

13. On June 4, 2014, the Property was sold by the LLC for a sale price of \$6,625,000 to an unrelated entity, 427 Old Country Road Developers Inc., which continued leasing the Property to Patio.com LLC (NY) briefly, through October 2014, whereupon the leasehold was terminated and Patio.com LLC (NY)’s operations ceased at the Property. The Property no longer houses a “patio.com” retail store, which was the original purpose for acquisition of the Property.

14. The lease with Metro PCS was assigned to the purchaser of the Property (427 Old Country Road Developers Inc.) as part of the sale.

15. Since October 2014, the LLC has had no active business operations, either at the Property or elsewhere.

16. The LLC no longer conducts business, nor has any plans to operate any other business.

17. Respondent David Ross, as manager, handled the sale of the property and receipt of the proceeds thereof, but has failed and refused to account for or distribute the proceeds of the sale, or any other remaining assets of the LLC including rentals collected prior to the sale, to the members of the LLC, including petitioner, in accordance with their interests in the LLC.

18. Upon information and belief, the assets of the LLC (consisting primarily of the proceeds from the sale of the Property and rentals collected prior to such sale) are being wasted and not being devoted to any business purpose for the benefit of the LLC, which no longer has a business purpose agreed to by the parties.

19. The management of the LLC is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved.

20. Continuing the LLC is financially unfeasible in that it has no present revenue nor any business plan or remaining business purpose.

21. Disagreement and conflict among the members regarding the means, methods, and finances of the LLC's operations is so fundamental and intractable as to make it unfeasible for the LLC to carry on its business as originally intended.

22. The foregoing constitutes grounds for dissolution and cause for the appointment of a receiver or liquidating trustee for the LLC pursuant to Section 703(a) of the New York Limited Liability Company Law.

23. No prior application for the relief sought by this petition has been sought.

WHEREFORE petitioner, Mitchell Ross, respectfully requests from the Court judgment and decree according the following relief:

(a) Judicial dissolution of 427 Old Country Road, LLC pursuant to Section 702 of the New York Limited Liability Company Law;

(b) Winding up the affairs of 427 Old Country Road, LLC, and in connection therewith appointing a receiver or liquidating trustee, pursuant to Section 703(a) of the New York Limited Liability Company Law;

(c) An accounting by respondent David Ross for the affairs and assets of 427 Old Country Road, LLC;

(d) Upon the winding up of 427 Old Country Road, LLC, directing the distribution of its assets in accordance with Section 704 of the New York Limited Liability Company Law; and

(e) Granting such other and further relief as may be just and equitable.

Dated: July 27, 2015

Andrew P. Saulitis

LAW OFFICES OF
ANDREW P. SAULITIS P.C.
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Verification

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

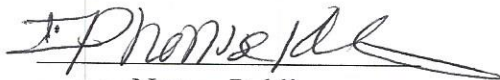
MITCHELL ROSS, being duly sworn, states:

I am the petitioner and a member of 427 Old Country Road, LLC, a New York limited liability company. The foregoing petition for dissolution and related relief is true to my knowledge, except as to matters alleged on information and belief, and that as to those matters I believe it to be true. The basis for the matters not stated on personal knowledge are documents reviewed and information obtained in my review of the facts and circumstances giving rise to the petition.



Mitchell Ross

Sworn to before me
on July 24th, 2015



Notary Public

*My Commission Expires
August 31, 2017*