00SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 14
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In the Matter of the Application of

DAVID CARASSO, HELAINE FRASER, HOWARD GOLDBERG, ROBERT GOLDBERG, ARTHUR ISRAEL, RICHARD ISRAEL, SOL ISRAEL, LORRAINE LEVY, BETH CARASSO SPECTOR and SANDRA C. WEIN RECOVABLE TRUST,

Shareholder-Petitioners,

v.

PAULINE J. PERAHIA REVOCABLE TRUST, MILDRED S. QUAIN TRUST and SOLOMON SEVY,

Shareholder-Respondents,

For an order granting judicial dissolution of

CATALINA OPERATING CORP. and SEA ISLE REALTY CORPORATION,

Corporate-Respondents.
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Index No. 606702/2014

VERIFIED ANSWER, AFFIRMATIVE DEFENSE, AND OBJECTIONS IN POINTS OF LAW PURSUANT TO CPLR §404

Assigned to:
Hon. Vito M. DeStefano

Shareholder-Respondents, Pauline J. Perahia Revocable Trust ("Pauline's Trust") and Mildred S. Quain Trust ("Mildred's Trust"), together, the "Sevy Trusts," by their counsel, Tobias Law Firm, P.C., hereby answer the allegations set forth in the Verified Petition (the "Petition") as follows:

1. Deny the allegations contained in paragraphs 24, 25, 26, 28, 39, 40, 41, 49, 52, 54 and 55 of the Petition.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Petition.

3. Admit the allegations in paragraphs 1, 2, 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 17, 20, 21, 22, 29, 31, 32, 33, 47, 48 and 53 of the Petition.

4. As to paragraphs 6, 7, 18 and 19 of the Petition, deny the allegations contained in these paragraphs of the Petition, and respectfully refer this Court to Point 1 of the Objections in Points of Law pursuant to CPLR §404 below (the "Objections"), as well as paragraphs 15 through 18 of the affidavit of Pauline J. Perahia in Opposition to Petition For Dissolution and Appointment of a Receiver and in Support of Cross-Motion For Limited Discovery, sworn to February 6, 2015, served and filed herewith ("Pauline's Affid." or "PA").

5. As to paragraphs 12 and 23 of the Petition, deny the allegations of the Petition to the extent Sandra Wein ("Sandra") is not a shareholder of Corporate Respondents Catalina Operating Corp. ("Catalina") and Sea Isle Realty Corp. ("Sea Isle"), and neither are Mildred Quain ("Mildred") or Pauline J. Perahia ("Pauline"); on the other hand, Sandra, Mildred, Pauline and Lorraine Levy are the Directors of Catalina and Sea Isle, together the "Beach Club."

6. As to paragraph 16 of the Petition, admit that Sea Isle owns real property and a mortgage, though the real property and mortgage are managed through Catalina's sister company's Board of Directors since Sea Isle is a holding company.

7. As to paragraph 27 of the Petition, deny the allegations, but admit that Sandra was a co-owner manager with Pauline, the Secretary and a Director of the Beach Club, and a trustee of Pauline's Trust (and the grantor to Pauline's Trust's of its 16 2/3% interest in Catalina Beach Club), until Sandra usurped the role of sole owner manager of the Beach Club, tipping of the balance of power between the Sevy Family and Carasso Family shareholders, though virtually all important management decisions for the Beach Club are made or approved by the Beach Club's Board of Directors (the "Board"), while operating account checks are co-signed by Pauline and Sandra, though Sandra drew all payroll account checks and wrote herself bonus checks that amounted to $40,000.00 a year from 2010 through 2014, without Board authority or approval, in breach of the Beach Club's by-laws and the law as set forth in Pauline's Affid., PA, ¶¶22-73.

8. As to paragraphs 34 and 35 of the Petition, admit that Pauline and Mildred voted not to approve compensation for Sandra of $90,000.00 for 2015, but deny that they voted not to appoint Sandra a co-owner manager of the Beach Club.

9. Deny the allegations contained in paragraph 36 of the Petition to the extent Sandra resigned immediately on December 15, 2014, and later made her resignation effective December 31, 2014.

10. As to paragraphs 37, 38, 45 and 50 of the Petition, the Sevy Trusts deny the allegations of these paragraphs and aver that no single owner manager has been appointed for the Beach Club since December 15, 2014 since there is not supposed to be a single owner manager and that Sandra usurped that role and thereby tipped the balance of power by doing so and further aver that the Beach Club has been managed by its Board through and after December 15, 2014 and continues to operate and be so managed.

11. As to paragraphs 42, 43, 44 and 46 of the Petition, the Sevy Trusts deny these allegations to the extent they understand that the Sevy Family had the majority vote for directors at the 2014 annual shareholders' meeting held on October 29, 2014, as explained in Objection 5 below and Pauline's Affidavit in ¶19, and the same may be true at the annual meeting of shareholders on September 27, 2013.

12. In response to paragraph 51 of the Petition, denies the allegations to the extent it implies the Beach Club will not be ready for the start of the Season.

13. As to paragraph 56 of the Petition, this paragraph does not require a response as to what Petitioners seek since the Petition speaks for itself.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

14. The Petition fails to state a cause of action upon which relief can be granted.

OBJECTIONS IN POINTS OF LAW PURSUANT TO CPLR §404

OBJECTION 1

THE PETITIONERS LACK STANDING UNDER 1104(a) TO BRING THEIR PETITION SINCE THEY ONLY HELD 40% OF THE BEACH CLUB'S STOCK WHEN THE PETITION WAS FILED ON DECEMBER 15, 2014

A. Stephen Carasso Held 10% Of The Beach Club's Stock On December 15, 2014; Not His Children Petitioners David Carasso And Beth Carasso Spector.

In their Petition, the Petitioners state that they are moving pursuant to BCL §1104(a) and that they have "50% of the outstanding shares of the corporate stock of Operating Corp. and Realty Corp." PA, Ex. 1, p. 1, ¶¶8 and 18. Petitioners claim that Petitioner David Carasso ("David") owns 2 ½ shares and Beth Carasso Spector ("Beth") owns 2 ½ shares (5% each) of the Beach Club. Thus, according to Petitioners, Beth and David together comprise 10% of the Petitioners alleged 50%.

The burden of establishing the requisite 50% stock ownership in a corporation that is the subject of a BCL §1104(a) judicial dissolution proceeding rests with the Petitioners. In Re Iceland Inc., 97 A.D.3d 579, 948 N.Y.S.2d 329, 330 (2d Dept. 2012). In Artigas v. Renewal Arts Realty Corp., 22 A.D.3d 327, 328, 803 N.Y.S.2d 12, 13 (1st Dept. 2005), the Appellate Division found that an individual who is not a shareholder of the corporation that is to be dissolved has no standing to bring a petition for dissolution under §1104(a).

In Artigas, petitions to dissolve two corporations were dismissed because the petitioner had sold his interests in those corporations before bringing the petitions. At bar, David and Beth were not shareholders in the Beach Club on December 15, 2014, the date of the Petition. The documentary evidence submitted to the Court by Pauline, as well as Stephen's statements to Shala Sedgh and Jay Goldstein, the Beach Club's accountants, reflect that Stephen Carasso ("Stephen") claimed to have made "a mistake" in giving his 10% stock interest in the Beach

Club to Beth and David and then Stephen took the shares back in January, 2014. PA, ¶¶15-18. Since David and Beth were not shareholders on the day of the Petition, the Petitioners at best only had 40% of the Beach Club stock, and the Petition must be dismissed. See, In Re Kagan and Hazelkorn, 7 Misc.3d 1009 (A), 7005 WL 856007 *3 (Sup. Ct. Nassau Co. 2005).

B. If The Court Does Not Dismiss The Petition On The Facts Before It Which Demonstrate The Petitioners Held 40% Of The Beach Club's Stock On The Day They Brought The Petition, The Court Should Grant The Sevy Trusts' Motion To Permit Limited Discovery On Beth's And David's Ownership Of 10% Of The Stock.

If the Court finds an issue of material fact as to David's and Beth's being shareholders in the Beach Club at the appropriate time, pursuant to In re Corfian Enterprises, Ltd., 52 A.D. 2d 828, 829, 861 N.Y.S.2d 392 (2d Dept. 2008) and CPLR §408, the Sevy Trusts request permission to conduct limited discovery in the form of document production and depositions from David, Beth, Stephen, and of Shala Sedgh and Jay Goldstein, accountants at Friedman LLP, concerning David and Beth's Beach Club stock ownership in 2014, which, as noted, is a threshold standing issue. PA, ¶¶15-18, and Kagan and Hazelkorn, supra.

OBJECTION 2

BASED ON THE BEACH CLUB'S ABILITY TO FUNCTION AS IT HAS SINCE OCTOBER 2012, THERE IS NO BASIS TO APPOINT A RECEIVER

Under BCL §1113, the Court, in its discretion, can appoint a receiver to preserve a company's property or carry on its business. As explained to the Court by Pauline, the appointment of a receiver is unnecessary at this time based on the Beach Club's ability to function as it has been functioning since October 2012 after Hurricane Sandy. PA, ¶¶39-41.

A. At Minimum, There Is A Serious Question As To Whether David And Beth Were Stockholders At The Required Time To Support The Petition, And This Question Alone Prevents The Appointment Of A Receiver.

Further, as in In Re 350 West 46th Street, Inc., 20 A.D.2d 685, 686, 246 N.Y.S.2d 501, 502 (1st Dept, 1964), since there is a serious question as to whether David and Beth were

stockholders at the time the Petition was filed, this issue alone prevents this Court from appointing a receiver at this time.

OBJECTION 3

THE PETITIONERS HAVE NOT ESTABLISHED A SUFFICIENT CASE OR DISSOLUTION UNDER BCL §1104(a)(1) SINCE THE BEACH CLUB'S BOARD AND THE BUSINESS HAS FUNCTIONED AND CONTINUES TO FUNCTION

BCL 1104(a)(1) provides that "the directors are so divided in respect to the management of the corporation's affairs that the votes required for action by the Board cannot be obtained." Because of Pauline's attempt to stop Sandra from taking unauthorized bonuses and seeking legal action by the Beach Club for Sandra's having done so, the Petitioners claim that the "directors are so divided in respecting the management of [the Beach Club] that the votes required for action by the Board cannot be obtained." PA, Ex. 1, ¶¶29-39. Notwithstanding the many years that Pauline, Mildred, Sandra and Lorraine making decisions on behalf of the Beach Club, Petitioners now suddenly contend that the failure of Pauline and Mildred to appoint Sandra as sole owner-manager of the Beach Club for 2015 for $90,000.00 a year requires the dissolution of a 70-year old thriving business. PA, Ex. 1, ¶34.

The facts before the Court show that there is insufficient basis for the Court to conclude that the requirements of BCL 1104(a)(1) are met for granting the extraordinary step of judicially declaring the death of the Beach Club. In the Matter of Radom & Neidorff, Inc., 307 N.Y. 1, 6-7 (1954) and Glamorise Foundation, Inc., 228 A.D.2d 187, 189, 643 N.Y.S.2d 94, 95 (1st Dept. 1996). Pauline has shown that through December 15, 2014, as well as the date of Pauline's Affidavit, the directors have been managing the affairs of the Beach Club. PA, ¶¶39-41, and 81-82.

In Kaufmann v. Kaufmann, 225 A.D.2d 775, 640 N.Y.S.2d 569 (2d Dept. 1996), the trial court concluded that the petitioner had failed to demonstrate that the dissension between him and

the respondent resulted in a deadlock which prevented the successful and profitable conduct of the corporation's affairs. The Second Department affirmed the trial court's order, concluding that the petitioner did not show that the disagreements between the respondent and him "caused an irreconcilable barrier to the continued functioning and prosperity of the corporation. Id.

Based upon Pauline's affidavit, it is clear that the parties have cooperated (though Sandra would prefer to act unilaterally) and are continuing to cooperate to carry out the purpose for which their matriarch, Julia Sevy ("Julia"), created the business – to operate a successful family beach club in Atlantic Beach. There is no reason why the Beach Club cannot continue to operate successfully as it has for the past 70 years.

Significantly, the Petition does not set forth detailed facts reflecting that Mildred, Pauline, Sandra and Lorraine have not successfully operated the Club. Pauline informs this Court that though the Beach Club is in its "quiet period," it is continuing to function due to the cooperative efforts of Pauline, Mildred and Sandra working with DeMilia and Riginio. PA, ¶¶81-82.

It is respectfully submitted that if the Court has any question concerning whether the differences between Sandra and Lorraine, on the one hand, and Mildred and Pauline, on the other, are genuinely irreconcilable, or inimical to the well being of the Beach Club, the question should be determined at a hearing. In re Pundyk, 226 A.D.2d 187, 189, 643 N.Y.S.2d 94, 96 (Sup. Ct. Nassau Co. 1996).

OBJECTION 4

THE PETTIONERS HAVE NOT PROVIDED DETAILED FACTS DEMONSTRATING THAT THE REQUIREMENTS OF BCL 1104(a)(3) HAVE BEEN MET

A. Petitioners Have Not Shown That The Shareholders Are So Divided That Dissolution Will Benefit The Shareholders.

Under BCL 1104(a)(3), grounds for dissolution exist if the petitioner proves "[t]hat there is internal dissension and two or more factions of the shareholders are so divided that dissolution would be beneficial to the shareholders." Petitioners do not say that. Instead, Petitioners merely express concern that the Beach Club will not be ready for the start of the Season on Memorial Day weekend – May 25, 2015 – and an admission that most membership renewals are reserved by deposit on or before September 15 of the previous year. PA, Ex. 1, ¶¶48-49. The Petitioners failed to inform the Court that the Beach Club is in a quiet period and little preparation has to be done at this time. Further, the Board continues to make operating decisions as they have arisen. PA, ¶¶39-41 and 82.

The Court of Appeals has found that there is no absolute right to dissolution based only upon feelings of dislike and distrust or "feuding and back biting between two equal owners of a corporation." (Assuming that the Petitioners owned 50% of the Beach Club stock on December 15, 2014, which the Sevy Trusts dispute.) The Court of Appeal's long-held view is that dissolution is only to be granted when the competing interests "are so discordant as to prevent efficient management and the object of its corporate existence cannot be attained." In the Matter of Radom & Niedorff, 307 N.Y.1, 6-7 1954.

According to the Court of Appeals in Radom, the primary inquiry is "whether judicially imposed death will be beneficial to the stockholders." Even "considerable and apparently ever-increasing internal conflict," standing alone, is an insufficient basis for dissolution under BCL 1104(a)(3). Id.

The Second Department has stated that corporate viability and profitability trumps shareholder acrimony. In the Matter of Fazio Realty Corp., 10 A.D.3d 363, 365, 781 N.Y.S.2d 118, 199 (2d 2004).

The facts show that although there has been internal dissension concerning Sandra's self-dealing, the shareholders are not so divided that dissolution would be beneficial to them since the Beach Club continues to operate smoothly and profitably. Riginio, and the other maintenance personnel he will hire in the Spring, can take care of painting and repairs. And, as in the past, DeMilia can take care of marketing and sales, billing for facility rentals, scheduling of entertainment and summer camp enrollment, and David Brauner, Esq., the Beach Club's corporate counsel, can address renewal of the parking and catering contracts, with limited consultation with the Board. See, PA, ¶81.

The detailed facts contained in Pauline's Affidavit demonstrate without question that ordering the dissolution or sale of the Beach Club would not be beneficial, but in fact harmful, to the Beach Club's shareholders. According to Al Pruskowski, CPA, the Sevy Trusts' valuation expert, dissolution would likely result in the diminution in the value of all the Beach Club's stock by about $2,050,000.00. Pruskowski swears that dissolution or forced sale of the Beach Club or its assets will likely result in the business's value being reduced at least 25%, and further result in the needless recognition of taxes. PA, ¶83.

Indeed, to obtain an order directing dissolution based upon the grounds set forth in BCL 1104(a)(3), the Petitioners must establish that the dissension between the shareholders "resulted in a deadlock precluding the successful and profitable conduct of the corporation's affairs." Kaufmann v. Kaufmann, 225 A.D.2d 775, 640 N.Y.S.2d 94 (2d Dept. 1996). The Petitioners have failed to demonstrate that the disagreements between Sandra, Pauline and Mildred pose an irreconcilable barrier to the Beach Club's continued "functioning and prosperity." Thus, as a

matter of law, the Petitioners are not entitled to judicial dissolution under BCL 1104(a). In Re Kagan and Hazelkorn, 7 Misc.3d 1009 (A), 2005 WL 856007 *5 (Sup. Ct. Nassau Co. 2005),

The Petitioners claim that they are entitled to dissolution based upon the failure on December 15, 2014 to elect Sandra owner-manager for $90,000.00 a year, and the failure for two years to re-elect directors. PA, Ex. 1, ¶¶26-39 and 46. The Petitioners disregard the fact that the Board dealt with the devastating effects of Hurricane Sandy, and since Hurricane Sandy have run the Beach Club effectively and profitability.

Moreover, this Court must consider whether there may not have been a deadlock in electing directors at the 2014 annual shareholders meeting since the Sevy Family voted their 50% of the shareholder interests for directors, while they were only opposed by shareholders owning 40% of the Beach Club's stock. Consequently, the Sevy Family should have been able to elect directors. PA, ¶19.

B. If The Court Believes There Are Material Questions Of Fact Whether Dissolution Would Benefit The Shareholders, It Must Hold An Evidentiary Hearing.

In the Matter of Myers v. Gold, 77 A.D.2d 652-653, 430 N.Y.S.2d 144, 145 (2d Dept. 1980), a dissolution proceeding brought pursuant to BCL 1104(a)(3), the Second Department decided that a hearing was "necessary to determine whether the alleged dissension between the parties within their closely held corporation makes continued association unworkable and whether the continuance of the corporate business no longer is advantageous to the shareholders."

Similarly, in Glamorise Foundations, Inc., 228 A.D.2d 187, 188, 643 N.Y.S.2d 94 (1st Dept. 1996), the court decided that whether the discord between the parties was genuinely irreconcilable or terminal to the well being of the corporation must be determined at an evidentiary hearing. Therefore, if the court is not persuaded by Pauline's Affidavit, and its

exhibits, and Al Pruskowski's affidavit, that dissolution would not be beneficial to the shareholders, the Sevy Trusts respectfully request an evidentiary hearing to prove it.

OBJECTION 5

THE SEVY SHAREHOLDERS SHOULD HAVE BEEN ABLE TO ELECT DIRECTORS AT THE 2014 ANNUAL SHAREHOLDERS MEETING, 50% TO 40%, AND THUS THERE WAS NO DEADLOCK IN ELECTING DIRECTORS UNDER BCL §1104(a)(2) AND (c)

Petitioners cite BCL §1104(a)(2) in support of their petition, which provides that dissolution is appropriate if the shareholders are so divided that the votes required for the election of directors cannot be obtained. BCL §1104(c), also cited by Petitioners, provides that dissolution may be appropriate if the shareholders are so divided that they fail for at least two consecutive annual meetings to elect directors. The Petitioners allege that at the Beach Club's 2014 annual meeting of shareholders on October 29, 2014, the shareholders could not elect directors to replace the four holdovers. PA, Ex. 1, Petition, ¶44.

Pauline has provided proof that Stephen Carasso was a 10% shareholder in the Beach Club since January, 2014, and was the holder of the 10% stock interest he may have given (5% each) to David and Beth in 2013. Notwithstanding Stephen's ownership of the Beach Club stock on October 29, 2014, David and Beth (by proxy) each voted 5% of the Beach Club's stock at the 2014 Annual Shareholders Meeting, creating the deadlock. PA, ¶19.

Since David and Beth had no right to vote at the 2014 Annual Shareholders' Meeting because they were not shareholders, and without those votes the vote would have been 50% (25 of the 50 total shares of each company held by the Sevy Family shareholders) vs. 40% (20 shares of the total 50 shares which the Petitioners held). Thus, new directors should have been chosen at the 2014 Annual Shareholders' Meeting by the Sevy Family shareholders. Further, there is now a question about the bona fides of the votes at the 2013 annual meeting on September 27,

2013, at which David and Beth (by proxy) each voted 5% to block the election of directors for which the Sevy Family shareholders voted their 50%. PA, ¶19.

OBJECTION 6

SANDRA'S TRUST AND THE OTHER PETITIONERS HAVE ACTED IN BAD FAITH IN BRINGING THE PETITION, AND THUS DISSOLUTION CANNOT BE GRANTED

A. The Petition Was Not The Result Of A Bona Fide And Honest Consideration Of The Beach Club's Interests.

It is axiomatic that bad faith in seeking dissolution of a corporation is a defense to dissolution. Kavanaugh v. Kavanaugh Knitting Co., 226 N.Y. 185, 196 (1919). Sitting as a court of equity, this Court should prevent dissolution of a viable business where dissolution was conceived in bad faith. If Sandra, Lorraine and the other Petitioners are seeking to punish the Sevy Trusts for pressing Sandra to account for her self-dealing, such conduct clearly smacks of bad faith. PA, ¶¶42-73 and 85, and Feinberg v. Silverberg, Decision and Order, Index No. 3120-11 (Sup. Ct. Nassau Co. Sept. 6, 2013), pp. 8-9, a copy of which Decision and Order is attached as Appendix 1 to this Memorandum.

At bar, bad faith is also exhibited by Beth's and David's voting at the 2014 Annual Shareholders Meeting and joining as petitioners in the Petition while they did not own stock in the Beach Club. PA, ¶¶15-20.

In Kavanaugh, the Court of Appeals reversed the lower court's dismissal of a complaint which alleged that the defendants' resolution to dissolve the company and institute a dissolution proceeding was not the result of a bona fide and honest consideration of the company's interests but rather was done in bad faith and for the sole purpose of permitting the individual defendants to dissolve the company. According to the Court:

> The plaintiff's complaint is that the individual defendants who were the board of directors did not form the opinion that it was advisable to dissolve the corporation forthwith in good faith and through honest

> intention and endeavor. We need not state a detailed analysis of the contents of the complaint. Obviously, facts are alleged which permit, if they do not compel, the inference that the directors conceived and progressed the scheme of dissolving the corporation, irrespective of the welfare or advantage of the corporation and of any cause or reason related to its condition or future, through the desire and determination to take from the corporation and to secure to themselves the corporate business freed from interference or participation on the part of the plaintiff. Moreover, allegations of the complaint are, in effect, that the judgment or opinion of the directors was not honest, their action was not the result of good faith, the exercise of an honest judgment and an honest and unbiased consideration of any fact or circumstances affecting the general interests of the corporation and of all of its stockholders, and was in bad faith and for the sole purpose of permitting the individual defendants Kavanaugh to dissolve the corporation for the purpose of depreciating the value of the corporate property and the plaintiff's proportionate interest therein. Those allegations are matters of fact.

Id. at 197-198.

According to Al Pruskowski, CPA, the Sevy Trusts' valuation expert, dissolution would likely result in the diminution in the value of all the Beach Club's stock by about $2,050,000.00. Pruskowski further states that dissolution or forced sale of the Beach Club or its assets will likely result in value being reduced at least 25%, and result in the needless recognition of taxes. PA, ¶83.

Petitioners' actions in seeking dissolution of a functioning, profitable business may well be compelled by their desire to force the Beach Club's assets to be sold at a "fire sale" so Petitioners can buy them cheaply, and obtain the Sevy Family interest for far below their fair value. PA, ¶87. The Court of Appeal's decision in Kavanaugh, supra, and this Court's decision in Feinberg, supra, provide the legal basis for this Court to prevent Petitioners from pursuing such a scheme. Petitioners should be barred from obtaining the relief they seek herein because they are simply acting in bad faith in retaliation for the demand that Sandra account for her unauthorized bonus-taking.

In addition, Petitioners filing a Petition with holders of only 40% of the stock and demanding that this Court exercise its discretion and take the extraordinary step of judicial dissolution, especially where there is the spectre of the Petitioners potentially seeking to profit from a "fire sale," warrants dismissal of the Petition. As this Court found in Feinberg, supra, Appendix 1, pp. 8-9, manufactured dissension does not constitute an irremedial barrier to the continued functioning and prosperity of a corporation. The Beach Club is an entity distinct from its owners which can be financially viable notwithstanding some internecine conflict.

B. If The Court Cannot Conclude On The Record Before It That The Petitioners Have Acted In Bad Faith, An Evidentiary Hearing Is Necessary To Determine The Issue.

In the Matter of Myers v. Gold, 77 A.D.2d 652, 653, 430 N.Y.S.2d 144, 145 (2d Dept. 1980), a dissolution proceeding brought pursuant to BCL 1104(a)(3), the Second Department held that a hearing was "necessary to determine whether the alleged dissension between the parties within their closely held corporation makes continued association unworkable and whether the continuance of the corporate business no longer is advantageous to the shareholders. Allegations of petitioner's bad faith constitute a defense to a dissolution proceeding and must be heard by Special Term as well."

Pauline has shown that Sandra intentionally manufactured a dispute on December 15, 2014 over her self-dealing and compensation, which dispute the Petitioners are using to support their claim that there are irreconcilable differences in the management of the Beach Club. Sandra could very easily not have taken a "bonus" in October, 2014, and, when requested, just as easily could have returned $20,000.00 to the Beach Club and thereby solved the problem. PA, ¶¶63-68. The fundamental fact is that the Club continues to function. Pauline and Mildred have had input into the running of the Beach Club, have obtained access to the corporate books, and there have been discussions concerning Pauline and Mildred selling their shares.

On the other hand, the Petitioners did not file the Petition as the result of a bona fide and honest consideration of the Beach Club's interests. PA, ¶87. In that vein, neither Sandra, Lorraine, nor any of the Petitioners discussed the ramifications of a dissolution with Pauline and Mildred before filing, nor did they take the time to receive or consider Pauline and Mildred's offer to sell their stock to the Carassso Family. PA, ¶¶78, 86-88. However, since receiving Mildred and Pauline's offer, there have been discussions between the attorneys for the Carasso Family and for the Sevy Trusts about the Carasso Family purchasing the Sevy Trusts' shares. PA, ¶86.

The Petitioners' alleged deadlock does not pose an insurmountable barrier to the continued functioning and prosperity of the Club, at least in the short term. When you add to that, the fact that Petitioners did not have a bona fide 50% of the shareholders bring the Petition, the Court can readily discern Petitioners' true bad faith motivation. If the Court does not find the Petitioners' actions patently taken in bad faith, the Sevy Trusts respectfully request a hearing to demonstrate the Petitioners' bad faith.

WHEREFORE, the Sevy Trusts demand judgment dismissing the Petition, as well as the costs and disbursements the Sevy Trusts incur in this case, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 6, 2015

TOBIAS LAW FIRM, P.C.

By: ______________________
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application of

DAVID CARASSO, HELAINE FRASER, HOWARD GOLDBERG, ROBERT GOLDBERG, ARTHUR ISRAEL, RICHARD ISRAEL, SOL ISRAEL, LORRAINE LEVY, BETH CARASSO SPECTOR and SANDRA C. WEIN RECOVABLE TRUST,

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Index No. 606702/2014

VERIFICATION OF ANSWER

Assigned to:
Hon. Vito M. DeStefano

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

PAULINE PERAHIA, being sworn, says:

Deponent is a trustee of the Shareholder-Respondents Pauline J. Perahia Revocable Trust ("Pauline's Trust"), a New York trust, one of the Shareholder-Respondents in the proceeding herein; Pauline's Trust is united in interest with Shareholder-Respondent Mildred S. Quain's Trust ("Mildred's Trust"); deponent has read the foregoing Verified Answer and Affirmative Defenses and knows the contents thereof and the same is true to deponent's own knowledge, except those matters therein which are stated to be on deponent's information and belief, as to those matters,

those matters, deponent believes it to be true. This verification is made by deponent because deponent is a trustee of a New York trust and Pauline's Trust is united in interest with Mildred's Trust.

Pauline J. Perahia

Sworn to before me this
19 day of February, 2015

Notary Public

DAVID G. TOBIAS
Notary Public State of New York
Qualified in New York County
Lic. No. 02TO4741211
Commission Expires August 6, 2017