

1 THE SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU: TRIAL PART 12  
3 ACTION NO. 1 INDEX NO. 604319-15  
4 ACTION NO. 2 INDEX NO. 602747-16

5 -----X  
6 MARK K. FELDMAN,  
7 Plaintiff,  
8 -against-  
9 NATALE F. CARDINO,  
10 Defendant.

ORIGINAL

11 -----X  
12 NATALE F. CARDINO, Individually and as a  
13 Shareholder of Mana Construction Group,  
14 Ltd., on behalf of himself and in the  
15 Right of Said Corporation,  
16 Plaintiffs,  
17 -against-  
18

19 MARK K. FELDMAN, MANA CONSTRUCTION GROUP,  
20 LTD (nominal defendant) and MP3  
21 CONSTRUCTION INC.,  
22 Defendants.

23 -----X  
24 Supreme Court  
25 Mineola, New York  
May 11, 2016

B E F O R E:

HONORABLE TIMOTHY S. DRISCOLL  
Supreme Court Judge

A P P E A R A N C E S:

WEISS ZARETT BROFMAN SONNENKLAR & LEVY, P.C.  
For Plaintiff Action 1 & Defendants Action 2  
333 New Hyde Park Road, Suite 211  
New Hyde Park, New York 11042  
BY: MICHAEL D. BROFMAN, ESQ.

THE MARGIOTTA LAW FIRM, P.C.  
For the Defendant Action 1 & Plaintiff Action 2  
4 West Main Street  
Bay Shore, New York 11706  
BY: LOUIS J. CAPASSO, ESQ., of Counsel

Kelly Culen  
Official Court Reporter

1 THE CLERK: The case of Feldman versus  
2 Cardino, Index No. 604319 of 2015, Action No. 2, 602747  
3 of 2016. Counsel your appearance.

4 MR. BROFMAN: Michael Brofman, Weiss Zarett  
5 Brofman Sonnenklar & Levy PC representing Feldman, Mana  
6 Construction and MP3.

7 THE COURT: Good morning to you, sir.

8 MR. CAPASSO: Good morning, your Honor, Louis  
9 J. Capasso, of counsel to Paul Margiotta, 4 West Main  
10 Street, Bay Shore New York 11706, counsel for Mr.  
11 Cardino.

12 THE COURT: Good morning, good morning.  
13 Please be seated, gentlemen. Thank you so much.

14 So the initial action, that is an action under  
15 Index No. 604319 of '15, has been pending here for a  
16 couple of months, and we have a June 12th of 2017 trial  
17 date and we will be managing this case as well as the  
18 new case that I'll mention in a moment to that trial  
19 date. Everyone should make sure that trial date is in  
20 their calendar in stone or blood or whatever non  
21 disappearing ink, all right?

22 This case is -- the beginning of the end of  
23 every case in this part is the trial date that I set.  
24 Absent something unexpected generally happening to  
25 counsel, usually in the nature of health difficulties

1 and the like, so just to manage expectations going  
2 forward.

3 Now, when the lawyers met with my law  
4 secretary last on April 27th, it was discussed that  
5 there was a case that had been pending before Suffolk  
6 County commercial division Judge Jerry Gargiulo and  
7 that Judge Gargiulo had I suppose on motion, although  
8 I'm not exactly certain, been transferred to here.

9 MR. BROFMAN: Your Honor, can I give you --  
10 explain.

11 THE COURT: That would be wonderful. If you  
12 can stand. Thank you so much.

13 MR. BROFMAN: Your Honor, on -- what had  
14 occurred is this second action was commenced.

15 THE COURT: The Gargiulo action for want of a  
16 better word.

17 MR. BROFMAN: The Suffolk County action. The  
18 Suffolk County action was commenced and one of the --  
19 there was a number of various different causes of  
20 action. I think eleven. We -- one of the causes of  
21 action was for the dissolution of Mana Construction.

22 THE COURT: Yes.

23 MR. BROFMAN: And in that cause of action, we  
24 filed immediately, as soon as we saw that, and since  
25 they had referenced Section 1104(a) of the BCL, plus

1 those allegations of special circumstances, we  
2 immediately filed an 1118 BCL notice. At the same time  
3 we filed a motion to dismiss the case, portions of the  
4 case. Some of the portions of the case we looked to  
5 dismiss were because they were involved in this  
6 particular litigation, they were actually defenses to  
7 this case, the case before you.

8 At the same time, we also asked that since  
9 they had commenced the action as an action for  
10 dissolution rather than special proceeding, which was  
11 what was supposed to be required under the BCL, we  
12 asked that the Court allow it to continue but as a  
13 special proceeding and ask the Court to transfer venue  
14 to this Court because we had this action pending  
15 between Mr. Cardino and Mr. Feldman and Mr. Cardino and  
16 it was kind of related. We understood that that venue  
17 was proper in Suffolk County. We never said it wasn't.

18 THE COURT: That's where the corporation  
19 that's the subject of the dissolution action is  
20 headquartered, so venue is proper?

21 MR. BROFMAN: Venue is in Nassau County, your  
22 Honor. The venue is -- the corporation is Nassau  
23 County not Suffolk but because of the business  
24 corporation law, you can bring the action in the  
25 judicial district. So it could have been brought in

1 Suffolk or Nassau, and since Mr. Cardino resided in  
2 Suffolk, he brought it in Suffolk, which was all fine.  
3 We understood that venue was appropriate there but we  
4 thought for the convenience of the parties, et cetera,  
5 it should be transferred because of what was going on  
6 in this case.

7 THE COURT: An that was on consent that it be  
8 transferred here?

9 MR. BROFMAN: Actually, no, nothing's been on  
10 consent, Judge.

11 The motion was fully briefed. We brought the  
12 motion. Opposition was filed. We filed a reply.

13 Right after that occurred -- now we brought  
14 the motion in January. Sometime on April 1st, the  
15 plaintiff in Suffolk County action brought on this  
16 order to show cause in which they sought injunctive  
17 relief and an amendment to the complaint and sought  
18 eliminate the 1104(a) process and we have filed our  
19 opposition to that and we -- the injunction itself, the  
20 temporary restraining order which was done ex parte,  
21 your Honor, I just want you to be clear on that.

22 THE COURT: By Judge Gargiulo?

23 MR. BROFMAN: That's correct. It was done ex  
24 parte on April 1st.

25 On April 5th when a conference was requested

1 by the Court, we went in and said, look, Judge, it  
2 shouldn't have been done ex parte. We think it was  
3 improper. We're going to -- if we don't get this  
4 dissolved today or resolved, as far as the TRO is  
5 concerned, we're going to go to the appellate division.

6 So what occurred is that, in discussions with  
7 counsel, we agreed on a change in the order to show  
8 cause, the TRO, with the understanding at that time  
9 that we were going to have a hearing.

10 MR. CAPASSO: A hearing the following week.

11 MR. BROFMAN: Right, a hearing I believe on  
12 April 20th was the scheduled hearing.

13 MR. CAPASSO: Yes.

14 MR. BROFMAN: So prior to the scheduled  
15 hearing, and we were all gearing up for it -- prior to  
16 the scheduled hearing, Judge Gargiulo issued an order  
17 denying the motion that we brought without prejudice  
18 and with leave to renew once the case is transferred  
19 and transferred the case to Nassau County.

20 THE COURT: Which puts me in an interesting  
21 position of being an appellate judge, I suppose, with  
22 respect to Judge Gargiulo's order.

23 MR. BROFMAN: The original order to show cause  
24 in a way, your Honor, because rather than run to the  
25 appellate division, I didn't want to do that at this

1 point. But it really creates another problem.

2 Because --

3 THE COURT: Explaining why it's here now.

4 MR. BROFMAN: It's here, and how I resolve it  
5 here is a very interesting problem. There's an 1118  
6 election, and under 1118 in the case law, and I have  
7 the case law --

8 THE COURT: We did the Arizona iced tea trial  
9 here, so I spent the better part of two years, the  
10 better part of six weeks on trial cuddling up with 1104  
11 and 1118 but you can feel free to educated me further.

12 MR. BROFMAN: No. I won't educate you, Judge.  
13 I will say under 1118 generally, if we bring an  
14 application to the court for a stay, the appellate  
15 courts would say you should issue this stay while we  
16 deal with 1118 but they brought a motion to amend --

17 THE COURT: A stay?

18 MR. BROFMAN: To stay the dissolution while  
19 you do the valuation hearing. Which is -- which would  
20 be fine. But if we're staying the dissolution while  
21 we're doing the evaluation hearing, that does occur.  
22 If there's an injunction enjoining us in any way from  
23 operating the company that our client has elected to  
24 purchase the shares of his client, it creates other  
25 issues.

1 THE COURT: Can I invite this thought process?  
2 Let's pretend for a minute that there was nothing  
3 before Judge Gargiulo. Let's pretend that today is  
4 everything in front of Judge Driscoll. What is the  
5 most orderly way to proceed rather than try to  
6 transmogrify what happened in Suffolk and what has  
7 happened here into some kind of coherent order? It  
8 sounds like that's not possible or that might be too  
9 much effort rather than to say, okay, here we are  
10 today. There is a petition for dissolution.

11 Okay, great, Judge, can you decide what you  
12 want to do with that? Can you either dissolve the  
13 company, which is perhaps what the petitioner in the  
14 dissolution action wants, or can you stay the  
15 dissolution and can you give us a schedule such that we  
16 can have valuation and such that we can litigate the  
17 initial case that was brought here?

18 MR. BROFMAN: Your Honor, I would prefer the  
19 latter, all right, that we have the stay and we go  
20 through a valuation. They would obviously prefer the  
21 former. It is that problem. The major problem is our  
22 client is operating the company. Their client is not  
23 there. Why he's not there is something that is  
24 disputed between the parties.

25 THE COURT: Okay.



1 MR. BROFMAN: But there is -- there are  
2 significant disputes, but if, if an Order to Show Cause  
3 prevents this company from operating, then it crashes  
4 everything. My client has put in over \$6 million into  
5 the company. His client has no investment in the  
6 company.

7 THE COURT: I'll certainly hear -- Mr.  
8 Capasso, you can be seated, if you'd be so kind.

9 Mr. Brofman, please continue.

10 MR. BROFMAN: There are loans that are  
11 outstanding to M&T Bank who is a -- which is a secured  
12 creditor here, over \$2 million, approximately  
13 \$2 million, actually, that we restructured in order to  
14 be able to allow the business to keep operating.

15 There is a second business that was opened by  
16 Mr. Feldman, MP3. MP3 is bidding on jobs. Has not  
17 gotten any work and hasn't spent any money, and all the  
18 money from MP3 went into Mr. Feldman, none of Mana's  
19 money. The books have been kept separate. So we've  
20 been very careful the way this has been done.

21 The problem is what we'd like to do is we  
22 would like to get to the point where we can deal with  
23 this issue of the 1104(a) dissolution and our 1118  
24 request to be able to value the shares. And we think  
25 that the most orderly way -- because if he's right, if

1 they're right about all the terrible, nefarious things  
2 that Mr. Feldman did, if they're right, your Honor can  
3 certainly decide that that will change the valuation.

4 THE COURT: That's a factor in buyout -- it's  
5 a factor in valuation.

6 MR. BROFMAN: Correct. And if they're wrong,  
7 then your Honor will determine the valuation based upon  
8 the battle of the experts, and we'll look at the  
9 numbers and we'll be done.

10 THE COURT: Either way your client is going to  
11 be the owner of this company going forward?

12 MR. BROFMAN: Correct.

13 THE COURT: Cardino is out. Feldman is the  
14 sole cook and bottle washer.

15 MR. BROFMAN: Right. Which is why the  
16 injunction, even a limited temporary restraining order  
17 that exists today or any kind of injunction makes,  
18 therefore, changes -- is a game-changer and basically  
19 makes my client's ability to be able to purchase the  
20 shares of stock impossible under the circumstances.

21 THE COURT: If I may, I see that when Mr.  
22 Margiotta or somebody from Mr. Margiotta's office first  
23 came before Judge Gargiulo, it's almost like a  
24 Christmas list here. I've never seen so many items of  
25 decretal relief in a TRO in seven years and seven days

1 I've been doing this kind of work, seven years and  
2 eight days. I've never seen that. It seems like there  
3 was a lot of stuff that was issued. Then there was  
4 stuff that was crossed out. Is what remains and is not  
5 crossed out, is that what is the TRO that's in effect  
6 right now?

7 MR. BROFMAN: Correct, your Honor. As of  
8 April the 5th.

9 THE COURT: I see.

10 MR. BROFMAN: And where we are at this point  
11 is that my client's trying to operate the business.  
12 There are a lot of accounts receivable that are being  
13 collected including big one with the City of New York  
14 that needs to be collected and paid over to those  
15 secured creditors. There are other operations that are  
16 still going on. There's the business being done by  
17 Mana. There's bids being done by MP3 and we've  
18 acknowledged that there is some relationship between  
19 the two companies. MP3 has also guaranteed all of the  
20 debt that was due from Mana to M&T Bank.

21 In addition, your Honor, my client put up his  
22 house as collateral for that. So there is a reason  
23 that if they get what they want, all they do is they  
24 hurt our client, they don't get any money out of this.  
25 Because when all is set and done, when you look at the

1 balance sheet that's here, when all is said and done  
2 there is no equity for creditors. There is no equity  
3 here. It would be a deficiency to pay the debt that's  
4 due on the company and, therefore, the only thing that  
5 this is doing is an attempt to injure Mr. Feldman for  
6 whatever reason. Your Honor, there is a dispute  
7 between the parties. There's no two ways about it as  
8 to what happened and what went on.

9 THE COURT: Marriage is tough, business  
10 relationships may be tougher. Business relationships  
11 maybe tougher. I got you.

12 MR. BROFMAN: This is a tough divorce.

13 THE COURT: Sure.

14 MR. BROFMAN: And the reality is that what we  
15 need -- what we want to do is we want to move this  
16 along to the end game as quickly as possible.

17 THE COURT: Is there a formal application? By  
18 formal application, I mean a motion on notice or an  
19 application on written notice such that it would be  
20 teed up appropriately for appellate review for what  
21 you're seeking, which is the staying the dissolution  
22 pending valuation and incorporating these bad acts into  
23 valuation?

24 MR. BROFMAN: I have not brought that motion  
25 as of yet, your Honor. We were about to do that. We

1 brought a motion -- we brought a motion to dismiss  
2 portions of the case before Judge Gargiulo.

3 THE COURT: Right.

4 MR. BROFMAN: That was pending. And that,  
5 again -- in fact, we were about to file the motion for  
6 reargument -- for renewal, excuse me, in accordance  
7 with Judge Gargiulo's order that allowed us to renew  
8 that in front of you. And to reconsider -- to look at  
9 those issues and on a substantive basis -- because on a  
10 substantive basis they've never been decided and  
11 decision's never been made.

12 THE COURT: Did you ever see the movie  
13 Stripes?

14 MR. BROFMAN: Yes, I have.

15 THE COURT: And there's a crazy man in there,  
16 but one of the lines he says and, Mr. Francis,  
17 everybody calls him Psycho, I don't like anybody  
18 touching my stuff. I don't like anybody touching my  
19 stuff. So you're asking me to contemplate and again  
20 sitting as an appellate judge with respect what Judge  
21 Gargiulo did. I'm strongly suggesting again that we  
22 adopt the course of action which really parts with what  
23 Judge Gargiulo did and we move forward, so that I don't  
24 have to try to get in his mind and get in the  
25 uncomfortable position as sitting as appellate judge,

1 which is what I am on the 2221 motion. And instead  
2 I'll impose whatever order or you want to call it non  
3 order, I'll impose whatever I do. And then you're at  
4 the appellate division at least with me knowing what  
5 I've done. But I have to figure out what Judge  
6 Gargiulo did, and try to figure out what I can do to  
7 engraft something on top of that.

8 MR. BROFMAN: Your Honor, I'm happy to bring  
9 the 1118 motion. I'm happy to do it. We'll tee it up  
10 right away.

11 THE COURT: Fair enough.

12 MR. BROFMAN: And that will allow your Honor  
13 to do what you need to do, but I still have to deal  
14 with this injunctive relief that's out there right now.

15 THE COURT: Yes, recognizing that the motion  
16 would be submitted today, and the CPLR gives me twenty  
17 days to decide motions for preliminary injunction, and  
18 in the seven years and eight days, I've never been over  
19 twenty days, do you have an application -- do you have  
20 an application that I vacate any portion of the TRO now  
21 recognizing that that would probably be a long shot at  
22 best, or are you just asking me to decide the  
23 preliminary injunction application in the normal  
24 course?

25 MR. BROFMAN: Your Honor, I would like to see

1 the TRO's vacated completely.

2 THE COURT: Right, I know you would like to do  
3 that but understanding that I don't know what happened  
4 in Suffolk and I'm trying to undo and do -- I'm trying  
5 to create some order out of the chaos. Not that this  
6 is chaotic at all. I'm trying to get some order out of  
7 having a case that I managed for a couple of months and  
8 having a brand new case that's coming with a certain  
9 temperature that was raised without me knowing fully  
10 how the temperature was raised. I guess I'm managing  
11 expectations. I'm not inclined to vacate the TRO in  
12 any way, but watch your mailbox in the next twenty  
13 days.

14 MR. BROFMAN: So, your Honor, if you're not  
15 inclined to vacate the TRO, I can live with the TRO if  
16 we have to.

17 THE COURT: Terrific.

18 MR. BROFMAN: And I know that counsel for Mr.  
19 Cardino would like to have a hearing, an evidentiary  
20 hearing on this injunction.

21 THE COURT: I'll hear you.

22 MR. BROFMAN: Because I know we had teed up  
23 for that purpose.

24 THE COURT: Assume that what happened there --  
25 I don't know that. Assume that I'm going to manage the

1 case my way. So the fact that Judge Gargiulo said it  
2 may be now that you're hear, it's nice. Right here  
3 you're with me.

4 MR. BROFMAN: Your Honor, I would tee up at  
5 the same time I would bring on the motion under 1118 to  
6 stay the proceeding while your Honor decides this,  
7 obviously, and seek the stay of the proceeding --

8 THE COURT: Well, you're not formally staying.  
9 You're saying, Judge, I'm incorporating the issues that  
10 would be in dissolution into valuation.

11 MR. BROFMAN: Well, that's what I meant,  
12 Judge.

13 THE COURT: I understand.

14 MR. BROFMAN: I meant staying the dissolution  
15 itself --

16 THE COURT: Yes.

17 MR. BROFMAN: -- but proceeding on the  
18 valuation under 1118.

19 THE COURT: I understand, I understand. But I  
20 suppose you're acknowledging that the valuation date,  
21 if you will, is the date on which a dissolution  
22 proceeding was commenced?

23 MR. BROFMAN: Correct, which was December 9,  
24 2015, that's correct, your Honor.

25 THE COURT: Thank you, Mr. Brofman, I



1 appreciate the fine preparation.

2 Mr. Capasso. Understanding that --

3 Have we met before in this courtroom? I think  
4 we have once, yes?

5 MR. CAPASSO: Once, yes, your Honor.

6 THE COURT: I'm very familiar with Mr.  
7 Margiotta, of course.

8 Understanding the batting average for TROs in  
9 this part is below the Mendosa line, sorry to make the  
10 Mets reference. Below the Mendosa line. Which means  
11 you walk out of here fine. You have a TRO, you have  
12 it. Odds are until I turn to the motion on the merits  
13 at which time you probably don't have too much of what  
14 you have now. So I'm happy to hear you. Understanding  
15 that's the history.

16 Again, if you looked at, you know, a hundred  
17 or so preliminary injunction applications, that's what  
18 you'd see. You'd see very few TROs turning into  
19 preliminary injunctions well below the Mendosa line.  
20 So I'm not prejudging this motion. I'm saying that's  
21 the history. You have an uphill battle given the  
22 history. I'll hear you.

23 MR. CAPASSO: I just want to fill in some of  
24 the, you know, gaps.

25 THE COURT: Yep.

1 MR. CAPASSO: Although my adversary did a  
2 great job giving you the history of it. Not only -- I  
3 mean, there is an application pending to allow an  
4 amended complaint which would take out the 1104 and  
5 have a different -- have the valuation go on a  
6 different path.

7 THE COURT: What would the valuation be under  
8 what section of the BCL?

9 MR. CAPASSO: He wants to -- Mr. Margiotta  
10 wants -- our client wants it dissolved and sold and not  
11 have the plaintiff, you know, purchase the stock.

12 THE COURT: I see. He wants to take out the  
13 purchase option under 1118?

14 MR. CAPASSO: Yes.

15 THE COURT: That's an interesting amendment  
16 theory because, of course, 3025 says amendment is given  
17 freely upon terms and conditions upon which the Court  
18 deems just. But Mr. Brofman has a wonderful argument  
19 that says an end run around the very procedure and the  
20 very protection that he gives -- this is a great case.  
21 This is fantastic, please continue.

22 MR. CAPASSO: Okay. And actually, when I on  
23 behalf of Mr. Margiotta, I presented to you the order  
24 to show cause --

25 THE COURT: You did, okay.

1 MR. CAPASSO: -- ex parte. And in it -- I  
2 mean, there was a Christmas list that was there. And I  
3 didn't do the papers, but we settled for --

4 THE COURT: The papers are wonderful. The  
5 fact that you have over 30 items in decretal relief and  
6 you got 26 of them is a testament to your accuracy and  
7 your typewriting ability.

8 MR. CAPASSO: But the main thrust of it is  
9 that the plaintiff has formed another corporation  
10 that's just siphoning off of Mana Construction using  
11 the same employees. And, you know, of course, it's  
12 contested but that's our position. That's why we  
13 sought the TRO.

14 Now, the judge did, you know, put a stay on  
15 the selling of any assets. Under the guise of a  
16 preliminary conference, the parties were ordered to go  
17 before Judge Gargiulo the following week and basically  
18 were told to make the TRO palatable to both sides,  
19 which the only reason why we consented was because we  
20 were told that there was a hearing on April 20th. And  
21 then in between, as counsel has stated, he kicks it  
22 over to Nassau County in your lap.

23 THE COURT: Delighted to have it. This is  
24 going to be a great case. Delighted to have you guys.

25 MR. CAPASSO: Mr. Margiotta had filed a notice

1 of appeal on the changing of the TRO based on that. So  
2 that's pending at the appellate division.

3 THE COURT: That's on motion, not on formal  
4 appeal, right? That's on motion?

5 MR. CAPASSO: Just in a notice. We didn't do  
6 the motion yet. He didn't do the motion yet. I mean,  
7 his wish is to have a hearing on the TRO to get  
8 everything set up and then move forward with the  
9 litigation.

10 THE COURT: Sure. Okay. Okay, all right, all  
11 right. Is there anything else for the record before I  
12 invite you to come on up to the Bench? Mr. Capasso,  
13 anything?

14 MR. CAPASSO: No, I'm finished.

15 THE COURT: I've got you too, Mr. Brofman,  
16 I've got the positions. Let's go back to Chambers for  
17 a moment. Off the record.

18 (A conference was held in Chambers.)

19 THE COURT: We're back on the record.

20 So I think we've created even some more order  
21 out of this wonderful intellectually challenging and  
22 absolutely fascinating case. I thank counsel for  
23 spending the time with me to educate me further about  
24 the various issues in the matter. And I think we have  
25 a schedule that will work for the lawyers, work for

1 their clients and work for the Court. And that is that  
2 the order to show cause that I have that was originally  
3 filed before Judge Gargiulo will be submitted for  
4 decision today.

5 That order to show cause essentially has two  
6 branches. It has various items of a TRO that Mr.  
7 Capasso wishes me to convert into a preliminary  
8 injunction as well as items from the TRO that were  
9 stricken that I think may well still be alive for  
10 purposes of a preliminary injunction application.

11 The second part of the application is an  
12 application to amend the complaint in the matter.

13 So let me just take that part first. And as  
14 to that part of the application, the Court is directing  
15 now that Mr. Cardino, the petitioner in the dissolution  
16 action, provide Mr. Brofman with a copy of his proposed  
17 amended complaint on or before May 27th, and also  
18 provide a copy of that proposed amended complaint to  
19 the Court. The Court would then invite further  
20 opposition from Mr. Brofman with respect to the  
21 application to amend the complaint and would invite  
22 that opposition to be received on or before June 17th  
23 of 2016. Mr. Capasso will then be provided the  
24 opportunity to reply, recognizing that the Court does  
25 not typically permit reply on orders to show cause.

1 This is more in the nature of something that would  
2 typically be filed by notice of motion, that is an  
3 application to amend the complaint, and, indeed, a  
4 reply I think is necessary given the procedural history  
5 of the case. So that reply would be by July 1st, and  
6 the Court will then consider the application to amend  
7 the complaint on July 1st upon submission.

8 In addition, there are two motions that Mr.  
9 Brofman conferenced with the Court. One is an  
10 application to renew the objections, if you will, that  
11 were made before Justice Gargiulo that was subject of a  
12 motion before Justice Gargiulo and indeed an order --  
13 decision and order issued by Justice Gargiulo.

14 The second motion is a putative motion, is a  
15 motion to stay the 1104(a) dissolution pending the  
16 valuation that Mr. Brofman has asked for in conjunction  
17 with Mr. Brofman's client's decision to buy out, if you  
18 will, Mr. Cardino.

19 Now, of course, that part of the case may be  
20 mooted if the Court grants Mr. Cardino the ability to  
21 amend his complaint, as we discussed earlier. Indeed,  
22 Mr. Cardino's application to amend the complaint may be  
23 denied, and then the Court would have to consider the  
24 application of Mr. Brofman to stay the dissolution, but  
25 I want to consider it all at one time, and, thus, for

1 any motions that Mr. Brofman wishes to file, in  
2 particular these two motions that we just contemplated,  
3 motion to renew and a motion to essentially stay 1104  
4 dissolution pending valuation. Those motions are to be  
5 filed by May 27th, and Mr. Capasso will provide  
6 opposition by June 17th and reply will be July 1st. So  
7 reply and return date of July 1st will allow the Court  
8 to consider all of these different issues all at one  
9 time.

10 Now, as I said earlier, the order to show  
11 cause with respect to the TRO in the preliminary  
12 injunction will be submitted today, and you will have a  
13 decision within twenty days consistent with article 22  
14 of the CPLR.

15 Judge McLaughlin will not be happy with me of  
16 not remembering whether it's 2219 or 2220.

17 It is 2219. So you will have a decision  
18 within 20 days, so that is on or before June 1st. The  
19 Court will render its decision, and you will have it in  
20 the mail around then.

21 To allow counsel the time to potentially work  
22 out a preliminary injunction that they can all live  
23 with, I've told counsel that I don't intend on  
24 considering this motion until two weeks from today,  
25 until May 25th, May 26th and that allows counsel the

1 opportunity, if they are able, to come to some  
2 agreement to moot the preliminary injunction issue,  
3 they have opportunity to do that, understanding, of  
4 course, that in this part cases don't get adjourned  
5 into the ether. So you know what the end date is. The  
6 end date on the preliminary injunction is June 1st.  
7 I'll make a decision. You'll have till May 26 to talk  
8 among yourselves and notify me of any agreement that  
9 you have. And then we'll next get together on  
10 September 15 at which time all of these different  
11 motions will be decided and we will see where we are  
12 going forward.

13 With that in mind, Mr. Brofman, is anything  
14 further I can do for you today?

15 MR. BROFMAN: No, thank you.

16 THE COURT: Mr. Capasso, anything further?

17 MR. CAPASSO: No, no thank you.

18 (CONTINUED ON THE NEXT PAGE TO INCLUDE THE  
19 CERTIFICATION.)  
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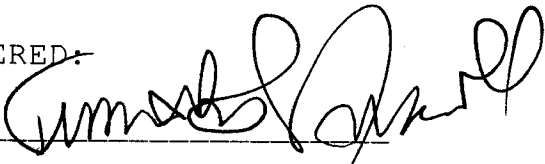


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THE COURT: May I ask counsel to order the minutes of these outstanding proceedings. I am going to so order the minutes and I want to, again, have everybody clear on what I've said and what I've ordered, so if you can make arrangements to split the cost with Kelly, that will be grand. Thank you both so much.

\* \* \* \* \*

SO ORDERED:



HON. TIMOTHY S. DRISCOLL

Dated: 6-17-2016

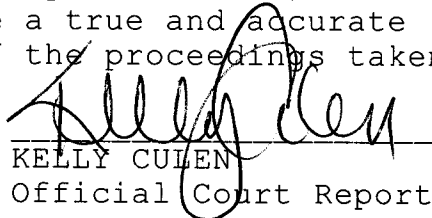
**ENTERED**

JUN 17 2016

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

**C E R T I F I C A T I O N**

I, KELLY CULEN, an Official Court Reporter of the State of New York, County of Suffolk, do hereby certify this transcript to be a true and accurate stenographic transcription of the proceedings taken by me to the best of my ability.

  
KELLY CULEN  
Official Court Reporter