

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of

Index No. ____/2016

TARA NORVELL, as a Managing Member of
GUCHI'S IDEA LLC and
on behalf of GUCHI'S IDEA LLC,
Petitioner,

VERIFIED PETITION

for an order and judgment dissolving the company
pursuant to New York Limited Liability
Corporation Law LLCL §702

-against-

GUCHI'S IDEA LLC and
YUJI HARAGUCHI, individually and in his capacity
as a Managing Member of
GUCHI'S IDEA LLC

Respondent.

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Petitioner TARA NORVELL, as a Managing Member of GUCHI'S IDEA LLC, alleges upon personal knowledge as to herself and her own acts and upon information and belief as to all other matter, through his attorney as follows:

INTRODUCTION

1. This is a special proceeding brought in accordance with Article 4 of the CPLR and pursuant to New York LLCL § 701 & 702, for judicial dissolution of GUCHI'S IDEA LLC ("GUCHI") a company organized under the laws of the State of New York with its principal executive office in New York City.

2. This proceeding is brought by TARA NORVELL, a member of GUCHI'S IDEA LLC holding at least 25% of all membership interests, and entitled to at least 25% of all distributions and profits and as one of two voting members of the company. There is a dispute over the other

25% between the parties. There are only two members with authority to control and manage the company: Ms. NORVELL and Mr. YUJI HARAGUCHI.

3. In May 2016, purporting to act under such authority, respondent issued an “action by written consent of the majority member” and made a “Capital Call” which petitioner believes was not actually done, was not necessary and violates the New York State Limited Liability Company Law (“LLCL”) under any circumstances, which reduced Ms. NORVELL’s share to 14.6% improperly, when she did not contribute \$25,000. Exhibit “A”.

4. There is no operative Operating Agreement signed between the members of the Company. The LLCL therefore controls. The respondent purports to have executed an Operating Agreement unilaterally as of April 17, 2016. Petitioner does not have a copy of this agreement and does not agree with the validity of such document.

5. On or about December 29, 2015, in direct contravention of the LLCL which requires approval of all members to ratify an operating agreement Mr. YUJI HARAGUCHI purported to ratify an operating agreement, solely to harm Ms. NORVELL, by substantially increasing his salary to \$145,000 (from \$48,000) and terminating her as an employee, decreasing her responsibilities and authority and over the direct objection of Ms. NORVELL. See, Correspondence, annexed cumulatively as Exhibit “B”.

6. In addition, this is also “retroactive to 2015” and appears that for 2015, he retroactively drew a guaranteed payment of \$127,914.40 with total compensation of \$145,000 – despite no agreement by the petitioner. See, Exhibit “B”.

7. The accounting has Ms. NORVELL meanwhile at a negative number and includes a “loan”. Her salary is \$42,534 (despite working there at least 8 months in 2016) with total compensation of about \$48,941.

8. This action by YUJI HARAGUCHI was done to harm the petitioner and was in bad faith and shockingly was done on advice of counsel, Stuart Kagen, Esq. upon information and belief. Exhibit "B", Letters dated December 22, 2015 and January 28, 2016.

9. Therefore, the "operating agreement" that respondent purports to control this company is null and void. This Court should grant dissolution. Clearly, the Company can no longer operate as intended due to deterioration of the working relationship between the members.

10. Clearly, YUJI HARAGUCHI's actions are improper and violate good conscience and the LLCL. Therefore, the company should now be dissolved, and YUJI HARAGUCHI should have to disgorge his improperly taken salary and distributions to make Ms. NORVELL whole.

11. Because the managers and managing members of are the only two members with authority to run and manage the company, and the restaurant that it operates, and because these two members are hopelessly deadlocked, with Ms. NORVELL being harmed by YUJI HARAGUCHI, and being disparaged, defamed and frozen out from the company's records and accounts, and the actual work of the company being in serious conflict and jeopardy, GUCHI'S IDEA LLC can no longer function as intended. See, correspondence, Exhibit "B".

12. For this reason, and other reasons to be detailed herein, judicial dissolution is warranted.

FACTS

13. GUCHI'S IDEA LLC is organized under the laws of the State of New York with a principal place of business in Kings County, New York City, borough of Brooklyn.

THE PARTIES

14. YUJI HARAGUCHI is a resident of New York and at least a 50% owner of YUJI HARAGUCHI and one of two members and officers with full and sole authority to manage, organize and operate the company.

15. TARA NORVELL is a resident of New York and at least a 25% owner of GUCHI'S IDEA LLC and one of two members and officers with full and sole authority to manage, organize and operate the company.

16. GUCHI'S IDEA LLC is run as OKONOMI – a high end Japanese restaurant concept.

DISSOLUTION

17. Annexed to this Petition is an affidavit of TARA NORVELL in support of dissolution.

18. The LLC is now under the sole control of YUJI HARAGUCHI who has purported to ratify the operating agreement with the sole intention to harm and shut out the petitioner completely from the operations, business, profits and GUCHIs of the LLC (Exhibit "B"), without the consent of NORVELL. This is substantially demonstrated by the **\$97,000 increase in salary of 300% to \$145,000** (Exhibit "B") that YUJI HARAGUCHI granted himself for 2016, and the additional **\$79, 914 for 2015** , misused tens of thousands of dollars in funds for a honeymoon trip to Japan and for his wedding in 2015, a trip for all employees to Japan to celebrate the company, payment of his apartment rent, payment of his personal car and other waste, misuse and looting of company funds by YUJI HARAGUCHI.

19. An accounting is needed to determine the extent of the looting and waste.

20. In furtherance of his oppressive and wrongful acts, YUJI HARAGUCHI has hired an attorney to assist him in harming and oppressing Ms. NORVELL, and is using this attorney vexatiously to damage NORVELL. Mr. Kagen purports to represent the LLC yet is in direct conflict with managing member, TARA NORVELL. Exhibit "B".

21. It further appears that despite objection by Ms. NORVELL to having Mr. Kagen. represent the LLC, and despite demand for correspondence between the LLC and Kagen, who

bizzarely purports to have no conflict of interest, Kagen has continued to be paid with LLC funds and has refused to provide the requested correspondence, as well as company books and records.

22. Kagen has also made bad faith legal threats on behalf of YUJI HARAGUCHI to Ms. NORVELL and her counsel. Exhibit "B".

23. Such action is prejudicial because it is exposing Ms. NORVELL to liabilities as regards taxation, unemployment insurance, worker's compensation, and other required actions of the company that upon information and belief are not being appropriately tended to by the oppressive actions of YUJI HARAGUCHI, who is in control of the company.

24. Taxes have not been filed properly and other corporate responsibilities of YUJI HARAGUCHI have not been met. This continues to harm Ms. NORVELL.

**THE COMPANY SHOULD BE JUDICIALLY DISSOLVED PURSUANT TO
LLCL 701 & 702**

25. The two members and officers, cannot speak, are in direct conflict and will be unable to reconcile in the future.

26. GUCHI'S IDEA LLC must be dissolved.

27. Given the adversarial posture of the parties, it is clear that GUCHI'S IDEA LLC is hopelessly deadlocked and that the company cannot function as intended.

28. Pursuant to LLCL §702, Petition in case of deadlock among directors or members:

Whether the remedy of dissolution should be granted rests within the discretion of the Court. *White On New York Companys*, 1104.2, at 11-40, 11-43. "In determining whether a petition for dissolution should be granted, the issue is not who is at fault in creating deadlock, but whether a deadlock exists." In Re: Dissolution of Validation Review Assocs., 236 A.D.2d 477 (2nd Dept. 1997). The Court stated that with a clear record of sufficient differences and animosity between the members to prevent the continued dissolution, summary judgment dissolving the company was the appropriate remedy. (*Id.*)

In light of the foregoing facts and circumstances, the members are now at a deadlock and as such, there is internal dissension between the majority members.

29. This is adequate grounds for dissolution under the LLCL §702, which states that a court may order judicial dissolution of a limited liability company. The Supreme Court, New York County has construed this provision to mean that judicial dissolution will be ordered where the complaining member can show that the business sought to be dissolved is unable to function as intended.

30. Specifically, the law states that judicial dissolution is proper “whenever it is not reasonably practicable to carry [on] the LLC’s business in conformity with the articles of incorporation or operating agreement.” In *Schindler v. Niche Holdings*, New York County Supreme Court stated that Section 702 of the LLCL allowed for judicial dissolution “where the complaining member can show that the business sought to be dissolved is unable to function as intended ... or that there is any internal ‘deadlock’ impending [the LLC’s] smooth operation. 1 Misc. 3d 713, 716, 772 N.Y.S.2d 781, 785 (Sup. Ct. N.Y. County 2003) *abrogated on other grounds in Tzolis v. Wolf* 10 N.Y.3d 100, 855 N.Y.S.2d 6 (2008).

31. Plainly, the Court found that the “deadlock” of members that disrupts the “smooth operation” of the LLC can serve as the basis for judicial dissolution. *Id.*

32. 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.”

33. 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. *Id.* 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. Thus, the dissolution of an LLC under LLCL § 702 is initially a contract-based analysis.

34. This is adequate grounds for dissolution under the LLCL §702, which states that a court may order judicial dissolution of a limited liability company. The Courts have construed this provision to mean that judicial dissolution will be ordered where the complaining member can show that the business sought to be dissolved is unable to function as intended. This is akin to the New York Business Corporation Law ("BCL") where an internal deadlock within the Company may act as a basis for judicial dissolution.

35. Specifically, the law states that judicial dissolution is proper "whenever it is not reasonably practicable to carry [on] the LLC's business in conformity with the articles of incorporation or operating agreement." In *Schindler v. Niche Holdings*, New York County Supreme Court stated that Section 702 of the LLCL allowed for judicial dissolution "where the complaining member can show that the business sought to be dissolved is unable to function as intended ... or that there is any internal 'deadlock' impending [the LLC's] smooth operation. 1 Misc. 3d 713, 716, 772 N.Y.S.2d 781, 785 (Sup. Ct. N.Y. County 2003) *abrogated on other grounds in Tzolis v. Wolf* 10 N.Y.3d 100, 855 N.Y.S.2d 6 (2008).

36. Plainly, the Court found that the “deadlock” of members that disrupts the “smooth operation” of the LLC can serve as the basis for judicial dissolution. *Id.*

37. The sole managing members are deadlocked and it is no longer reasonably practicable to continue doing business in the manner that the LLC was intended. There is no reconciliation possible and there is no subsequent revival of the LLC likely as a result of the actions of YUJI HARAGUCHI.

38. The relationship between the two managing members which formed the basis for the management of the LLC cannot be restored in light of the complete absence of communication. The managing members are at irreversible odds and cannot carry out the business functions of the LLC.

39. No previous application for this relief has been made.

WHEREFORE, Petitioners request a judgment ordering dissolution of GUCHI'S IDEA LLC in accordance with LLCL §701 and §702 of New York Limited Liability Corporation Law, and granting such other, further and different relief as this court may deem just, proper and equitable.

Dated: July 25, 2016
New York, New York



Kevin Sean O'Donoghue
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646.280.6903

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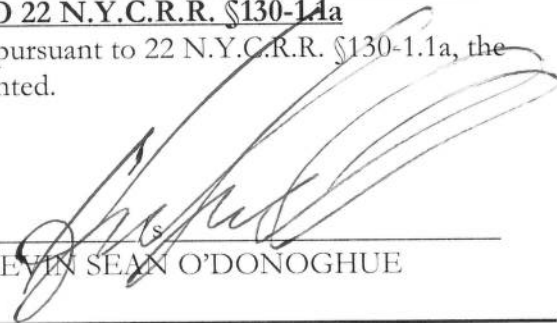
VERIFIED PETITION with AFFIDAVIT IN SUPPORT and Exhibits

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CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. §130-1.1a

KEVIN SEAN O'DONOGHUE hereby certifies that, pursuant to 22 N.Y.C.R.R. §130-1.1a, the foregoing Petition is not frivolous nor frivolously presented.

Dated: July 25, 2016
New York, New York



KEVIN SEAN O'DONOGHUE

PLEASE TAKE NOTICE

* that the within is a true copy of a _____ entered in the office of the clerk of the within named Court
on .
* that a _____ of which the within is a true copy will be presented for settlement to the Hon. one of the
judges of the within named Court at _____, on at 9:30 a.m.