

At an IAS Term, Comm-11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27th day of March, 2017.

P R E S E N T:

HON. SYLVIA G. ASH,

Justice.

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**In the Matter of the Application of
DORINE BORIELLO...**

Petitioner,

DECISION AND ORDER

**For the Dissolution of, and Appointment of a Receiver
or Liquidating Trustee for, CATERINA REALTY, LLC,
Pursuant to §§ 702 and 703 of the Limited Liability
Company Law,**

Index # 513825/2016

- against -

MICHAEL LOCONTE, et. al.,

Respondents.

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The following papers numbered 1 to 6 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 1, 2
Opposing Affidavits (Affirmations) _____	_____ 3, 4
Reply Affidavits (Affirmations) _____	_____ 5, 6

Upon the foregoing papers, the Respondents' motion to dismiss is granted to the extent that the petition for dissolution of CATERINA REALTY, LLC ("Caterina") under Limited Liability Company Law §702 is hereby dismissed.

The instant petition for dissolution was filed on August 9, 2016. On August 16, 2016, this Court issued a directed verdict in favor of Defendants, who are the Respondents herein, in the action entitled *Boriello v. LoConte*, Kings County Supreme Court Index #503180/2013. In that derivative action, Plaintiff, Dorine Boriello ("Boriello"), alleged that Defendants breached their fiduciary duties by causing Caterina to enter into a "sweetheart lease" with Jersey Lynne Farms,

Inc. ("Jersey Lynne"), a company that is also owned by the individual parties herein. At the trial, after Boriello presented her case-in-chief, this Court granted Defendants' motion for a directed verdict finding there was no evidence that Defendants breached any fiduciary duty to Caterina.

In the instant petition, which was filed before trial commenced in the shareholder derivative action, Boriello seeks dissolution of Caterina "because it is no longer reasonably practical to carry on the business of the Company." However, the only support for this allegation in the petition is Boriello's statement that "Respondents have used the Lease as a vehicle to improperly waste and drain assets of Caterina...."

This Court, however, has already determined, after a trial, that the Respondents have acted properly with regards to the subject lease with Jersey Lynne. Thus, Boriello is collaterally estopped from asserting the alleged impropriety of the lease with Jersey Lynne as a basis for Caterina's dissolution. The remainder of Boriello's allegations in the petition are conclusory and otherwise fail to state a basis for dissolution under Limited Liability Company Law §702.

Accordingly, the Respondents' motion to dismiss the petition is granted and the petition is dismissed. The request for sanctions is denied.

This constitutes the Decision and Order of the Court.

E N T E R,



SYLVIA G. ASH, J.S.C.