

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of

Index No.: /16

DORINE BORRIELLO, individually, and as Trustee of  
the Lo Conte Family Irrevocable Trust f/b/o Dorine  
Borriello , a Holder of a 25% Membership Interest,

Date Purchased: August 2016

**VERIFIED PETITION**

Petitioner,

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,

-against-

MICHAEL LOCONTE, individually and as Trustee of the  
Lo Conte Family Irrevocable Trust f/b/o Michael  
LoConte, DIANE SCHMIDT, individually and as Trustee  
of the Lo Conte Family Irrevocable Trust f/b/o Diane  
Schmidt, and MARIA PENNEY SELIGSON,  
individually, and as Trustee of the Lo Conte Family  
Irrevocable Trust f/b/o Maria Penny Seligson,

Respondents.

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The Petitioner herein, Dorine Borriello, individually and in a representative capacity, by and  
through her attorneys, Goldberg Weprin Finkel Goldstein LLP, as and for her Verified Petition to dissolve  
Caterina Realty LLC, respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a proceeding to dissolve Caterina Realty, LLC (“Caterina” or the  
“Company”), a failing family-owned real estate company, currently operated by Respondents in a

manner that rewards them personally to the Petitioner's and Caterina's detriment. In view of Respondents' misconduct, a judicial dissolution of Caterina is warranted because it is no longer reasonably practical to carry on the business of the Company.

### **PARTIES**

2. Petitioner, Dorine Borriello ("Petitioner"), is an individual who resides in Suffolk County, New York.

3. Petitioner holds a 25% membership interest in Caterina.

4. Petitioner's brother, Michael LoConte ("LoConte"), is an individual who resides in Kings County, New York.

5. LoConte holds a 25% membership interest in Caterina.

6. Petitioner's sister, Diane Schmidt ("Schmidt"), is an individual who resides in Nassau County, New York.

7. Schmidt holds a 25% membership interest in Caterina.

8. Petitioner's other sister, Maria Penney Seligson ("Seligson")(collectively with LoConte and Schmidt the "Respondents"), is an individual who resides in Morganville, New Jersey.

9. Seligson holds a 25% membership interest in Caterina.

10. Petitioner and Respondents each transferred their respective 25% shares in Caterina to The Lo Conte Family Irrevocable Trust (the "Trust").

11. Upon information and belief, Petitioner has been and still is a Trustee of the Trust f/b/o Dorine Borriello, and has a 25% ownership interest in the Trust and thereby is a 25% member of the Company.

12. Upon information and belief, LoConte has been and still is a Trustee of the Trust f/b/o Michael LoConte, and has a 25% ownership interest in the Trust.

13. Upon information and belief, Schmidt has been and still is a Trustee of the Trust f/b/o Diane Schmidt, and has a 25% ownership interest in the Trust.

14. Upon information and belief, Seligson has been and still is a Trustee of the Trust f/b/o Maria Penney Seligson, and has a 25% ownership interest in the Trust.

15. Caterina is a domestic limited liability company, organizing and existing under the laws of the State of New York pursuant to the attached Operating Agreement annexed hereto as Exhibit "A".

16. In addition to owning Caterina, Petitioner and Respondents also own another family business, known as Jersey Lynne Farms, Inc. ("Jersey Lynne").

17. Jersey Lynne is engaged in the wholesale distribution of food and related products, selling goods to grocery stores, supermarkets and restaurants.

18. Petitioner previously worked on a full-time basis for both Caterina and Jersey Lynne for many years and previously served as president during the period 2006-2011. On or about November 26, 2011, Petitioner's employment with Jersey Lynne was abruptly terminated by the Respondents.

19. After the termination of Petitioner's employment, the parties executed various agreements for severance and other accrued employment-related obligations. Petitioner, however, continues to own a 25% equity interest in both Caterina and Jersey Lynne, and retains full rights as a voting member and shareholder.

**RESPONDENTS HAVE BREACHED THEIR FIDUCIARY DUTIES  
TO CATERINA, RENDERING THE COMPANY DYSFUNCTIONAL**

20. On or about December 13, 2011 (about three weeks after the termination of Petitioner), Respondents, as members of Caterina, entered into a “sweetheart” lease on behalf of Caterina and Jersey Lynne, as tenant (the “Lease”) for the building and warehouse located at 8801 Foster Avenue, Brooklyn, New York 11236 (the “Premises”). A copy of the Lease is annexed hereto as Exhibit “B”.

21. The Lease terms greatly favor Jersey Lynne at the expense of Caterina and derivatively at the expense of Petitioner.

22. Among other things, the Lease provides for Jersey Lynne to pay rent at significantly below fair market value.

23. Petitioner objected to the Lease upon the grounds that its terms favor Jersey Lynne at the expense of Caterina.

24. Litigation is now pending between the parties concerning the propriety and commercial reasonableness of the Lease in the Supreme Court, Kings County (Index No. 503180/13). A trial is scheduled to begin in this matter on August 10, 2016.

25. Annexed hereto as Exhibit “C” is the last substantive decision in that action which provides additional background as to the viability of the allegations of breach of fiduciary against Respondents.

26. The trial is limited to the period 2012 – 2016 and will not address the fundamental issues of irreconcilable disputes that are inimical to the best interests of the Company.

27. Because Respondents have used the Lease as a vehicle to improperly waste and drain assets of Caterina, dissolution is appropriate.

28. Specifically, the Lease is set to expire in November 2016. It is readily apparent that the parties can not agree on a proper and fair renewal of the Lease particularly since Jersey Lynne is also failing and has suffered operating losses in recent years attributable in part to the death of Jersey Lynne's CFO, Ken Seligson, in 2015.

29. The Property should not be saddled with another sweetheart lease and another round of protracted and costly litigation on issues that does not resolve the intrinsic dysfunction of Caterina

30. In view of the foregoing, Respondents have and will continue to breach their fiduciary duties, eliminating the ability of Caterina to maximize the value of its assets.

31. The deteriorating situation is also attributable to Respondents' decision that Caterina pay operating expenses for the Premises that are customarily the responsibility of a commercial tenant.

32. Respondents have refused to take appropriate steps to properly manage Caterina's affairs and are again refusing to pursue efforts to realize the full value of the Company's valuable commercial building in Brooklyn.

33. As a consequence, Petitioner and Respondents can no longer continue in business together.

34. Jurisdiction over this matter rests with this Court pursuant to Section 702 of the New York Limited Liability Company Law ("LLCL").

35. It has been and will be impossible for Petitioner and Respondents to reach any agreement regarding the future management of Caterina regardless of the outcome of the trial.

36. It is no longer possible to carry on the business of Caterina in conformity with the Articles of Organization and Operating Agreement.

37. Indeed, Respondents have repeatedly violated the terms of the Operating Agreement by failing to provide Petitioner with timely and complete financial reports and tax returns as required by Sections 4.2 and 4.3 of the Operating Agreement.

38. Additionally, Respondents have violated Section 6.1 of the Operating Agreement by failing to recognize Petitioner's equal management rights as a full member and have denied Petitioner access to the building.

39. In fact, Respondents have made management decision that were directly contrary to the wishes expressed by Petitioner and have acted in a manner to thwart Petitioner's ability to meaningfully participate in the management of the Company.

40. Respondents have made dissolution the only viable course of action left for Caterina since the Company's assets are to be maximized for the benefit of its members as intended by the Operating Agreement.

41. Respondents also control all of the books, records and accounts of Caterina, and have not provided full or complete financial reports to the Petitioner on a timely basis.

#### **AS AND FOR A FIRST CAUSE OF ACTION**

42. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1 through 41 of the Petition with the same force and effect as though set forth at length herein.

43. There exists an irreconcilable deadlock, dissension, hostility and distrust between the members of the Company over the future management and direction of the Company.

44. Caterina is unable to function under such divided and divisive management as contemplated by the Articles of Organization and Operating Agreement.

45. As a result, it is not reasonably practicable to carry on the business of Caterina.

46. With no other reasonable alternatives, a judicial dissolution and liquidation of

Caterina is in the best interest of the Company.

47. Dissolution of Caterina will not be injurious to the parties or to the public.

**AS AND FOR A SECOND CAUSE OF ACTION**

48. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1 through 47 of the Petition with the same force and effect as though set forth at length herein.

49. In the event of dissolution and upon cause shown, the Court may direct the winding up of Caterina's affairs.

50. By reason of all of the foregoing, there is an urgent need for the prompt appointment of a Receiver to wind up Caterina's affairs prior to November 2016, when the Lease comes up for renewal.

51. Respondents cannot be entrusted to wind up Caterina's affairs. They have demonstrated clearly their willingness to subordinate Caterina's interest to those of their own and those of Jersey Lynne.

52. Delay in winding up Caterina's affairs will lead to waste of Caterina's assets.

53. Leaving Respondents in place to conduct or participate in the winding up of Caterina's affairs will lead to further waste and loss of Caterina's assets.

**WHEREFORE**, Petitioner respectfully requests a Judgment and Order of this Court as follows:

- (a) On the First Cause of Action, dissolving Caterina, directing that all of the property of Caterina be sold in a commercially reasonable manner pursuant to the LLCL, directing that the assets of Caterina be distributed to its members after payment of all of its just debts, in accordance with §704 of the LLCL; and
- (b) On the Second Cause of Action, appointing a Receiver pursuant to §704 of the LLCL to wind up Caterina's affairs and sell its Property in a manner to promote maximum value of the Premises; and
- (c) Granting such other and further relief as this Court deems necessary.

Dated: New York, New York

August 9, 2016

**GOLDBERG WEPRIN  
FINKEL GOLDSTEIN LLP**  
*Attorneys for Petitioner*  
1501 Broadway – 22<sup>nd</sup> Floor  
New York, New York 10036

By: 

Kevin J. Nash  
Christopher R. Clarke

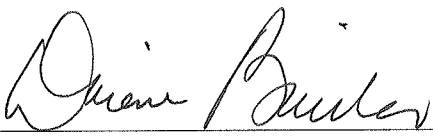


VERIFICATION

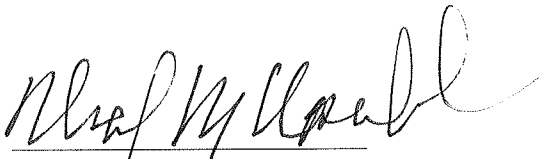
STATE OF NEW YORK            )  
  )SS:  
COUNTY OF NEW YORK        )

DORINE BORIELLO, being duly sworn, deposes and says:

I am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof; and the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
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DORINE BORIELLO

Sworn to before me this  
9 day of August, 2016

  
\_\_\_\_\_  
Notary Public

NEAL M. ROSENBLOOM  
Notary Public, State of New York  
No. 31-4644520  
Qualified in New York County  
Commission Expires 11/1/17