

SHORT FORM ORDER

INDEX
NO.: 600274-15

**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PUBLISH

PRESENT: Honorable Elizabeth H. Emerson

x

LAUREN SARDIS, Individually and as a
Shareholder and on behalf of JLAJ HOLDING
CORP. and as a Shareholder and on behalf of
SCCC HOLDINGS CORPORATION,

Plaintiff,

-against-

JEFFREY SARDIS and AETEA
INFORMATION TECHNOLOGY, INC.,

Defendants,

and SCCC HOLDINGS CORP.,

Nominal Defendants.

x

MOTION DATE: 6-9-16
SUBMITTED: 6-16-16
MOTION NO.: 003-RRH

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.
Attorneys for Plaintiff
990 Stewart Avenue
P.O. Box 9194
Garden City, New York 11530

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA & WOLF, LLP
Attorneys for Defendants
1111 Marcus Avenue, Suite107
Lake Success, New York 11042

Upon the following papers read on this motion for attorneys' fees; Notice of Motion and supporting papers 60-87; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 89-92; Replying Affidavits and supporting papers 93-97; it is,

ORDERED that this motion by the plaintiff for an award of attorneys' fees, costs, expenses, and disbursements is referred to a hearing, which shall be held on October 20, 2016 at 2:15 p.m., Supreme Court, Courtroom 7, Arthur M. Cromarty Criminal Court Building, 210 Center Drive, Riverhead, New York 11901.

The plaintiff seeks to recover from the defendants, Jeffrey Sardis and AETEA Information Technology, Inc., attorneys' fees in the amount of \$532,773.45 and costs, expenses and disbursements in the amount of \$128,756.51. The rule in New York is that attorneys' fees and disbursements are incidents of litigation and that the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or

court rule (**Glenn v Hoteltron Sys.**, 74 NY2d 386, 393). The plaintiff contends that she is entitled to attorneys' fees and disbursements pursuant to Business Corporation Law § 626 (e) and under the stipulation of settlement in the Sardis' divorce action.

Although Business Corporation Law § 626 (e) provides that a successful plaintiff in a shareholders' derivative action may recoup legal expenses and attorneys' fees from the proceeds of a judgment, compromise, or settlement in favor of the corporation, it does not authorize the imposition of such expenses on the losing party (**Id.**). The basis for an award of attorneys' fees in a shareholders' derivative suit is to reimburse the plaintiff for expenses incurred on the corporation's behalf (**Id.**). Those costs should be paid by the corporation, which has benefitted from the plaintiff's efforts and which would have borne the costs had it sued in its own right (**Id.**).

Contrary to the plaintiff's contentions, this action did not result in a judgment, compromise, or settlement in favor of the corporation. This action was discontinued by the plaintiff without any monetary compensation being paid to either JLAJ Holding Corp. or SCCC Holdings Corporation. Accordingly, the court finds that the plaintiff is not entitled to attorneys' fees under Business Corporation Law § 626 (e).

The defendants do not oppose the branch of the plaintiff's motion which is to recover attorney's fees and disbursements under the stipulation of settlement in the Sardis' divorce action. Moreover, the stipulation of settlement in this action was conditioned on, inter alia, "the payment of legal fees, if any, incurred by Plaintiff, which shall be in an amount as agreed upon by the parties hereto or, in the absence of any agreement, in such amount, if any, as determined by the court on application by Lauren..." Accordingly, the matter is referred to a hearing for the court to determine the legal fees and disbursements, if any, that the plaintiff should recover from the defendants, Jeffrey Sardis and AETEA Information Technology, Inc.

Dated: September 7, 2016


J.S.E.