

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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In the Matter of the Petition of
:
HUGH W. CAMPBELL,
As the Preliminary Executor of
THE ESTATE OF EMMA C. BRISBANE
:
For the Judicial Dissolution of
:
MCCALL'S BRONXWOOD FUNERAL HOME, INC.
-----X

Index No.: 17384-07

VERIFIED
ANSWER

MCCALL'S BRONXWOOD FUNERAL HOME, INC., by JAMES H. ALSTON, JR.,

being duly sworn, hereby answers the Verified Petition as follows:

1. Respondent admits the allegations set forth in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 14, 25, and 29.
2. Respondent denies the allegations set forth in paragraphs 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, and 28
3. Respondent denies information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 5, 24, and 27.
4. Respondent denies information sufficient to form a belief as to the truth or falsity of paragraphs 16, 18, 26, and respectfully refers all conclusions of law and fact to this Court for its determination.

FIRST AFFIRMATIVE DEFENSE

5. Dissolution is inappropriate in this case.

SECOND AFFIRMATIVE DEFENSE

6. Respondent and its shareholders have voluntarily entered into a Stockholder's Agreement in 1998 which governs the valuation and procedure to follow in the event of a death and the resulting sale or transfer of either shareholder's interest.

7. Business Corporation Law § 1104-a (b) provides as follows:

The court, in determining whether to proceed with involuntary dissolution pursuant to this section, shall take into account:

- (1) Whether liquidation of the corporation is the only feasible means whereby the petitioners may reasonably expect to obtain a fair return on their investment; and
- (2) Whether liquidation of the corporation is reasonably necessary for the protection of the rights and interests of any substantial number of shareholders or of the petitioners.

8. Liquidation is not the only feasible means by which the Estate may receive a fair return on its investment. A fair return is provided by a sale conducted in accordance with the formula established by the 1998 Shareholder's Agreement.

9. Further, liquidation of the Corporation is not necessary to protect the rights and interests of the shareholders or petitioner. The Corporation is solvent; has operated at a profit for the last 26 years; has no liens; judgments or lawsuits against it; and is current in the payment of its creditors. The rights and interests of the shareholders are best protected by enforcing the 1998 Stockholder's Agreement, including the mandatory buy-sell provisions of that Agreement.

10. In this case, the Stockholder's Agreement governs and dissolution must be denied as a matter of law.

THIRD AFFIRMATIVE DEFENSE

11. The valuation voluntarily determined by the shareholders under the Stockholder's Agreement represents a fair return on Ms. Brisbane's investment and as such, the valuation set forth in the Stockholder's Agreement governs.

FOURTH AFFIRMATIVE DEFENSE

12. The parties have partially performed under the Stockholder's Agreement, with Ms. Brisbane receiving an advance distribution of her interest in the Corporation in the form of a transfer of an adjoining parcel of real estate.
13. As such, the remaining shareholder is entitled to specific performance of the Stockholder's Agreement and to consideration of the value of the adjoining parcel of real estate in determining the amount of fair value and consideration payable to the Estate of Ms. Brisbane.

FIFTH AFFIRMATIVE DEFENSE

14. In the alternative, in the event that the Stockholder's Agreement does not govern then co-shareholder James H. Alston, Jr., and the Corporation have the right to preserve the Corporation by purchasing the Corporation's stock at fair value pursuant to Section 1118 of the Business Corporation Law, which he hereby elects in the alternative to do, and therefore, dissolution is inappropriate.

SIXTH AFFIRMATIVE DEFENSE

15. In the alternative, co-shareholder James H. Alston, Jr., has purchased the stock interest of Emma Brisbane in accordance with the 1998 Stockholder's Agreement

and the Estate of Emma Brisbane is entitled to receive the purchase price in accordance with the Stockholder's Agreement, but not to dissolution.

SEVENTH AFFIRMATIVE DEFENSE

16. In the alternative, Respondent respectfully repeats and reincorporates the allegations set forth in its opposing papers submitted to this Court in support of its motion to dismiss dated August 2007.

EIGHTH AFFIRMATIVE DEFENSE

17. The claim for payment on the Mortgage and the claim for an accounting are barred by the applicable statute of limitations. The mortgage provides that payment in full was due by March 1, 1996, and as such, any claim that the Mortgage had not been paid, or for an accounting, would have been required to have been commenced by March 1, 2002, more than five (5) years prior to the commencement of this action.

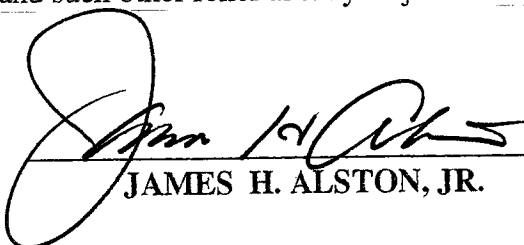
NINTH AFFIRMATIVE DEFENSE

18. The claim for payment on the Mortgage is barred because the claim has been paid.

TENTH AFFIRMATIVE DEFENSE

19. The 1998 Stockholders Agreement constitutes an accord and satisfaction of any claim by Ms. Brisbane which may predate that agreement.

WHEREFORE, it is respectfully requested that the Petition for Dissolution be dismissed and that his Court issue an Order dismissing the Petition for judicial dissolution with prejudice; dismissing the second cause of action for an accounting; compelling Petitioner to comply with the terms of the 1998 Stockholder's Agreement, including the requirement to offer the Estate's share in the Corporation for sale to the Corporation and the remaining shareholder at the price and terms set forth in the Agreement, and granting costs and such other relief as may be just and appropriate.



JAMES H. ALSTON, JR.

Sworn to before me this
27 day of June 2012



NOTARY PUBLIC