

EXHIBIT A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 53 Mot Seq 004

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In the Matter of the Application of:

JAMES TUFENKIAN, Holder of a 50% Membership
Interest,

Petitioner,
Index No.
652875/15

-against-

SYLVIA TIRAKIAN,

Respondent,

For the Dissolution of and Appointment of a
Receiver or Liquidating Trustee for Harvest
Song Ventures LLC, pursuant to §§ 702 and 703
of the Limited Liability Company Law.

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September 21, 2016
60 Centre Street
New York, NY 10007

B e f o r e:

HON. CHARLES E. RAMOS, Justice.

A p p e a r a n c e s:

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BY: TINA GLANDIAN, ESQ.

MINUTES OF PROCEEDINGS

Reported By:
William L. Kutsch
Senior Court Reporter

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THE COURT: Okay. Let's deal with the motion to dismiss.

MS. GLANDIAN: Yes, your Honor.

THE COURT: Use the lectern please.

MS. GLANDIAN: Yes, your Honor.

Good afternoon, your Honor.

Tina Glandian on behalf of respondent, Sylvia Tirakian.

Your Honor, this case was filed by petitioner last August in which they filed three simple claims, essentially seeking the dissolution of this company.

As the court will probably recall, we went back and forth several times. We filed an answer with counterclaims in which respondent alleged that the petitioner had induced her fraudulently to sign over control of the company, and then essentially try to push her out of the company, and sought dissolution.

As soon as we amended our -- we came to court, we had some proceedings, the court asked us to amend the counterclaims. Within ten days of our amendment, they filed this amended verified petition now, alleging a host of outrageous conduct which, frankly, I mean, it's -- not only is it contrary to the documentary evidence we have provided, but it frankly makes no sense whatsoever.

Essentially what they are saying is now, without

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any sort of specificity or any sort of factual support, that Miss Tirakian, who formed this company in 2005, essentially, as part of some master scheme, somehow was responsible for these accounting errors that took place in the early years by the CPA that worked for both members of the entity, who in 2012 or '13, we attached it as an exhibit, did a report. They had three separate forensic audits done. There was never any wrongdoing whatsoever alleged against Miss Tirakian. And, again, after one year, for the first time now, they have alleged all this outrageous conduct.

In any event, we think that the motion to dismiss should be granted. We think that they have not met the high burden of establishing that judicial dissolution is appropriate.

Miss Tirakian, who is in court today, who has been attending the proceedings, has consistently maintained that she is willing to go back to managing the company, as she successfully did for all those years.

We spoke about this last time. The fact that the company wasn't immediately profitable does not mean that the company was not a success.

The company was recognized, was given four prestigious awards in the specialty foods industry. It was in chain stores like Costco and Wal-Mart, and was actually really finally at the point where it was ready to make money

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when these errors were discovered. And Mr. Tufenkian at the time just decided that he wanted repayment of his loan and would do whatever was necessary.

It's our position he induced Miss Tirakian to enter into that amendment and then, since then, has essentially let the company just -- he has not been taking current orders, he has not been -- you know, we had submitted in support of our counterclaims exhibits from customers who had been e-mailing, saying that the product was now bad on the shelves, and they were calling the phone number, that the line had been disconnected.

The financial records that they have submitted show that what Mr. Tufenkian has been doing is just repaying his loan down as opposed to actually putting the interests of the company first. And I can get into the specifics, we have obviously briefed it all, but we think all of these claims are untimely.

They have alleged conduct back from 2005, '6, '7, '8, all of which are barred by the respective statute of limitations, and I could go through them specifically if the court would like me to do that.

THE COURT: Well, let's hear from the petitioner, and then we will come back to you.

MS. GLANDIAN: Okay. Thank you, your Honor.

MR. ZAROCOSTAS: Good afternoon, your Honor.

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Michael Zarocostas on behalf of petitioner, James Tufenkian.

First, I would like to point out, there are two different aspects of this case. The first is the dissolution, and the second are substantive claims that both parties probably are going to be asserted here.

With respect to the first part, the dissolution, dissolution is a summary proceeding, and there are claims involving the petition for dissolution, the appointment of a liquidating trustee, and an accounting. And from the inception of this case, in the accounting, we have asked the court to hold respondent accountable for her misconduct. And we had intended to litigate those claims in the accounting in the summary process.

Now, in an abundance of caution, we have asserted substantive claims which, on a motion to dismiss, are not subject to dismissal based on evidentiary submissions outside of the four corners of the pleadings. So right off the bat, this motion, which, by the way --

THE COURT: Unless there are documents that completely dispose of the claims.

MR. ZAROCOSTAS: Correct. They would have to be documents that flatly contradict the claims and conclusive; something like a contract is usually the one you see mostly.

But in this case, the notice of motion is moving

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only on two grounds: Statute of limitations and failure to state a claim. So the motion itself is defective to the extent it seeks dismissal on documentary evidence or on summary judgment standards. So that's totally inappropriate.

With respect to the dissolution petition, what's particularly egregious here is that, the motion to dismiss, we haven't changed, we've added enhanced factual allegations with respect to the reason for dissolution.

Respondent has actually cut-and-pasted their prior motion to dismiss, and I'm not saying making the same arguments. I'm saying a verbatim cut-and-paste.

If you look at point 2 of their brief, of a motion that was denied by this court, and your Honor said in March from the bench: The motion to dismiss is denied, and we're going forward on the dissolution.

And then when we came back in May, when we were addressing the original counterclaims they filed, the respondent raised the issue of fraudulent inducement, and we said: Your Honor, we have amendment number two to the Operating Agreement in which respondent unequivocally agreed to give the petitioner a hundred percent total control of the company. He is the management. And we made that point to your Honor, and you said: Well, if you are correct, and if her fraudulent inducement claim is as weak as it is, then

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it's a slam dunk for your client.

So we haven't reached that point yet.

So I think -- I could give you new facts, by the way, your Honor. Why they made a motion to dismiss the petition for dissolution is beyond me.

Here are the new facts, which don't them help at all.

The company has shut down its active operations. It has about \$4,000 in the bank account. And get this. They say they want to operate the business, they want to work. Miss Tirakian resigned in November of 2014. She hasn't worked for the company in over a year-and-a-half. And just recently in June of this year, the company went to her and said: If you want to operate this business, if you want to buy new product, which are perishable preserves, to try and keep the company viable, you have to buy the preserves. We are giving you the opportunity to put your money where your mouth is. You buy the preserves. This was June, three months ago, this is what she said: No.

So outside the courtroom she does one thing, she resigns, she doesn't work for the company, she doesn't contribute her ten percent share of the financing, she doesn't want to pay for the product to sell and actually make the company a viable business; yet her attorney comes into court and says: I'm willing to do anything, your

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Honor. This company shouldn't be dissolved.

So I feel like on those grounds alone, we've already had evidence submitted from both sides. There is no reason to continue this business. It's been shut down.

And even if you ignore amendment number two to the Operating Agreement, which she might say it's somehow induced by fraud, there's not a single fact to prove that, the Operating Agreement is structured so that each member has 50 percent authority over the company. So let's imagine this. She says: Amendment number two doesn't apply, so now we have 50/50 percent control. It's classic deadlock. Do you think Mr. Tufenkian would allow her to work for the company after she has overstated the inventory by \$800,000? After 11 years of being in business, it's never turned an annual profit? He has the veto power to prevent that from happening again.

And this is an age-old principle under New York law. Courts cannot interfere with the internal management of a company. You have the right, your Honor, to say: Well, I'm not going to grant the petition for dissolution. But what she is proposing is coming in and saying: Your Honor, take a look at my business plan. Last time we were here, you said: Miss Tirakian, do you have a business plan. I bet she didn't bring one today. And even if she did, courts don't entangle themselves in: Well, this looks like

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a good business plan. Well, I think you should manage the business. What's next; are we going to determine in court what she should be paid on an annual salary basis?

So anyway, that's completely inappropriate.

Now, if we turn to the substantive claims that we have, we have a detailed 28-page pleading. And I'm telling you it's verified, it's got fraud allegations, it's got chapter and verse details of breach of contract, breach of fiduciary duty, and fraud.

And I'll give you a classic example.

First of all, you have to accept the allegations as true. When Miss Tirakian filed her own counterclaims, she made the same argument. She didn't say: I have to adduce evidence and you don't have to accept my facts as true. She made the opposite argument. So consistently both sides are subject to the same standard on a motion to dismiss.

In any event, I'll give you the example that sort of is emblematic of the entire case.

On her watch as day-to-day manager of the company, in which she owed a fiduciary duty to the petitioner, inventory was overstated by more than \$800,000. She perpetuated the false financial condition of the company by creating financial statements on a monthly basis and gave them to the petitioner to induce his continued investment in the company over a several-year period.

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Now, if you look at that, and we have a July 29th affidavit from the chief financial officer of my client, his name is Eric Jacobson. The first exhibit is 77 pages of false financial statements with dates and times e-mailed from Miss Tirakian to James Tufenkian. I mean, that's a prima facie case right there of fraud, and yet she says there's no details of the fraud. They don't even mention those 77 pages of financial statements in their motion to dismiss, which is ridiculous.

With respect to this argument that there is a statute of limitations barring my client or the company from recovering against Miss Tirakian, it's black-letter law that a fiduciary who's engaged in the kind of misconduct alleged here is equitably estopped from invoking the statute of limitations. You can't do it. Under First Department authority, you simply cannot say: Well, yes, I had a duty of disclosure, and I concealed some things, and it went on for a few years, but since you didn't know about it, and I concealed it from you, your claims are now stale. It's inequitable, and that's why the court says you can't invoke the statute of limitations.

Even if you ignore the fact that she can't invoke the statute of limitations, which she can't, there is also case law that says, when you have a fiduciary relationship like Tirakian and Tufenkian had, she is the managing

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day-to-day member. The statute of limitations does not begin to run until the fiduciary relationship ends. And we have cited the Otto case, a First Department case. It says that the motion court properly applied the six-year statute of limitations to the breach of fiduciary duty claim since the action is equitable in nature; right? Which we have equitable claims. We have accounting, we are asking for disgorgement and restitution. And it's also based in fraud. That's why there's also a six-year statute. And the court specifically said, the six-year statute does not run until the fiduciary relationship is terminated. We have other cases that we have cited on that point.

There is even another ground to reject the statute of limitations argument; which is, when you have an ongoing and continuous wrong, like we have here, courts don't allow -- courts basically say the statute of limitations doesn't begin to run until the last wrongful act. And in this case, she was perpetuating and providing false financial statements up until late 2012, early 2013, and we even have in the first quarter of 2014 a false financial statement where she overstated the inventory by \$30,000.

Not only that, this is another thing that's been ignored by the motion to dismiss. We have detailed allegations that Tirakian embezzled money from the company. There are petty cash withdrawals without explanation, and

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this is in our amended petition, that total thousands of dollars. We have one example, which is an exhibit in our petition, just 2014 alone, \$8,000 of withdrawals.

We also have a personal credit card that she used in her name. It's not a company credit card, but she was having the company reimburse her for those expenses, and those expenses include personal items, gas, pizza, things that are not part of the company's operations.

So we also have a case that we cite that says, this is directly on point, by the way. It's State of New York Workers' Compensation Board versus Madden. It's 119 AD3d 1022. The court, the Appellate Division there, rejected the statute of limitations defense where defendant "'continually' misrepresented the trust's true financial condition to plaintiff and, throughout its dealings with the trust, made 'continuous and ongoing' misrepresentations of the trust's financial condition." That's exactly what we have here.

All right. So I mean, I can also argue if necessary, if your Honor is inclined to accept the statute of limitations argument, that our amended petition would relate back to the original petition because it's based on the same facts and gives notice.

THE COURT: Let me hear from the respondent.

MR. ZAROCOSTAS: Okay.

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I do have some other points on the substantive claims if you want to hear those as well.

THE COURT: I read the papers.

MS. GLANDIAN: Your Honor, it's hard to listen to these allegations when they're entirely contrived. And I think the best thing to point to, to indicate this, is, this discrepancy, this accounting discrepancy, was discovered, everybody concedes, in 2012. That's what they have alleged in the amended verified petition. That's essentially what all the parties, everybody agrees to.

On March 20, 2014, Mr. Tufenkian entered into the amendment number two to the Operating Agreement, in which, even though he said, and how he sold this and what we allege was the fraud in the inducement, he told Miss Tirakian: I want to be involved. I want to help steer this in the right direction. The operating -- I'm sorry, the amendment clearly states that ST -- meaning Sylvia Tirakian -- will be President of the Company and in charge of day-to-day operations, subordinate to the CEO.

Now, I just would like to ask, I guess rhetorically, if Miss Tirakian had engaged in all this misconduct from 2005 -- and let me just point out that Mr. Tufenkian is a very savvy businessman, this is not his first -- you know, this is one of many investments he has. He has his CFO, Mr. Jacobson, who has been signing

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affidavits, who's the CFO of all of his other ventures, who is not directly employed by Harvest Song, to my understanding. He's just Mr. Tufenkian's representative. He has been reviewing, together with Mr. Tufenkian, all of these financials, the profit and loss statements, monthly, and, again, according to the Operating Agreement, he was also -- that was part of his responsibility. So even though they've tried to put this all on Miss Tirakian now, that was always part of his duty, but he had three forensic audits done following 2012.

Now, would it make any sense, that if they actually believed half of what they're saying, that Miss Tirakian had concealed all of this, and she was, you know, submitting 77 pages of fraudulent financial statements, and doing this, you mean to tell me that after they did three forensic audits and delved into all of this, that two years later in 2014 Mr. Tufenkian would enter into an Operating Agreement in which he says Sylvia Tirakian will be President of the Company and in charge of day-to-day operations? It makes absolutely no sense. This one document alone undercuts most of their claims. And essentially, short of the dissolution, everything that they allege as far as the mismanagement and the fraud and everything else --

THE COURT: Counsel, you are making the kind of arguments that we would normally hear on a trial of this

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case. You are making a motion now to dismiss for basically legal insufficiency.

MS. GLANDIAN: I understand. I just would like to point it out because, again, Mr. Zarocostas's arguments are all based on this new premise that suddenly though everything is referred to as a misconduct. There's absolutely nothing other than their allegations belatedly, well after the statute of limitations has run, that there was any sort of misconduct. And everything, all of the documentary evident that's been submitted, shows that it's contrary to there being any misconduct. Their own CPA basically said this is only because of a couple of QuickBooks entries that were mistakenly -- that overstated the inventory, and that's what's caused this issue. Nothing ever was pointed at Miss Tirakian as having any sort of role.

As far as the resignation; again, that was part of what was alleged in our counterclaims as the only reason she resigned. I know Mr. Zarocostas said she's been claiming now to want be to involved, and this goes to the dissolution.

The only reason she felt that she had to resign was because after two years, she had absolutely no control over the company, he essentially was pushing her out, and she sent that resignation e-mail. And since then, they have

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known that she has always been willing to step back in, and she has wanted her position back at the company.

THE COURT: All you have done is recite the triable issues. I can't dismiss the claims at this point.

MS. GLANDIAN: Well, I think, your Honor, if we wanted to talk about the reasons the claims should be dismissed, one of the reasons, as far as the dissolution goes, and the In Re Ocean case that we cited is on point, and it discusses how a company is not financially -- it's financially feasible as long as it's able to pay its debts as they come due. And they've attached --

THE COURT: That, now we're talking about the petition itself.

As far as your motion to dismiss is concerned, the claims being asserted against your client, that motion is denied. These are all triable issues.

Now, with regard to the petition to dissolve the corporation, and I know we have claims back and forth, but what's left of the company? It's not functioning. It's got \$4,000 in a bank account? What are we doing?

MS. GLANDIAN: Well, that's now, after Mr. Tufenkian has -- that's precisely what he wanted.

THE COURT: That's a claim that you want to assert and you are asserting it by way of a counterclaim.

MS. GLANDIAN: Right.

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THE COURT: What's the point in not dissolving this company?

MS. GLANDIAN: Well, we had at some point a third-party offer who wanted to purchase this, and Miss Tirakian again has always wanted to be involved and run the company, and so we were trying to, last time we talked about seeing if there was a way to equitably resolve this.

THE COURT: Has anybody made an offer for this nonfunctioning -- essentially now it's a corporate name. That's all that's left.

MR. ZAROCOSTAS: Well, I mean, I don't want to put settlement conversations on the record, so maybe we can talk about it in Chambers, but it's complicated, and I would rather it not be on the record, especially since it's confidential settlement communications.

THE COURT: I understand.

MR. ZAROCOSTAS: But I'm happy to speak with you in Chambers about it, your Honor.

THE COURT: I just want to know what's left in terms of the petition.

MR. ZAROCOSTAS: Well, let me just point out, your Honor, the motion to dismiss cites year-old financial statements. That's how frivolous it is. Our amended petition included the most recent financial statements which were at the time May of 2016. There's \$4,000 in cash, there

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is \$10,000 in inventory, and there is some *de minimus* receivables, compared with about \$900,000 in liability.

And, this is also a new fact, the company is in default. The company has received notices of default of all the loans, and those are immediately due and payable. So there's absolutely no reason --

THE COURT: Who owns the loans?

MR. ZAROCOSTAS: James Tufenkian is one of them. There's more than one. James is biggest creditor. And we don't shy away from that. He's been an investor in this company for over 11 years. It's never turned an annual profit.

Miss Tirakian has walked away with about a million dollar in compensation, and Mr. Tufenkian has about a million dollars in debt that's still owed, he's never made a penny. And then their definition of succession is: Well, we were in Oprah Magazine, it's a big success. It never turned an annual profit. It's ridiculous. There's no reason to keep running this business.

MS. GLANDIAN: Your Honor, I think the financials that they have -- the reason we have referred to some of the older financials was because those are the ones that were -- actually when both of them were somewhat involved in the company. Since then -- and we had shown what Mr. Tufenkian was doing since ousting her from the

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company, was just to be paying down his loan, and the cash was disappearing. And one of the claims that we have alleged in our counterclaims is that he switched over the account, locked her out of the account.

THE COURT: How are you going to finance ongoing business? Where is the money going to come from?

MS. GLANDIAN: Well, I think if Miss Tirakian wants to run it, she can get financing, and she can seek out loans and investors.

THE COURT: Where?

MR. ZAROCOSTAS: Your Honor, if I could interject? She was just asked in June of 2016: Will you provide money to buy preserves to sell? We have no preserves now to sell for the end of the year or next year. She said no.

MS. GLANDIAN: That was because clearly at this point --

MR. ZAROCOSTAS: It's ridiculous.

MS. GLANDIAN: -- she's gotten the feedback that Mr. Tufenkian is not answering phone calls, he's putting bad product out, and they just want her to put in money into a business that they keep running into the ground. He's letting her have no say in the business. He has no background or experience in this. And belatedly, as obviously a litigation strategy, they requested that she put

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in money. You know, this is already well into the harvest season. They just wanted to make the gestures to say that she is refusing to run the business. If she had some involvement in management over it, she certainly would be involved and get the financing that's necessary.

THE COURT: Okay, folks. I don't want to be too flip about this, but you can stick a fork in this company. It's done.

MR. ZAROCOSTAS: It is done, your Honor.

And I just want to point out --

THE COURT: Petition is granted.

We'll continue the action with regard to the claims and counterclaims against the individuals.

MR. ZAROCOSTAS: Petition is granted, your Honor?

THE COURT: Yes.

Settle an order.

Thank you very much, folks.


MS. GLANDIAN: Thank you, your Honor.

(At this time the proceedings were concluded.)

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C E R T I F I C A T I O N

This is to certify the within is a true and accurate transcript of the proceedings as reported by me.



William L. Kutsch, SCR