

Doshi v Besen

2019 NY Slip Op 33771(U)

December 30, 2019

Supreme Court, New York County

Docket Number: 651696/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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<p>AMIT DOSHI, BEING THE HOLDER OF 50% OF THE OUTSTANDING SHARES OF BESEN & ASSOCIATES, INC.</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">- v -</p> <p>MICHAEL BESEN,</p> <p style="text-align: center;">Respondent.</p>	<p>INDEX NO. <u>651696/2019</u></p> <p>MOTION DATE _____</p> <p>MOTION SEQ. NO. <u>001, 002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 41, 42, 43 were read on this motion to/for DISSOLUTION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45 were read on this motion to/for DISMISSAL.

On March 22, 2019, petitioner Amit Doshi filed this special proceeding for a judicial dissolution and accounting of Besen & Associates, Inc. (B&A) pursuant to BCL §1104 (a). Besen moves for dismissal of the petition, arguing that Doshi’s resignation in July 2018 terminated their “interpersonal issues,” and thus there can be no factual predicate for BCL § 1104. (NYSCEF Doc. No. [NYSCEF] 21, April 16, 2019, Besen Aff., ¶ 8).

BCL § 1104 (a) authorizes dissolution of a New York corporation on three grounds:

- “1. That the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

2. That the shareholders are so divided that the votes required for the election of directors cannot be obtained.

3. That there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders.”

B&A is a New York corporation with its principal office located at 381 Park Avenue South, New York, New York. (NYSCEF 1, Petition ¶ 8). Besen formed B&A in 1988 for the purpose of operating a commercial real property sales brokerage business. (*Id.*). In 1989, Doshi joined B&A’s employ, and eventually became an equal B&A shareholder with Besen. (*Id.*). Together they were B&A’s only officers and directors until July 20, 2018, when Doshi resigned his positions as an officer, director and employee of B&A, “due to the severe dissension between the parties and Petitioner’s complete distrust of Respondent as described herein.” (*Id.*).

Doshi claims that Besen became distracted by his own personal investments triggering the failure of B&A, and its related joint businesses. (*Id.*, ¶ 10). “[T]hey have become embroiled in disagreements and business disputes in recent years which are so severe that all confidence, trust and cooperation between them has been destroyed.” (*Id.*, ¶ 9). According to Doshi, dissension began in 2017, and the partners discussed separating their joint interest in B&A and other jointly held businesses. (*Id.*, ¶ 1). Doshi asserts that “[t]here was such severe disagreement and dissension between us about the direction and operation of B&A[,] and the use of its funds that we were, in fact, in a deadlock and could not continue.” (NYSCEF 35, May 1, 2019 Doshi Aff., ¶ 3). Doshi opposes the way in which Besen is currently operating and directing B&A and has not abandoned his “right to elect a director with a diametrically different view as to how the

Company should be operated.” (*Id.*, ¶ 5). Doshi also accuses Besen of using B&A assets for his personal enjoyment. (NYSCEF 5, March 21, 2019, Doshi Aff., ¶ 8; NYSCEF 1, Petition, ¶ 10).

Besen blames Doshi for abandoning B&A and joining the employ of a competitor. (NYSCEF 21, April 19, 2019, Besen Aff., ¶ 30). On May 31, 2018, Besen initiated a plenary action with 24 causes of action and 273 paragraphs (*Besen v Doshi*, Index No. 652691/2018), in this court against Doshi, in which Besen alleges that it is “impossible for [Besen] to continue to operate any business with [Doshi].” (NYSCEF 34, Amended Complaint, ¶¶ 154, 167, 181, 199, 210, 227, 245 and 269). Besen also accuses Doshi of sensational misconduct and breaches of his fiduciary duty including: converting millions of dollars from B&A (*Id.*, ¶¶ 97-101); misappropriating B&A funds to participate in deals not involving B&A (*Id.*, ¶ 102); loaning money to clients of B&A through his own entity, without earning fees or commissions for B&A (*Id.*, ¶ 107); and interfering with the payment of commissions to B&A (*Id.*, ¶ 108). Besen repeatedly alleges that “the differences between [Besen and Doshi] are irreconcilable”, and that any attempt to settle their differences “will continue to be fruitless.” (*Id.*, ¶¶ 156, 157, 169, 170, 183, 184, 201, 202, 212, 213, 229, 230, 247, 248, 271 and 272). In addition, Besen seeks dissolution of eight entities that he jointly owns with Doshi. (*Id.*, ¶¶ 151, 164, 178, 203, 207, 224, 241, 266). In the counterclaims, Doshi seeks to dissolve eight additional entities jointly owned by the parties; Besen has consented to the dissolution of seven.

(See NYSCEF 7).¹ The exception is 94-16 34th Road LLC because upon foreclosure of the property, there will be no remaining assets to distribute.

The foreclosure proceeding pending in Queens Supreme Court, concerning 94-16 34th Road LLC, property jointly owned by Besen, Doshi and Farhadian,² illustrates the depth of the parties' dissention and the destruction they are both willing to tolerate at B&A's expense. (See *Jackson Partners LLC v. 94-16 34 Road LLC*, et. al, Index No. 715767/2017). Doshi and Farhadian are the only managing members of this LLC, but the property is managed by New York City Management LLC, a company co-owned by Besen and Doshi. (NYSCEF 34, Amended Complaint, ¶ 34). The squalid conditions of the building are such that the tenants initiated a building-wide rent freeze. (*Id.*, ¶¶ 35, 36, 37). Doshi and Farhadian were each ready, willing and able to pay Astoria Federal Bank (Astoria) 1/3 of the remaining balance on the loan, but Besen declined to pay his share. (See Index 652691/18, NYSCEF 57, March 29, 2019, Farhadian Aff., ¶ 5). Instead, Besen insisted on renovating the property with refinancing from Signature Bank with significant associated fees. (NYSCEF 34, ¶¶ 35-40). As the October 1, 2017 maturity date was approaching, Doshi and Farhadian offered to extend the Astoria mortgage at no fee until these issues could be resolved. (See Index 652691/18, NYSCEF 57, ¶¶ 7, 8). Astoria agreed, but when Besen refused to execute a document

¹ Dissolution proceedings are pending for a total of 20 entities in which Besen has an interest. In *Ram Gupta and Amit Doshi vs 292 East 166 LLC*, Index No. 651094/2019, petitioners seek the dissolution of two more companies owned by Doshi, Besen and a third partner Gupta. In yet another action, Index No. 650952/2019, Gupta seeks dissolution of another company he owns with Besen.

² Robert Farhadian is a defendant in Besen's plenary action bearing index number 652691/2018.

to correct a scrivener's error in the LLC documents³, as required by Astoria, the mortgage defaulted. (*Id.*, ¶ 6). Doshi and Farhadian created Jackson Partners LLC, an entity that purchased the defaulted mortgage, and is now foreclosing on the property. (See Index 652691/18, NYSCEF 57, ¶ 11). Besen's attempts to stay the foreclosure have all failed. (See Index 652691/18, NYSCEF 58, Livote, J. denying motion to intervene in Queens foreclosure; NYSCEF 59, Feb. 1, 2019, Appellate Division Second Department affirming decision issued by Livote, J. and denying stay of Queens foreclosure; NYSCEF 60, March 7, 2019, Appellate Division Second Department denying Besen's motion to renew and reargue; see also Index 652691/2018, NYSCEF 279, Oct. 4, 2019 Masley, J. denying Besen's motion for preliminary injunction staying the Queens foreclosure).

Another example of the irreconcilable differences between Doshi and Besen is illustrated by each party's maneuvers regarding the B&A server. (See Index 652691/2018, NYSCEF 319, 355). For months, these sophisticated business people, and their equally sophisticated attorneys, have been unable to get Doshi access to B&A's electronic documents, books and records. On October 11, 2019, this court heard oral argument on Besen's motion sequence number 005, in the related action bearing index number 652691/18, where Besen moved to quash Doshi's document demand. (See Index 652691/2018, NYSCEF 316, Transcript). The court directed the parties to investigate the cost of imaging, or alternatively establishing a portal, and report back to the court at the next conference scheduled for November 6, 2019. However, it was not

³ The Operating Agreement listed Besen as owning 20% of 94-16 34th Road LLC instead of 1/3. (See Index 652691/18, NYSCEF 57, March 29, 2019 Farhadian, Aff., ¶ 6).

until December 17, 2019, the night before a subsequent status conference, that Besen finally submitted an affirmation attesting to the cost of imaging --\$1,500. (See Index 652691/2018, NYSCEF 355, Dec. 17, 2019, Heppt Aff and NYSCEF 356, Dec. 18, 2019 Walfish Aff.). Despite this minimal cost in the grand scheme of this multi-million-dollar litigation, the parties persist in arguing about who shall bear the cost. (See December 27, 2019 decision on motion sequence numbers 004 and 005 in the action bearing index number 652691/2018).

Besen does not trust Doshi because Doshi allegedly lied to Besen about his involvement as a partner in a transaction for property located at 417 Lafayette Street. (NYSCEF 34, Amended Complaint, ¶ 97). Besen believes Doshi to be self-dealing as evidenced by payment of a B&A commission to The Bluestone Group (a real-estate investment firm), for the purpose of funding Doshi's investment in a deal with that firm. (*Id.*, ¶ 103). Besen repeatedly objects to Doshi's employment with Meridian Capital, a B&A competitor, as evidence of malfeasance. (*Id.*, ¶ 123).

Despite his allegations of pervasive malfeasance, Besen opines that the conflict no longer exists because Doshi abandoned B&A. (NYSCEF 21, Apr. 16, 2019, Besen Aff., ¶¶ 6, 8). The court rejects the implicit notion that B&A is a sole proprietorship. The court is compelled to deny Besen's motion as it is undermined by Besen's own allegations. Contrary to Besen's wishful thinking, B&A cannot escape the fallout of the admitted collapse in the relationship between Doshi and Besen. The parties need not come to blows to satisfy BCL §1104 (a).

Regardless of whether Doshi, Besen, or both, are responsible for the demise of B&A, it is apparent to this court that these parties are so divided that they can

accomplish nothing but destroy the successful company they created together. The standard for dissolution is not who is to blame. (*Schneck v Schneck*, 27 Misc 3d 1237(A), 2010 NY Slip Op 51084[U], at 8* [Sup Ct, Nassau County 2010]). With each party holding 50% of B&A, it is mathematically impossible to elect a new director to replace Doshi, and even if a new director could be elected, it would be impossible for the two directors to agree. Doshi promises that such a new director will have a “diametrically different view as to how the Company should be operated.” (NYSCEF 35, May 1, 2019, Doshi Aff., ¶ 5). The parties confirmed this deadlock to decision-making at a status conference with the court on December 18, 2019.

Besen also objects to dissolution based on the seven years remaining on B&A’s lease. (NYSCEF 21, Besen Aff., ¶ 31). Such practical problems are no impediment to dissolution and can be easily resolved -- at a price. For example, the lease can be assigned to Doshi or Besen, or some other negotiated resolution with the landlord. Likewise, the partners can buy each other out of B&A, or some other negotiated resolution, as Besen opined. (NYSCEF 21, Besen Aff., ¶ 7). However, this proceeding will not be used to force either party to surrender their shares. (NYSCEF 245 in *Besen v Doshi*, Index No. 652691/2018, Doshi Aff., ¶¶2, 5).

There is no contested issue for which a hearing is required. (*Goodman v Lovett*, 607 200 AD2d 670, 670 (2d Dept 1994)). On the contrary, it is clear that there is “internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders.” (BCL §1104(a)). A hearing would only delay the inevitable and do even more harm to the corporation.

Besen's cross motion pursuant to CPLR 602 (a) to consolidate this special proceeding with the plenary matter, to which there is no procedural bar, is denied despite Doshi's consent. Upon granting this petition, the matter is disposed, and thus there is no action that can be consolidated.

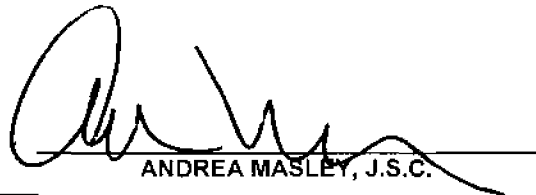
Accordingly, it is,

ORDERED and ADJUDGED that the petition is granted with an accounting to follow the dissolution; and it is further

ORDERED that the cross-motion to dismiss and to consolidate is denied.

Motion Seq. No. 001:

12/30/19
DATE


ANDREA MASLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
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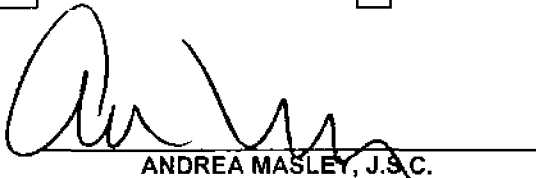
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APPLICATION:

CHECK IF APPROPRIATE:

Motion Seq. No. 002:

12/30/19
DATE


ANDREA MASLEY, J.S.C.

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- SETTLE ORDER
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- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: