

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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In the Matter of the Application of RENA
PACHTER, in her representative capacity as
Administrator of the ESTATE of JUDITH
LINDENBERG, deceased, individually and
derivatively on behalf of 3046 WEST 22 ST.
PROPERTIES LLC, HOMES R BEAUTIFUL RE
LLC, and PARK 50 WEST PROPERTIES LLC

Decision and Order
Petitioners, Index No. 502779/2020

For the Dissolution of 3046 WEST 22 ST
PROPERTIES LLC, D-WIN PROPERTIES LLC,
HOMES R BEAUTIFUL RE LLC, and PARK 50
WEST PROPERTIES LLC, and other relief,

-against-

July 12, 2021

DAVID WINIARSKI, ESTHER WINIARSKI,
MYRON WINIARSKY, ROBERT LUBIN, ARYEH
WEBER, and the LAW OFFICE OF ARYEH
WEBER, ESQ.

Respondents,

-and-

3046 WEST 22 ST. PROPERTIES LLC, D-WIN
PROPERTIES LLC, HOMES R BEAUTIFUL RE LLC
and PARK 50 WEST PROPERTIES LLC,

Nominal Respondents,

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PRESENT: HON. LEON RUCHELSMAN

In a decision dated May 5, 2021 this court granted a motion
filed by the respondents David, Esther and Myron Winiarski and
Aryeh Weber to dismiss the equitable dissolution claim. The
petitioner has now moved seeking to reargue that determination.
Papers were submitted by the parties and after reviewing all the
arguments this court now makes the following determination.

As recorded in prior orders the petitioners have instituted
this action seeking dissolution of various entities. Further,

the Petition seeks derivative claims of breach of fiduciary duty, conversion and other claims. The Petition alleges the respondents harmed the entities by engaging in improper conduct. In the prior decision the court dismissed the equitable dissolution claim but maintained the judicial dissolution claim. The petitioner seeks to reargue that determination.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

In Matter of 1545 Ocean Avenue LLC, 72 AD3d 121, 893 NYS2d 590 [2d Dept., 2010] the court held that the sole basis for dissolution of a limited liability company were the grounds outlined in Limited Liability Company Law §702, namely judicial dissolution and that it was improper "to import dissolution grounds from the Business Corporation Law or Partnership Law to the Limited Liability Company Law" (id). Indeed, there are no cases that apply anything other than judicial dissolution to limited liability companies. The fact that other remedies are available to limited liability companies such as piercing the corporate veil or the business judgement rule does not mean other

dissolution methods are possible. The petitioner argues there is no reason why equitable dissolution should be barred when it is available for entities that are so similar to limited liability corporations. However, that is a policy argument which cannot override the clear directive of Matter of 1545 Ocean Avenue LLC (supra). Indeed, this court is bound by Matter of 1545 Ocean Avenue LLC which interpreted Limited Liability Company Law §702 as foreclosing all other forms of dissolution (see, Natanel v. Cohen, 43 Misc3d 1217(A), 988 NYS2d 524 [Supreme Court Kings County 2014]).

The petitioner further argues "the law supports the viability of equitable dissolution" (Memorandum of Law, page 2). While that is surely true when dealing with ordinary corporations, and it may very well be the petitioner has demonstrated the sufficiency of evidence necessary to obtain equitable dissolution generally, it is not true at all when dealing with limited liability companies. The cases cited by petitioner do not endorse such equitable dissolution for limited liability companies. Tzolis v. Wolff, 10 NY3d 100, 855 NYS3d 6 [2008] held that derivative actions were permissible in a limited liability company, however, that has nothing to do with whether other forms of dissolution are available. Further, in Mizrahi v. Cohen, 104 AD3d 917, 961 NYS2d 538 [2d Dept., 2013] the dissolution that occurred was "judicial" pursuant to Limited


Liability Company Law §702. Again in Matter of Superior Vending LLC (Tal-Plotkin), 71 AD3d 1153, 898 NYS2d 191 [2d Dept., 2010] the court considered options based upon judicial dissolution pursuant to Limited Liability Company Law §702. Again, while arguments based upon logic or common sense might seem persuasive, at this time there is no basis for a dissolution of a limited liability company that is not judicial.

Therefore, the petitioner has not presented any basis to disturb the prior determination. Therefore, based on the foregoing the motion seeking to reargue the decision dismissing the equitable dissolution claim is denied.

So ordered.

ENTER:

DATED: July 12, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC