

At an IAS Term, Part ^{COM} of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 18th day of September, 2019

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X
ELAINE HOFFMAN,

Plaintiff,

- against -

DECISION + ORDER

Index No. 514635/15

S.T.H.M. REALTY CORP., ALLAN HOFFMAN,
DONNA HOFFMAN, AND JUDI BREZNIAK,

Defendants.

-----X
ELAINE HOFFMAN,

Plaintiff,

- against -

Index No. 514638/15

HYMEL-PORTER REALTY CORP., ALLAN HOFFMAN,
DONNA HOFFMAN AND JUDI BREZNIAK,

Defendants.

-----X
ELAINE HOFFMAN,

Plaintiff,

- against -

Index No. 514639/15

CORNELL BEVERAGES, INC., ALLAN HOFFMAN,
DONNA HOFFMAN AND JUDI BREZNIAK,

Defendants.

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Petitioner herein seeks dissolution of three related, closely held corporate entities in which Elaine Hoffman, Allan Hoffman, Donna Hoffman and Judi Brezniak each own 25% of the shares. These entities were initially owned and operated by their grandfather and fathers. Defendants Allan Hoffman and Judi Hoffman came to be active employees, while Elaine Hoffman and Judi Brezniak have never actively participated in corporate affairs.

Over the years, the business of Cornell Beverages diminished and the real property owned by the corporations has deteriorated and remains significantly underdeveloped. However, the real property itself has skyrocketed in value.

Petitioner was largely disinterested in corporate affairs during the years that the realty was languishing in value. In recent years, petitioner has increasingly sought to derive an economic benefit due to both her personal needs and a realization that the realty has undergone a dramatic increase in value. In this, petitioner's efforts have been frustrated because the other three shareholders steadfastly refuse to sell, heavily mortgage or otherwise take such actions as would produce significant distributions to the shareholders. Petitioner refuses to compel a buyout under the Shareholders Agreement as such would only allow her to receive book value for her shares.

The evidence further indicates that the corporations have been operated in an informal fashion, typical of closely held entities of this kind. Paragraph 8 of the Shareholders Agreement provides that unanimous agreement among the shareholders is required to hire and first set the salary

of an employee. Paragraph 12 requires a two thirds vote (67%) to change an employees compensation. It appears that all shareholders initially agreed to (or acquiesced in) the employment of Allan and Judi Hoffman and that at least 75% have agreed to later changes in compensation. There is no significant evidence that the entities have been run in anything other than an honest and straightforward manner or that compensation was anything other than reasonable and modest. While the entities have been managed in a very conservative fashion, their management was certainly within the scope of the reasonable exercise of business judgment. This court is without discretion to substitute its own business judgment for that reasonably (although perhaps not optimally) adopted by a solid three of the four shareholders.

Petitioner's expectations herein have been frustrated only in the sense that she desires the corporate entities, which now possess a great deal of equity in real property, to liquidate some or all of that wealth and distribute it to the shareholders. This is decidedly not the frustration needed for liquidation under BCL1104a. No credible evidence of illegal, fraudulent, or oppressive conduct, or looting, wasting or diversion of assets for non-corporate purposes, has been adduced at trial. A buyout herein cannot be compelled on any basis other than that provided in the Shareholder's Agreement. Under the circumstances, New York Law permits the three (3) shareholders controlling 75% of the shares to block the remaining shareholder, with whom they profoundly disagree, from corporate management.

Accordingly, the instant petition is dismissed in its entirety.

The foregoing constitutes the decision, order and judgment of this court.

ENTER FORTHWITH,


J. S. C.

HON. LAWRENCE KNIPEL
Administrative Judge

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