EXHIBIT "2"

At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District Virtually at the Tompkins County Courthouse, Ithaca, New York, on the 16th day of August 2021.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

Application of DR. ELIZABETH PLOCHARCZYK,

Petitioner,

DECISION AND ORDER

Index No. EF2021-0163
RJI No. 2021-0097-M

For the Judicial Dissolution of PATHOLOGY ASSOCIATES OF ITHACA, P.C. and DR. DANIEL SUDILOVSKY,

Respondent.

APPEARANCES:

COUNSEL FOR PLAINTIFF:

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JOSEPH A. MCBRIDE, J.S.C.

Currently before the Court is a Petition for Judicial Dissolution as well as a cross-motion seeking to vacate the temporary restraining order dated March 18, 2021, for a preliminary injunction against the petitioner, as well as a stay of the proceeding. First, Petitioner, Dr. Elizabeth Plocharczyk ("Petitioner") filed the Petition for Judicial Dissolution via Order to Show Cause on March 16, 2018. The Court signed the proposed Order to Show Cause on March 18, 2021 and made it returnable April 30, 2021. Subsequently, on April 24, 2021, Respondent, Dr. Daniel Sudilovsky, ("Respondent") filed his above-mentioned cross-motion. On July 1, 2021, via a Decision and Order, this Court ordered a hearing on the merits of the Petition for Dissolution and subsequently held the cross-motion in abeyance. The hearing was held virtually on August 16 and 30, 2021. It is the Court's understanding that the cross-motion is moot and therefore, the Court will only discuss the dissolution hearing below.

BACKGROUND FACTS

Petitioner and Respondent are each 50% shareholders of Pathology Associates of Ithaca ("PAI"). Petitioner specializes in Pathology and Dermatopathology diagnosing skin tissue diseases and Respondent specializes in breast tissue pathology. Beyond that, each party provides their own version of the facts. Both Petitioner and Respondent have impressive resumes and brings a specialized knowledge and expertise to the practice. PAI was established in 1997. Respondent moved to the Ithaca area and joined the practice in 2005. In 2007 Respondent became the sole shareholder. In 2013, Petitioner joined the practice as an employee. Both parties testified about the mentor/mentee relationship between Respondent and Petitioner. For the first several years, both worked well together and collaborated well. They had different specialties which balanced the practice. They had a healthy functional relationship and even socialized outside of work on a few occasions. In 2018, Petitioner became an equal share partner where Respondent gave Petitioner 50% shares at no cost. PAI had three client contracts. Cayuga Medical Center ("CMC") since 1997, Schuyler Hospital ("Schuyler") since 2013, and Tompkins County Medical Examiner ("TCME") since 2018. In addition, Respondent acted as Medical Director of CMC and Schuyler. Respondent explained that in his role as medical director was an independent position. The medical director oversaw lab testing, coordinated

meetings and collaborations with other departments, and maintained the hospital's state and federal licensing. Respondent explained that decisions made in the lab are solely of the medical director with a responsibility attached and it was not a democracy. Meanwhile, PAI does not have an independent office, but each party has an office located in CMC's basement.

At the hearing, Petitioner tells a story that at some point in 2019 and throughout 2020, Respondent became withdrawn and erratic in behavior. Following the COVID-19 pandemic response, Petitioner claims she had to step up with no support from Respondent. When Respondent eventually became involved, he was rude and tried to thwart Petitioner's efforts. Petitioner testified that specifically the working relationship changed in the fall of 2019 after Respondent announced he was getting a divorce, he became "disengaged." Petition claimed respondent missed meetings, was absent from work, and when he was present demonstrated "erratic behavior" and was rude with not only Petitioner but other members of the medical community. Petitioner testified that Respondent even claimed he was a "conscious objector" to specific projects and ideas that Petitioner presented. For example, when Respondent was absent from multidisciplinary meetings, Petitioner would present a plan that was accepted by the rest of the team, however, when Respondent did return to meetings, he would "decide he did not like the plan" and "dismantle her work." Petitioner claimed this uncertainty and behavior ultimately caused so much stress to Petitioner that she became very ill with acute stress induced gastritis.

Petitioner claims that when the COVID pandemic hit Tompkins County, Respondent was visibly absent. Generally, the pathology lab at CMC, which Respondent was medical director, would conduct infectious disease testing. However, in early March 2020, Tompkins County was doing off-site testing and sending samples to the Mayo Clinic in Minnesota. At the time, the pandemic really took off, Respondent was on vacation. Petitioner did not contact Respondent to apprise him of what was going on. When Respondent returned, he did not show up to a few meetings that were scheduled. This behavior led to the claim that Respondent was absent.

Moreover, there were three major events that precipitated the dissension between the parties. First, the parties did not agree on the idea of pooling COVID testing. Petitioner was a proponent of pooling as a way to expand volume and lower cost of testing. Petitioner testified that Respondent thwarted her efforts and sent a dismissive email on April 17, 2020 that explained pooling "was not going to happen" at the CMC lab, and that was the end of the

discussion. Petitioner claims that Respondent's approach and how he conveyed his displeasure with her suggestion made her feel as if she was doing something wrong. Further, at one point CMC and Cornell tried to collaborate in an effort to expand testing capabilities. Petitioner testified that at one of the collaboration meetings, Respondent was rude in his approach. Respondent only wanted to talk about himself and his accomplishments, how the collaboration would make him look, interrupted speakers, and demonstrated grandiose behaviors. Petitioner claimed that as a result, Cornell personnel said they would only work with Petitioner and not with Respondent. Finally, Petitioner testified that around Septmeber 2020, Respondent publicly humiliated her at a meeting regarding her saliva validation study and dismissed her results in front of colleagues.

Petitioner testified that as the year went on, there was less and less communication between the parties, the relationship deteriorated and became tense. Petitioner testified that the parties were no longer collaborative partners, and the relationship was no longer sustainable to the point she wanted to leave the practice. By October 2020, the parties barely spoke to each other and Respondent was removed as medical director by CMC. By January 2021, Petitioner testified she "couldn't take it any longer." However, she wanted to stay in the practice and wanted Respondent to leave. In March 2021, Petitioner filed the current Petition for dissolution. Petitioner alleged she has lost trust in Respondent as a business and medical practice partner and that the two members are at a deadlock as they have not been able to communicate as to the daily operation of PAI. Petitioner claimed there is corporate frustration and irreconcilable division respecting the management of the practice and a breakdown of trust between the shareholders. Petitioner suggest judicial dissolution would be beneficial to the shareholders as well as to effectively continue the medical services the shareholders provide to the community.

Alternatively, Respondent paints a very different picture of the parties' working relationship. Respondent claims he was unaware of any breakdown in communication as Petitioner never once approached him to discuss their working relationship. Respondent testified that due to the COVID pandemic, PAI's involvement was minimal. Elective surgeries and procedures were cancelled and as a result, there was not a lot of pathology services needed. Further, while the Tompkins County COVID testing occurred off-site, there was no need for the medical director of the hospital to be involved as this was not the medical director's role.

Respondent claimed he acted as medical director in the best interest of the hospital's state and federal licensing.

Respondent testified that on March 13, 2020, he went on vacation to Cleveland for his mother's 90th birthday celebration and never once heard from Petitioner indicating she needed help with the COVID response. Respondent claimed that the allegation that he was absent was disingenuous as his vacations did not exceed the allotment in the shareholder agreement. Moreover, Respondent testified that upon return, it seemed Petitioner had the COVID response covered and in fact, Petitioner was the best for the job since she had a background in public health administration. Respondent only had to become involved later on when the testing came to the CMC lab and in his capacity as medical director. Respondent testified that he had to be concerned with the bigger picture for the hospital. Respondent claimed that he did not thwart the pooling idea for the sake of being obstinate, but as a responsibility of the medical director as he could not authorize pooling of testing swabs at that time. Respondent explained that at the time Petitioner wanted to do pooling testing, the Mayo Clinic was not yet doing pooling testing as it was not yet an approved method. Moreover, Respondent explained that they could not pool testing even if they wanted. While the CMC lab approved a validation study in April, the Rheonix instrument used to pool samples had not yet been FDA approved.

Further, Respondent claimed he had to object to the Cornell collaboration testing as Cornell is a veterinary testing site had different accreditation and licensing concerns. Respondent explained that if the state inspected the samples tested, it was the medical director's position that would be held responsible and agreeing with the Cornell collaboration, he could open himself up to a lawsuit. Finally, Respondent testified that it was not his intention to publicly humiliate Petitioner regarding the Septmeber 2020 Saliva validation study. Respondent explained that for validation studies the gold standard was a 95% accuracy rating. Testing was usually performed by lab techs and validated by the head lab tech before being presented to the medical director. On this occasion, Petitioner took it upon herself to perform her own testing, and only received an 88% accuracy rating. Respondent claimed that the results were emailed to him on a weekend, and he did not have an opportunity to review the results in time. Respondent testified that his head lab tech was forced to go into Petitioner's locked office to retrieve her results just one hour before the scheduled meeting. While timing was less than ideal,

Respondent was not giving the opportunity to confront Petitioner prior to the meeting and therefore had to review and reject the results in front of clients. Respondent claimed that it was after this Septmeber 2020 meeting that Petitioner went "radio silent."

Respondent testified that there was no deadlock between shareholders as it pertained to the PAI business, denied a breakdown of trust, and was blindsided by this dissolution proceeding. Respondent claimed he did not intentionally miss meetings, but was ether not invited or missed the invitation due to the change to virtual scheduling. Respondent testified that the first he learned there was any tension between the parties at a June 2020 meeting with Dr. Stallone, CMC president. Petitioner would complain about Respondent's behavior to hospital administrators rather than with Respondent directly. In June 2020, Dr. Stallone called Respondent into his office for a meeting to discuss the future of his role as medical director. When Respondent arrived, Petitioner was there, and Respondent claimed this was the first he learned of any breakdown of communication or Petitioner's feelings about Respondent's alleged behavior. Respondent testified that up until that point, Dr. Stallone had been praising Respondent for the work he was doing as medical director, and then after the meeting, he was blindsided that they were looking to transition the medical director position from Respondent to Petitioner. Respondent testified that despite the transition timeline, by October 2020, it was clear to Respondent that Dr. Stallone was "influenced" by Petitioner's complaints and so Respondent voluntarily resigned as medical director.

Dr. Stallone testified that Respondent's demeanor was terse and disrespectful, especially around the pooling discussions. Dr. Stallone confirmed that Cornell said they would not work with CMC if Respondent was involved. While Dr. Stallone testified that he did text encouragement to Respondent, he was acting in his role as hospital administrator trying to get the employees to get along. Dr. Stallone testified that while Petitioner's opinion and complaints of Respondent did influence his decisions, Dr. Stallone was more concerned about Respondent's ability to cooperate with others. Dr. Stallone further confirmed that the purpose of the June 2020 meeting was to create a smooth transition of medical director, there was a steady decline in the parties' interactions and therefore welcomed the switch in October 2020.

Petitioner filed the verified Petition for Judicial Dissolution on March 16, 2021, via proposed Order to Show Cause. The proposed order was signed March 18, 2021 and eventually

scheduled for a hearing on the dissolution. Petitioner argued that judicial dissolution was necessary, by the very nature of Respondent's opposition clearly shows there is a breakdown of communication. Respondent argued that there is no deadlock as there has not been a corporate vote resulting in a deadlock.

It should be noted that after the petition for dissolution was filed, Respondent filed a separate action for breach of contract against Petitioner. At some point after the Petition was filed, CMC terminated their contract with PAI as exclusive pathology services. CMC then contracted with Petitioner and her newly formed corporation for an exclusive pathology services contract. Respondent claimed that is in violation of the non-compete clause in their shareholder agreement.

LEGAL DISCUSSION AND ANALYSIS

Pursuant to Business Corporation Law § 1104 (a),

> "a petition for dissolution [may be granted] on one or more of the following 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 directors 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." See Greer v. Greer, 124 AD2d 707, 707-08 (2nd Dept. 1986).

In Greer, the Second Department held that dissolution is "an appropriate remedy available to the court...where in light of the undisputed evidence of the intense strife... [that] crippled their ability to operate the corporations." Id. at 708. The prime inquiry for dissolution is "whether judicially-imposed death will be beneficial to the stockholders or members and not injurious to the public." Application of Sheridan Construction Corp., 22 AD2d 390, 392 (4th Dept. 1965). The Sheridan Court explains that there is no better example of deadlock than when two [shareholders] "enmeshed in a bitter feud" where the "disagreements which developed and the

intensity of their discord became so great that efficient management became impossible" and dissolution is the "only practical and feasible solution." Id. at 391-92. Further, dissolution is appropriate when "there are such differences and animosity between two principals... as to present an irreconcilable barrier to the continued functioning of [the] corporation under efficient management." See In re Cunningham & Kaming, P.C., 426 NYS2d 765, 766 (1st Dept., 1980). See also, Goodman v. Lovett, 200 AD2d 670 (2nd Dept. 1994) (while the underlying reason of dissention is of no moment, the fact that there is apparent dissension among the parties is sufficient to direct dissolution).

In the case at hand, it is clear that even though Petitioner and Respondent worked closely in two distinct settings, first as partners, and second as medical director and subordinate, the two roles are so closely intertwined, the Court must focus on their personal and professional relationship between the two principals as a whole. As the Second Department points out, it is not the underlying reason of the dissension that is of consequence, it is the fact that there is apparent dissension among the parties that makes it sufficient to direct dissolution. See Goodman, 200 AD2d at 671. While Respondent claims that there is no evidence of deadlock because there has been no opportunity to vote, the Court is unpersuaded by this argument. Clearly, several courts throughout the State indicate that "intense strife" or "discord affecting management" and "dissension impeding the ability to function" are prime examples of deadlock. See generally Greer, 124 AD2d at 708; Sheridan, 22 AD2d 390 at 392; and Matter of Celino v. Celino & Barnes, PC, 175 AD3d 1120, 1122 (4th Dept. 2019).

Here, it is clear that the parties no longer have a good working professional or personal relationship. All effective communication has ceased to exist. The stress of Petitioner's perception of Respondent's behavior has literally made her ill. Petitioner feels as if she is not an equal, and as if her efforts are being thwarted by Respondent. Dr. Stallone confirmed Respondent is terse and rude to clients essential thwarting an efficient working relationship between the parties. It is clear from the record that the dissension has impeded the parties' ability to function as partners within the shareholder agreement. In fact, Petitioner has created her own pathology business and taken over PAI's contracts. The exact subject of a sister litigation between these two parties. That alone creates an irreconcilable barrier to the continued function of the partnership. As courts have held in the past, the benefit of a dissolution to one

party, presumably benefits the other party. See Matter of Eklund Farm Mach., Inc., 40 AD3d 1325, 1327. When PAI's only clients, terminate their contracts because of the level of animosity between the partners, the Court can only take that into consideration and conclude that the intense discord among the partners necessitates dissolution benefiting the stockholders and does not injure the public. The Court finds that based on the testimony and evidence presented, the level of animosity between the parties prevents an efficient operation of the partnership and "demonstrates sufficient dissension among the parties to direct dissolution."

CONCLUSION

Based on all the facts and evidence presented at the hearing, the Court finds that there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders. Therefore, the Petition for dissolution is granted. As such, the cross-motion and request for stay of proceedings are deemed moot.

Finally, since our tenure in Tompkins County is ending, this matter will be transferred to another Supreme Court Judge assigned to Tompkins County matters for further dissolution proceedings.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this **DECISION AND ORDER** by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 12/7/21
Norwich, New York

HON. JOSEPH A. MCBRIDE
Supreme Court Justice

Entered 12/07/2021