

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable **Leonard Livote** IAS TERM, PART 33
Acting Supreme Court Justice

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 In the Matter of the Application of Index No.:711131/19
 VASILIKI APOSTOLOPOULOS, Holder of Fifty Motion Date:11/19/19
 Percent of all Outstanding Shares of
 OXFORD ASSOCIATES GROUP, INC. and Seq. No: 1
 LANCASTER REALTY MGT. CORP., Cal No.: 4
 Petitioner,

-against-

OXFORD ASSOCIATES GROUP, INC. and
LANCASTER REALTY MGT. CORP.
and GEORGE KYRIAKOUCDES A/K/A GEORGE
KYRIAK,

Respondents,

For the Dissolution of OXFORD ASSOCIATES
GROUP, INC. and LANCASTER REALTY MGT.
CORP. Pursuant to BCL §1104-a(1).

FILED
5/13/2020
12:46 PM
COUNTY CLERK
QUEENS COUNTY

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 The following papers numbered EF 1-29 read on this motion by
 petitioners Vasiliki Apostolopoulos and Oxford Associates Group,
 Inc. for an Order enjoining and restraining Respondent, or anyone
 acting on his behalf, from removing, encumbering, mortgaging,
 assignment, lending against or in any way devaluing the assets of
 the company to the detriment of Petitioner; Enjoining and
 restraining Respondent, or anyone acting on his behalf, from
 disposing, transferring, diverting or selling any cash or assets,
 not in the normal course of operations belonging to the
 Corporations and/or charging expenses to the Corporations without
 the consent of Petitioner; Directing Respondent, or anyone acting
 on his behalf, to deposit all receivables of the Corporations in
 his possession in the Corporations' bank, accounts; Enjoining and
 restraining Respondent, or anyone acting on his behalf, from
 entering into contracts, purchase orders, commitments, or
 incurring any obligations or liabilities for or on behalf of the
 Corporations that devalue the assets of the company to the
 detriment of Petitioner, without the consent of Petitioner;

Pursuant to BCL §624, directing that Respondent make available to Petitioner all items and property of the Corporations, including but not limited to all books and records, contracts, commitments or other evidence of debt or obligations, check books, financial statements, tax records, computer and other electronic data, and any shareholders' agreements, for Petitioner's inspection, review and/or copying from the last 12 years; Directing that accountings be had of the Corporations since June 1, 2007; Directing the appointment of a receiver to oversee the operations of the Corporations pursuant to BLC §1203 in furtherance of a dissolution of the companies;

and, the cross-motion for an Order: (a) pursuant to CPLR 404 and/or 3211(a)(7) dismissing the Verified Petition herein; (b) or alternatively, pursuant to CPLR 409(b) granting summary determination dismissing the Verified Petition.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits.....	EF 1-6
Cross Motion, Affirmation, Affidavits and Exhibits.....	EF 19-23
Answering Affirmations, Affidavits and Exhibits.....	EF 25-29
Reply Affirmations, Affidavits and Exhibits.....	
Other.....	

Upon the foregoing papers, the motion is granted in part and the cross-motion is denied.

Petitioner commenced this dissolution proceeding alleging that she was shut out of management of the corporations. Respondent alleges that petitioner resigned her positions, relinquished her ownership and voluntarily resigned and left the employ of the corporate respondents. Respondent cross-moves to dismiss.

By Order dated January 15, 2020, the Petitioner was granted leave to amend the Petition.

The motion to dismiss on statute of limitations grounds is addressed to the merits and is not be defeated by the amended pleading (*Livadiotakis v Tzitzikalakis*, 302 AD2d 369, 370 [2d Dept 2003]). However, respondent contends, at this time, that petitioner has no ownership interest, and therefore no right to participate in the management of the corporate entities. Thus, there are grounds for dissolution within the statute of

limitations. Accordingly, the cross-motion is denied.

Petitioner moves for preliminary injunctive relief pending the determination of the petition. "Preliminary injunctive relief is a drastic remedy that will not be granted unless a clear right to it is established under the law and upon undisputed facts found in the moving papers, and the burden of showing an undisputed right rests upon the movant" (*Anastasi v. Majopon Realty Corp.*, 181 A.D.2d 706, 707 [2d Dept 1992]).

In order "to prevail on a motion for a preliminary injunction, the movant must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position" (*Apa Sec., Inc. v. Apa*, 37 A.D.3d 502, 503 [2d Dept 2008]).

In the instant case, preliminary injunctive relief is warranted to maintain the status quo. Accordingly, the motion is granted to the extent that, pending further order of the Court, it is,

Ordered, that, upon the posting of a bond in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,00.00), Respondent or anyone acting on his behalf, is enjoined and restrained from disposing, transferring, diverting or selling any cash or assets, not in the normal course of operations belonging to the Corporations and/or charging expenses to the Corporations without the consent of Petitioner; and it is further,

Ordered, that Pursuant to BCL §624, Respondent shall make available to Petitioner all items and property of the Corporations, including but not limited to all books and records, contracts, commitments or other evidence of debt or obligations, check books, financial statements, tax records, computer and other electronic data, and any shareholders' agreements, for Petitioner's inspection, review and/or copying from the last 12 years.

Any other or further relief requested but not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: May 8, 2020

FILED

**5/13/2020
12:46 PM**


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Leonard Livote, A.J.S.C.