

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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INDEX NO. 158029/2023

In the Matter of

MOTION DATE 09/11/2023

MICHAEL RYOO,

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

FIVE SENSES KOREAN BBQ, INC.,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for MISCELLANEOUS/INSPECTION OF CORPORATE RECORDS.

This is a proceeding pursuant to Business Corporation Law § 624, pursuant to which the petitioner, Michael Ryoo, seeks to compel the production of the books and records of the respondent corporation for the purpose of inspection. The respondent served late opposition to the petition. The petition is granted.

It is not disputed that the petitioner owns 23.66% of the shares of stock in the respondent closely held corporation, Five Senses Korean BBQ, Inc., pursuant to an August 9, 2019 Stock Purchase/Operating Agreement (the Operating Agreement). Section 53 of the Operating Agreement provides that,

“[a]ccurate and complete books and account of the transactions of the Company will be kept in accordance with generally accepting accounting principles (GAAP) and at all reasonable times will be available and open to inspection and examination by any Shareholder. The books and records of the Company will reflect all the Company’s transactions and will be appropriate and adequate for the business conducted by the Company.”

On June 20, 2023, the petitioner served a demand letter upon the respondent, demanding that he be permitted to inspect (a) profit and loss statements from 2018 to the present for the related

limited liability company known as Five Senses Korean BBQ, LLC (the LLC), (b) the respondent's profit and loss statements from 2019 to the present, (c) a list of debts incurred by the respondent and the LLC, (d) a list of the respondent's current shareholders and the LLC's current members, along with capital tables indicating capital investments made by the shareholders and members, (e) a list of assets belonging to the respondent and the LLC, and (f) the respondent's and the LLC's tax returns, including K-1 forms issued to the respondent's shareholders and the LLC's members, from 2019 to the present. He also demanded access to the respondent's accountant. The respondent did not respond to the petitioner's demand, except to the extent that it permitted him to speak with its accountant. This proceeding ensued.

In the order to show cause initiating the proceeding, the court directed that all papers responsive to the petition were to be served and filed on or before September 8, 2023. The respondent, without securing the permission of the court, served and filed a late attorney's affirmation in opposition to the petition on September 11, 2023. Where a court order fixes a deadline for the service of opposition papers, and the opposing party fails to comply with that deadline, the court may ignore or reject papers that were filed after the deadline (*see BSD 253, LLC v Wilmington Sav. Fund Socy., FSB*, 186 AD3d 1601, 1603 [2d Dept 2020]; *Retained Realty v Zwicker*, 2018 NY Misc LEXIS 5425, *1 [Sup Ct, N.Y. County, Jan. 30, 2018]).

Even were the court to consider the late opposition papers, the petition must be granted in any event. "Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose" (*Retirement Plan for Gen. Empls. of City of N. Miami Beach v McGraw-Hill Cos., Inc.*, 120 AD3d 1052, 1055 [1st Dept 2014]; *see Business Corporation Law* § 624[b], [e]; *Matter of Dwyer v Di Nardo & Metschl, P.C.*, 41 AD3d 1177, 1178 [4th Dept 2007]; *Matter of Peterborough Corp. v Karl Ehmer, Inc.*, 215 AD2d 663, 664 [2d Dept 1995]). The statutory right of inspection supplemented, but did not replace, the common-law right (*see*

Matter of Crane Co. v Anaconda Co., 39 NY2d 14, 19-20 [1976]; Retirement Plan for Gen. Empls. of City of N. Miami Beach v McGraw-Hill Cos., Inc., 120 AD3d at 1055).

The petitioner alleged facts sufficient to establish that he wishes to inspect the respondent's books and records to ascertain the financial state of the respondent's business as a closely held corporation, the relationship of the LLC to the respondent, including the extent of any shares that the LLC may own, the propriety of the tax returns, the amount of any dividend or distribution to which he might have been entitled, and the identities of the other shareholders and members, which may have changed since he entered into the Operating Agreement. It is no defense to a Business Corporation Law § 624 proceeding that the shareholder may have obtained some of the requested information from other sources. Nor is it a defense that the corporation's attorney claims to have produced all responsive books and records "in his possession," inasmuch as a shareholder has the right to inspect all relevant books and records maintained by the respondent itself, and not just those that it had turned over to its attorney.

Accordingly, it is

ADJUDGED that the petition is granted; and it is,

ORDERED that, on or before November 30, 2023, the respondent shall make available to the petitioner or his attorney, for inspection and copying, at a place of the respondent's choosing, all of the documents demanded by the petitioner in his June 20, 2023 demand and identified in the instant petition.

This constitutes the Decision, Order, and Judgment of the court.

10/19/2023
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

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

APPLICATION:

CHECK IF APPROPRIATE: