

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

PRESENT: DEGRASSE
Justice

PART 25

GENERAL TRADING CO. INC
- v -

INDEX NO. 106159/06
MOTION DATE _____
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with the accompanying memorandum decision.

Dated: July 28, 2006

FILED
AUG 07 2006
NEW YORK
COUNTY CLERK'S OFF.

Dated: _____ MB _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

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

-----X
In the Matter of the Application of
GENERAL TRADING CO., INC.,

Petitioner,

Index No. 106157/06

For the Dissolution of
2927 EIGHTH AVENUE CORP.,

Pursuant to Sections 1104 and 1104-a of the BCL.
-----X

DeGrasse, J.:

Motion sequences 01 and 02 are consolidated. This is an application for a judgment dissolving 2927 Eighth Avenue Corp. (the corporation) pursuant to Business Corporation Law §§ 1104 and 1104-a. Dissolution of a corporation under section 1104 is available under circumstances of division among its directors, division among its shareholders or internal dissension involving two or more factions of shareholders. Dissolution under section 1104-a is available where the directors or those in control of a corporation have been guilty of illegal, fraudulent or oppressive conduct. Section 1104-a dissolution is also available where the corporation's property or assets are being looted, wasted or diverted for non corporate purposes by the directors, officers or those in control of the corporation. It is alleged in the petition that petitioner is a creditor of the corporation. The corporation's indebtedness is secured by a pledge agreement which has given petitioner the right to assume ownership of and vote the corporation's shares in the event of a default. Such a default occurred in June 2001. Thereupon, petitioner took control of the corporation's shares and registered them in its own name. Petitioner also removed the corporation's directors; elected Jonathan Abad, petitioner's vice president, as the sole director; removed the corporation's officers and elected Abad as president and one

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Patrick Doody as secretary. Dissolution is unavailable under section 1104 because petitioner is the sole shareholder and its vice president the sole director.

Dissolution under section 1104-a is discretionary (*Gimpel v Bolstein*, 125 Misc 2d 45 [1984]). Petitioner's control over the corporation's shares, its board and its officers places it in a position to obtain the result sought here by means of a nonjudicial dissolution pursuant to Article 10 of the Business Corporation Law. Article 10 relief is available notwithstanding petitioner's claim that the corporation is controlled by its former president. Accordingly, the application is denied and the petition dismissed. Petitioner's motion for an order appointing a receiver and granting a preliminary injunction is denied in light of the foregoing disposition. Moreover, petitioner has not made a sufficient showing that a receiver should be appointed because property will be removed from the state, lost, materially injured or destroyed (*see* CPLR 6401 [a]). The Clerk shall enter judgment dismissing the petition.

Dated: July 28, 2006



J. S. C.

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