



Aristotelis (a/k/a Telly) Vagianderis as a director and officer of Kalamaki Taverna, Inc. (the Corporation), which does business as Telly's Taverna, (the Restaurant), to recover damages based upon various acts of alleged misconduct; for an accounting; and for declaratory relief to the effect that Telly is permanently removed as a director and officer of the Corporation, is permanently retired and is no longer an employee of the Restaurant. Plaintiff also seeks to compel the sale of Telly's shares of stock to herself, pursuant to the terms of the shareholder agreement; to compel defendant to turn over the books and records of the corporation; and injunctive relief.

Defendant Aristotelis Vagianderis died on March 7, 2006. This court in an order dated January 22, 2007, denied a motion by Ionnis Vagianderis to be substituted as the Executor of the Estate, and denied a separate motion for consolidation, as the preliminary letters testamentary had expired. Plaintiffs are the respondents-defendants in related action entitled Ionnis Vagianderis as the Executor of the Estate of Aristotelis (a/k/a Telly) Vagianderis v Joanna (a/k/a Nana) Loisselle, et al. (Index No. 307/06), and they erroneously cross-moved in that action to substitute Ionnis Vagianderis as the Executor of Estate of the decedent in the instant action. The court, in an order dated July 31, 2007, directed the Executor or Loisselle and the Corporation to renew their prior motions for substitution and consolidation, in the instant action.

On February 28, 2007, letters testamentary appointing Ioannis Vagianderis, as Executor of the Estate of Aristotelis (Telly) Vagianderis were issued by the Surrogate's Court, Queens County. Therefore, that branch of plaintiffs' motion which seeks to renew the prior motion to substitute Ioannis Vagianderis, as Executor of the Estate of Aristotelis (Telly) Vagianderis, in place of Aristotelis (Telly) Vagianderis, as the defendant, is granted, and the parties are directed to amend the caption accordingly.

That branch of plaintiffs' motion which seeks to vacate the statutory stay of the action, due to the death of Aristotelis (Telly) Vagianderis, is granted.

That branch of the motion which seeks summary judgment directing the Executor to sell to the plaintiff the decedent's shares in the Corporation, for the sum of \$150,000, is denied. Plaintiff now seeks to enforce a provision in the shareholder's agreement which provides for the termination of the shareholder's interest upon death and valuation of the deceased shareholder's interest. Plaintiff, however, has not moved to amend her

complaint, and is not entitled to summary judgment on an unpled cause of action.

That branch of plaintiff's motion which seeks to renew the prior motion to consolidate, for the purpose of a joint trial, the within action with the action entitled Ionnis Vagianderis as the Executor of the Estate of Aristotelis (a/k/a Telly) Vagianderis v Joanna (a/k/a Nana) Loiselle, et al. (Index No. 307/06), is granted, as these actions involve common questions of law and fact. These actions shall retain their separate captions and shall have separate index numbers, separate requests for judicial intervention and separate notes of issue shall be filed for each action.

A copy of this order together with notice of entry shall be served upon the Clerk of the Pre-Note Compliance Part and upon the Clerk in the Trial Term office at the time the notes of issue are filed.

Dated: November 29, 2007

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J.S.C.