



refused to permit an inspection of corporate books and records, and have diverted corporate funds and assets. The amount of liquor purchased by the restaurant allegedly does not match sales, and Kiriakis has allegedly diverted food supplies to his other restaurants, claiming that the food spoiled. On May 4, 2008, the other shareholders allegedly had the petitioner arrested at the restaurant.

The court notes initially that the petitioner does not have a cause of action for corporate dissolution based on Business Corporation Law § 1104, "Petition in case of deadlock among directors or shareholders," which generally requires a proceeding to be brought by the holders of 50% of the shares, or based on Business Corporation Law § 1104-a, "Petition for judicial dissolution under special circumstances," which requires a proceeding to be brought by the holders of 20% of the shares. However, "[a]side from the statutory ground for dissolution, there exists a common law right to dissolution where management breaches its fiduciary duty to its shareholders ...." (In re Quail Aero Service, Inc., 300 AD2d 800, 802; see, Fedele v Seybert, 250 AD2d 519; Lewis v Jones, 107 AD2d 931.) "There is no minimum share ownership requirement found in the common law ...." (Lewis v Jones, supra, 932.) The remedy of common-law dissolution is available to a minority shareholder where majority shareholders or corporate officials have looted the corporation or otherwise

violated their fiduciary duties. (See, Leibert v Clapp, 13 NY2d 313; Sternberg v Osman, 181 AD2d 897; Lewis v Jones, supra.)

The respondents object that because the petitioner and her husband own their shares as tenants by the entirety, the petitioner cannot bring this action without her husband. (Although Leonidas Mouzakitidis is named in the caption, he did not sign the petition.) Rust v Turgeon (295 AD2d 962) offers some support for the respondents' position, for there the Appellate Division, Fourth Department, held that even if a stockholder "were determined to be a joint tenant of all of the shares, his interest would be an undivided interest in all of the shares, and he could not be deemed a holder of one half of the shares as required by Business Corporation Law § 1104(a) ...." "[T]he holder of an undivided interest in all of a corporation's shares could not be deemed the holder of one-half of the shares, as required to bring an action for involuntary dissolution of the corporation ...." (CW2D § 121:513; Rust v Turgeon, supra.) The cases cited by the petitioner such as Henner v State (32 Misc2d 333) and Mastrofrancisco v Mohawk Gas Co. (201 App Div 586), where one cotenant sued alone, do not involve stock ownership or the judicial dissolution of a corporation.

The petitioner's attorney alleges that he spoke by phone to Leonidas Mouzakitidis, who is currently in Greece, and that "he

agreed to this action to enforce the parties' rights." The petitioner, if she is so advised, may remove the unnecessary obstruction to her case which has appeared at its early stage by having her husband join a new proceeding.

Accordingly, the petition and the motion are denied without prejudice to renewal upon the joinder of Leonidas Mouzakitis as a petitioner.

Short form order signed herewith.

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J.S.C.