

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

In the Matter of the Application of
ERNEST A. RIEGER III,
Individually and as Holder of Fifty
Percent of the Outstanding Shares of
AIRMARINE ELECTROPLATING CORP.,

INDEX No. 010524/09

MOTION DATE: July 28, 2009
Motion Sequence # 001

Petitioner,

For the Dissolution of AIRMARINE
ELECTROPLATING CORP., a domestic
corporation, pursuant to Article 11 of the
Business Corporation Law.

The following papers read on this motion:

Order to Show Cause..... X
Affirmation in Opposition..... X

This application, brought on by order to show cause, for an order:

- (a) why Airmarine Electroplating Corp., a corporation organized and existing under the laws of the State of New York, should not be dissolved pursuant to Article 1 of the Business Corporations Law, as more particularly set forth in section 1104(a)(1) and (3);
- (b) why such order and further relief as this Court may deem just and proper under the circumstances should not be granted, together with the costs and disbursements of this proceeding to the petitioner, as well as reasonable counsel fees,

is determined as hereinafter set forth.

FACTS

Petitioner and his sister Laurie each own 50% of the outstanding shares of domestic corporation Airmarine Electroplating Corp. ("Corporation"), which is in the business of refurbishing airplane parts. The parties are also the sole directors of the corporation.

PETITIONER'S CONTENTIONS

Petitioner Ernest Rieger ("Ernest") seeks judicial dissolution of the Corporation, pursuant to Business Corporation Law section 1104, based on animosity and dissension between himself and his sister, and claims that the two parties cannot reach an agreement on how to manage the Corporation. Ernest alleges that there is a deadlock between he and respondent that is preventing the Corporation from benefiting its shareholders. Ernest does not believe that carrying out a shareholders or directors meeting would be beneficial, and further asserts that the dissolution of the Corporation would not be injurious to the public.

RESPONDENT'S CONTENTIONS

Respondent Laurie Rieger ("Laurie") asks this Court to dismiss the petition for involuntary dissolution of the Corporation based on the doctrine of "unclean hands". Laurie claims that Ernest has been appropriating corporate funds for personal use, as well as over-compensating himself. Laurie further states that Ernest has been hiding corporate documents from her, and that Ernest has been sub-contracting refurbishing work to other companies at a high rate in order to make Airmarine Electroplating Corp. look unprofitable. However, Laurie contends that the Corporation is capable of operating profitably. Laurie states that she and Ernie are the sole shareholders in another corporation called Airlift Hydraulics, which is the corporation that actually owns the FAA certificate enabling Airmarine to receive FAA aircraft component refurbishing manuals. Laurie contends that Ernest is seeking involuntary dissolution of this Corporation in order to create his own personal corporation using the same clients and the same FAA certificate that are used by this Corporation. Laurie alleges that her theory is bolstered by the fact that Ernest does not seek to dissolve Airlift Hydraulics, because then he would no longer be in possession of the FAA Certificate and would not be able to open his own

personal Aircraft refurbishing corporation.

DECISION

The standard for whether an involuntary dissolution should be ordered was promulgated in **Matter of Goodman v. Lovett**: “[T]he critical consideration is the fact that dissension exists and has resulted in a deadlock precluding the successful and profitable conduct of the corporation’s affairs.” (200 A.D.2d 670, 607 N.Y.S.2d 52 2nd Dept. 1994). Laurie claims that her brother has been hiding documents from her and has been using corporate funds without her consent. These contentions essentially demonstrate that the standard for involuntary dissolution has been met. Laurie and Ernest clearly do not agree on how the Corporation should be run, and act in a hostile manner towards one another. Laurie further admits that the company has not been operating at a profit as of late, and she has provided no plan that the company will do so in the future. Laurie states that Ernest has breached his good faith duty to her as a co-shareholder, and this only re-iterates that the standard for involuntary dissolution has been met.

The fact that Laurie claims Ernest acted in bad faith regarding the management of the Corporation is of no moment, inasmuch as the dissension and distrust is palpable and real. (See **id.**). The petitioner showed, and the respondent reinforced, that the disagreements between the two parties “pose an irreconcilable barrier to the continued functioning and prosperity of the corporation.” (See **Matter of Kaufmann**, 225 A.D.2d 775, 640 N.Y.S.2d 569, 2nd Dept., 1996). Thus, the petition for the dissolution of Airmarine Electroplating Corp. is **granted**.

Laurie’s counterclaim for accounting cannot be **granted** absent a proper application (CPLR 2215), although such would appear to be appropriate under the circumstances.

A Preliminary Conference has been scheduled for October 2, 2009 at 9:30 a.m. in Chambers of the undersigned. Please be further advised that counsel appearing for the Preliminary Conference **shall** be fully versed in the factual background and their client’s schedule for the purpose of setting **firm** deposition dates.

Dated AUG 27 2009


J.S.C.

ENTERED

AUG 31 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**