

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ORIN R. KITZES IA Part 17  
Justice

	x	Index	
IN THE MATTER OF VICTOR WEINGARTEN		Number	<u>12584</u> 2007
- against -		Motion	
		Date	<u>February 27,</u> 2008
		Motion	
THIRTY FIRST STREET REALTY CORPORATION		Cal. Number	<u>49</u>
	x	Motion Seq. No.	<u>3</u>

The following papers numbered 1 to 6 read in this special proceeding brought by Victor Weingarten pursuant to Business Corporation Law § 1104-a, for inter alia, a judgment dissolving Thirty First Street Realty Corporation.

	<u>Papers Numbered</u>
Order to Show Cause - Petition -Affidavits - Exhibits .....	1
Reply Affidavits.....	2
Statement of Answer .....	3-4
Memoranda of Law .....	5-6

Upon the foregoing papers it is ordered that:

Petitioner Victor Weingarten, Fred Weingarten (his brother), and the Estate of Jacob Popovic are the equal shareholders of Thirty First Street Realty Corporation (the subject corporation) which owns premises known as 34-14 31<sup>st</sup> Street, Long Island City, New York. Transit System Ltd. (TSL), another corporation owned by Popovic and the Weingartens, occupied the property as a month-to-month tenant and engaged in the management of taxi medallions. Pursuant to a decision and order (one paper) dated May 11, 2004, the Honorable Marguerite Grays directed the judicial dissolution of TSL pursuant to Business Corporation Law § 1104[a]. In a decision dated September 21, 2006, Justice Grays, finding that the shareholders had not been able to reach a negotiated settlement concerning the distribution of company assets, directed the appointment of a receiver to supervise the liquidation of the assets. The petitioner alleges that TaxiFleet Management LLC, a

new corporation formed by Fred Weingarten and Jacob Popovic to engage in the management of taxis, now operates from 34-14 31<sup>st</sup> Street, Long Island City, New York and that the other shareholders of the subject corporation have not permitted him any use of the property or participation in corporate affairs.

On or about May 16, 2007, petitioner Victor Weingarten began the instant proceeding for the judicial dissolution of the subject corporation pursuant to Business Corporation Law § 1004-a, alleging oppressive conduct. Fred Weingarten and the estate of Jacob Popovic reply that the subject corporation owns 34-14 31<sup>st</sup> Street, Long Island City, New York and leases the property to Transit Systems LLC pursuant to a five year lease dated May 3, 2007. Fred Weingarten and the estate further allege that Transit Systems LLC subleased the property to TaxiFleet Management, LLC pursuant to a five year sublease dated May 3, 2007. Fred Weingarten and the estate are the sole shareholders of Transit Systems LLC and TaxiFleet. While Fred Weingarten and the estate of Jacob Popovic deny the allegations of the petition pertaining to oppressive conduct, they will consent to the dissolution of the subject corporation provided the lease and sublease are not disturbed. Petitioner Victor Weingarten alleges that the majority shareholders of the subject corporation entered into the lease without his knowledge and consent and that he "strongly object[s] to the Lease."

Turning first to the petition, the court notes that Business Corporation Law § 1104-a, "Petition for judicial dissolution under special circumstances," provides in relevant part: (a) The holders of shares representing twenty percent or more of the votes of all outstanding shares of a corporation \*\*\* entitled to vote in an election of directors may present a petition of dissolution on one or more of the following grounds: (1) The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders \*\*\*." (See, Matter of Can Plant Maintenance, Inc., 270 AD2d 829.) "[O]ppression should be deemed to arise only when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." Matter of Kemp & Beatley, Inc., 64 NY2d 63, 73; see, In re Quail Aero Service, Inc., 300 AD2d 800.) In the case at bar, petitioner Weingarten has alleged that his reasonable expectation of using the subject corporation's ownership of 34-14 31<sup>st</sup> Street, Long Island City, New York in a taxi business has been frustrated by the conduct of the other shareholders. Fred Weingarten and the estate of Jacob Popovic deny these allegations and resist the dissolution of the subject corporation unless a condition unacceptable to petitioner Weingarten is observed. Under these circumstances, the

court finds that the conflicting allegations of the parties have raised issues of fact concerning whether judicial dissolution of the corporation is warranted pursuant to Business Corporation Law § 1104-a. (See, Matter of Steinberg, 249 AD2d 551; Giordano v Stark, 229 AD2d 493; Matter of Kournianos, 175 AD2d 129.) A hearing must be held pursuant to Business Corporation Law § 1109 to resolve disputed issues of fact concerning the merits of the petitioner's application and the appropriate remedy. (See, Matter of Kemp & Beatley, Inc., 64 NY2d 63; Matter of Steinberg, supra; Giordano v Stark, supra; Matter of Kournianos, supra; Matter of McDougall [Manhattan Ad Hoc Housewares], 150 AD2d 160; Matter of Ricci v First Time Around, 112 AD2d 794.)

Accordingly, the petition is granted to the extent that a hearing shall be held on June 9, 2008, at 10:00 A.M., in IAS Part 17.

That branch of the motion which is for a preliminary injunction prohibiting the majority shareholders of the subject corporation from transferring corporate assets is denied. The petitioner did not demonstrate irreparable injury if provisional relief is withheld. (See, Dana Distributors, Inc. v Crown Imports, LLC, 48 AD3d 613.) The sole asset of the subject corporation appears to be real estate which the majority shareholders use in their taxi business and which they have not threatened to transfer.

That branch of the motion which is for an order "appointing a receiver to supervise the winding up of corporate assets" (see, BCL § 1202) is denied without prejudice to renewal at the dissolution hearing.

The remaining branches of the motion are denied.

Dated: April 29, 2008

---

J.S.C.