Huggins v Scott
2019 NY Slip Op 33506(U)
November 25, 2019
Supreme Court, New York County
Docket Number: 652567/2019
Judge: W. Franc Perry
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

----------X

KORIN HUGGINS,

Petitioner,

- v -

TERESA SCOTT, WOMEN'S WORLD OF BOXING LLC,

Respondents.

----------X

INDEX NO. 652567/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION, ORDER AND JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDICIAL DISSOLUTION / RECEIVER.

This is a special proceeding for judicial dissolution of a limited liability company under Limited Liability Company Law ("LLCL") § 702. In particular, petitioner and minority member Korin Huggins ("Petitioner") seeks an order and judgment (1) dissolving Women's World of Boxing, LLC (the "Company"), (2) appointing a temporary receiver to, *inter alia*, supervise the sale and/or auction of the Company's assets, (3) enjoining and restraining respondent and majority member Teresa Scott ("Respondent") from unilaterally transferring the Company's assets, terminating its employees, or withdrawing funds from its accounts, and (4) directing Respondent to permit Petitioner to review the Company's books and records. Respondent argues, inter alia, that the Company is still operating for its intended purpose and is financially viable and, thus, Petitioner's application for judicial dissolution must be denied.

BACKGROUND

Petitioner, a boxer, started an unincorporated boxing club known as Women's World of Boxing in 2007. The Company was formally incorporated in April 2014. As of September 22, 2019, the Company had more than one hundred client members.

In 2015, Petitioner and Respondent began a romantic relationship. In December 2016, Petitioner agreed to finance the construction of a gym and corporate headquarters for the Company at 2147 2nd Avenue, New York, New York (the "Premises"). Petitioner also agreed to co-sign a personal guarantee in connection with the Company's lease of the Premises. In consideration of Petitioner's contributions to the Company, on or about February 21, 2017, the parties executed an Amended and Restated Operating Agreement of Women's World of Boxing, LLC (the "Operating Agreement"), that granted Petitioner a minority interest in the Company.

Under the Operating Agreement, Respondent is the Chief Executive Officer, Chief Operating Officer, and the owner of a 60% membership interest in the Company. Petitioner is the Chief Financial Officer and the owner of a 40% membership interest in the Company.

The Operating Agreement does not confer any unique authority or impose any specific obligations on the Chief Executive Officer, Chief Operating Officer, or the Chief Financial Officer. Except for certain delineated acts that require unanimous approval of all membership interests then outstanding, decision making authority is vested in the member(s) then holding at least a majority of the outstanding membership interests of the Company (NYSCEF Doc. No. 19, Art. 3 ["The Members have the exclusive right to manage the Company's business in accordance with their percentage share of Membership Interest."]). Although Petitioner is a member and the Chief Financial Officer of the Company, Petitioner does not allege that she was ever involved in the Company's day-to-day operations or managing the Company's finances.

In 2018, the parties' romantic relationship deteriorated. By letter dated November 10, 2018 (the "Letter"), Petitioner informed Respondent that she wished to end their relationship and requested, *inter alia*, that Respondent agree to buy back Petitioner's 40% membership interest in the Company, pursuant to section 7.2 of the Operating Agreement, for the sum of $75,000.00

representing half of Petitioner's capital investment in the Company. Petitioner acknowledged that operating the Company was Respondent's dream and that, while Petitioner's initial investment was needed to finance the construction of the gym, "[s]ince the doors have opened, you've [Respondent] been successfully maintaining the business including paying the rent without my contribution." (NYSCEF Doc. No. 20). In connection with the sale of her 40% interest in the Company, Petitioner also requested that Respondent agree to seek to amend the lease for the Premises to remove Petitioner as a guarantor. Finally, Petitioner informed Respondent that she had decided to terminate the lease, effective December 31, 2018, to the apartment that the parties had been sharing in since May 2017 (NYSCEF Doc. No. 20).

After Petitioner's Letter requesting that Respondent voluntarily agree to buy back Petitioner's 40% interest in the Company for $75,000.00, in March of 2019, Petitioner, through counsel, began demanding that Respondent provide Petitioner with financial documents regarding the Company. Shortly thereafter, in May of 2019, Petitioner commenced the instant proceeding seeking judicial dissolution of the Company claiming that as a result of internal dissension among the parties regarding Respondent's purported (1) misappropriation of the Company's assets and funds, (2) failure to timely make rent payments, and (3) refusal to produce receipts or to otherwise account to Petitioner for the Company's expenses, it is not reasonably practicable for the Company to continue to carry on its business in conformity with the Operating Agreement.

In addition, Petitioner filed an order to show seeking a temporary restraining order, which was granted, and seeking a preliminary injunction enjoining Respondent from transferring certain funds or otherwise authorizing payments or incurring debts on behalf of the Company that are not in furtherance of the Company's stated purpose in the Operating Agreement. Respondent has answered the Petition and opposes Petitioner's application for a preliminary injunction.

DISCUSSION

Petitioner, pursuant to LLCL § 702, seeks an order and judgment directing judicial dissolution of the Company. Respondent opposes the petition.

Limited Liability Company Law § 702, entitled *Judicial Dissolution*, provides that:

> On application by or for a member, the Supreme Court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement

(emphasis added). In determining whether a limited liability company should be dissolved, pursuant to Section 702, "the court must first examine the limited liability company's operating agreement to determine, in light of the circumstances presented, whether it is or is not 'reasonably practicable' for the limited liability company to continue to carry on its business in conformity with the operating agreement" (*Matter of Kassab v. Kasab*, 137 AD3d 1135, [2d Dept 2016]). To warrant judicial dissolution, the allegations must show that "the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or [that] continuing the entity is financially unfeasible" (*Doyle v Icon, LLC*, 103 AD3d 440, 440 [1st Dept 2013]).

"Disputes between members are not sufficient to warrant the exercise of judicial discretion to dissolve an LLC that is operated in a manner within the contemplation of it[s] purposes and objections as defined in its articles of organization and/or operating agreement" (*Kassab v Kasab*, 60 Misc 3d 1204[A] [Sup Ct Queens Cnty 2018]). Moreover, allegations that the movant has been systematically excluded from the operation and affairs of the subject company are insufficient to establish that it is no longer "reasonably practicable" for the

company to carry on its business, as required for judicial dissolution under LLCL § 702 (*Doyle*, 103 AD3d at 440, quoting LLCL § 702).

Here, accepting as true the facts alleged in the petition and according Petitioner the benefit of every favorable inference, Petitioner has failed to establish a case of action for judicial dissolution of the Company, pursuant to LLCL § 702, based on her allegation of mismanagement of the Company's funds and Respondent's efforts to exclude her from the management of the Company (see Kassab, 60 Misc 3d 1204[A]). The Operating Agreement states that the purpose of the Company is to conduct any lawful business whatsoever that may be conducted by limited liability companies pursuant to the LLCL in New York (NYSCEF Doc. No. 3, Art. 1). The Petition and affirmation in support fail, to establish that the Company is presently unable to fulfill its stated purpose by operating a gym at the Premises. The Company continues to possess a leasehold interest in the Premises, to finance its monthly operating costs of approximately $10,000.00, and to provide services to its client members (NYSCEF Doc. No. 25, ¶¶ 35-36).

In her Letter, Petitioner concedes that, despite the lack of her involvement in the operations and finances of the Company, the Company as led by Respondent has remained open for business and able to pay its expenses without additional capital contributions since Respondent began operating the gym in 2017. Petitioner's allegations, thus, are insufficient to demonstrate that the management of the company is unable or unwilling to reasonably permit or promote the stated purpose of the Company to be realized or achieved or that continuing the Company is financially unfeasible (*see Kassab v Kasab*, 137 AD3d 1135, 1136 [2d Dept 2016]).

As for Petitioner's request for the appointment of a receiver, the court must proceed with "extreme caution" in determining whether to appoint a temporary receiver because of the drastic intrusion it imposes on the defendant's interests prior to determination of the underlying action

on the merits. (*Hahn v Garay*, 54 A.D.2d 629 [1st Dept 1976]). The appointment must be "necessary" to protect the property from waste, dissipation or disappearance. (*In re Armienti*, 309 A.D.2d 659, 661 [1st Dept 2003]). Thus, courts require clear and convincing evidence of the danger of irreparable loss or damage (*see, e.g., McBrien v. Murphy*, 156 A.D.2d 140 [1st Dept 1989]), and thus are particularly hesitant to appoint a receiver with respect to a profitable, ongoing business (*see, e.g., Martin v. Donghia Associates, Inc.*, 73 A.D.2d 898 [1st Dept 1980]). In view of Petitioner's failure to establish her entitlement to judicial dissolution of the Company, there is no occasion for the appointment of a receiver (*see Doyle*, 103 AD3d at 440, citing LLCL § 703).

Finally, regarding Petitioner's request to access the books and records of the Company, Petitioner, as a member of the LLC, has an independent statutory right to conduct an inspection (*see Gartner v Cardio Ventures, LLC*, 121 AD3d 609, 610 [1st Dept 2014], citing LLCL § 1102). Thus, the Petition is granted only to the extent of directing Respondent to provide Petitioner with access to the books and records of the Company (*see Arie Bar v Mandler*, 2010 N.Y. Slip Op. 34049[U], 3 [Sup Ct Nassau County 2010]).

CONCLUSION

Accordingly, it is hereby

ORDERED and ADJUDGED that the Petition is granted only to the extent that Respondent is directed to provide Petitioner with an opportunity to inspect the books and records of the Company; and it is further

ORDERED that the Petition is otherwise denied in its entirety, without costs and disbursements to either party; and it is further

ORDERED that Petitioner's application for a preliminary injunction is denied and the TRO issued in connection with the entry of Petitioner's OTSC in motion sequence number 001 is vacated; and it is further

ORDERED that the clerk of the court is directed to enter judgment accordingly.

Any requests for relief not otherwise discussed herein have nonetheless been considered by the court and are hereby denied and this constitutes the decision, order and judgment of the Court.

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch

November 25, 2019
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE