

Sergeev v Land-0-Fun Inc.

2019 NY Slip Op 33718(U)

December 9, 2019

Supreme Court, Kings County

Docket Number: 520487/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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VLADIMIR SERGEEV a 50% Shareholder of
LAND-O-FUN INC., VYACHESLAV MILOV & OLEG
BAZYLKO, each having a beneficial interest
in 49% of the shares of Land-O-Fun Inc.,
And Derivatively on behalf of Land-O-Fun In.,
Petitioners,

Decision and order

- against -

Index No. 520487/19

LAND-O-FUN INC., & SEMION KORDUNOV,
Respondents,

December 9, 2019

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PRESENT: HON. LEON RUCHELSMAN

MS # 1

The petitioners have moved seeking the respondents issue stock certificates in the amount of 24.5% each to both Vyacheslav Milov and Oleg Bazylko and 1% to Vladimir Sergeev and for the respondents to produce all corporate books and records as detailed in the order to show cause and for attorney's fees.

The respondents oppose the motion arguing it has no merit.

Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

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On October 10, 2018 Oleg Bazylko sold his fifty percent interest in a children's amusement center called Land-O-Fun [hereinafter LOF] to Vladimir Sergeev and Seminov Kordunov. The fifty percent ownership interest, represented by 100 shares was transferred to Kordunov. A few days later Valentin Sorkin, the

other fifty percent owner of LOF sold his share to both Kordunov and Sergeev, however, no shares were ever transferred. The relationship between Kordunov and Sergeev deteriorated and Kordunov called a shareholder meeting which Sergeev failed to attend. At that meeting by-laws were adopted and corporate officers were designated. During July 2019 Sergeev assigned 49% of his interest to Oleg Bazytko the former owner and Vyacheslav Milov.

The petitioners have instituted the within proceeding and have moved seeking a declaration that Bazytko and Milov are recognized as 49% percent owners of the corporation and for the production of books and records pursuant to BCL §624. The respondent opposes the motion arguing that pursuant to the By-Laws the assignment was invalid hence Bazytko and Milov have no interest in the corporation and that in any event the request for books and records is improper.

Conclusions of Law

It is true that a special meeting was called for February 15, 2019 and that at such meeting by-laws were adopted. The by-laws state that "shares of the Corporation shall be transferable on the books of the Corporation solely by the holder thereof...upon surrender for cancellation of the certificates

representing such shares" (see, By-Laws adopted February 15, 2019 §5.03(a)). The respondent argues that Sergeev had no authority to assign his interest in the corporation since he did not have any shares in which to assign. Thus, the respondent argues that portion of the motion must be denied. However, there is no dispute that Sergeev purchased half of the corporation together with Kordunov. Thus, there is no dispute that Sergeev is a half owner of the corporation. While it is true that he personally did not receive any shares, that is a mere technicality that does not diminish his rights as an owner. Indeed, Kordunov acknowledged Sergeev's ownership interest by providing him notice of the special meeting, in essence, conceding that he was an owner and shareholder without the actual possession of the specific shares, which is a mere formality. Therefore, the portion of the motion seeking the respondents issue shareholder stock acknowledging the ownership interests of Vyacheslav Milov in the amount of 24.5%, Oleg Bazytko in the amount of 24.5% and Vladimir Sergeev in the amount of 1% is granted.

Turning to the request for statutory books and records, pursuant to Business Corporation Law §624(e) the petitioners are entitled to "an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed

to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement" (id). Those are the documents to which the petitioners are entitled.

The motion seeking attorney's fees is denied.

So ordered.

ENTER:



DATED: December 9, 2019

Brooklyn N.Y.

Hon. Leon Ruchelsman

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