

Tufenkian v Tirakian
2019 NY Slip Op 31052(U)
April 19, 2019
Supreme Court, New York County
Docket Number: 652875/2015
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

JAMES TUFENKIAN

Plaintiff,

- v -

SYLVIA TIRAKIAN,

Defendant.

INDEX NO. 652875/2015
MOTION DATE 02/04/2019
MOTION SEQ. NO. 007

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196

were read on this motion to/for APPOINT - REFEREE

Upon the foregoing documents, it is

Sylvia Tirakian moves for an order (1) appointing a receiver or liquidating trustee and (2) enforcing a dissolution order (the Dissolution Order) of this court (Ramos, J.) dated November 17, 2016 which granted the petition for dissolution of Harvest Song Ventures, LLC (Harvest Song) (NYSCEF Doc No. 161).

James Tufenkian commenced this action by verified petition in 2015, as amended in 2016, against Ms. Tirakian for the judicial dissolution of their company, Harvest Song, of which they are each a 50% owner. Pursuant to the Dissolution Order, the court granted the Verified Amended Petition "to the extent of dissolving" Harvest Song and:

3. ORDERED that a neutral third party shall be appointed as a receiver of the company and shall promptly wind up its affairs, including liquidating and marshalling its assets in an orderly and efficient manner, with all the usual powers and duties according to the laws of this State. Each Party shall submit the names of at least two candidates to

act as receiver and liquidating trustee of the company by December 2, 2016 whereupon this Court shall select a receiver.

Shortly thereafter, on December 2, 2016, Mr. Tufenkian filed a “Notice of Request to Voluntarily Discontinue Third Cause of Action,” wherein he represented to the court that, “[s]ince the Court heard oral argument, the Company has shut down its active operations, and, as of December 1, 2016, has: (a) only \$776 in cash ..., (b) zero inventory ..., (c) only \$1980 in accounts receivable,” and stated that Harvest Song “is obviously unable to pay the costs of a Receiver,” and “a business with virtually no assets and no operations would unnecessarily cause the Company and the parties to incur significant costs and expenses with little, if any, benefit” (Glandian Aff., Ex. D; NYSCEF Doc. No. 162). Based on Mr. Tufenkian’s “withdrawal of the claim for the appointment of a receiver” the court issued an order dated March 8, 2017 “sever[ing] as moot” that portion of its Dissolution Order “which appointed a receiver for the company” (*id.*, Ex. E, NYSCEF Doc. No. 163).

In her Second Amended Answer and Counterclaims, filed on December 15, 2016, Ms. Tirakian asserted a counterclaim for the appointment of a receiver, as well as a counterclaim for an accounting. Ms. Tirakian now claims that not only has Mr. Tufenkian not made any effort to dissolve Harvest Song, but that he has continued to operate Harvest Song and to sell the company’s product -- specialty jams and preserves -- through at least the end of June 2018 using an unrelated business that he independently owns, Tufenkian Import/Expert Ventures, Inc.

Section 703(a) of the New York Limited Liability Company Law provides that:

Upon cause shown, the supreme court in the judicial district in which the office of the limited liability company is located may wind up the limited liability company's affairs upon application of any member, or his or her legal representative or assignee, and in connection therewith may appoint a receiver or liquidating trustee.

CPLR 6401(a) also authorizes the appointment of a temporary receiver as a provisional remedy when property that is the subject of litigation is in danger of harm, injury or damage and such remedy is necessary to protect the interests of the parties. Specifically, 6401(a) provides:

Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

Although the appointment of a temporary receiver is a “an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication on the merits,” which “should be granted only where the moving party has made a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party’s interests,” here, the appointment of a receiver is necessary to wind up the affairs of Harvest Song and provide a proper accounting (*Meagher v Doscher*, 157 AD3d 880, 883-84 [2d Dept 2018] [quotation and citation omitted]). In the three years since the Dissolution Order was issued, Mr. Tufenkian has not wound up Harvest Song’s affairs in any way and, in fact, has continued to pursue consignment and licensing arrangements on its behalf (Jacobson Aff., ¶¶ 3-5, NYCSEF Doc. No. 184). Under these circumstances, Ms. Tirakian has met her burden of establishing that a temporary receiver is appropriate and necessary to protect the parties’ interests.

To the extent that Ms. Tirakian seeks attorneys' fees and costs in connection with this motion, her request is denied. "In the absence of any pertinent contractual or statutory provision with respect to the recovery of amounts expended in the successful prosecution or defense of an action, each party is responsible for its own legal fees" (*Chapel v Mitchell*, 84 NY2d 345, 349).

Accordingly, it is

ORDERED that Ms. Tirakian's motion is granted to the extent that a neutral third party shall be appointed as a receiver for Harvest Song and shall promptly wind up its affairs, including liquidating and marshalling its assets in an orderly and efficient manner and providing an accounting, with all the usual powers and duties according to the laws of this State. Ms. Tirakian and Mr. Tufenkian shall each submit the names of two candidates to act as receiver and liquidating trustee of the company by April 26, 2019 (sent to the Part 53 e-mail address: SFC-Part53@nycourts.gov) whereupon this Court shall select a receiver from among the candidates submitted.


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4/19/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE