

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

In the Matter of MARIA R. ARAMANDA,
individually and derivatively as a member of
LIDO DUNES, LLC,

Petitioner,

-against-

LIDO DUNES, LLC and MICHELLE
SCHNEIDER,

Respondents.

MICHELLE C. SCHNEIDER,

Plaintiff,

-against-

MARIA R. ARAMANDA,

Defendant.

TRIAL/IAS, PART 3
NASSAU COUNTY

INDEX No. 12766/08 ✓

MOTION DATE: April 6, 2012
Motion Sequence # 001, 003

INDEX No. 4956/08

MOTION DATE: April 6, 2012
Motion Sequence # 002, 003

The following papers read on this motion:

Notice of Petition.....	X
Notice of Motion.....	XX
Cross-Motion.....	X
Affirmation in Opposition.....	XX
Reply Affirmation.....	XX
Memorandum of Law.....	XX
Reply Memorandum of Law.....	X

Petition for judicial dissolution of Lido Dunes, LLC is **granted**. Motion by petitioner Maria Aramanda to dismiss respondent Michelle Schneider's counterclaims is **denied**.

Motion by plaintiff Michelle Schneider to vacate the automatic dismissal for failure to file a note of issue is **granted**. Plaintiff's time to file a note of issue with respect to Index No. 4956/08 is extended until 30 days from the date of this order. Motion by defendant Maria Aramanda to confirm the automatic dismissal or for summary judgment dismissing the complaint is **denied**.

This is a petition for the judicial dissolution of a limited liability company pursuant to § 702 of the Limited Liability Company Law (Index No. 12766/08).

Petitioner Maria Aramanda and respondent Michelle Schneider are the sole members of respondent Lido Dunes, LLC. The company was formed for the purpose of developing residential property in Long Beach.

Aramanda alleges that Schneider has refused to contribute her share of the working capital, has refused to participate in the management of the business, has misappropriated company assets, and has engaged in other acts which are not in the interest of the company.

In her answer dated March 16, 2012, Schneider asserts various counterclaims against Aramanda for breach of fiduciary duty, fraud, unjust enrichment, and other claims. On November 15, 2006, Schneider took title to a property located at 6 Woodhail Street. On the same date, Schneider took a purchase money mortgage loan in the amount of \$555,440, and a second mortgage in the amount of \$138,860, on the property. On April 28, 2007, Lido Dunes, which had now taken title, executed yet a third mortgage on the property in the amount of \$125,000.

On December 20, 2006, Schneider purchased another property located at 7 Kensington Street in Long Beach. Schneider took a purchase money mortgage in the amount of \$880,000, and also a second mortgage in the amount of \$220,000 on the property. On December 19, 2006, apparently before Schneider took title to the Kensington property, the parties entered into a written partnership agreement with respect to the development of both the Woodhail and Kensington properties. Schneider alleges that Aramanda fraudulently induced her to transfer the Woodhail and Kensington properties to Lido Dunes, excluded her from the management of the business, and used funds of the limited liability company for her personal use.

In a separate action commenced March 14, 2008, Schneider asserts the identical claims which are asserted against Aramanda as counterclaims to the dissolution petition, including dissolution of the partnership (Index No. 4956/08).

The court concludes that it is not reasonably practical to carry on Lido Dunes' business in conformity with the operating agreement of the company. Accordingly, the petition for judicial dissolution is **granted**. Petitioner shall settle a final order of dissolution on notice to respondent and a certified copy of the order of dissolution shall be filed by petitioner with the Department of State within 30 days of the date of signing of the order (Limited Liability Company Law § 702).

Aramanda moves to dismiss Schneider's counterclaims in the dissolution action as duplicative of Schneider's claims in the separate action. Because both proceedings are pending before this court, there is no danger of inconsistent adjudications. Accordingly, petitioner Maria Aramanda motion to dismiss respondent Michelle Schneider's counterclaims is **denied**.

Defendant Aramanda has not established that plaintiff Michelle Schneider unreasonably neglected to file a note of issue within 90 days after a demand to file a note of issue was served. Defendant Aramanda has not established that she is prima facie entitled to judgment with respect to plaintiff Michelle Schneider's breach of fiduciary duty and other claims.

Plaintiff Michelle Schneider's motion to vacate the automatic dismissal for failure to file a note of issue is **granted**. Plaintiff's time to file a note of issue with respect to Index No. 4956/08 is extended until 30 days from the date of this order. Defendant Maria Aramanda's motion to confirm the automatic dismissal or for summary judgment dismissing the complaint is **denied**.

So ordered.

Dated **MAY 09 2012**


J.S.C.

ENTERED

MAY 11 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**