

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

ESTATE OF STEPHEN ZACCHERIO,

INDEX No. 15919/07

Plaintiff,

MOTION DATE: Nov. 19, 2014
Motion Sequence # 006

-against-

MICHAEL LAVALLE and
CHRISTOPHER J. KANE,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Affirmation in Support..... X
Affirmation in Opposition..... X

Motion by defendants for summary judgment dismissing the complaint is **granted** to the extent of dismissing the complaint without prejudice to commencing a proceeding for dissolution of the corporation.

Plaintiff Stephen Zaccherio is a minority shareholder of Speed of Sound Courier Express, Inc. Defendants Michael Lavalle and Christopher Kane are the majority shareholders. Plaintiff alleges that at a shareholders meeting on August 27, 2007 defendants removed him as a director of Speed of Sound without cause in violation of a shareholder agreement. Plaintiff further alleges that at the shareholders meeting defendants terminated his employment contract with the company. Plaintiff alleges that the employment contract provided for a salary of \$3,000 per month, plus medical benefits and reimbursement of

expenses. Finally, plaintiff alleges that defendants issued a 20 % stock interest to non-party Robert McIntyre without his consent in violation of the shareholder agreement.

This action was commenced on September 7, 2007. Plaintiff asserts claims for breach of the shareholder agreement and breach of the employment contract. There is no claim for dissolution of the corporation. Stephen Zaccherio died on January 24, 2013. By order dated January 23, 2014, plaintiff's executor, Frank Zaccherio, has been substituted as the plaintiff in this action.

Defendants are moving for summary judgment dismissing the complaint. Defendants argue that plaintiff's employment contract was terminable at will. Defendants argue that their removal of Zaccherio as a director was authorized by the business judgment rule.

In opposition, plaintiff notes that defendants made a prior motion for summary judgment, which was denied December 2, 2009.

"[C]ourts are generally loath to intercede in squabbles between partners that result in piece-meal adjudications, preferring that partners either settle their own differences amicably or dissolve and finally conclude their affairs by a full accounting" (*Gramercy Equities Corp. v Dumont*, 72 NY2d 560,564-65 [1988]). There is a similar reluctance to intercede in squabble between shareholders in a close corporation.

Accordingly, defendants' motion for summary judgment dismissing the complaint is **granted** to the extent of dismissing the complaint without prejudice to commencing a proceeding for dissolution of the corporation.

This order concludes the within matter assigned to me pursuant to the Uniform Rules for New York State Trial Courts.

So ordered.

Dated DEC 15 2014

ENTERED

DEC 17 2014

Stephen A. Swarcia

NASSAU COUNTY XXX
COUNTY CLERK'S OFFICE

J.S.C.