

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE** HOWARD G. LANE **IA Part** 6
Justice

In the Matter of PAULINE SOLURI,
Petitioner,

Index
Number 2847/13

-against-

Motion
Date May 7, 2013

FRANK SATRIALE & PSFS LLC,
Respondent.

Motion Cal. No. 110

Motion Seq. No. 1

The following numbered papers read on this petition by petitioner Pauline Soluri pursuant to Limited Liability Company Law § 702 to dissolve PSFS LLC and direct that the real property known as 22-72 35th Street, Astoria, New York of PSFS LLC be sold, an accounting be had of the contributions of the members from the date of the formation of PSFS LLC, and the assets of PSFS LLC be distributed to its members after payment of all of its debts in accordance with the order and the Limited Liability Company Law.

Papers
Numbered

Notice of Petition - Petition- Affidavits - Exhibits1-5

Upon the foregoing papers it is ordered that the unopposed petition is determined as follows:

Petitioner brought this special proceeding for judicial dissolution pursuant to Limited Liability Company Law § 702 by filing a copy of the notice of petition and petition with the County Clerk on February 13, 2013.

Article 7 of the Limited Liability Company Law does not provide that service of a petition be made upon notice specified by the court (*cf.* Business Corporation Law § 1106). The procedural requirements of Article 4 of the CPLR regarding the

manner of service of a notice of petition, therefore, govern this case. Under CPLR 403(b), a notice of petition, together with the petition and affidavits specified in the notice, must be served on any adverse party at least eight days before the time at which the petition is noticed to be heard (*see* CPLR 403[b]). CPLR 404(a) allows the respondent in a special proceeding to object in point of law by setting forth it in the answer or by motion to dismiss within the time to answer. An answer must be served at least two days before the time at which the petition is noticed to be heard.

Petitioner offers an original affidavit of service dated March 8, 2013 indicating that service of a copy of the notice of petition and petition and supporting papers were served pursuant to CPLR 308(2) upon respondent Frank Satriale by suitable age and discretion service on “MORTGAGES. AURIANNA, CO-TENANT,” on March 1, 2013, and a subsequent mailing on March 5, 2013. Service pursuant to CPLR 308(2) is not complete until proof of service was filed with the Clerk of the Court within 20 days thereof. Petitioner has failed to establish that proof of service upon respondent Satriale has been filed with the Clerk. Since respondent Satriale’s time to answer or move to dismiss does not begin to run until service is complete (*see Hausknecht v Ackerman*, 242 AD2d 604 [2d Dept 1997]), plaintiff has failed to show that the instant petition was properly noticed (*see National Bank of Canada v Skydell*, 181 AD2d 645 [1st Dept 1992]; *Ross Bicycles, Inc. v Citibank, N.A.*, 149 AD2d 330, 331 [1st Dept 1989]). In addition, petitioner has failed to offer any proof of service of the notice of petition, petition and affidavits upon respondent PSFS LLC.

Under such circumstances, it is hereby ORDERED and ADJUDGED that the petition dismissed.

Dated: July 15, 2013

Howard G. Lane, J.S.C.