

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

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In the Matter of the Application of  
GUY DeANGELIS,

Petitioner, Decision and order

- against -

Index No. 503587/19

For Judicial Dissolution of

DEAN'S PORK PRODUCTS INC., A Domestic  
Corporation,

Pursuant to Section 1104(a) of the  
Business Corporation Law  
and MICHAEL DeANGELIS

Respondents,

July 16, 2019  
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PRESENT: HON. LEON RUCHELSMAN

The petitioner has moved seeking dissolution pursuant to BCL §1104(a). The respondents have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

On May 26, 1972 Dean's Pork Products Inc., was established. It is equally owned by petitioner Guy DeAngelis and his nephew the respondent Michael DeAngelis. The corporation is the maker of prok products particularly sausages. Originally, the two shareholders were Guy and his brother Frank, however, in 2018 Frank assigned all his shares to his son Michael. Due to various industry forces the corporation has been operating at a

loss for many years. To successfully try and turn the company around the respondent has suggested a modification and upgrade of equipment in the amount of approximately \$500,000. The petitioner, the only director of the company, has declined to engage in such long term and risky investments, especially considering the declining market share of the industry the company has suffered. The petitioner seeks the dissolution of the company on the grounds the shareholders cannot agree how best to run the company and hence a deadlock exists.

#### Conclusions of Law


It is well settled that when considering the dissolution of a corporation "the issue is not who is at fault for a deadlock, but whether a deadlock exists" (Matter of Kaufmann, 225 AD2d 775, 640 NYS2d 569 [2d Dept., 1996]). Thus, ignoring the conduct or fault of any particular party "the critical consideration is the fact that dissension exists and has resulted in a deadlock precluding the successful and profitable conduct of the corporation's affairs" (Matter of Dream Weaver Inc., 70 AD3d 941, 895 NYS2d 476 [2d Dept., 2010]). Therefore, when there is really no dispute that a deadlock exists then a hearing is not required and dissolution should be granted (In re Dream Weaver Realty, 70 AD3d 941, 895 NYS2d 476 [2d Dept., 2010]).

In this case there is no dispute that a deadlock exists and the parties cannot work together in one corporation. Indeed, the respondent does not really dispute that the parties cannot work together. The single issue that deadlocks the company concerns investing in a machine to package the sausages in a different manner. Since the respondent believes the entire future of the business is dependent upon such packaging changes, the failure of the petitioner to agree to this change renders a deadlock that cannot be reconciled. The majority of respondent's affidavit is devoted to allegations the petitioner has engaged in improper corporate conduct concerning books and records and an accounting for the company's proceeds and expenses. Those contentions are valid and the respondent can pursue them in an appropriate manner. However, based on the foregoing the motion seeking to dissolve the corporation is granted.

So ordered.

ENTER:

DATED: July 16, 2019  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC