

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 46 SUFFOLK COUNTY

PRESENT: Hon. Emily Pines

MOTION DATE: 11/18/10
SUBMITTED: 12/14/10
MOTION NO.: 001 - MD

nonfinal

_____ x
In the Matter of the Application of RBR Equities, LLC
and SW Consulting Co., Inc., collectively, owners of Fifty
(50%) percent interest in JAMESPORT
DEVELOPMENT, LLC.,

Petitioners,

For the Judicial Dissolution of
JAMESPORT DEVELOPMENT LLC,
Pursuant to LLCL Section 702, and for related relief,

-against-

CIARELLI & DEMPSEY P.C.
ATTORNEYS FOR PETITIONER
737 Roanoke Avenue
Riverhead, New York 11901

LAW OFFICES OF ANTHONY LOPRESTI
ATTORNEY FOR RESPONDENT
585 Stewart Avenue - Suite 544
Garden City, New York 11530

JAMESPORT DEVELOPMENT LLC and JUL-BET
ENTERPRISES, INC.,

Respondents.

_____ x

ORDERED that the Order to Show Cause seeking judicial dissolution of Jamesport Development LLC pursuant to LLCL Section 702 and seeking the appointment of a receiver is denied; and it is further

ORDERED that the portion of the Order to Show Cause seeking to preliminarily enjoin Jul-Bet Enterprises, Inc., is granted solely to the extent that Jul-bet Enterprises, Inc. is temporarily enjoined from selling, disposing of pledging or encumbering any property or assets of Jamesport Development, LLC ("The LLC") pending further Order of this Court, except in the ordinary course of business.

Pursuant to the record, Jamesport Development, LLC was formed on or about September 11, 2003. The membership interest is

held as follows: petitioner, RBR Equities, LLC holds 25%; Petitioner SW Consulting Co., Inc. holds 25%; and Respondent Jul-Bet Enterprises, Inc. holds the remaining 50%. The members executed an Operating Agreement on October 30, 2007.

The Petitioners allege that the purpose of The LLC was "for the express and limited purpose of developing a 43-acre vacant parcel fo property located on Main Road, Jamesport, New York, (the "Subject Property")". The Petitioners further allege that "all of the members had understood and agreed that a development plan would be pursued and an as of right plan would be sought for the 43-acre parcel". However, petitioners claim that Jul-Bet has "mismanaged" the Subject Property resulting in a drastically reduced value.

In addition, the Subject Property is currently subject to a mortgage held by United International Bank in the amount of \$3,250,000.00. Petitioners contend that because of the pending foreclosure action, and the alleged mismanagement by Jul-bet, the LLC can no longer carry out its stated purpose warranting dismissal under **LLCL §702**.

In opposition to the Petition for Dissolution, Jul-Bet argues that although the current site plan for the Property differs from the original application, any such changes were a direct result of the Town of Riverhead's rejection of the original application. Furthermore, Jul-Bet contends that each of the changes were disclosed to and agreed to by the Petitioners. Jul-bet further argues that the Petitioners have failed to respond to any cash calls made by the LLC for over two years and as a result, any financial contribution made to the LLC have been paid solely by Jul-Bet, including the expense of defending against the aforementioned foreclosure action. Although Jul-bet agrees that the LLC was forced to change its initial development plans, the purpose of the LLC as stated in both the Articles of Organization and the Operating Agreement state that the purpose of the LLC "is to engage in any lawful act of activity for which limited liability companies may be organized under the LLCL". Jul-Bet contends that such a purpose is being achieved and that the development plan for the LLC's property is extremely close to approval and fruition.

LLCL §702 states in relevant portion that judicial dissolution may be granted whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. Furthermore, as set forth in the opposition papers, *In re 1545 Ocean Ave. LLC* 72AD2d 121, 893 NYS2d 590 (2nd Dep't 2010), the Court held,

"The court will not dissolve an LLC merely because the LLC has not experienced a smooth glide to profitability or because events have not turned out exactly as the LLC's owners originally envisioned."

The records both in support and in opposition to the dissolution present numerous issues of fact as to the operations and purpose of The LLC as well as whether or not, it is reasonably practicable to carry on The LLC. In addition, attached to the opposition papers, the Respondent has provided copies of letters from 3rd parties, expressing interest in the Subject Property, which may weigh in on the issue of financial feasibility.

Therefore, the Court cannot determine as a matter of law, that it is no longer reasonably practicable to carry out the purpose of The LLC and Judicial dissolution at this time, is not warranted. Counsel are directed to appear at a preliminary conference to set forth a discovery schedule in this matter. Such conference shall be held on February 28, 2011 at 11:00 am.

This constitutes the DECISION and ORDER of the Court.

DATED: January 18, 2011



Emily Pines J. S.C.

NON-FINAL