

<b>Matter of Salcedo v Sandoval</b>
2016 NY Slip Op 31143(U)
May 11, 2016
Supreme Court, Richmond County
Docket Number: 85011/16
Judge: Kim Dollard
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

**X**

**In the Matter of the Application of  
FRANCISCO SALCEDO  
Holder of Sixteen and Two Thirds of All  
Outstanding Shares, and GREGORIO RAMIREZ,  
Holder of Sixteen and Two Thirds Percent of  
All Outstanding Share**

**DCM PART 4**

**Present:**

**HON. KIM DOLLARD**

**DECISION AND ORDER**

**Index No. 85011/16**

**Motion No. 394-001**

**Petitioners,**

**for the Judicial Dissolution of  
HISPANOS CAR SERVICE, INC.**

**-against-**

**JOSE A. SANDOVAL, DIAZ DIGNA MATUTE and  
MANUEL SALVATTIERRA,**

**Respondents.**

**X**

The following papers numbered 1 to 2 were fully submitted on the 15<sup>th</sup> day of April, 2016.

	Papers Numbered
Order to Show Cause and Supporting Papers.....	1
Verified Answer.....	2

Upon the foregoing papers, petitioners' application for the judicial dissolution of "Hispanos Car Service, Inc.", is granted.

Insofar as it appears, petitioners are the owners of one-third of the outstanding voting shares of the subject corporation, which was formed to supply vehicles for hire. It is undisputed that petitioners are the only officers of the corporation (*i.e.*, the president and vice president); that are

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the sole signatories on the corporation's license and all leases; that no directors have been appointed; and that petitioners have personally guaranteed the payment of the corporation's debts.

Respondents hold no formal position with the firm, but are collectively the owners of approximately one-half of the outstanding voting shares. Nelson Ramirez, a non-party, is the owner of the balance of the outstanding voting shares, and has submitted no papers in support or opposition to the petition.

To the extent relevant, it is alleged that respondents (together with the husband of one of them) have "collectively assert[ed] control over the Corporation" and "are the only people with access to [its] safe". Accordingly, they "control the flow of [all] money" (Affidavit in Support of Gregorio Ramirez, paras 3-10). It is further alleged that these individuals have violated their fiduciary duty by excluding petitioners from access to the corporation's safe (*id.* at para 10), thereby effectively precluding same from acquiring knowledge of the corporation's financial health and/or any waste or diversion of its assets. Regarding the purported "breakdown" in communication, it is claimed that "[s]erious differences of opinion have arisen between the Petitioners and Respondents, in the conduct and management of the business affairs of the Corporation . . . with the result that [its] business and good will . . . are in immediate danger of irreparable impairment" (Verified Petition, para 22). It is further claimed that respondents work "only limited hours . . . leaving the vast majority of the work required to run the business . . . to the Petitioners" (*id.* at para 23[a]), who are minority shareholders. Accordingly, it is requested that the corporation be dissolved pursuant to Business Corporation Law § 1104 *at seq.*, as the "internal dissention" and division of the

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shareholders has rendered “the orderly operation of the Corporation impossible such that dissolution would be beneficial to [each of] the shareholders” (*id.* at para 23).

In opposition, respondents’ attorney has submitted an affirmation denying the principal allegations in the petition, and asserting mutual misconduct on the part of petitioners. However, having no personal knowledge of the facts, an acceptable excuse for the failure to submit affidavits based on same, or documentary evidence in support of these averments, the affirmation is without probative value (see *Zuckerman v City of New York*, 49 NY2d 557, 563; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065; *Currie v Wilhouski*, 93 AD3d 816; *cf. Russo v 491 West Street Corp.*, 176 AD2d 672).

Since petitioners collectively do not own 50% of the outstanding shares entitled to vote, they are ineligible to seek voluntary dissolution under Business Corporation Law § 1104. However, as the owners of more than 20% of those shares, they are entitled to petition for dissolution under Business Corporation Law § 1104-a. Moreover, there being no admissible evidence to the contrary, this Court would be loathe to hold that petitioners are not entitled to the relief requested. Respondents’ apparent disinclination to submit probative evidence in opposition to the petition constitutes a clear sign that the continued operation of Hispanos Car Service, Inc. in the present climate is simply unfeasible, and that liquidation is the only viable means of protecting the rights and interests of most, if not all, of its shareholders. The denial of the petition under these circumstances would only expose the shareholders’ investment and any remaining “good will” to an unconscionable loss in value.

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Accordingly it is;

ORDERED that Petitioners' application for the judicial dissolution of "Hispanos Car Service, Inc.", is granted.

This constitutes the Decision and Order of the Court.

ENTER,

  
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Kim Dollard, A.J.S.C.

Dated: May 11, 2016