

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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In the Matter of the Application of
STEVEN TELANO and VINCENT MONFREDO,

Petitioners,

For the Judicial Dissolution of Eagle Security Group, Inc.

Respondent,

pursuant to Business Corporation Law § 1104-a, *et. seq.*

AND GIACCHINO BRUCCULERI, RAYMOND C.
WONG, LEO S. CINQUEMANI, ANTONIO
GUADAGNINO, SALVATORE D. GIAMMANICO,
GEORGE F. BRADLAU, MICHAEL J. TONE,
SAIMA SICUREZZA SPA, and PHILIP KYRIACOU

Additional Party Respondents.
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ECF CASE:

Index No. 717941/2018
(Hon. Justice Joseph Risi)

Return Date: September 3, 2019

Motion Seq. No.: 002

**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF RESPONDENTS BRADLAU AND
TONE'S MOTION TO DISMISS THE AMENDED PETITION**

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& CONTINI, L.L.P.
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Of Counsel:

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PRELIMINARY STATEMENT

George F. Bradlau (“Bradlau”) and Michael J. Tone (“Tone”), Additional Party Respondents in this action (collectively the “B&T Respondents”), submit this reply memorandum of law in further support of their Motion to Dismiss (“Motion”) the Amended Petition of Petitioners, Steven Telano (“Telano”) and Vincent Manfredo (“Manfredo”) (collectively the “Petitioners”) as to the B&T Respondents, seeking a) judicial dissolution of Respondent, Eagle Security Group, Inc. (“Eagle”) pursuant to Business Corporation Law (“BCL”) § 1104-a(a)(1) & (2), b) a surcharge pursuant to BCL §1104-a(d), and c) an accounting.

In opposition to the B&T Respondents’ Motion, Petitioners submit only an Affidavit by Manfredo (“Manfredo Affidavit”). The Manfredo Affidavit contains numerous extraneous and inflammatory, fabricated “facts” in an effort to distract this Court from the obvious – that the B&T Respondents, Eagle’s private counsel, are not proper parties to this special proceeding. The B&T Respondents should be dismissed from the dissolution and surcharge proceedings because they were never shareholders, officers, directors or “in control” of Eagle, as required by BCL § 1104-a (a) and (d). Further, the B&T Respondents should be dismissed from the accounting proceeding as they never possessed or controlled Eagle’s financial documents, which are the subject of the accounting.

ARGUMENT**POINT I****PETITIONERS’ DISSOLUTION AND SURCHARGE CLAIMS SHOULD BE DISMISSED AGAINST EAGLE’S OUTSIDE ATTORNEYS, BRADLAU AND TONE**

Petitioners’ cause of action for dissolution and surcharge should be dismissed against Bradlau and Tone because they are not proper parties to this proceeding, as delineated under BCL § 1104-a

(a) and (d).

In opposition, Petitioners admit, as they must, that Bradlau and Tone, Eagle's outside counsel, were never "shareholders, officers, or directors" of Eagle. In a last ditch effort to keep the B&T Respondents in this dissolution/surcharge action, Petitioners assert—without one shred of evidence—that Bradlau and Tone (a) were "silent" investors who were "siphoning large sums of money" from Eagle, and (b) as such, were "in control" of Eagle for the purposes of BCL § 1104-a. Simply put, these self-serving contentions are wrong.

Unfortunately for Petitioners, their creative story telling is belied by both the Manfredo Affidavit and the documentary evidence. In reality and as Manfredo admits, Bradlau and Tone acted as Eagle's private counsel and provided legal services, including but not limited to drafting the shareholders' agreement, attending shareholders' meetings, preparing corporate minutes, and preparing and negotiating contracts on behalf of Eagle. See Manfredo Aff. at ¶¶ 14, 20-23, 25-26. Manfredo also concedes, as he must, that Bradlau and Tone were paid "legal fees" for those services. Manfredo Aff. at ¶ 36.

Importantly, even if this Court assumes Petitioners' unsubstantiated allegations to be true, which they are not, Petitioners still fail to state a cause of action under BCL § 1104-a (a) and (d). Petitioners have not cited to even one case to support their contention that a "silent investor" is deemed to be "in control" of a corporation for purposes of BCL § 1104-a. Our independent research has revealed no cases or treatises which support Petitioners' all-encompassing interpretation of "in control" under BCL § 1104-a. Moreover, our research has failed to uncover even one case where outside lawyers, who were paid for legal services provided to a corporation, were deemed to be "in

control” of a corporation so as to be a proper party to a corporate dissolution proceeding.

This is significant because Petitioners’ overly expansive and unsupported interpretation of the term “in control” could potentially expose professionals (including lawyers and accountants) who perform services for a corporation (and are paid for these services) to being named a party in a corporate dissolution proceeding. This Court should not enlarge the term “in control” under BCL § 1104-a to encompass professional service providers who are simply doing their job.

For the reasons stated above, the Court should dismiss Petitioners’ causes of action for dissolution and surcharge pursuant to BCL § 1104-a(a) and (d) against Bradlau and Tone.

POINT II

PETITIONERS’ EQUITABLE ACCOUNTING CLAIM SHOULD BE DISMISSED AGAINST EAGLE’S OUTSIDE ATTORNEYS, BRADLAU AND TONE

While Petitioners ask this Court to order Eagle’s prior outside counsel, Bradlau and Tone to account to them, they ignore the obvious -- that neither ever possessed or controlled Eagle’s financial books and records. In reality, the B&T Respondents would be unable to comply with any Court Order to account to Petitioners and, as such, the second cause of action for an accounting should be dismissed as to Bradlau and Tone.

Petitioners assert in their reply papers that the B&T Respondents effectively served as the “gatekeeper” for Eagle’s financial records. See *Manfredo Aff.* at pp. 35-6. While the B&T Respondents deny even this, what is significant is that in so doing Petitioners admit that the B&T Respondents did not possess or control Eagle’s documents. Moreover, the documentary evidence unambiguously confirms that the B&T Respondents did not, and do not, possess or control Eagle’s

financial records – rather, such documents have been in the possession of Eagle’s accountant, Antonio Guadagnino (“Guadagnino”), who is a party to this action.¹

In an e-mail from Telano to Bradlau dated August 1, 2013, Telano writes as follows:

I was advised by the Board of Directors. . . to contact you or Mike Tone to make a mutually convenient arrangement to view additional records held at the office of Eagle’s accountant.

See Exhibit “A” to Affirmation of Marianne S. Conklin dated August 29, 2019 (“Conklin Aff.”). In response and via e-mail dated August 7, 2013, Bradlau responds and provides several dates for Telano to “**review the available Eagle records and documents at Antonio’s [Guadagnino] office in Astoria.**” (Emphasis added). See Exhibit “A” to Conklin Aff. After Manfredo reviewed financial documents at Guadagnino’s office, Tone writes to him and advises that “[c]opies of Eagle’s financial documents that you requested are ready for pick-up...at Antonio’s [Guadagnino] office...” (Emphasis added). See Exhibit “B” to Conklin Aff. Again, the documentary evidence unquestionably confirms what Petitioners admit – that neither Bradlau nor Tone possess Eagle’s financial records and would be unable to comply with any Court order to “account.”

¹ Upon information and belief, Mr. Guadagnino, who is an additional party respondent, has not appeared in this matter. Petitioners have filed a motion for a default judgment against him, which is currently pending before Your Honor.

Petitioners' equitable accounting cause of action against Eagle's private counsel, Bradlau and Tone, should also be dismissed as no required, fiduciary relationship ever existed between them and Petitioners. As the B&T Respondents argued in their moving papers, the documentary evidence in the form of a Termination Letter (See Exhibit "C" to Affirmation of Anthony P. Colavita dated April 19, 2019) unambiguously confirms that any fiduciary relationship that was created as a result of the B&T Respondents' representation of Eagle existed only between them and Eagle – not between them and Petitioners. In opposition to this argument, Petitioners have for the first time attempted to create an attorney-client relationship between themselves and the B&T Respondents that simply never existed. Again, this alleged attorney-client relationship contradicts both the documentary evidence and Petitioners' contentions as contained in the Amended Petition. Petitioners' desperate efforts to save their claims against the B&T Respondents by creating a fictitious fiduciary relationship is disingenuous at best and should be disregarded by the Court.

CONCLUSION

For all of the foregoing reasons, Additional Party Respondents, George F. Bradlau and Michael J. Tone, respectfully request that this Court enter an Order granting the Motion and dismissing the Amended Petition against them, together with such other and further relief as the Court may deem just and proper.

DATED: Garden City, New York
August 29, 2019

Respectfully Submitted,

L'ABBATE, BALKAN, COLAVITA
& CONTINI, L.L.P.

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