

**E-FILE**

SHORT FORM ORDER

INDEX NO. 621996/2023

**SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY**

**PRESENT:**

**HON. JERRY GARGUILO  
SUPREME COURT JUSTICE**

**ORIG. RETURN DATE:  
FINAL SUBMITTED DATE:  
MOTION SEQ# 001 MOTDEC  
MOTION SEQ# 002 MOTDEC**

IN THE MATTER OF THE APPLICATION OF  
MARK PIEPES, AS ADMINISTRATOR OF THE  
ESTATE OF DYLAN ROSS, A MEMBER OF  
FAMOUS FOOD FESTIVAL LLC,

**PETITIONER'S ATTORNEY:**  
WESTERMAN BALL EDERER MILLER  
ZUCKER & SHARFSTEIN, LLP  
1201 RXR PLAZA  
UNIONDALE, NY 11556  
516-622-9200

Petitioner,

**RESPONDENTS' ATTORNEY:**  
JAY A PRESS P.C.  
255 EXECUTIVE DR STE 400  
PLAINVIEW, NY 11803  
516-597-5757

-against-

ERIC ARSHRAVAN ET AL.,

Respondents.

The Petitioner, Mark Piepes as Administrator of the Estate of Dylan Ross (hereinafter "Piepes") seeks by way of Petition an order directing Eric Arshravan and Famous Food Festival LLC hereinafter ("Famous") to produce for inspection and copying by Petitioner and/or his agents (including, without limitation, his accountant and/or counsel) the books and records relating to the company, Famous, and further seeks an order that Respondents' obligation to provide Petitioner with the company's books and records is ongoing and that all company financial information (including without limitation, QuickBooks or accounting records, bank statements, credit card statements, records of salaries, compensation and/or distributions paid to members or others) shall be provided to Petitioner on an ongoing monthly basis. Petitioner also seeks an award of damages incidental to the costs including counsel fees, disbursements and other expenses incurred by the Petitioner.

The Petition is opposed on the grounds that Petitioner is entitled to review Famous's books & records through the date of Dylan's death on January 7, 2023, and no further. A cross-petition seeks an order denying the Petition and/or to dismiss the Petition for lack of jurisdiction.

The prayer for relief sounding in lack of jurisdiction is **DENIED**. All claims for fees

*PIEPES, ET AL v. ARSHRAVAN, ET AL*  
*INDEX NO. 621996/2023*  
*PAGE 2*

incurred are **RESERVED**.

The Court has considered the following in consideration of its determination:

Motion Sequence #001

1. Plaintiffs' Notice of Petition, inclusive of Exhibits A-D, Memorandum of Law In Support.

Motion Sequence #002

1. Defendants' Notice of Cross-Motion, Affidavit of Eric Arshravan In Opposition To Motion and In Support of Cross-Motion, Affirmation of Danielle N. Grzan Esquire in Opposition To Motion and In Support of Cross-Motion, inclusive of Exhibits A-G and Memorandum of Law in Opposition To Motion and In Support of Cross-Motion; and
2. Plaintiffs' Affirmation of Michael E. Planell, Esq. in Opposition to Cross-Motion and in Further Support of Petition; Affidavit of Mark Piepes in Opposition to Respondents' Motion to Dismiss and in Further Support of Petition, with Exhibits 1-7; Affidavit of Larry Radler, inclusive of Exhibits 1-4; and Memorandum of Law In Opposition To Cross-Motion and In Further Support of Motion.

The Court conducted a conference with counsel and the following factual background is in large measure conceded. The company organizes and runs food festivals in New York. The company was formed on or about December 16, 2016. Dylan owned 50% of the membership interest in the company at the time of his death. Eric Arshravan is the only other member of the company and is a 50% owner of the company. On January 7, 2023, Dylan died in a car accident. On or about January 20, 2023, the Respondent's counsel sent a letter demanding that Petitioner and his wife turn over all company property, stored at their facility within five (5) days. On or about May 16, 2023, the Nassau County Surrogate's Court appointed Petitioner Administrator of The Estate of Dylan Ross ("the Estate").

Petitioner claims in the months since Petitioner was appointed as administrator of the estate in May 2023, Respondent has not provided any information to Petitioner concerning the operations or financial conditions of the company. The Respondent vehemently denies that allegation. It appears that Respondents have, to some extent, provided information to the Petitioner and have offered authorizations to the company's accountant and a business broker.

*PIEPES, ET AL v. ARSHRAVAN, ET AL*  
*INDEX NO. 621996/2023*  
*PAGE 3*

At the conference with the Court, it became apparent to the Court that the ultimate resolution of this matter may involve a sale to the Respondent Eric Arshravan of Dylan's membership interest. A condition to any such resolution will be a valuation of the company. It is apparent that Petitioner seeks to complete responsible due diligence in order to determine fair value of the 50% share his deceased son held in the company. It is the position of the Respondent that all the information sought by the Petitioner should be and has been turned over reflecting business finances and the like up until the time of Dylan's death. Petitioners' counsel seeks continued access to discoverable material going forward in time at least until the time a transaction is culminated or a different resolution is negotiated.

Limited Liability Company Law §509. Distribution upon withdrawal provides:

Except as provided in this chapter, upon withdrawal as a member of the limited liability company, any withdrawing member is entitled to receive any distribution to which he or she is entitled under the operating agreement and, if not otherwise provided in the operating agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her membership interest in the limited liability company as of the date of withdrawal based upon his or her right to share in distributions from the limited liability company. (*emphasis added*)

Section 509 appears to put a stop sign upon "withdrawal as a member." The issue is whether death is a withdrawal from membership. Neither party has submitted authority equating death with withdrawal in the absence of an operating agreement or the like.

In *Gartner v. Cardio Ventures, LLC*, 121 A.D.3d 609 (2014), the LLC had both an operating agreement and a subscription agreement which the court held were controlling, neither of which are applicable in this matter. The court held that plaintiff, as a member of the LLC, had an independent statutory right to review of the books and records of the LLC. Respondent herein asserts the Petitioner is not a member of the LLC, but instead an executor of a deceased member's estate.

In *Sheric, LLC v. Bash LLC*, 2022 WL 768342 (N.Y. Sup. Ct. Mar. 11, 2022), where petitioner sought to examine the books and records of the LLC, the Court allowed examination, excluding documents already provided, including: tax returns; general ledgers; canceled checks and bank statements, all of which the Respondents herein claim

PIEPES, ET AL v. ARSHRAVAN, ET AL  
INDEX NO. 621996/2023  
PAGE 4

have already provided to Petitioner. As such, the Respondents herein assert they already fulfilled their duty to Petitioner and the Petition must be dismissed.

Section 608 of the New York Limited Liability Corporation Law provides as follows:

If a member who is a natural person dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling his or her estate or administering his or her property, including any power under the operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor. (*emphasis added*)

Section 1102 (a) & (b) of the New York Limited Liability Corporation Law recites the following:

- (a) Each domestic limited liability company shall maintain the following records, which may, but need not, be maintained in this state:
- (1) if the limited liability company is managed by a manager or managers, a current list of the full name set forth in alphabetical order and last known mailing address of each such manager;
  - (2) a current list of the full name set forth in alphabetical order and last known mailing address of each member together with the contribution and the share of profits and losses of each member or information from which such share can be readily derived;
  - (3) a copy of the articles of organization and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed;
  - (4) a copy of the operating agreement, any amendments thereto

PIEPES, ET AL v. ARSHRAVAN, ET AL  
INDEX NO. 621996/2023  
PAGE 5

and any amended and restated operating agreement; and  
(5) a copy of the limited liability company's federal, state and local income tax or information returns and reports, if any, for the three most recent fiscal years.

(b) Any member may, subject to reasonable standards as may be set forth in, or pursuant to, the operating agreement, inspect and copy at his or her own expense, for any purpose reasonably related to the member's interest as a member, the records referred to in subdivision (a) of this section, any financial statements maintained by the limited liability company for the three most recent fiscal years and other information regarding the affairs of the limited liability company as is just and reasonable. (*emphasis added*)

The items sought by the Petitioners are set forth at Exhibit D annexed to the Notice of Petition. The Court directs disclosure of items 1 through 13 as set forth in Exhibit D, dated August 8, 2023, until the date of Dylan's passing.

The Cumulative Pocket Part (Book 32A Limited Liability Company Law) at 6.13.2  
Inspection notes:

A member has a right to inspect and copy the LLC's books and records for any purpose reasonably related to his interest as a member [Section 1102(b)], subject to reasonable inspection standards in the operating agreement and the reasonableness of the request...

The 'reasonable standard' for inspection could include the nature of the prior notice to be given by the member, including a statement as to the reasons for inspection and a representation that the records reviewed or copies furnished will not be used for an improper purpose, and the time, place and cost of the inspection...

Section 608 expressly answers the question whether the estate of a deceased or adjudged incompetent member has inspection rights with respect to settling the estate or administering such



*PIEPES, ET AL v. ARSHRAVAN, ET AL*  
*INDEX NO. 621996/2023*  
*PAGE 6*

member's property. The grant to a party who was the successor in interest to her decedent's membership interest of access to the LLC's books was not an admission that the party was a member. *Pappas v. 38-40 LLC*, 172 A.D.3d 409, 101 N.Y.S.3d (1st. Dept. 2019). A holder of performance units who never obtained membership in the LLC was denied access to the LLC's books and records. *Cordts-Auth. v. Crunk, LLC*, 815 F.Supp.2d 778, 800 (S.D.N.Y. 2011), aff'd, 479 Fed.Appx. 375 (2d Cir. 2012).


The Petition is **GRANTED** in part and **RESERVED** in part. Respondent must produce all records and the like identified by the Petitioner consistent with sections 608 and 1102 (a)(b) of the Limited Liability Company Law for the last three (3) fiscal years. 2023 shall be the last of the three (3) fiscal years. Upon inspection, the Petitioner, on good cause shown, by letter application, may seek whatever other discovery deemed reasonably necessary beyond the date of Dylan's passing to complete his Commission as Executor.

The Respondent shall continue to provide the Petitioner with authorizations to allow the flow of information from the Company's Accountant as well as any Business Broker consistent with the terms of this order.

Counsel shall appear for conference with the Court on Thursday, November 30, 2023, at 10:00 a.m.

The foregoing constitutes the decision and **ORDER** of this Court.

**Dated: October 27, 2023**

  
HON. JERRY GARGUILO, JSC