

ORIGINAL

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NASSAU : TRIAL TERM PART 5

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3 In the Matter of the Application of  
4 HELEN HARRIS, Holder of One-Half of All  
5 of the Outstanding Shares Entitled to Vote  
6 in an Election of Directors of the  
7 GREAT MID ATLANTIC REALTY CORP.,

Index No.  
602952/19

Petitioner,

8 For the Dissolution of the  
9 GREAT MID ATLANTIC REALTY CORP.,  
10 a Domestic Corporation, and ROSALIE HARRIS,

Respondents.

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11 September 13, 2022  
12 Mineola, New York

13 B E F O R E:

HON. TIMOTHY S. DRISCOLL, Justice

14 A P P E A R A N C E S:

15 BERKMAN HENOCH PETERSON PEDDY & FENCHEL, PC  
16 Attorney for Petitioner  
17 100 Garden City Plaza  
18 Garden City, New York

BY: JOSEPH MACY, ESQ.  
NICHOLAS TUFFARELLI, ESQ.

19 ZELENTZ, SHAPIRO & D'AGOSTINO, P.C.  
20 Attorney for Respondents  
21 138-44 Queens Boulevard  
22 Briarwood, New York

BY: LAVINIA A. ACARU, ESQ.

23 MINUTES OF VIRTUAL PROCEEDINGS

24  
25 JENNIFER A. SCHMIDT, CSR  
OFFICIAL COURT REPORTER

Virtual Proceedings 2

1 (Whereupon, a discussion was held off the  
2 record.)

3 THE COURT CLERK: In the matter of the  
4 application of Helen Harris, holder of one-half of all  
5 of the outstanding shares entitled to vote in an  
6 election of directors of the Great Mid Atlantic Realty  
7 Corp. for the dissolution of the Great Mid Atlantic  
8 Realty Corp., index 602952 of 2019.

9 Counsel for the plaintiff, please make your  
10 appearance.

11 MR. MACY: Good morning. On behalf of the  
12 plaintiff petitioner, Joseph Macy and Nicholas  
13 Tuffarelli, the Law Office of Berkman, Henoch,  
14 Peterson, Peddy & Fenchel, 100 Garden City Plaza,  
15 Garden City.

16 THE COURT: Mr. Macy, Mr. Tuffarelli.  
17 Ms. Acaru, may I have your appearance, ma'am?

18 MS. ACARU: Yes. Good morning, your Honor.  
19 Lavinia Acaru, Zelenitz, Shapiro & D'Agostino, 118-35  
20 Queens Boulevard, Suite 400, Forest Hills, New York  
21 11375, appearing for the respondent.

22 THE COURT: The Court has before it Motion  
23 Sequence 8, which is Mr. Macy's application for summary  
24 judgment on the dissolution claim. Before going on the  
25 record, I indicated, although it's not the most precise

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## Virtual Proceedings

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1 word, I suppose I stated with some certainty that I  
2 thought that Mr. Macy had the better of the argument as  
3 to dissolution, but then he didn't have the better of  
4 the argument that money that was used by Rosalie Harris  
5 to pay her attorneys should be moved back into the  
6 corporate account. So I was pretty firm on those  
7 tentative thoughts.

8 Mr. Macy, if you need to be heard further.

9 MR. MACY: No, your Honor. I'll rely upon  
10 the Court at this time.

11 THE COURT: Ms. Acaru, do you need to be  
12 heard? I know your papers are there and you are  
13 conceding nothing and your papers made some fine  
14 arguments. Do you need to be heard further?

15 MS. ACARU: No, your Honor.

16 THE COURT: Presently before the Court is  
17 Motion Sequence 8, which is an application by  
18 Petitioner Helen Harris for summary judgment on her  
19 petition for dissolution of Great Mid Atlantic Realty  
20 Corp. pursuant to BCL 1104(a), as well as for return of  
21 all corporate funds that were utilized to pay the legal  
22 fees of Rosalie Harris. The Court has before it  
23 various papers in support of and in opposition to the  
24 motion. More specifically, the Court has before it ECF  
25 entries 147-176 and 188-199. The Court is also aware

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## Virtual Proceedings

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1 that the motion essentially seeks summary judgment on  
2 the petition for dissolution that initiated this case,  
3 that is Motion Sequence 1, and, thus, the Court's  
4 Decision and Order, which I am reading in now, will  
5 cover not just only Motion Sequence 8 but also Motion  
6 Sequence 1.

7 To succeed on its application for summary  
8 judgment on its dissolution cause of action, the  
9 petitioner must point to undisputed facts, in  
10 evidentiary form, that demonstrate its ownership of  
11 one-half of the votes of all outstanding shares of the  
12 corporation. Upon establishing ownership, dissolution  
13 requires the petitioner, again, to provide facts in  
14 evidentiary form that show (1) the directors are so  
15 divided respecting the corporation's affairs that the  
16 votes required for action by the board cannot be  
17 obtained, or (2) that the shareholders are so divided  
18 that the votes required for the election of directors  
19 cannot be obtained, or (3) that there is internal  
20 dissension and two or more factions of shareholders are  
21 so divided that dissolution will be beneficial to the  
22 shareholders. If the petitioner, as the moving party,  
23 makes that showing, it is prima facie entitled to  
24 summary judgment. Upon making such a showing to defeat  
25 summary judgment, the respondent must point to facts,

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## Virtual Proceedings

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1 in evidentiary form, that show an issue regarding one  
2 or both of the elements of BCL 1104.

3 Here, the undisputed facts provided by  
4 petitioner establish the first element, which is that  
5 the petitioner owns one-half of the outstanding shares  
6 of the corporation. That evidence includes the 1982  
7 shareholders agreement, ECF 161, that identifies  
8 petitioner, Helen Harris, and respondent, Rosalie  
9 Harris, as 50 percent shareholders. Moreover, the  
10 stock certificates, which have no indication of fraud  
11 or any other invalidity, reflect that Helen and Rosalie  
12 each own 25 shares of the corporation, and those  
13 certificates are found at ECF 163 and 197. There are  
14 no other stock certificates or indication of ownership.  
15 In response, respondent Rosalie Harris only argues that  
16 Helen has failed to submit sufficient evidence, and  
17 states that she never saw any documentation indicating  
18 Helen's 50 percent ownership. She also claims that  
19 other stock certificates exist, but provides no  
20 indication about whether these certificates were issued  
21 or who holds them. None of that creates a factual  
22 issue to defeat the uncontroverted evidence that Helen  
23 Harris owns 50 percent of the corporation, and, thus,  
24 has standing to petition for dissolution under BCL  
25 1104.

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Virtual Proceedings

1 As to the second issue, the petitioner has  
2 carried its burden of pointing to undisputed facts that  
3 the two shareholders are so divided that dissolution  
4 would be beneficial to the shareholders thereby  
5 satisfying 1104(a)(3). Indeed, the evidence submitted  
6 by petitioner, including the affidavit of petitioner  
7 Helen Harris, is replete with examples of the deadlock.  
8 That includes, as provided in Helen's affidavit, the  
9 failure of the shareholders to meet, the failure of  
10 Rosalie to be present at a meeting called by Helen, and  
11 the utter lack of discussion of the corporation's  
12 business and finances. And, the personal animosity and  
13 lack of trust among Helen and Rosalie is palpable from  
14 Helen's affidavit. Indeed, dissension among the  
15 shareholders appears to be not only the rule, but  
16 indeed the governing principle of these two sole  
17 shareholders of the corporation. As legions of cases  
18 at the trial and appellate level have made clear, the  
19 division and disagreement among and between Helen and  
20 Rosalie is a classic example of deadlock to warrant  
21 dissolution of the corporation. Thus, the Court orders  
22 that Great Mid Atlantic Realty Corp. is dissolved as of  
23 today's date. And in so doing, the Court grants  
24 summary judgment as requested in Motion Sequence 8, and  
25 grants the petition for dissolution, the original

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## Virtual Proceedings

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1 motion in this case, which is Motion Sequence 1.

2 Now, the focus of the motion papers is really  
3 on the application of dissolution. The undisputed  
4 evidence does not, however, provide the Court with  
5 undisputed evidence that requires the return of any  
6 corporate funds that Rosalie Harris used to pay her  
7 legal fees. Simply put, the petitioner has not  
8 satisfied its burden on that claim to show that the  
9 undisputed facts demonstrate, as a matter of law, that  
10 the respondent acted improperly to the extent that the  
11 respondent's legal fees were borne by the corporation.  
12 At trial, if necessary, the Court will expect to hear  
13 evidence on the questions of whether, and to what  
14 extent, any legal fees borne by the respondent are  
15 proper expenses of the corporation, given the history  
16 and dealings of the corporation over the years.

17 That constitutes the Decision and Order of  
18 the Court with respect to Motion Sequence 8 and Motion  
19 Sequence 1. Inasmuch as the petitioner is a prevailing  
20 party, it will pay for the minutes of these  
21 proceedings, which our fine court reporter will send  
22 the bill for, and the written Decision and Order will  
23 constitute the so-ordered minutes of today's  
24 proceedings. Mr. Macy will then use those so-ordered  
25 minutes, the written decision, to craft with our

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## Virtual Proceedings

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1 clerk's office a proposed judgment, which he will  
2 submit on ten days' notice. We will then get together  
3 in 60 days' time because it's the Court's hope that  
4 this family matter can now be brought to resolution.

5 All right. So with that in mind, today is  
6 September 13. Could we get together November 10, which  
7 is a Thursday, at 3 p.m., would that be possible?

8 MR. MACY: November 10 looks fine for me,  
9 your Honor.

10 MS. ACARU: That's fine.

11 THE COURT: All right. So that will be the  
12 next date we'll get together, November 10 at 3 p.m.

13 Is there anything further I can do for you  
14 today, Mr. Macy?

15 MR. MACY: There is, your Honor. I have one  
16 question. Obviously, we're going to go to Judge  
17 Covello and see if we can resolve the assets and the  
18 disposition. I am concerned, given the history of this  
19 matter, that if we don't that we may be back in a  
20 position where the assets are sitting here and they are  
21 further delayed. Will the Court empower Judge Covello  
22 to act as referee for the purpose of the sale of the  
23 marketing and sale of these assets should the parties  
24 be unable to agree to the disposition of same?

25 THE COURT: I think that's very clever,

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## Virtual Proceedings

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1 especially given his familiarity here. I can't spend  
2 your money for a judicial purpose without your consent.  
3 If that's the consent of the parties, the Court will,  
4 of course, seriously entertain that application. And  
5 to the extent that Judge Covello cannot bring the case  
6 to resolution, it would be appropriate to hear your  
7 application again for a receiver. I think it would be  
8 timed perfectly at that point.

9 MR. MACY: Since the Court has set a 60-day  
10 period, why don't we see what we could do on a  
11 negotiated basis with Judge Covello? If I find in 40  
12 or 45 days that that is not working out prior to the  
13 next conference, I will bring on, I hope, an  
14 application for an appointment of a receiver and the  
15 Court can either designate Judge Covello or such other  
16 receiver as you deem appropriate, obviously, and we  
17 will go from there.

18 THE COURT: That sounds like a plan.

19 Ms. Acaru, what else can I do for you, ma'am?

20 MS. ACARU: Nothing, your Honor.

21 (Continued on next page to include  
22 certification.)  
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Virtual Proceedings

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THE COURT: Thank you so much everybody. Be

safe and healthy. Thank you.

MR. MACY: Thank you, your Honor. I

appreciate your time.

(Virtual proceedings concluded.)

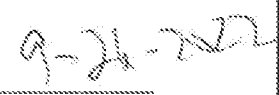
\* \* \*

I hereby certify the above and foregoing to be a true and accurate record of my stenographic notes.

  
\_\_\_\_\_  
JENNIFER A. SCHMIDT, C.S.R.

SO ORDERED:

  
\_\_\_\_\_  
HON. TIMOTHY S. DRISCOLL, J.S.C.

  
\_\_\_\_\_  
DATE

**ENTERED**

**Oct 03 2022**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

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