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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91237161
Party	Defendant Ocinomled, Ltd.
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Date	07/15/2022
Attachments	7.15.22 Resp to Bd Inquiry Re State Court Action.pdf(259661 bytes) Exhibit A Ocinomled.pdf(118670 bytes) Exhibit B Ocinomled.pdf(260371 bytes) Exhibit C Ocinomled.pdf(104992 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EMERIL'S FOOD OF LOVE PRODUCTIONS, LLC Opposer, v. OCINOMLED, LTD. Applicant.	:	Opposition No. 91237161 Serial No. 76/586,960

RESPONSE TO BOARD INQUIRY REGARDING CIVIL ACTION

Ocinomled, Ltd. ("Applicant"), by and through its undersigned counsel, hereby responds to the Order issued by the Trademark Trial & Appeal Board (the "Board") on June 15, 2022. 20 TTABVUE.

On March 29, 2022 the Supreme Court of the State of New York Appellate Division, First Judicial Department issued a decision and Order on the Appeal filed by three of the Defendants in the State Court action (initiated on April 12, 2021).[1] Thereafter, Respondents/Defendants-Respondents-Appellants moved for the reargument of, or, in the alternative, for leave to appeal the Court of Appeals. The Supreme Court of the State of New York Appellate Division, First Judicial Department denied that motion on May 26, 2022. A copy of the Order issued by the Clerk of the Court is attached hereto as **Exhibit**

[1] A copy of the Notice of Appeal has been made of record in the instant proceeding and attached as Exhibit B to Response to Board Inquiry Regarding Civil Action. 18 TTABVUE.

A. The next day, Respondents/Defendants-Respondents-Appellants filed a Notice of Motion for Leave to Appeal in the Court of Appeals for the State of New York. A copy of the Motion to Leave to Appeal, Notice of Motion for Leave to Appeal, and Memorandum in Support of Motion for Leave to Appeal is attached hereto as **Exhibit B**. This Motion is as of yet undecided. A copy of the current New York State Appellate Court Undecided Motions Docket, printed on July 15, 2022, is attached hereto as **Exhibit C**.

As such, the State Court Action has not yet been finally determined in accordance with T.B.M.P. § 510.02(b). Applicant respectfully requests that this proceeding remain suspended until the Motion enclosed as Exhibit B has been decided, the time for seeking any further review has expired, a decision denying or granting such review has been rendered, and/or any further review has been completed.

Respectfully submitted,

OCINOMLED, LTD.

Date: July 15, 2022

By: /s/ *Abigail J. Remore* /

Abigail J. Remore
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Attorneys for Applicant

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Response To Board Inquiry Regarding Civil Action was served via email on the attorney for Opposer, Deborah K. Squiers, Cowan Liebowitz & Latman PC, 114 West 47th Street, New York, NY 10036-1525, trademark@cll.com, dks@cll.com, lsf@cll.com.

/s/ *Saval Desai* /
Saval Desai
CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Applicant

Dated: July 15, 2022

Exhibit A

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Barbara R. Kapnick, Justice Presiding,
Troy K. Webber
David Friedman
Tanya R. Kennedy
Manuel J. Mendez, Justices.

In the Matter of Omer Grgurev, et al., Petitioners/Plaintiffs-Appellants-Respondents,	Motion No.	**2022-01385**
	Index No.	157551/19
	Case No.	2021-02692

-against-

Milan Licul, etc., et al., Respondents/Defendants-Respondents-Appellants,

Anthony Antonello, et al., Respondents/Defendants.

Respondents/defendants-respondents-appellants Milan Licul, Brank Turcinovic, and Ocinomled, Ltd having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on March 29, 2022 (Appeal No. 15608),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: May 26, 2022

Susanna Molina Rojas
Clerk of the Court

Exhibit B

Appellate Division, First Department Docket No. 2021-02692
New York County Clerk's Index No. 157551/2019

Court of Appeals
State of New York

OMER GRGUREV and FERDO GRGUREV, as Minority Shareholders Each Owning 25% of All Outstanding Shares of Ocinomled, Ltd.,

Petitioners/Plaintiffs-Appellants-Respondents,

against

MILAN LICUL and BRANKO TURCINOVIC, Individually, and as the Controlling Shareholders Holding 50% of All Outstanding Shares of Respondent Ocinomled, Ltd., and OCINOMLED, LTD.,

Respondents/Defendants-Respondents-Appellants,

ANTHONY A. ANTONELLO and THE HARTFORD LIFE INSURANCE COMPANY,

Respondents/Defendants.

MOTION FOR LEAVE TO APPEAL

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May 27, 2022

Appellate Division, First Department Docket No. 2021-02692
New York County Clerk's Index No. 157551/2019

Court of Appeals
State of New York

OMER GRGUREV and FERDO GRGUREV, as Minority Shareholders Each Owning 25% of All Outstanding Shares of Ocinomled, Ltd.,

Petitioners/Plaintiffs-Appellants-Respondents,

against

MILAN LICUL and BRANKO TURCINOVIC, Individually, and as the Controlling Shareholders holding 50% of All Outstanding Shares of Respondent Ocinomled, Ltd., and OCINOMLED, LTD.,

Respondents/Defendants-Respondents-Appellants,

ANTHONY A. ANTONELLO and THE HARTFORD LIFE INSURANCE COMPANY,

Respondents/Defendants.

NOTICE OF MOTION FOR LEAVE TO APPEAL

PLEASE TAKE NOTICE that upon the annexed memorandum and affirmation, Respondents/Defendants-Respondents-Appellants will move this Court, located at 20 Eagle Street, Albany, New York 12207, on June 6, 2022, at 10:00 a.m., or as soon thereafter as counsel can be heard, for leave to appeal from the order of the

Appellate Division, First Department, entered on March 29, 2002, and for such other relief as the Court may deem just and proper.

Dated: New York, New York
May 27, 2022

SCHLAM STONE & DOLAN LLP

By: _____

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Appellate Division, First Department Docket No. 2021-02692
New York County Clerk's Index No. 157551/2019

Court of Appeals
State of New York

OMER GRGUREV and FERDO GRGUREV, as Minority Shareholders Each Owning 25% of All Outstanding Shares of Ocinomled, Ltd.,

Petitioners/Plaintiffs-Appellants-Respondents,

against

MILAN LICUL and BRANKO TURCINOVIC, Individually, and as the Controlling Shareholders holding 50% of All Outstanding Shares of Respondent Ocinomled, Ltd., and OCINOMLED, LTD.,

Respondents/Defendants-Respondents-Appellants,

ANTHONY A. ANTONELLO and THE HARTFORD LIFE INSURANCE COMPANY,

Respondents/Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

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May 27, 2022

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PRELIMINARY STATEMENT

Arising from a dispute among the owners of the iconic Delmonico's Restaurant, this case presents a novel question of law: when considering the equitable dissolution of a closely held corporation, should courts consider all the conduct of the shareholders related to the allegations in the dissolution proceeding even if that conduct is not in direct connection to the corporation? The answer to that question should be yes. The First Department, however, reached the wrong result, leading to conflicting outcomes among the Appellate Departments that have faced this question.

Delmonico's was owned by Ocinomled Ltd., a closely held corporation in which the two Petitioners and two Respondents each held equal shares. Those same four individuals also held equal shares in a corporation that owned another restaurant: Scaletta Ristorante. Petitioners managed the day-to-day operations at Scaletta while Respondents took the lead in managing Delmonico's. In about 2013, disputes among the partners began. In short, each side made essentially mirror-image allegations against the other for purported misconduct at the restaurant each managed.

Eventually, Petitioners filed for the equitable dissolution of Ocinomled, Ltd., claiming that they were oppressed by Respondents. During the dissolution proceedings before the referee, Respondents were prevented from presenting evidence of Petitioners' misconduct related to Scaletta, even though it bore upon Respondents' conduct at Delmonico's. The trial court, noting that the referee had nonetheless made findings as to Scaletta, proceeded to discount those findings almost entirely. The First Department went further and held that the allegations regarding Scaletta should be considered separate from Delmonico's because it was owned by another entity. This was all error.

In a proceeding for an equitable dissolution of a closely held corporation, a court is obligated to consider the totality of the circumstances. This Court should make clear that the circumstances to be considered include the conduct of shareholders that bears directly on the allegations giving rise to the dissolution proceeding, even when the specific conduct occurs outside the strict confines of the corporation itself.

JURISDICTION AND TIMELINESS

The Court has jurisdiction under CPLR 5602(a)(1)(i) because the order appealed from "finally determines the action." Petitioners brought this action seeking the equitable dissolution of Ocinomled, Ltd. (A.15, 25).[1] Supreme Court's order granted that relief along with further relief necessary to effectuate the dissolution (A.6-11). The First Department affirmed the grant of that relief and also directed respondents to produce an accounting for Ocinomled for the years 2011 to 2019 (Exhibit A at 2). While this Court has found that an order to produce an accounting "does not finally determine the action," it did so in the context of a case where the action itself was brought specifically to obtain an accounting. *Wagner v. Etoll*, 37 N.Y.2d 795, 796 (1975). Here, in contrast, Petitioners' Amended Verified Petition and Complaint contains 21 causes of action, but makes no reference to seeking an accounting (A.25-51). In fact, Petitioners have repeatedly asserted not that an accounting is part of the basis for their claim, but rather that it is an equitable *remedy*

[1] Citations to "A." refer to the appendix filed by Petitioners and citations to "S.A." refer to the supplemental appendix filed by Respondents. Citations to "Dkt." refer to the First Department's docket.

for their claim seeking the equitable dissolution of the corporation (Dkt. No. 16 at 5; Dkt. No. 21 at 3). Where the action that Petitioners brought has been fully resolved and all that remains is the production of a remedy, the order is final and ripe for this Court's review. *See Burke v. Crosson*, 85 N.Y.2d 10, 15 (1995).

This motion is timely because it was made on May 27, 2022, within 30 days of May 26, 2022 when Petitioners electronically served notice of entry of the First Department's order denying Respondents leave to appeal (*see* Exhibit C). CPLR 5513(b). The Respondents' prior motion for leave to appeal, filed in the First Department, was timely because it was served on April 1, 2022 (*see* Exhibit B)—well within 30 days of March 29, 2022, when Petitioners electronically served notice of entry of the First Department's merits order (*see* Exhibit A).

OVERVIEW OF THE CASE

Messrs. Licul and Turcinovic (Respondents), and Omer and Ferdo Grgurev (Petitioners) together owned and managed two restaurants in Manhattan—Scaletta Ristorante and Delmonico's (A.1207-09). The parties organized each restaurant as a separate S-

corporation. The entity called 50/50 Restaurant Corp. owned Scaletta. Delmonico's was owned by Ocinomled, Ltd. (the name being "Delmonico" spelled backward). Each partner held a 25% stake in both corporations (*see id.*).

The four business partners divided responsibilities between the two restaurants. Until about 2013 when disputes arose among the partners, all four were involved in managing Scaletta, although Petitioners exclusively operated the restaurant on a day-to-day basis (A.1208, 1223). After 2013 until it closed in 2018, Petitioners excluded Respondents from decision making at Scaletta (*see, e.g.*, S.A.989-92). With respect to Delmonico's, Respondents exclusively managed Delmonico's from its opening in 1999 until a Temporary Receiver was appointed in relation to this action in 2020 (*see* A.1208-09).

Disputes among the business partners arose around 2013, with essentially mirror-image allegations of wrongdoing by each side against the other. Petitioners alleged, for example, that Respondents had engaged in inadequate record-keeping at Delmonico's and had unfairly cut off their salaries from

Delmonico's. Respondents alleged that Petitioners had maintained almost no records at Scaletta, cut Respondents off from their salaries at Scaletta, and instead had paid Petitioners' wives and daughters salaries for no-show jobs at Scaletta. These issues played out in several lawsuits filed between 2014 and 2019 (A.1212-17).

This action commenced in August 2019. Petitioners initially alleged claims related only to Delmonico's before filing an amended petition and complaint expanding the causes of action relating to Delmonico's and adding a new section that alleged claims and causes of action relating to Scaletta (*see* A.26-35, 38, 41, 46). Respondents answered and filed counterclaims, related primarily to wrongdoing by Petitioners in the running of Scaletta.

Respondents moved for the judicial dissolution of Ocinomled, Ltd. pursuant to B.C.L. § 1104 (S.A.104). Petitioners cross-moved for appointment of a referee on their claim for equitable dissolution of Ocinomled. The Trial Court denied Respondents' motion for dissolution pursuant to B.C.L. § 1104 but granted the application to appoint a referee to assess Petitioners' claim for equitable dissolution (A.157-58).

The referee conducted a three-day dissolution hearing. But during the course of that hearing, the referee refused to consider Respondents' evidence of Petitioners' misconduct at Scaletta because, in his interpretation, the Trial Court's order of reference required him to look only at the shareholder conduct as it related strictly to Ocinomled (A.1217-18).

Following the hearing, the referee issued a report and recommendation concluding that Respondents had breached their fiduciary duties to Petitioners by intentionally excluding them "from the management and operation of Delmonico's by unjustifiably denying their prompt and meaningful access to the restaurant's financial books and records" (A.1220). The referee also concluded that Respondents had "engaged in a pattern of oppressive conduct toward Petitioners" by reducing and terminating Petitioners' salaries at Delmonico's (where they did not work) and by not distributing profits to Petitioners (A.1221-23).

The referee also concluded that "Petitioners did not establish that Respondents engaged in 'illegality' or 'fraud'" (A.1224). The referee wrote that "[w]hile Delmonico's record and bookkeeping

practices were undeniably antiquated and, in some instances non-existent, this fact in and of itself does not warrant the conclusion that Respondents engaged in illegality or fraud in the operation or management of Delmonico's" (A.1224-25). He further noted that "[t]he record in this case is incontrovertible that Scaletta's record and bookkeeping practices were maintained in identical fashion as Delmonico's" (A.1225).

The referee's decision to preclude Respondents' evidence regarding Scaletta, however, led to several distorted factual findings. For instance, the referee's findings regarding Petitioners' salaries at Delmonico's were reached despite preventing Respondents from presenting evidence showing that (1) prior to 2015, Respondents had been paid mirror-image salaries from Scaletta and (2) Petitioners had stopped paying Respondents those salaries at Scaletta—and had done so before their salary reductions occurred at Delmonico's (*see* S.A.772, 1127-29).

In post-hearing motions before Supreme Court, Respondents strongly objected to the referee's one-sided treatment of issues relating to Scaletta (A.1323-24; S.A.1661-62). Supreme Court

resolved that issue not by ordering full consideration of the totality of the circumstances, but instead by formally severing the claims related to Scaletta and "discounting" all but one of the referee's findings with respect to it (A.1382, 1416).

Following further back and forth between the parties, Supreme Court granted Petitioners' motion and equitably dissolved Ocinomled, Ltd. (A.6). The court also ordered a variety of other steps designed to effectuate that dissolution, including the requirement that Respondents pay a deficiency judgment to Petitioners (A.6-11). The court dismissed all of Respondents' counterclaims without prejudice (A.11).

REASONS TO GRANT LEAVE

The issues arising from the equitable dissolution of Ocinomled, Ltd. raise a novel and important question of law that the First Department answered incorrectly and that is generating conflicting rulings among the appellate departments. As its name indicates, a proceeding for the equitable dissolution of a corporation is a proceeding in equity. It is a long-established principle that "[c]ourts of equity are to do equity and compel fair dealing."

Hammer v. Michael, 243 N.Y. 445, 448 (1926). To ensure equity and fair dealing in the corporate dissolution context, this Court has held that "consideration must be given to the totality of circumstances surrounding the current state of corporate affairs and relations." *Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d 63, 73 (1984). While seeming to admit of no dispute, the simplicity of this instruction leaves ambiguous how broadly the totality of circumstances stretch. This Court should resolve that ambiguity.

A. This case presents a novel and important question of law.

While this Court has been crystal clear that a court fashioning an equitable dissolution of a corporation must consider the totality of circumstances, it has not expressly defined how broadly those total circumstances sweep. In one reading—the one erroneously adopted by the First Department—those circumstances are limited narrowly to the conduct of the corporation facing dissolution and the shareholders' actions as related exclusively to that corporation. In another—better—reading, a court would consider all the circumstances that bear upon the shareholder conduct at issue in

the equitable dissolution proceeding. This Court has never expressly answered which of these two readings is correct.

The absence of squarely controlling authority on the subject is apparent from the briefing and decisions in this case. Respondents maintained that this Court's decision in *Kemp* meant what it said and that courts should consider *all* relevant conduct pertaining to the current state of corporate affairs and relations, including the conduct of the shareholders in relation to another corporation (Dkt. 14 at 18-23; Dkt. 17 at 7-12). But concededly, *Kemp* does not explicitly answer the question of whether conduct regarding a separate corporation—even one in the exact same business comprised of the exact same shareholders—must be considered in an equitable dissolution proceeding.

Petitioners, seizing that fact, argued that no authority supported the proposition that "the Court should take into account the affairs of a *separate* corporation" (Dkt. 16 at 24). But the case on which Petitioners attempted to rely in support of the contrary proposition involved the question only of whether the court should order the dissolution of "satellite corporations" in addition to the

primary corporation, not whether conduct at satellite corporations bore on a finding of oppressive conduct. *See Sternberg v. Osman*, 181 A.D.2d 897, 898-99 (2d Dep't 1992). Thus, Petitioners, too, have failed to identify authority that squarely and explicitly answers this question. If anything, they have conceded this is an open and novel question (Dkt. 16 at 24).

When the First Department ruled that the claims related to Scaletta should be considered in a separate proceeding because Scaletta was owned by another entity, it cited no authority at all (Exhibit A at 2). The First Department's failure to cite any authority for its holding further indicates that this is a novel question of law awaiting this Court's guidance.[2]

In addition to its novelty, this question is one of significant importance. Business partners commonly engage in more than one commercial venture at the same time, and conduct from one venture cannot help but effect the partners' relationships and

[2] The First Department cited *Kemp* later in the decision, but in support of the proposition that the lower "court also properly entered the deficiency judgment against respondents Licul and Turcinovic" (Exhibit A at 2-3). The Court did not cite *Kemp* for the exclusion of conduct related to a restaurant owned by another entity. And, indeed, nothing in *Kemp* supports such a proposition.

conduct as a whole. When relations reach such an impasse that an equitable dissolution is on the table, courts need to know the scope of conduct they should consider. Only this Court can definitively answer that question.

B. The First Department answered the question incorrectly.

In answering the question at issue here without this Court's explicit guidance, the First Department reached the wrong result. The First Department held that the claims related to Scaletta were properly disregarded in their entirety because Scaletta was not owned by Ocinomled, Ltd. (Exhibit A at 2). The First Department did not find that the allegations regarding Scaletta were given proper weight or that the meaning of those allegations did not affect the outcome of the present proceeding. Instead, the court held that "the issue of equitable dissolution of Ocinomled, Ltd. and its asset, Delmonico's steakhouse, should be considered separate from the claims related to Scaletta Ristorante, which was owned by another entity" (*id.*). This is a categorical exclusion and it was error.

To start, although *Kemp* does not expressly answer the question presented here, it contains language with which the First Department's decision is in considerable tension. Most notable is this Court's admonition that courts weighing an equitable dissolution must consider "the totality of circumstances surrounding the current state of corporate affairs and relations." *Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d at 73.

This broad language ought to be given a broad reading. All the more so because it is designed to prevent minority shareholders from using equitable dissolution "as merely a coercive tool." *Id.* at 74. "Therefore, the minority shareholder whose own acts, made in bad faith and undertaken with a view toward forcing an involuntary dissolution, give rise to the complained-of oppression should be given no quarter in the statutory protection." *Id.*[3] Given the inquiry and its purpose, there is no sense in the First Department's categorical holding that claims regarding a separate

[3] Although the Court of Appeals focused on statutory dissolution in *Kemp*, it did so after noting that the statutory scheme supplemented the principles of judicially ordered equitable dissolution. *See Matter of Kemp & Beatley, Inc.*, 64 N.Y.2d at 70. Petitioners have never claimed that the rule articulated in *Kemp* applies to the proceedings here.

entity never have a bearing on a corporation's equitable dissolution, no matter how interconnected the entities or relevant the conduct.

This case presents a clear illustration of the error in the First Department's artificially narrow view of what counts among the totality of circumstances to be considered. The two corporations at issue here—Ocinomled, Ltd. and 50/50 Restaurant Corp.—were mirror images of one another. They were formed by the exact same shareholders, holding equal ownership over both. Both companies were formed for essentially the same purpose (running a restaurant) and operated in parallel with one another. While Petitioners took the lead in running one company's restaurant, Respondents took the lead in running the other. Both companies (at least initially) paid salaries to all four shareholders and both were found to have engaged in less-than-ideal bookkeeping (likely arising from the fact that both companies used the same bookkeeper).

The conduct of these two corporations were inextricably intertwined, with the operations of one having a direct and undeniable effect on the other. Indeed, that is the point that

Respondents repeatedly tried to make, but were repeatedly denied the opportunity to do so. To isolate the two companies as if they existed in different universes is to blink reality and common sense. It is a clear failure to take into account the totality of the circumstances surrounding the current state of corporate affairs and relations.

C. The First Department's decision creates a conflict among the Appellate Departments.

In reaching the wrong result, the First Department's decision stands in conflict with the implicit holdings of other departments. While the First Department now categorically excludes conduct related to one corporation in considering the equitable dissolution of another, the Second and Fourth Departments have permitted such evidence. While neither department explicitly defined the scope of circumstances considered under *Kemp*, their reasoning is plainly at odds with the First Department's holding.

For instance, the Second Department considered a minority shareholder's purchase of an interest in a competing company while considering his claim of oppression. *Cassata v. Brewster-Allen-*

Wichert, Inc., 248 A.D.2d 710 (2d Dep't 1998). In *Cassata*, the shareholder claiming oppression alleged that "the majority shareholders discontinued their practice of issuing dividends to shareholders, refused to reinstate his salary, and removed his authority to sign checks" on the company's bank account. *Id.* at 711. While this constituted a *prima facie* showing of oppressive conduct, the Second Department held that it was error to grant his motion for summary judgment without a hearing. *Id.* The court ruled that there were issues of fact arising from the shareholder's purchase of an interest in a competing company that could give rise to an inference that the shareholder acted in bad faith with the intent of forcing the dissolution of the company. *Id.* at 711-12.

The Fourth Department took a similarly broad view when considering the dissolution of the Cellino & Barnes law firm. *Cellino v. Cellino & Barnes, P.C.*, 175 A.D.3d 1120 (4th Dep't 2019). Cellino and Barnes together formed Cellino & Barnes P.C. ("PC") in New York, but Barnes subsequently formed Cellino & Barnes L.C. ("LC") in California, planning to open a Los Angeles office. *Id.* at 1120-21. Cellino alleged that Barnes favored the LC to the

detriment of the PC in a variety of ways. *Id.* at 1121. The court allowed dissolution proceedings to continue because these allegations "raised issues of fact whether dissension and deadlock have so impeded the ability of the PC to function effectively that dissolution would benefit the shareholders." *Id.* at 1122. *See also In re Dissolution of Eklund Farm Mach., Inc.*, 40 A.D.3d 1325, 1326 (3d Dep't 2007) (affirming dissolution of corporation where Supreme Court found dissension among shareholders to be "patently obvious" in light of "acrimonious and continuing litigation concerning control of EFM and *three other intertwined family corporations*" (emphasis added)).

Under the First Department's rule, the allegations of conduct relating to other entities would have had no role to play and would have to have been considered separate from the allegations of the corporation at issue. Thus, not only did the First Department reach the wrong result (*see supra* Section B), it announced a rule in conflict with other departments of the Appellate Division. That conflict further underscores the need to grant leave here.

D. This case presents a good vehicle to answer the question and resolve the inter-Department conflict.

There is no reason to wait for another case to decide the issue presented here. This is a pure question of law: when considering the equitable dissolution of a closely held corporation, should courts consider all the conduct of the shareholders related to the allegations in the dissolution proceeding even if that conduct is not in direct connection to the corporation? The First Department answered that question categorically as a matter of law. It did not engage in weighing or evaluating the evidence. Instead, it found that evidence of such conduct should be considered in a separate proceeding if it relates to a separate corporation. Petitioners' canard that Respondents' objection is to the weight given the evidence simply cannot stand in the face of the First Department's clear refusal to consider the evidence at all (Exhibit A at 2).

Moreover, Respondents raised this issue throughout the proceedings. Respondents pressed for the referee to consider the Scaletta conduct and were rebuffed there. Respondents raised their objections with the trial court as well, but to no avail (A.1323-24;

S.A.1661-62). Respondents made their arguments yet again to the First Department, but without success (Dkt. 14 at 18-23; Dkt. 17 at 7-12). Notably, in opposing this argument on appeal, Petitioners never claimed that the issue had not been preserved below (*see* Dkt. 16 at 24-27). Thus, the novel and important legal question presented in this case is preserved and squarely before the Court. This Court should answer it.

CONCLUSION

This Court should grant Respondents' motion for leave to appeal.

Dated: New York, New York
May 27, 2022

Respectfully submitted,

SCHLAM STONE & DOLAN LLP

By: _____

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Appellate Division, First Department Docket No. 2021-02692
New York County Clerk's Index No. 157551/2019

Court of Appeals
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OMER GRGUREV and FERDO GRGUREV, as Minority Shareholders Each Owning 25% of All Outstanding Shares of Ocinomled, Ltd.,

Petitioners/Plaintiffs-Appellants-Respondents,

against

MILAN LICUL and BRANKO TURCINOVIC, Individually, and as the Controlling Shareholders holding 50% of All Outstanding Shares of Respondent Ocinomled, Ltd., and OCINOMLED, LTD.,

Respondents/Defendants-Respondents-Appellants,

ANTHONY A. ANTONELLO and THE HARTFORD LIFE INSURANCE COMPANY,

Respondents/Defendants.

AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO APPEAL

JOHN MOORE, an attorney admitted to practice in the courts of this state, affirms under the penalties of perjury as follows.

1. I am an associate in the firm Schlam Stone & Dolan LLP, counsel of record for the respondents/defendants-respondents-appellants in this matter.

2. I submit this affirmation in support of the respondents/defendants-respondents-appellants motion for leave to appeal, returnable June 6, 2022.

3. Attached as Exhibit A is notice of entry, dated March 29, 2022 of the decision of the Appellate Division, First Department of the same date modifying the order of Supreme Court.

4. Attached as Exhibit B is the motion of respondents/defendants-respondents-appellants to the Appellate Division, First Department requesting reargument or, in the alternative, leave to appeal to the Court of Appeals, dated April 1, 2022.

5. Attached as Exhibit C is notice of entry, dated May 26, 2022, of the decision of the Appellate Division, First Department denying the motion of respondents/defendants-respondents-appellants for reargument or, in the alternative, leave to appeal to the Court of Appeals.

Dated: New York, New York
May 27, 2022

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Exhibit C

Return Date/ Motion No.	**Short Title**
Nov. 2, 2020	
2020-739	Izmirligil v Steven J. Baum P.C.
Feb. 14, 2022	
2022-114	Porco v Lifetime Entertainment
Mar. 28, 2022	
2022-217	Globe Trade Capital v Hoey
Apr. 4, 2022	
2022-201	Matter of Crowe
Apr. 11, 2022	
2022-228	People v Worley (Michael)
2022-257	Stockton v H&E Biffer
2022-261	Finkelstein v Finkelstein
2022-263	People ex rel. Rankin v Brann
2022-264	Urias v Buttafuoco & Assocs.
Apr. 18, 2022	
2022-268	Matter of Panasia Estate v 29 West
Apr. 25, 2022	
2022-269	Matter of Celinette H.H. v Michelle R.
2022-277	People v Santana (Francisco)
2022-286	MM v Church of Our Lady
2022-287	JM v Church of Our Lady
2022-288	People v Cotto (Albert)
2022-289	People v Buchanan (Jesse J.)
2022-293	Ford v Lee
2022-297	NYCTL 1998-2 v DR 226 Holdings

Return Date/ Motion No.	Short Title
2022-298	Guzman v Americare Inc.
2022-300	Bryant v State of NY
2022-305	Kegelman v Town of Otsego
2022-307	3rd and 60th Assocs. v Third Avenue M&I
2022-308	Matter of Spickina v Roque
May 2, 2022	
2022-291	US Bank v Pierce
2022-306	People v Haims (Bruce)
2022-310	Matter of Powis Contracting v JCC
2022-311	Matter of Liu v Ruiz
2022-313	Torto Note Member v Babad
2022-314	People v Joe (Philip)
2022-316	US Bank NA v Lightstone Holdings
2022-320	Dowell v EST Trish LLC
2022-327	People v Suazo-Lopez (Nestor)
2022-328	Rosenzweig v Gubner
2022-329	Matter of Wustrau v Accord Fire District
2022-340	Commissiong v DHCR
May 9, 2022	
2022-303	Chen v 111 Mott LLC
2022-319	Arrey v Tuck It Away-East Side
2022-321	People v Corrica (Toussant)
2022-322	Matter of Elijah S.
2022-323	County of Nassau v Nassau County Investigators PBA
2022-325	People v Rosario

Return Date/ Motion No.	**Short Title**
2022-330	Deustche Bank v Quinones (Ferreira)
2022-336	People v Brown (Marcus)
2022-337	Word of God Fellowship v Vimeo
2022-338	Ortiz v State of New York
2022-347	People v Anthony (Herman)
2022-348	Elpa Builders v State of NY
2022-349	Tihan v Apollo Management
2022-351	Bielsa v Gonzalez
2022-352	Melohn v Melohn
2022-354	Liberty Square Realty v Doe Fund
2022-357	People v Simmons (Jeremiah)
May 16, 2022	
2022-302	A. Ottavino Property v Inc. Village of Westbury
2022-324	Herskowitz v Wesley Hills Center
2022-339	Matter of Kathryn K v Derek S
2022-343	Rochester v City of NY
2022-350	People v Robinson (Bernard)
2022-358	Matter of City of Troy & TUFA
2022-359	Winiarski v Butler
2022-362	Warwick St. Partners v Harris
2022-370	Elberg v Crabapple Corp.
2022-371	Teliman Holding v VCW Associates
2022-372	Matter of Adoption of Kayden
2022-374	Kattan v 119 Christopher LLC
2022-385	People v Williams (Robert)

Return Date/ Motion No.	Short Title
May 23, 2022	
2022-360	Matter of Perez v NYC Civil Service
2022-363	Matter of Schrock v Ploetz
2022-365	Allen v Consolidated Edison
2022-366	McCarthy Concrete v Banton Construction
2022-368	Pak v DiJoseph
2022-369	People v Scott (Jermaine L.)
2022-375	People v Reyes (Israel)
2022-376	People v Ortiz (Luis)
2022-378	People v Gatling (Mark)
2022-379	Matter of Thomson [Pettus] v Board (Index No. 261117/14)
2022-380	PAL Environmental v APS Contracting
2022-381	St. Joseph's Hospital v Adcock
2022-383	Matter of City of Rome v Board of Assessors
2022-386	Montgomery v 215 Chrystie LLC
2022-387	Matter of Prismatic v NYCTA
2022-388	Matter of Riley XX
2022-389	People v Frances (Luis)
2022-396	Matter of Weingrad & Weingrad v Goetz
2022-397	Kwong v City of NY
May 31, 2022	
2022-382	Polygenis v Stone Lounge Press
2022-384	People v Emery (Gariem)
2022-401	People v Tuszynski (David F.)
2022-402	Williams v E&R Jamaica Food

Return Date/ Motion No.	Short Title
2022-403	Matter of Cozzolino v DHCR
2022-408	Brown v Cerberus Capital
2022-409	Matter of Darlene H. v Abdus R.
2022-410	People v Torres (Jose)
June 6, 2022	
2022-399	Colon v Martin
2022-400	People v Lombardi (Peter)
2022-404	Perlberger v Lutin
2022-411	Weichert v Chabonneau
2022-415	People v Rodriguez (Luis)
2022-416	Matter of Ashanti v NYC Conflicts
2022-418	Matter of Santomero v Town of Bedford
2022-426	Ricciardi v State of NY
2022-428	Matter of Powers v State Material
2022-430	Williams v Martino
2022-439	Matter of Grgurev v Licul
2022-440	Robbins v 315 West 103 Enterprises
2022-441	Manko v Mannor
June 13, 2022	
2022-405	People v McCoy (Eric)
2022-413	4A General Contracting v James
2022-417	Matter of McDonald v Annucci
2022-420	Kilpatrick v Kamkar
2022-421	Kilpatrick v Henkin
2022-422	Kilpatrick v Volterra

Return Date/ Motion No.	**Short Title**
2022-423	Kilpatrick v Arp and Scott
2022-424	Kilpatrick v Berlin
2022-425	Kilpatrick v Cuomo
2022-429	Matter of Wells Fargo v Aegon USA
2022-431	People v Miranda (Jose)
2022-432	People v Patterson (Phillip)
2022-433	Matter of State of NY v Christian R.
2022-436	Kilpatrick v Fields
2022-437	Pettus v Board of Directors (Index No. 260040/18)
2022-442	People v Bulina (Gabriel)
2022-443	People v Ruiz (Alexandro)
2022-445	Matter of Fuller-Astarita v ABA Transportation
2022-446	People v Bonfiglio (James)
2022-447	Altman v DiPreta
2022-448	Matter of LandmarkWest! v NYCBSA
2022-453	Pistone v American Biltrite
June 21, 2022	
2022-407	Teamsters Local 445 v Monroe
2022-412	Matter of Thomson [Pettus] v Board
2022-419	Overton v Egami Group
2022-427	People v Barr (Dennis)
2022-434	People v DeJean (Giscard)
2022-435	Bonczar v American Multi-Cinema
2022-438	Pettus v Board of Directors
2022-450	People v Manning (William A.)

Return Date/ Motion No.	**Short Title**
2022-451	Collyer v LaVigne
2022-452	Kattan v Kattan
2022-454	Mahne v Cell Source
2022-455	Matter of Nemeth v K-Tooling
2022-456	Matter of Stephanie Q. v Walter R.
2022-457	People v Ortega (Yoselyn)
2022-458	People v Scrom (Paul L.)
2022-459	Matter of Ja'Sire FF.
2022-461	Matter of Tariq S.
June 27, 2022	
2022-460	Aranoff v Aranoff
2022-465	Nieborak v W54-7 LLC
2022-466	Matter of Joshua PP v Danielle PP
2022-467	People v Feliciano (William)
2022-468	Matter of Hunstein v Town of Southold
2022-469	People v Torres (Hector)
2022-470	Matter of Wysocki v Town of Southold
2022-471	JPMorganv Fischer
2022-472	Matter of Daniel J. v State of NY
2022-473	Schwartz v Noll
2022-475	People v Huether (Stephen)
2022-476	People v Edmee (Etzer)
2022-477	Sultan v Connery
2022-481	Kenyon & Kenyon v Sightsound
2022-482	Matter of Searles v Poole

Return Date/ Motion No.	**Short Title**
2022-484	Matter of Ramirez v Selective Advisors
2022-486	In Rem Tax Foreclosure Action No. 52
2022-487	Mutual Aid Assoc. v City of Yonkers
2022-488	People v Seignious (Jayquaine)
2022-489	People v Seignious (Jayquaine)
2022-490	Matter of McKinley H.-W.
2022-491	Tuohy v Sato
2022-493	Williams v Scafidi
2022-485	Matter of the Adoption of William
July 5, 2022	
2022-478	People v Sherwood (Jason A.)
2022-479	Oyibo v Huntington Hospital
2022-494	Matter of Schunk v Town of York
2022-498	Matter of Grace E. W.- F.
2022-499	Brasstacks Alliance v Lewis
2022-500	Cohen v Getzel
2022-501	People v Alvarado-Villavicencio
2022-505	Matter of Shchukin House v Frolova
2022-506	BGC Partners v Avison Young

Updated: July 7, 2022