

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. DARRELL L. GAVRIN MM PART 52
Acting Justice

NINI RIENZI

Plaintiff,

- against -

MICHAEL RIENZI

Defendant.

INDEX
NUMBER ..2097-2001..

MOTION
DATE ..5/13/2002..

MOTION
CAL.NUMBER ...18+19...

The following papers numbered 1 to read on this motion:

PAPERS
NUMBERED

Order To Show Cause-Affid(s)-Exhibits-Service.....
Notice of Motion/Affid(s)-Exhibits.....
Notice of Cross Motion/Affidavits in Opposition-Exhibits.....
Replying Affidavits-Exhibits.....
Other.....

The defendant moves for, *inter alia*, an order immediately setting a valuation date for the parties' business, Rienzi and Sons, Inc.

The business in question, Rienzi and Sons, Inc., is a family owned and operated business which was founded and continues to be headed by the defendant. Rienzi & Sons, Inc. is a multi-million dollar company engaged primarily in the importing and distribution of Italian food products under the popular "Rienzi" brand name. In addition to the United States corporation, there is a sister business, Rienzi Italia, Srl, in Italy which is also run by the Rienzi family.

Defendant, relying on section 236 [B][4][b] of the Domestic Relations Law, argues that the valuation date should be set before trial. In addition, defendant avers that the valuation date used should be the commencement date of this action because the business is an active asset.

The plaintiff opposes the motion and argues the Court should defer

setting a valuation date until time of trial due given that discovery and the overall valuation of the businesses is incomplete.

Section 236[B][4][b] of the Domestic Relations Law provides as follows:

As soon as practicable after a matrimonial action has been commenced, the court shall set the date or dates the parties shall use for the valuation of each asset. The valuation date or dates may be anytime from the date of commencement of the action to the date of trial.

The Court feels it is not practicable at this time to set a valuation date. The parties present extremely complex financial issues surrounding foreign and domestic corporations, a family partnership and numerous real estate holdings both here and abroad that make establishing a valuation date a serious endeavor. Under the circumstances, the Court believes its analysis concerning a valuation date would benefit from a thorough examination of the parties' financial issues at trial. In the case at the bar, the determination of a valuation date for Rienzi & Sons, Inc. is also clouded by disputed factual issues. Predominantly, the parties have raised a question concerning alleged dissipation of the assets of Rienzi & Sons, Inc. by the defendant. As the Court "may take into consideration transfers and dissipations by a spouse seeking to hinder equitable distribution" (*Wegman v. Wegman*, 123 A.D.2d 220, 236-37 [2d Dept. 1986]) when setting a valuation date, it is the Court's opinion that this issue should be deferred to trial so the Court may "completely assess the equities of the situation so as to insure a fair disposition of the [parties'] assets." (*Enzien v. Enzien*, 149 A.D.2d 783 [3d Dept. 1989])

A copy of this order has been mailed to the parties and/or their respective counsel.

Dated: June ,2002

DARRELL L. GAVRIN, A.J.S.C.