

**Matter of Gluzman v A.S.M. Pharm. Corp.**

2024 NY Slip Op 32282(U)

June 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 537042/2023

Judge: Carolyn E. Wade

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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the <sup>2<sup>nd</sup></sup> day of June, 2024.

P R E S E N T:

HON. CAROLYN E. WADE,

Justice.

-----X  
In the Matter of the application of SUZANNA  
GLUZMAN,

Petitioner,

For a Judgment Compelling the Books and Records  
Of A.S.M. Pharmacy Corporation Pursuant to  
CPLR Art. 78

- against -

Index No. 537042/23

A.S.M. PHARMACY CORPORATION and MIKHAIL  
ROYTMAN, an officer of Said Corporation Having  
Custody of Said Books and Records,

MS-1

Respondents.  
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

1-6  
10-11  
13-18

Upon the foregoing papers, petitioner Suzanna Gluzman (Gluzman or Petitioner) moves (in motion sequence [mot. seq.] one), for an order and judgment, pursuant to CPLR Article 78, compelling respondents A.S.M. Pharmacy Corporation (A.S.M.) and Mikhail Roytman (Roytman), an officer of ASM having custody of its books and records, (collectively, Respondents) to submit to Petitioner: (1) annual balance sheets or profit and

loss statements for the preceding three years; (2) most recent interim balance sheets and profit and loss statements; (3) payroll records for the past three years; (4) bank statements; (5) cash register reports; (6) credit card statements; (7) income and expense statements; (8) cash flow statements; (9) financial statements; (10) tax returns for the preceding three years; (11) loan agreements that A.S.M. is a party to; (12) leases that A.S.M. is a party to; (13) all documents, instruments and agreements to which A.S.M. is a party or to which A.S.M. is bound; (14) the "information necessary to access" A.S.M.'s electronic accounts; and (15) "any other statements for accounts" that A.S.M. maintains (NYSCEF Doc No. 6).

### Background

On December 19, 2023, Gluzman commenced this Article 78 proceeding by filing a notice of petition, a petition *verified by counsel* and four exhibits: (1) a certificate reflecting that Gluzman holds 100 shares of A.S.M. stock (NYSCEF Doc No. 2); (2) Minutes and By-Laws of A.S.M. reflecting that Gluzman was President and Roytman was Vice President (NYSCEF Doc No. 3); (3) a June 8, 2023 letter from Gluzman's counsel to Roy Breitenbach, Esq. regarding a January 25, 2023 Stock Purchase Agreement (SPA) among the shareholders (including Gluzman) and "Ms. Shulman" (NYSCEF Doc No. 4); and (4) a November 27, 2023 letter from Gluzman's counsel to Roy Breitenbach, Esq. asserting that the SPA is null and void because Gluzman was "fraudulently induced" to enter into that agreement and a "Pharmacist Agreement" (NYSCEF Doc No. 5).

The four-page petition alleges that Gluzman is a shareholder of A.S.M. with 50% ownership and that she is President, pursuant to A.S.M.'s By-Laws (NYSCEF Doc No. 1

at ¶¶ 1-2 and 5). Respondent Roytman has allegedly “refused to permit Ms. Gluzman to inspect A.S.M.’s books and records” and Gluzman demands “a full inspection of the books and records of A.S.M.[.]” pursuant to BCL § 624 (e), listing the 15 different categories of documents sought (*id.* at ¶¶ 6-7).

The petition alleges that by letters dated June 8, 2023, June 29, 2023 and November 27, 2023, Gluzman’s counsel asserted her “right to inspect the books and records”; “made a second request seeking inspection . . .”; and “request[ed] access” to the books and records, but allegedly “the request was ignored” (*id.* at ¶¶ 8-10). The petition alleges that “despite repeated requests, Mr. Roytman has refused to provide Ms. Gluzman access to the books and records . . .” (*id.* at ¶ 11). The petition alleges that Gluzman is entitled to inspect the books and records: (1) as President and a 50% shareholder “to evaluate how A.S.M. is being managed and assess the overall health and profitability of A.S.M.”; (2) because she “intends to demonstrate . . .” that the SPA was for insufficient consideration; and (3) because she “seeks to determine whether the assets of A.S.M. may have been misappropriated or misapplied by management” (*id.* at ¶ 12).

### ***Respondents’ Answer***

On March 20, 2024, Respondents collectively e-filed an answer verified by Roytman, which alleges that A.S.M., a retail pharmacy in Brooklyn, has been in business for more than 20 years (NYSCEF Doc No. 10 at ¶ 1). The answer alleges that for A.S.M.’s entire existence, Gluzman has owned 50% of the A.S.M. stock, Roytman has owned 25% and the other 25% is owned by a non-party named Voskoboynik (*id.* at ¶ 2). The answer

alleges that Gluzman, a New York licensed pharmacist, has served as A.S.M.'s "supervising pharmacist" from A.S.M.'s formation until January 2023, that Roytman and Voskoboynik were not licensed pharmacists (*id.* at ¶ 3). Allegedly, "[d]uring this same period, the physical books and records for A.S.M. were in the office located in the pharmacy" to which Gluzman had "equal and unencumbered access . . ." (*id.* at ¶ 5). The answer alleges that Gluzman also had equal access to bank account information, payroll records and to A.S.M.'s accountant and tax records (*id.* at ¶¶ 6-7).

The answer alleges that in late 2022, Gluzman told Roytman that she wanted to close the pharmacy and Roytman responded that he and Voskoboynik did not, so "the parties decided to identify a pharmacist who could be hired to replace Gluzman as supervising pharmacist" (*id.* at ¶ 8). The shareholders allegedly located Michele Shulman (a/k/a Michele Feldman) (Shulman) to replace Gluzman as supervising pharmacist, and Gluzman "prevailed upon Roytman and Voskoboynik to each sell Shulman shares in A.S.M. so that Shulman would be incentivized, beyond her salary, with a 20% ownership interest . . ." (*id.* at ¶ 9). The answer further alleges that:

"[a]ccordingly, on or about January 25, 2023, the following agreements were entered into: (a) an Employment Agreement between A.S.M. and Shulman, providing that Shulman would serve as A.S.M.'s supervising pharmacist in place of Gluzman; (b) a Stock Purchase Agreement among Gluzman, Roytman, Voskoboynik, and Shulman in which Gluzman, Roytman, and Voskoboynik agreed to sell, and Shulman agreed to buy, shares of A.S.M. stock, on or before February 1, 2024; and (c) an agreement among Roytman, Gluzman, and Voskoboynik governing the operation of A.S.M. through February 1, 2024, which provided, among other things, that Shulman would replace Gluzman as supervising pharmacist on February 1,

2023; and Roytman would 'continue his position as a Manager of the Pharmacy, performing and overseeing daily business operations, including payroll'" (*id.* at ¶ 10).

After Shulman became supervising pharmacist in February 2023, A.S.M.'s books and records allegedly remained in the pharmacy office and Gluzman continued to have online access to A.S.M.'s banking information, payroll records and accountant (*id.* at ¶ 11).

The answer alleges that "[s]everal months later, in a classic case of 'seller's remorse,' Gluzman began to express regret about having turned over the supervising pharmacist position to Shulman and agreeing to sell 10% of her A.S.M. shares to Shulman" because the pharmacy began operating profitably (*id.* at ¶ 12). The answer alleges that:

"[s]eeking to undo her voluntary transfer of the supervising pharmacist position to Shulman, Gluzman started to contend that she 'did not understand' the agreements she signed in January 2023, and that she was being 'frozen out' of the pharmacy, including being denied access to A.S.M.'s books and records.

\* \* \*

"Gluzman has, in fact, come to the pharmacy since February 2023, to review the A.S.M. corporate minutes book, bylaws, and stock certificates. Gluzman asked, and Roytman willingly agreed, to take these documents off premises for copying so that she could have a personal copy in her possession.

\* \* \*

"It is also A.S.M.'s understanding that Gluzman maintains her online access to the corporate bank account. Additionally, as the accompanying affirmation from Aron Gilman, A.S.M.'s accountant, explains, Gluzman can speak with him about A.S.M.'s financial condition and request records, statements, and other information from him (*id.* at ¶¶ 13 and 15-16).

The answer asserts that “this proceeding, along with the records requests attached to Gluzman’s Petition is nothing more than gamesmanship . . .” to “delay in engaging with her fellow shareholders, and Shulman, regarding her contractual obligations under the January 2023 agreements” (*id.* at ¶ 17).

Notably, the answer alleges that “on January 17, 2024, [Gluzman’s] counsel received: (a) A.S.M.’s preliminary 2023 profit-and-loss statement, prepared by its accountant; (b) A.S.M.’s complete 2023 Paychex payroll report; and (c) the corporate minutes book, including bylaws and stock certificates” (*id.* at ¶ 18). The answer asserts that Gluzman’s BCL § 624 (e) petition should be denied because “Gluzman has had, and continues to have, full and unencumbered access to all [of] A.S.M.[’s] books and records to which she is entitled . . .” (*id.* at ¶ 20). The answer also asserts that Gluzman seeks books and records that are beyond the scope of BCL § 624 (e) (*id.* at ¶ 27).

Respondents also submit an affirmation from A.S.M.’s accountant, Aron Gilman (Gilman), who affirms that he has never been instructed to withhold any financial information from Gluzman (NYSCEF Doc No. 11 at ¶ 4). Gilman also affirms that “[s]ince February 1, 2024, at times, Gluzman has asked me to provide her with financial reports or records of A.S.M., and I have complied with these requests” (*id.* at ¶ 5).

### ***Gluzman’s Reply***

Gluzman, in reply, submits an affidavit explaining her prior role at A.S.M. as supervising pharmacist, her decision to relinquish that position after nearly two decades and claims that “Roytman took this as an opportunity to try to have me dilute my ownership



in the company and freeze me out of its operations completely” (NYSCEF Doc No. 13 at ¶¶ 1-5). Gluzman claims that “Roytman defrauded me into signing several documents . . .” including the January 2023 SPA (*id.* at ¶ 7). Gluzman, however, admits that “on January 17, 2024, Roytman’s attorney sent my counsel a small fraction of the records I had requested . . .” consisting of “a single profit and loss statement for 2023 and a payroll report for 2023” (*id.* at ¶ 17). Gluzman asserts, for the first time on reply, that her document demand is not limited to records described in BCL § 624 (*id.* at ¶ 26).

### Discussion

As explicitly stated in the petition, this Article 78 proceeding was commenced by Gluzman, a 50% shareholder of A.S.M., for the *limited purpose* of inspecting the books and records of A.S.M., pursuant to BCL § 624 (e) (*see* NYSCEF Doc No. 1 at ¶ 7).<sup>1</sup> BCL § 624 (e) provides, in relevant part, that:

“[u]pon the written request of any shareholder, the corporation shall give or mail to such shareholder an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement.”

Here, Respondents have demonstrated that Petitioner Gluzman and her counsel have already received copies of A.S.M.’s 2023 profit and loss statement, A.S.M.’s payroll report

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<sup>1</sup> Gluzman’s attempt to broaden the scope of this Article 78 proceeding for the first time in her reply affidavit is rejected (*see Grocery Leasing Corp. v P & C Merrick Realty Co., LLC*, 197 AD3d 625, 627 [2d Dept 2021] [holding that “the court should not have addressed the arguments raised by P & C Merrick for the first time in its reply papers”]).



prepared by Paychex and A.S.M.'s corporate record books in January 2024. Gluzman admits that these records were received. The remaining records requested by Gluzman are outside the scope of BCL § 624 (e), which, by its express terms, only requires production of "an annual balance sheet and profit and loss statement for the preceding fiscal year." The record reflects that Respondents have complied with the requirements of BCL § 624 (e) by providing Gluzman's counsel with the requisite corporate records from 2023. Accordingly, it is hereby

**ORDERED** that this Article 78 petition seeking to compel Respondents to produce A.S.M.'s books and records, pursuant to BCL 624 (e), is denied as moot.

This constitutes the decision, order and judgment of the court.

E N T E R,

  
 J. S. C.

**HON. CAROLYN E. WADE  
 JUSTICE OF THE SUPREME COURT**

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