



2 of 3 DOCUMENTS



Analysis
As of: Dec 26, 2013

Han Fui Hui et al., Appellants, v. Tieh Chi Ho et al., Defendants, and East Broadway Mall, Inc., et al., Respondents.

2326

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

1 A.D.3d 274; 767 N.Y.S.2d 582; 2003 N.Y. App. Div. LEXIS 12596

**November 25, 2003, Decided
November 25, 2003, Entered**

SUBSEQUENT HISTORY: [***1]
Appeal denied by *Han Fui Hui v. Tieh Chi Ho*, 2 N.Y.3d 703, 810 N.E.2d 915, 2004 N.Y. LEXIS 565, 778 N.Y.S.2d 462 (N.Y., Apr. 1, 2004)

JUDGES: Concur--Buckley, P.J., Ellerin, Lerner and Gonzalez, JJ.

OPINION

HEADNOTES

Corporations--Shareholders' Agreement.--Defendants' challenged conduct of issuing new shares of stock and selling those shares to parties other than plaintiffs did not violate shareholders' agreement and was otherwise shielded from judicial scrutiny under business judgment rule; plaintiffs failed to meet their burden to demonstrate that defendants acted in bad faith or to serve interests other than those of corporation.

[*274] [**582] Judgment, Supreme Court, New York County (Ira Gammerman, J.), entered July 23, 2002, which, in this action seeking, inter alia, declaratory relief, upon the court's prior grant of partial summary judgment to defendants and its confirmation of the referee's finding that plaintiffs were duly notified of the issuance of new shares in defendant East Broadway Mall, Inc., dismissed the complaint, unanimously modified, on the law, to declare in defendants' favor that the complained-of issuance of the new shares in East Broadway Mall, Inc. did not violate the Shareholders' Agreement, and otherwise affirmed, without costs.

COUNSEL: For Plaintiffs-Appellants: Eric W. Berry.

For Defendants-Respondents: Arthur P. Xanthos, Leonard W. Wagman, Chris X. Lin.

The complaint was properly dismissed since the challenged conduct of defendants in issuing new shares of stock and selling [**583] those shares to parties other than plaintiffs did not violate the Shareholders'

1 A.D.3d 274, *274; 767 N.Y.S.2d 582, **583;
2003 N.Y. App. Div. LEXIS 12596, ***1

Agreement, and was otherwise shielded from judicial scrutiny under the business judgment [***2] rule. Plaintiffs failed to meet their burden to demonstrate that defendants acted in bad faith or to serve interests other than those of the corporation (*see 40 W. 67th St. Corp. v Pullman*, 100 N.Y.2d 147, 760 N.Y.S.2d 745, 790 N.E.2d 1174 [2003]).

We modify only to declare in defendants' favor (*see Lanza v Wagner*, 11 N.Y.2d 317, 334, 229 N.Y.S.2d 380,

183 N.E.2d 670 [1962], *appeal dismissed* 371 U.S. 74, 9 L. Ed. 2d 163, 83 S. Ct. 177 [1962], *cert denied* 371 U.S. 901, 9 L. Ed. 2d 164, 83 S. Ct. 205 [1962]).

We have considered plaintiffs' remaining contentions and find them unavailing.

Concur--Buckley, P.J., Ellerin, Lerner and Gonzalez, JJ.