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Re: *Grunstein v. Silva*
C.A. No. 3932-VCN
Date Submitted: July 26, 2011

Dear Counsel:

The Defendants have moved to compel the Plaintiffs to provide “full responses” to certain interrogatories and requests for production of documents. Such motions are not unusual. The Plaintiffs’ responses to the motion contain something of a twist. As a general matter, they do not contest the subject matter of the various discovery requests; instead, they assert that they already have substantially complied with the requests. Part of the problem is the volume of the discovery already obtained; too much information can impede finding a particular

factoid. There are also disagreements, as one would expect, about the scope of discovery and its burdensomeness.

Much of the discovery is directed to Plaintiff Grunstein's relationship with various entities involved in this proceeding and a prior proceeding.¹ The Defendants have raised a privity issue, and that topic requires a fact-intensive analysis. Also, the focus on that topic came late in the proceedings.

The Defendants have helpfully divided their application into three areas.² The first topic involves Plaintiff Grunstein's ownership of various entities that have been involved in, or close to, the various disputes among the parties. The second topic involves Plaintiff Grunstein's role in the management of those entities. The third aspect involves an email exchange between Plaintiff Dwyer and Credit Suisse that might give some insight into the alleged delay in the filing of this action and Plaintiff Dwyer's characterization of his relationship—one perhaps

¹ See *MetCap Sec. LLC v. Pearl Senior Care, Inc.*, 977 A.2d 899 (Del. 2009) (TABLE).

² Defendants' Second Request for the Production of Documents Directed to Plaintiffs and Second Set of Interrogatories Directed to Plaintiffs are at issue. The discovery requests that remain in dispute are summarized in the Affidavit of Lily A. North, Esquire, dated July 18, 2011, Corrected Exhibit A, submitted July 25, 2011. Plaintiffs served discovery responses after the Defendants' filing of their motion to compel. Those submittals narrowed the range of disagreement. See Letter of Bruce E. Jameson, Esq., dated July 25, 2011. In general, the Defendants are seeking supplemental responses to their discovery requests.

recognizing the possibility of financial gain—with the Defendants. Although these topics may be of varying degrees of relevance, they fall within the scope of generally allowed discovery.

Some of the requested information and documents have already been produced. That, of course, does not lead to the conclusion that all responsive information and documents have been supplied. More importantly, even though some of the responses supply appropriate information, the Plaintiffs are in a far better position to know where—from among the extensive volume of discovery supplied—the appropriate materials can be found. It is simply more efficient for the Plaintiffs either to supply the appropriate responses or to specify where in the discovery record those responses may be found. It is not helpful to respond to reasonably well-focused discovery requests by asserting that the responses are in there somewhere.

Thus, inquiry into Plaintiff Grunstein's relationship with, ownership of, and roles with the various entities is unavoidable. Indeed, it goes to the core of the privity debate. The information sought falls clearly within the scope of acceptable discovery. For that reason, the motion to compel is granted with respect to

Interrogatories 1(a)-(c), 3(c), 3(g), 5(b)-(c), 5(f), 7, 13, 17(a)-(h), 19, 21(a)-(h), and 23. Interrogatories 6, 12 (refers to Interrogatory 11 which is not at issue), 16 (refers to Interrogatory 15 which is not at issue), 18, 20, 22, and 24 seek the identity of documents evidencing and supporting these responses. Those are appropriate inquiries and the motion to compel is granted with respect to them as well.

One subparagraph of several interrogatories is, however, unduly burdensome. For example, Interrogatory 1(i) directs the Plaintiffs, to “list and describe in detail any and all actions ever taken by MetCap Securities. For each action, identify who authorized the action, describe in detail any communications concerning or relating to that action, and describe in detail the decision making process leading up to that action.”³ Although the Plaintiffs have not demonstrated in any detail how responding to an interrogatory as broad as this example would be burdensome, this is one of those questions—actually, an internal series of questions—that is revealed as clearly unduly burdensome simply by a reading of

³ For convenience, defined terms that were set forth fully in capital letters have been provided in typical type face.

the text. For this reason, the motion to compel supplemental responses to interrogatories 1(i), 5(i), 17(i), and 21(i) is denied.

Interrogatory 29 inquires into work done by Plaintiffs Dwyer and Capital Funding relating to the acquisition of Beverly. That is an appropriate inquiry, and the motion to compel is granted with respect to this interrogatory.

Similarly, Interrogatory 30 inquires into the Credit Suisse relationship with Plaintiffs Dwyer and Capital Funding Group, and that is material, not only as to the merits of the substantive dispute, but also because it may shed light on privity issues associated with Plaintiff Grunstein. A response to this interrogatory is required.

Interrogatory 32's inquiry of Plaintiff Capital Funding Group's experience with HUD financing may be of lesser value, but it may lead to admissible evidence with respect to the reasonable compensation expectations for projects such as the Beverly acquisition. Thus, the motion to compel a response to this interrogatory is granted.

A further response to Interrogatory 33 is ordered. Plaintiff Grunstein's efforts on the Beverly acquisition—other than as an attorney working for his firm—would be relevant and discoverable.

A response to Interrogatory 36 is necessary. A general reference to deposition testimony does not suffice as an explanation of the response to Request for Admission No. 89. Reference to specific pages of the deposition might well suffice.

A further response to Requests for Production No. 1 and No. 2 is ordered. The production of documents relied upon in preparing the interrogatory responses is appropriate. Production of documents evidencing the formation, corporate structure, and governance of the various, apparently interrelated, entities is relevant and appropriate.

As noted, if documents required to be produced have previously been produced, a reference to their Bates numbers should suffice.

Interrogatories and documents produced may be entitled to confidential treatment. This letter opinion does not address that issue.

Grunstein v. Silva
C.A. No. 3932-VCN
January 26, 2012
Page 7

All responses required in this letter opinion shall be supplied by February 21, 2012, or such other date as the parties may agree.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K