EFiled: May 22 2008 10:58AM EDT
Transaction ID 19940519
Case No. 3402-VCN

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

May 22, 2008

Jeffrey S. Goddess, Esquire
Rosenthal, Monhait & Goddess, P.A.
919 Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899-1070

George H. Seitz, III, Esquire
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19899-0068

Re: Tanyous v. Banoub
C.A. No. 3402-VCN
Date Submitted: March 26, 2008

Dear Counsel:

Plaintiff Boraam Tanyous ("Tanyous") has sought the appointment of a custodian under 8 *Del. C.* § 226 for Happy Child World, Inc., a Delaware corporation ("Happy Child"). Happy Child is under the control of Defendants Medhat Banoub and Mariam Banoub. Also pending in this Court is Tanyous's action under 8 *Del. C.* § 220 seeking to inspect Happy Child's books and records.[1] At the core of that action

[1] *Tanyous v. Happy Child World, Inc.*, C.A. No. 2947-VCN.

is the parties' dispute over whether Tanyous is a stockholder of Happy Child. For purposes of this application, I assume that he is.

An application for a custodian under § 226(a)(2), the only subsection arguably pertinent to Tanyous's application, requires that: "[t]he business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division."

I note first that the corporation is not deadlocked. There is, however, uncertainty over who owns it. As a practical matter, Tanyous either owns 55% of the corporation, in which case he would be able to control it, or he owns none of it, in which case he would not be entitled to exercise any control over it. As noted, that question may be resolved in the context of the pending § 220 action which is nearing a close.

Many of Tanyous's contentions are a repetition of, or an expansion upon, claims previously asserted. There have been financial transactions involving the Defendants and the assets of Happy Child that, from the distance of the Court, may be difficult to understand. There also are regulatory concerns—Happy Child operates

a daycare facility subject to State regulations—that may prove to be problematic, but, at this point, they are little more than speculation premised upon recent regulatory inquiries.

In short, the integrity and efficiency of the Defendants as operators of Happy Child are fairly in dispute, but Tanyous has not demonstrated that type of injury contemplated by § 226(a)(2). On the current record, exclusion of the Defendants from Happy Child (which seems to be Tanyous's ultimate goal) is not warranted. The process of appointing a custodian is not the appropriate means of achieving that result, at least on these facts.

As noted, the § 220 action is winding down. In the course of resolution of that action, the question of whether Tanyous is a stockholder may also be resolved. If that is the outcome, it may also determine who should control and operate Happy Child. Substitution of new management this close to the resolution of the § 220 action might unduly complicate the ongoing operation of that venture.

Finally, the individual proposed by Tanyous to serve as the custodian has performed professional work for Tanyous and, if an interim manager or custodian were to be appointed, it should not be someone affiliated with either side of this

dispute. Finding an appropriate custodian in the relatively short time remaining until resolution of the § 220 action might be difficult.

For the foregoing reasons, Tanyous's application for appointment of a custodian is denied, without prejudice to its renewal for cause.

With that conclusion, it is not necessary to address the Defendants' motion to stay this action pending the outcome of the related § 220 proceeding.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K