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Re: Stone v. Stant
C.A. No. 890-VCN
Date Submitted: June 4, 2008

Dear Counsel:

The Plaintiffs have moved under Court of Chancery Rule 59(f) for reargument of the Court's decision of May 12, 2008. That decision denied their motion to freeze the funds held in the Helen M. Stone Revocable Family Trust (the "Revocable Trust"), of which Defendant Marian Stant is the trustee.¹ The primary purpose of the freeze was to put a halt to the payment of the cost of defending this

¹ The Plaintiffs have argued that Mrs. Stant had fiduciary obligations with respect to the Revocable Trust even before she formally became its trustee.

action with funds of the Revocable Trust. At that time, Defendant John Stant was a defendant in this action primarily because he is alleged to have benefited from the transfers of funds from the Revocable Trust that Plaintiffs presently challenge.

On May 13, 2008, the Court granted Plaintiffs' motion to amend their complaint to bring a challenge to the conduct of Mr. Stant, not in a way directly related to the Revocable Trust, but rather with respect to his role as trustee of a different trust, the Irrevocable Stone Family Trust (the "Stone Family Trust").

The motion for reargument seeks to preclude use of funds from the Revocable Trust to pay for the cost of defending against claims arising out of Mr. Stant's role as the trustee of the Stone Family Trust. The Court's decision of May 12, 2008, focused on the use of funds from the Revocable Trust to pay the cost of defending claims, whether against Mrs. Stant or Mr. Stant,² with respect to the disposition of funds in the Revocable Trust. That decision has not been challenged.

Instead, the Plaintiffs have filed the pending motion for reargument to challenge the use of funds in the Revocable Trust to pay the cost of defending Mr.

² Any additional defense costs attributable to Mr. Stant on the Revocable Trust claims are *de minimis*.

Stant's conduct as trustee of the Stone Family Trust. Although not addressed at oral argument on their motion to freeze the assets of the Revocable Trust, the Plaintiffs did fairly present the issue in their written submissions to the Court: "Lastly, the funds in the Revocable Trust account are being used to defend John Stant's unwarranted use of the funds in the Irrevocable Trust in his daytrading. That should be paid by Mr. Stant personally."³

The Court, in its May 12, 2008, decision, did not deal squarely with this contention. There is no basis for the payment of the cost of defending the claims brought against Mr. Stant as trustee of the Stone Family Trust with funds from the Revocable Trust. Those claims are distinct from the various claims tied to the Revocable Trust and how the Revocable Trust may have been used for the personal benefit of the Defendants.

Accordingly, because the Court failed to address an issue fairly presented to it, reargument is appropriate and Plaintiffs' motion is granted. Furthermore, the Court concludes that funds of the Revocable Trust may not be used to pay the cost of defending Mr. Stant with respect to claims arising out of his service as trustee of the Stone Family Trust.

³ Reply Br. in Supp. of their Mot. for Partial Summ. J. as to Burden of Proof, Obligation to Account, and to Freeze Trust Assets Pending Final Disposition of the Case, at 34.

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The question becomes one of how to allocate to the Revocable Trust those costs which, at least at this time, are properly paid by it. The Plaintiffs have suggested an equal division. That appears to be unreasonable and unfair because, given the history and scope of this litigation, the claims against Mr. Stant in his capacity as trustee of the Stone Family Trust are relatively minimal compared to those which have been asserted with respect to the Revocable Trust. The appropriate means for allocating defense costs between those which may properly be charged to the Revocable Trust, at this time, and those which may not be charged to the Revocable Trust will be to assign to counsel for the Defendants the unenviable task of allocating in good faith his fees, based on his best professional judgment, to the defense of Mr. Stant against those claims arising under the Stone Family Trust. Such sums may not be paid from the Revocable Trust.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K