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April 16, 2009

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Re: Ross Holding and Management Company, et al. v.
Advance Realty Group, LLC, et al.
C.A. No. 4113-VCN
Date Submitted: April 6, 2009

Dear Counsel:

I have the Plaintiffs' renewed application to disqualify the Windels firm, along with the letters exchanged as a result of that effort.

My earlier denial of the motion to disqualify the Windels firm was without prejudice because I was concerned that new information would emerge that could shift the balance. I did not envision, however, that the Plaintiffs would come forth with a new motion in reliance upon a document which, at least in draft form, they

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had attached to the Complaint. It would suffice, in order to justify denial of the renewed motion, to point out that there is nothing new or, perhaps more accurately, no newly discovered evidence.¹

My thought—I do not know if it qualifies as an expectation—was that, if there were, in fact, grounds for disqualification of the Windels firm, a better understanding would emerge during the discovery process of how the work done by the Windels firm for Mr. Senkevitch (or other plaintiffs) in 2001 would have any impact on the litigation pending in this Court. Simply because Windels was involved and talked to one (or more) of the plaintiffs does not, without more, demonstrate that there is any reasonable possibility of adverse consequences in this litigation. It is this lack of a relationship between whatever it was that the Windels firm did in 2001 and the substance of the litigation that is pending before me that is the primary obstacle in the way of granting the Plaintiffs' motion.

¹ The distinction between a draft document and a signed document which the Plaintiffs advance in footnote 1 of Mr. Brown's letter of April 2, 2009, is not persuasive. If the Plaintiffs were so concerned about the lack of a signature, then one wonders why it was annexed to the Complaint. On the other hand, one would hope that the Defendants would not rely upon the lack of a signature affixed to a copy of a document which a member of the Windels firm eventually did sign.

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Accordingly, for the foregoing reasons, the Plaintiffs' renewed application to disqualify the Windels firm is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K