COURT OF CHANCERY
OF THE
STATE OF DELAWARE

J. TRAVIS LASTER
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

May 24, 2010

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RE: *Brown Investment Management, L.P. v. Parkcentral Global, L.P.*,
C.A. No. 5248-VCL

Dear Counsel:

This is an action by a limited partner of a defunct hedge fund to obtain a list of the names and addresses of its fellow limited partners. The plaintiff has been seeking the list since December 2009. At the conclusion of a one-day trial on May 11, 2010, I ruled from the bench and ordered the fund to produce the list. On May 14, the fund noticed its appeal from that ruling and asked me to stay my order pending appeal. By order dated May 18, I denied the motion to stay. This letter sets forth my reasoning.

FACTUAL BACKGROUND

Plaintiff Brown Investment Management, L.P. ("Brown") is a limited partner of defendant Parkcentral Global, L.P ("Parkcentral"). Parkcentral is a Delaware limited partnership. The general partner is Parkcentral Capital Management, L.P. ("Parkcentral GP"). David Radunsky is the Chief Operating Officer and General Counsel of Parkcentral GP. He was the only witness to testify at trial.

A. The Demise Of Parkcentral

Parkcentral operated a hedge fund from June 2001 until November 2008. Parkcentral represented to its investors that it pursued multiple strategies designed to preserve capital while providing returns comparable to long-term equities. Parkcentral further represented that it risked no more than 5% of its capital on any single strategy, making 5% the worst case loss that investors could expect to suffer except in very rare circumstances.

In early 2008, Brown invested $10 million in Parkcentral and became a limited partner by virtue of that investment. Brown's affiliates invested another $6 million. By August 2008, Parkcentral had suffered catastrophic losses that wiped out all of its capital. The Parkcentral fund complex lost $2.6 billion. Brown and its affiliates saw their $16 million go to zero in less than 90 days.

Parkcentral is no longer involved in any active business. It has no operations and no business plan.

B. Other Parkcentral Limited Partners Sue In Texas.

In 2009, a group of Parkcentral limited partners filed a putative class action in the United States District Court for the Northern District of Texas against various individuals and entities affiliated with Parkcentral. Brown is not involved in the Texas lawsuit, except as an absent member of the putative class. The Texas plaintiffs allege that the defendants caused Parkcentral to violate the fund's risk management policies and made material misrepresentations about the fund. Most significantly, they allege that notwithstanding Parkcentral's representations about the fund's multiple diversified investment strategies, the fund's collapse resulted from its use of a single, unhedged investment strategy.

C. Brown Requests A List Of Limited Partners.

Brown first requested a list of limited partners on December 21, 2009, but did not identify its purpose for seeking the list. Parkcentral denied the request.

On January 15, 2010, Brown made a second demand that became the subject of this proceeding. Brown identified five specific purposes for the request. In substance, Brown wants to communicate with other limited partners about the failure of Parkcentral, potential wrongdoing at Parkcentral, and the Texas litigation. Parkcentral again declined to produce the list.

Brown filed this action on February 4, 2010. The case was tried on May 11. At the conclusion of trial, I heard brief post-trial arguments from counsel and then ruled from the bench. I directed Parkcentral to produce the list to Brown within five business days. I required that Brown keep the list confidential and use it only for the limited purposes identified in the demand. I entered a final order implementing my ruling later that day. Parkcentral noticed its appeal and sought a stay.

LEGAL ANALYSIS

A motion for stay pending appeal is governed by Court of Chancery Rule 62(d), which provides: "Stays pending appeal . . . shall be governed by Article IV, § 24 of the

Constitution of the State of Delaware and by the Rules of the Supreme Court." Ct. Ch. R. 62(d). The applicable Supreme Court rule is Rule 32(a), which provides that "[a] stay or an injunction pending appeal may be granted or denied in the discretion of the trial court." Sup. Ct. R. 32(a). The Supreme Court has identified four factors to guide the trial court in exercising its discretion: (1) "a preliminary assessment of likelihood of success on the merits of the appeal," (2) "whether the petitioner will suffer irreparable injury if the stay is not granted," (3) "whether any other interested party will suffer substantial harm if the stay is granted;" and (4) "whether the public interest will be harmed if the stay is granted." *Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357-58 (Del. 1998). The factors are not to be considered in isolation, but as part of a balancing of "all of the equities involved in the case together." *Id*. at 358.

A. Parkcentral's Appeal Does Not Raise A Fair Ground For Further Litigation.

Parkcentral's appeal depends on overturning the settled legal precedent on which I relied and on successfully challenging factual findings that I made after trial. I of course acknowledge that the Delaware Supreme Court has the power and obligation to reverse my decision if it believes that my legal rulings were incorrect or my factual findings clearly erroneous. But because of the hurdles that Parkcentral must overcome, I conclude that Parkcentral has not "presented a serious legal question that raises a fair ground for litigation and thus for more deliberative investigation." *Id*.

Parkcentral's core legal argument was previously addressed by Chancellor Chandler in *Arbor Place L.P. v. Encore Opportunity Fund, L.L.C.*, 2002 WL 205681 (Del. Ch. Jan. 29, 2002). In that decision, the Chancellor rejected the contention that the Gramm-Leach-Bliley Act of 1999 pre-empted the obligation of a Delaware limited liability company to provide a list of its members under 6 *Del. C.* § 18-305. The limited partnership records provision, 6 *Del. C.* § 17-305, parallels the limited liability company provision, and *Arbor Place* therefore governs. Moreover, as I explained during my post-trial ruling, any other conclusion would vitiate a core informational right provided by Delaware law. As I found after trial, Parkcentral did not do anything to adopt a policy regarding the confidentiality of its list of limited partners beyond issuing the periodic privacy notices required by the Gramm-Leach-Bliley Act. Based on those notices, Parkcentral claimed that it could prevent Brown from ever accessing the list. If those facts enable Parkcentral to refuse to provide a list, then so can every Delaware entity that falls under the expansive coverage of the Gramm-Leach-Bliley Act.

Equally important, I found as fact after trial that Parkcentral lacked a good faith basis to believe that providing a list of limited partners to Brown would harm the partnership. Parkcentral has no business operations, no prospects, and no business plan. It cannot be harmed by the production of a list of its limited partners. Although Mr. Radunsky testified that Parkcentral could be harmed because its investors expect

confidentiality, this testimony highlights the fact that Parkcentral's interests are not the same as Mr. Radunsky's. Parkcentral is kaput, but Mr. Radunsky continues as a manager of other funds and an executive in the fund industry. By refusing to provide a list of limited partners, Mr. Radunsky avoids any chance that a limited partner might respond negatively when contacted by Brown. Mr. Radunsky understandably does not want to irritate his most likely sources of future capital. This is a situation where an individual has managed to rationalize as beneficial to the entity what is merely beneficial to him personally. Harm to Mr. Radusky's interests does not equate to harm to Parkcentral.

I therefore found as fact that there was not a good faith basis to believe that production of the list could harm the limited partnership. I also found as fact that Brown had a credible basis to suspect possible wrongdoing at Parkcentral sufficient to enable it to obtain a list of limited partners. Given the steep uphill climb that Parkcentral faces in overturning *Arbor Place* and setting aside my factual findings, I do not believe that the case presents fair ground for further litigation.

B. Parkcentral Will Not Suffer Harm From Denying A Stay.

Parkcentral argues that if the list is produced pending the outcome of its appeal, the fund will suffer irreparable harm. I already have found as fact that Parkcentral will not suffer harm from providing a list of its limited partners to Brown under the conditions specified in my order. For the same reasons, Parkcentral cannot credibly claim to be harmed by the denial of its motion to stay. I give this factor significant weight.

I recognize that in *Wynnefield Partners Small Cap Value, L.P. v. Niagara Corp.*, 2006 WL 2521434 (Del. Ch. Aug. 9, 2006), Vice Chancellor Parsons noted that denying a motion for stay pending appeal in a books and records action "may effectively deny [the company] Supreme Court review." *Id.* at *2. He further observed that "[s]uch a result is contrary to the 'fundamental interest that all appellants share . . . in having effective appellate review.'" *Id.* (quoting *State Dep't of Ins. v. Remco Ins. Co.*, 1986 WL 3419, at *2 (Del. Ch. Mar. 18, 1986). Although I agree with the logic of *Wynnefield*, I do not believe that its reasoning compels the issuance of a stay pending appeal in every books and records case. In *Wynnefield*, the respondent corporation was a going concern that was engaged in a pending going-private transaction. The Court ordered the corporation to produce a variety of books and records. In this case, the only information sought is a list of the limited partners of a defunct entity. I found after trial that Parkcentral could not be harmed by the confidential production of a list of its limited partners for the purposes articulated in Brown's demand. There was no similar finding in *Wynnefield*.

C. Brown Will Be Harmed By A Stay.

Brown and its affiliates invested $16 million in Parkcentral, only to see their investment evaporate in under ninety days. Brown has been seeking a list of limited partners since December 2009. Relying primarily on an argument rejected by this Court some eight years ago and despite its defunct status, Parkcentral resisted providing the list. Under these circumstances, Brown is being harmed through the prolonged denial of its inspection right. Admittedly the harm suffered by Brown from a stay is incremental, and I therefore give this factor relatively little weight.

D. The Public Interest

To the extent the public interest is at stake, it weighs towards denying the motion. Investors in Delaware business entities have a statutory right to access a list of their fellow investors. Delaware public policy favors the prompt production of the list. *See, e.g.*, 8 *Del. C.* § 220(b). Although under some circumstances a stay might be warranted, here it would add yet another layer of unnecessary delay. Fabian tactics should not be rewarded.

CONCLUSION

After balancing the *Kirpat* factors, I concluded that Parkcentral's motion to stay should be denied. The temporary stay I put in place pending this ruling is hereby lifted. Absent a further stay, Parkcentral shall comply with the May 11, 2010, final order within five business days

IT IS SO ORDERED.

Very truly yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor

JTL/SMS