

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR
VICE-CHANCELLOR

COURT HOUSE
WILMINGTON, DELAWARE 19801

December 19, 2000

Thomas P. Preston, Esquire
Reed Smith
120 I Market Street
Suite 1500
Wilmington, DE 1980 I

Phillip Ozdemir
476 Hopkins Crandall Road
Smyrna, NY 13464

Re: Caithness Resources, Inc. v. Phillip Ozdemir and Skyborne, Inc.,
C.A. No. 18073

Dear Messrs. Preston and Ozdemir:

Defendant Phillip Ozdemir has sought reargument of this Court's November 22, 2000 decision (the "Denial Order") denying his motion to dismiss or stay this action in favor of an action brought by Ozdemir in the courts of the State of New York. Ozdemir's reargument motion rehashes issues that he raised in the original briefing on his prior motion. These issues were thoroughly considered by the court in its November 22, 2000 opinion and I will not repeat that analysis here. After considering Ozdemir's reiteration of his prior arguments, I am satisfied that I did not overlook a controlling decision or principle of law and that I did not misapprehend the law or material facts in reaching my decision to deny Ozdemir's prior motion. *Kansas RSA IS Limited Partnership v. SBMS RSA, Inc.*, Del. Ch., C.A. No. 13986, mem. op., 1995 WL 214363, at *2, Allen, C. (Mar. 31, 1995).

In the alternative, Ozdemir seeks certification of the Denial Order pursuant to Supreme Court Rule 42(b). Put succinctly, I do not believe that the Denial Order meets the criteria of Rule 42(b). The Denial Order simply rejects Ozdemir's motion to dismiss or stay a first-filed Delaware action. This is the sort of garden-variety *non-merits* ruling that is inappropriate for certification under Rule 42(b). The Denial Order involved the application of settled principles of Delaware and New York law and does not involve novel issues of law of sufficient importance to

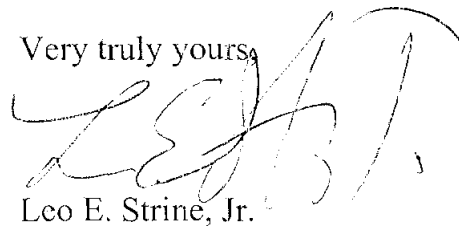
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merit interlocutory review by the Delaware Supreme Court. Although Ozdemir's motion presented a somewhat new twist on the traditional inquiry into which case was first-filed, the basic first-filed question presented — whether a New York action in which the only a bare notice and summons was filed is entitled to first-filed status — was already answered by the reasoning of *Joyce v. Cuccio*, Del. Ch., C.A. No. 14953, mem. op., Jacobs, V.C. (July 24, 1996) and by New York case law. Nor does the Denial Order in any manner compel the courts of New York to dismiss Ozdemir's pending New York action; it simply permits the plaintiffs to proceed with their action here. Furthermore, Ozdemir did not file his application for certification in a timely manner and has not demonstrated good cause for his late filing.

For all these reasons, Ozdemir's motions for reargument and for certification are HEREBY DENIED. IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "LEA", written over a circular stamp or seal.

Leo E. Strine, Jr.

cc: Register in Chancery