

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 16, 2005
Decided: February 17, 2005

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Re: *Belanger v. Fab Indus., Inc., et al.*
Civil Action No. 054-N

Dear Counsel:

The Court, after careful consideration of the parties' submissions¹ with respect to the pending Motion For Protective Order filed by defendants (the "Motion"), and finding that oral argument is not necessary, hereby GRANTS defendants' Motion. Plaintiff shall not be permitted to take the depositions of Messrs. Bitensky, Myers, Bober and Bernstein at this time.

¹ I have considered the arguments in plaintiff's sur-reply letter, even though plaintiff did not request leave to file it as required by this Court's Rule 171(a).

Depositions are not presently necessary to resolve the statutory claims to be presented to the Court on April 12, 2005 and, therefore, the interests of justice require a protective order because depositions of key Fab Industries, Inc. personnel at this critical time in the corporation's life constitutes an undue burden in light of the needs of the case at this time.² Nothing in this letter, however, shall be construed as opining on the appropriate nature of discovery as to Count II of the complaint, as Count II will not be addressed at the expedited hearing on April 12, 2005. Plaintiff has previously conceded that discovery is not necessary as to Count III.³

Plaintiff's argument in opposition to the Motion is that "the validity of the Dissolution Plan depends on whether the defendants' failure to execute, acknowledge and file a certificate of dissolution almost three years after stockholder authorization is reasonable," and that the question of reasonableness is one of fact.⁴ In support of his argument, plaintiff cites to a lone footnote in the well-respected treatise by Balotti & Finkelstein, The Delaware Law of Corporations and Business Organizations. That footnote is not the law, but 8 *Del. C.* § 275 is. Section 275 on its face does not contain a

² See CT. CH. R. 26(b)(1); 26(c).

³ Pl.'s Opening Br. In Supp. Of His Mot. For Partial Summ. J. at 1.

⁴ See Pl.'s Opp'n To Defs.' Mot. For Protective Order & Pl.'s Req. For Imposition of a Briefing Schedule at 3.

reasonableness requirement, or any other requirement as to the timing of the filing of the certificate of dissolution, which is precisely why the controversy in this case exists. Even if a reasonableness requirement is implicit in § 275, and I express no opinion at this time on the matter, nothing in the statute indicates or implies that the conduct or intent of the parties is relevant to determining the validity of a plan of dissolution.

Indeed, plaintiff has argued as much already. In his Opening Brief in Support of His Motion For Partial Summary Judgment, he argues that the dissolution plan is “invalid on its face.”⁵ The Court fails to grasp why deposition discovery is warranted or necessary for a document that is invalid on its face. Furthermore, just because (in plaintiff’s opinion) Count IV “presents an issue of first impression for this Court,” it does not follow that depositions are necessary in order for the Court to decide the issue. To the extent that plaintiff seeks oral discovery because of the alleged paucity of the defendants’ productions in written discovery,⁶ plaintiff should instead file a motion to compel as to those document production requests if he believes it is warranted.

⁵ Pl.’s Opening Br. In Supp. Of His Mot. For Partial Summ. J. at 7.

⁶ See Pl.’s Opp’n To Defs.’ Mot. For Protective Order & Pl.’s Req. For Imposition of a Briefing Schedule at 4-5.

For the foregoing reasons, therefore, defendants' Motion is granted, and depositions shall not be had at this time. With respect to a briefing schedule on the motion for declaratory judgment to be heard on April 12, 2005: (1) plaintiff shall file and serve his opening brief in support of their motion on or before March 7, 2005; (2) defendants shall file and serve their answering brief on or before March 28, 2005; and (3) plaintiff shall file and serve his reply brief, if any, on or before April 6, 2005.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:amf