

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

WILLIAM B. CHANDLER III  
CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

Submitted: July 18, 2008  
Decided: September 12, 2008

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Re: *In re TGM Enterprises, L.L.C.*  
Civil Action No. 3565-CC

Dear Counsel:

I have reviewed the briefs in connection with the motions before me. In my judgment, defendant's motion to stay proceedings in the Court of Chancery to allow resolution in Delaware Superior Court and plaintiff's motion for leave to amend her petition with claims against the defendant can both be decided in this opinion. This letter constitutes the Court's opinion on the pending motions.

The facts in this case are somewhat convoluted. In 2001, Mergenthaler and Speakman (plaintiff Johnson's late father) formed TGM Enterprises, LLC ("TGM") for the purpose of investing in real estate, and until 2006 TGM had some success in purchasing and selling properties.<sup>1</sup> Mergenthaler was named as TGM's

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<sup>1</sup> Def.'s Br. Mot. Stay 2.

managing member and made most of TGM's management decisions while Johnson was generally a passive and silent member.<sup>2</sup>

Around October 2007, Johnson became disenchanted with Mergenthaler's performance as managing member and requested that Mergenthaler voluntarily dissolve TGM.<sup>3</sup> Mergenthaler refused Johnson's request.<sup>4</sup> Mergenthaler maintained, despite Johnson's showing that she held ninety-eight percent of TGM and Mergenthaler held one percent, that he in fact had entered into an agreement with Speakman to split the net profits of TGM on a 50/50 basis.<sup>5</sup> Johnson then filed for dissolution in the Court of Chancery, and Mergenthaler filed counterclaims against Johnson. In May 2008, Mergenthaler also filed a complaint against Johnson in the Superior Court of Delaware.<sup>6</sup> In that complaint, Mergenthaler asserted claims for tortious interference with contract, tortious interference with business relations, breach of fiduciary duty, quantum meruit, unjust enrichment, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and conversion. He also sought a jury trial and legal damages for Johnson's actions.<sup>7</sup>

Soon after the petition and counterclaims were filed in this Court, the parties began the discovery process. As a result of discovery, Johnson learned that Mergenthaler was allowing his mother to use TGM's sole real estate holding rent free.<sup>8</sup> Ten days later, plaintiff sought to amend her petition to assert claims for breach of fiduciary duty and waste against Mergenthaler. On May 21, 2008, Mergenthaler filed a motion to stay in the Court of Chancery in favor of his Superior Court action.

The Court's right to grant a stay is within the exclusive discretion of the Court. The discretion to issue a stay is "inherent in every court and flows from its control over the disposition of causes on its docket."<sup>9</sup> The Court exercises its discretion to grant a stay in this case pursuant to defendant's motion.

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<sup>2</sup> Pl.'s Br. Mot. Amend 3-4.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 4-5.

<sup>5</sup> Def.'s Br. Mot. Stay 2.

<sup>6</sup> *Id.*, see *Mergenthaler v. Johnson, et al.*, C.A. No. 08C-05-153JOH Del. Super. Ct. (May 20, 2008).

<sup>7</sup> *Id.*

<sup>8</sup> Pl.'s Br. Mot. Amend 6.

<sup>9</sup> *Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681, 683 (Del. 1964).

Given that defendant demands an opportunity for a jury trial in Delaware Superior Court and given that many of defendant's claims are damage claims which are legal in nature, I conclude that the most judicially efficient way to proceed is to stay the Court of Chancery action and to allow the defendant to proceed first with his action in Delaware Superior Court. This Court recognizes that defendant's "desire to have a jury trial ... is one that should [be] give[n] substantial weight,"<sup>10</sup> and upon further review, I conclude that there is no efficiency or fairness argument that justifies a different result. In the event, however, that defendant fails to prosecute vigorously the Superior Court action, plaintiff may seek to lift the stay in this lawsuit.

The Court understands that jurisdiction rests solely with the Court of Chancery where a party moves for dissolution of a company;<sup>11</sup> therefore, after defendant's claims have been resolved in the Superior Court the parties will maintain the opportunity to re-open and resolve any remaining issues, including plaintiff's motion to dissolve TGM, in the Court of Chancery.

In addition, I address plaintiff's motion for leave to amend her petition. A party's motion to amend is "freely given when justice so requires."<sup>12</sup> "A motion for leave to amend a complaint is always addressed to the discretion of the trial court."<sup>13</sup> "In the absence of undue prejudice, undue delay, bad faith, dilatory motive or futility of amendment, leave to amend should be granted."<sup>14</sup> I conclude that Johnson's proposed amendment to her petition should be granted because the motion was timely filed, and I find no prejudice to Mergenthaler by granting Johnson's request. Plaintiff will be free to pursue her amended claims in this Court upon the conclusion of the other issues in the Superior Court.

I therefore grant defendant's motion for a stay of proceedings in the Court of Chancery effective until proceedings have concluded in Delaware Superior Court, and I also grant plaintiff's motion for leave to amend her complaint to add her claims for breach of fiduciary duty and waste.

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<sup>10</sup> *Nichols v. Lewis*, C.A. No. 1758-VCS 2007 WL 1584622, at \*1 (Del. Ch. 2007).

<sup>11</sup> *See* 6 *Del. C.* § 18-802 (2007).

<sup>12</sup> DEL. CH. R. 15(a).

<sup>13</sup> *Bokat v. Getty Oil Co.*, 262 A.2d 246, 251 (Del. 1970).

<sup>14</sup> *Cantor Fitzgerald*, C.A. No. 16297-NC 1999 Del. Ch. LEXIS 134, at \*4, (citing *Fox v. Christina Square Assoc., L.P.*, C.A. No. 13907 1995 Del. Ch. LEXIS 89, at \*5, (June 19, 1995)).

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

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