

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: November 26, 2008

Decided: December 12, 2008

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Re: *Christen v. Trados Inc.*
Civil Action No. 1512-CC

Dear Counsel:

I have reviewed the briefs regarding petitioner's third motion to compel and for sanctions. This is my decision on the motion.

First, I grant petitioner's request to re-depose Messrs. Campbell, Budge, Gandhi, and Passarello. Documents were produced after each of their depositions that raise potentially relevant issues. Petitioner should be allowed to question the witnesses regarding these newly produced documents. The additional depositions should be limited to the issues raised by the newly produced discovery.

While it would be impossible for me to rule on each document discovered after the witnesses were deposed, I can address examples of issues raised by these documents and why they have convinced me that petitioner is entitled to conduct the additional depositions. I should

emphasize that my decision is not based on any specific document or issue; however, a short examination of a few of the issues raised by these documents may be helpful.

- **Joseph Campbell** (Trados' chief executive officer and a director). Petitioner has shown that there are numerous emails relevant to Campbell's deposition that were not produced prior to the deposition. For example, some of these emails may raise issues regarding possible revenue manipulation, issues about which petitioner should be able to question Campbell. Any potential revenue manipulation could be relevant to valuation as well as the motivations of anyone compensated under the management incentive plan. Additionally, comments given by Passarello on a call (in which Campbell was a participant) may be relevant: Passarello suggested that the agreement signed by common shareholders was enforceable and meant that the common shareholders could not object to the deal. Such information may be relevant to what Campbell believed his duties were to the common and preferred stockholders.
- **James Budge** (Trados' chief financial officer). Petitioner has alleged that many documents produced after Budge's deposition raise important issues; respondents, of course, deny that these documents are important. I need not, and will not, attempt to resolve each of these issues. After reviewing the parties' submissions, I have found sufficient reason to believe that there are issues raised by the additional production that entitle petitioner to re-depose Budge. For example, some documents suggest that Budge knew about or participated in the alleged revenue manipulation. Additionally, some documents may contain discussions regarding who was likely to vote in favor of the merger. Petitioner is entitled to question Budge regarding the issues raised in the newly discovered documents.
- **Sameer Gandhi** (a Trados director). There are newly produced documents that raise issues relevant to the deposition of Gandhi. For example, emails sent between Gandhi and Campbell may show (1) the progress of the early merger negotiations and (2) an alleged effort by Campbell and Gandhi to convince the board to approve the deal.
- **Kevin Passarello** (Trados' general counsel). Newly produced documents raise issues about the opinion Passarello gave during a call

(in which Campbell was a participant) regarding the rights of the common shareholders. Any advice regarding the rights of the common shareholders may cast light on what Campbell believed his duties were to the common shareholders. Petitioner should be allowed to depose Passarello regarding this advice and whether he gave the advice to other directors.

Again, these are just examples of some of the issues that are raised by the newly produced documents. I am convinced that petitioner is entitled to re-depose each of the witnesses regarding the issues raised by the additional production.

Second, for the moment, I am denying petitioner's request for sanctions and for shifting of costs. I have broad discretion under Rule 37 to impose sanctions and to shift costs for discovery violations. Whether I should grant such relief, however, will not become clear until later in this case, after the additional depositions and preparation of petitioner's expert rebuttal report. Only after the case has proceeded further will I be able to decide whether petitioner was prejudiced by the delayed discovery, whether Trados is to blame for such prejudice, and whether Trados should pay petitioner's costs and attorneys' fees associated with the additional depositions, expert rebuttal report, and the second and third motions to compel.

The parties should bear this in mind when proceeding with discovery in this case. I have not specified the locations of the additional depositions, and it would be in the interest of both parties to control discovery costs by behaving reasonably.

Third, to the extent it has not already done so, I direct Trados to produce any responsive documents before the depositions of Messrs. Campbell, Budge, Gandhi, and Passarello or explain to the Court in writing why the production of such documents is not possible.

Finally, the Court understands petitioner to have withdrawn his request for an additional deposition of Kevin McClelland, an investment banker with JMP Securities LLC. The Court also declines to order a deposition of Walter Thomas, Trados' in-house counsel as the Court understands Trados to have represented to petitioner and to this Court that it has responded in full to all the discovery requests.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:jmb