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April 23, 2009

Via LexisNexis File & Serve
and First Class Mail

Mr. Robert H. Harris
87 Lotus Oval South
Valley Stream, NY 11581

Mr. Don L. Hartman
11242 Osprey Lake Lane
West Palm Beach, FL 33412

Re: Harris v. RHH Partners, LP, et al.
C.A. No. 1198-VCN
Date Submitted: April 6, 2009

Dear Mr. Harris and Mr. Hartman:

Petitioner Robert H. Harris ("Harris"), by letter dated April 4, 2009, asserts that several factual mistakes were made in this Court's April 3, 2009, Letter Opinion that dismissed claims and defenses of all unrepresented juristic entities named in his action and granted non-party Don L. Hartman's ("Hartman") motion to intervene. Both Harris and Hartman proceed *pro se*.

Harris has petitioned this Court to replace Broadway, Inc. ("Broadway"), a Delaware corporation controlled by Hartman, with JP Florimar, Inc ("Florimar"), a

Delaware corporation, as the general partner of RHH Partners, L.P. ("RHH"), a limited partnership formed under the Delaware Revised Uniform Limited Partnership Act.[1]

Although not formally presented as such, Harris's April 4, 2009, letter will be treated as a motion for reargument of the Court's April 3, 2009, decision.[2] Under Court of Chancery Rule 59(f), the party seeking relief must "demonstrate that the Court 'overlooked a decision or principle of law that would have had controlling effect or that the Court . . . misapprehended the law or the facts so that the outcome of the decision would be affected.'"[3]

Harris raises four specific contentions. First, he alleges that Broadway failed to prepare tax returns not only for the years 2002-04, but for the years 2002-09. Second, he clarifies the nature of the Florimar entity, which he asserts is a New York corporation wholly owned by his wife. Third, he presents the argument that, in essence, basic math makes Hartman's grounds for intervention illogical. Finally, Harris claims that Hartman's entire position has been fully and finally litigated in

[1] 6 *Del. C.* § 17-101 *et seq.* For a more detailed discussion of the background of the present dispute between Harris and Hartman see *Harris v. RHH Partners, LP*, 2009 WL 89810 (Del. Ch. Apr. 3, 2009).
[2] *Id.*
[3] *In re Kent County Adequate Pub. Facilities Ordinances Litig.*, 2007 WL 2565566, at *1 (Del. Ch. Aug. 29, 2007) (quoting *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995)).

New York, and thus *res judicata* prevents its presentation here and renders intervention improper. The Court addresses each in turn.

First, Harris alleged in his complaint that under the terms of the RHH partnership agreement Broadway was "required to prepare or cause to be prepared all federal state and local income tax and information returns for the partnership . . . and has failed to carry out the foregoing obligation for the years 2002, 2003, and 2004."[4] The Court must rely on fact alleged in pleadings,[5] not upon facts either never presented to this Court, or only presented in the blunderbuss of correspondence Harris submits with regularity. Even considering additional tax years, the Court's original decision remains unaffected.

Second, and again, the Court must rely on pleadings. Harris's complaint omits a representation as to the nature and control of Florimar. Importantly, its control (other than the fact that it is not controlled by Hartman) is not important for the purposes of addressing Hartman's motion to intervene. A motion to intervene seeks to evaluate whether, in its absence, the interests of a non-party will be impaired.[6] Replacing Broadway with any entity not controlled by Hartman would impair his

[4] Compl. ¶ 11. (internal quotations omitted).
[5] *See generally Orman v. Cullman*, 794 A.2d 5, 28 n.59 (Del. Ch. 2002).
[6] *See* Ct. Ch. R. 24(a).

interests, no matter the nature of Florimar. A better understanding of the Florimar entity does not compel the Court to revisit its ruling as to intervention.

Third, Harris takes issue with Hartman's position that control of Broadway was provided to him as collateral for a debt owed him by Harris. Harris now argues that basic math and simple logic do not support this position, as the control of RHH allegedly granted to Hartman would be "worth, at most, fifteen hundred dollars. Hardly something that one would accept as collateral for a seven hundred and seventy-six thousand dollar obligation."[7] Yet, if the purpose of a security interest is to provide a creditor with effective control of an asset in order to assure payment of a debt, the unusual arrangement established by Harris may just give Hartman effective control. Whether this device will work as Hartman suggests was intended, of course, is beyond the scope of the Court's present effort.

Under Court of Chancery Rule 24(a), the validity of the claimed interest in a motion to intervene is assessed by reference to the allegations accompanying such motion, and those allegations must be accepted as true.[8] Harris's merits based argument appealing to math and logic is premature.

[7] Harris's April 4, 2009, letter at 1.
[8] *Bonczek v. Helena Place, Inc.*, 1989 WL 110547, at *2 (Del. Ch. Sept. 21, 1989) (citing *Pennamco, Inc. v. Nardo Mgmt. Co., Inc.*, 435 A.2d 726, 728 (Del. Super. 1981)).

Finally, and yet again, this Court must rely on facts actually before it. Harris concedes that the facts upon which he relies for his claims of *res judicata* are not before this Court. He claims in his April 4, 2009, letter to be in possession of documents demonstrating that all of Hartman's claims have been litigated to resolution in New York courts; yet, he has not submitted them to the Court.[9] This assertion answers itself. The evidence presented to the Court thus far regarding other litigation between these individuals is far from clear. The Court cannot conclusively determine at this stage what effect other litigation has had (or not had) on this proceeding. The Court's April 3, 2009, Letter Opinion is unchanged by Harris's presently unsupported argument of *res judicata*.

For the foregoing reasons, Harris's motion for reargument is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[9] Documents submitted by Harris suggest that at least a substantial portion of any claims that Hartman may have were resolved adversely to Hartman. The difficulty is that those documents do not clearly show the resolution of all claims.