COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

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Mr. Domenic Tricome
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Re: *In re Food Ingredients International, Inc.*,
Civil Action No. 4422-VCP

Dear Counsel and Mr. Tricome:

On July 9, 2009, I ordered the dissolution of a Delaware corporation known as Food Ingredients International, Inc. ("FII") pursuant to 8 *Del. C.* § 273.[1] On December 29, 2009, I entered an order relieving an earlier-appointed receiver of his duties to account for and wind up the business of FII and, upon the receiver's unopposed motion, appointed one of the two directors and parties claiming an ownership interest in that company as the sole director. Several months later, Domenic Tricome, who claims

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[1] I refer to this action as the "Action."

an interest in a company that is allegedly owned by FII, in whole or in part, submitted a letter (the "Letter") to this Court requesting a Temporary Restraining Order ("TRO") and other relief pertaining to allegedly tortious and criminal actions taken by several persons, including the parties to this Action. This Letter Opinion addresses Tricome's Letter and the requests for relief therein.

I. BACKGROUND

A. Key People and Entities

I begin with a short recitation of the key people and entities relevant to Tricome's Letter. FII is a Delaware corporation formed on or about April 14, 2000. Its primary business is to engage in the importation, blending, sales, and distribution of food ingredients and preparations.[2] Edward Tulskie allegedly is a 50% stockholder of FII who commenced this Action by petitioning this Court for dissolution of FII.[3] He allegedly was an officer and director of FII before its dissolution.[4] In his petition for dissolution, Tulskie named as Respondent Perry Beach Services Ltd. ("PBS"), which allegedly is the other 50% stockholder of FII. Ciaran Quigley owns a 100% interest in PBS and allegedly was also an officer and director of FII before its dissolution.[5] All the Whey, Inc.

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2 Docket Item ("D.I.") 1.

3 *Id*.

4 D.I. 2 at 2.

5 *Id*.; D.I. 9, Letter from Kevin F. Brady, Esq. to Court dated November 24, 2009 ("Brady Nov. 24 Letter"), at 1.

("ATW") is a Pennsylvania corporation of which FII claims to be the majority owner. Tricome disputes that claim and alleges that he is the President and sole director of ATW.[6] Another individual, William Franks, allegedly is also an owner of ATW.[7]

B. Procedural History

On March 13, 2009, Tulskie petitioned this Court for a discontinuance and dissolution of FII's business on the ground that he and the other 50% stockholder, PBS, could not agree "as to the desirability of discontinuing [FII] and disposing of its assets."[8] Pursuant to his petition, Tulskie moved the Court on June 22, 2009 to dissolve FII under Delaware General Corporation Law ("DGCL") § 273.[9] Having found that Tulskie met the statutory prerequisites of § 273 and received no answer or response from PBS or Quigley, despite Tulskie's efforts for over three months to contact Quigley and apprise him of the dissolution proceedings, I entered an order on July 9, 2009 (the "July 9 Order") dissolving FII and approving a plan of discontinuance and distribution of assets, and scheduling a hearing to address the appointment of a receiver for FII and the winding up of its affairs.[10] At an August 11, 2009 hearing, I granted Tulskie's unopposed

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6 D.I. 13, Tricome's Letter, at 2-3 and Ex. D.

7 *Id*. at 2-3.

8 D.I. 1.

9 *See* D.I. 2; 8 *Del. C.* § 273.

10 D.I. 5.

application to appoint a receiver and instructed him to file a proposed form of order.[11] Notably, neither Quigley nor any other representative of PBS attended the hearing or otherwise communicated with the Court.

On August 21, 2009, I ordered Tulskie and Quigley to resign their positions as directors of FII and appointed Kevin F. Brady, Esq. ("Brady" or the "Receiver"), of Connolly, Bove, Lodge & Hutz LLP, as Receiver to wind up FII's business and maximize value for its shareholders (the "August 21 Order").[12] In a letter dated November 24, 2009, Brady apprised the Court of the status of the winding up of FII and related distributions.[13] In his letter, Brady described gathering information based on the limited corporate documents available regarding FII and its assets as well as his efforts to contact Quigley and PBS. In addition, Brady informed the Court that he believed Quigley left the United States to move back to Ireland at the end of 2006 or the beginning of 2007.[14]

Brady also expressed the belief that FII had few outstanding or potential liabilities and only a single asset: ownership of ATW. Although he acknowledged that this ownership was challenged in a separate litigation, Brady expressed his belief that FII wholly owned ATW or, at a minimum, owned an 80% interest in it pursuant to a stock

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11 D.I. 6.

12 D.I. 8.

13 Brady Nov. 24 Letter.

14 *Id*.

purchase agreement.[15] Brady further reported that Franks and ATW had filed a complaint in the Eastern District of Pennsylvania against FII, Tulskie, and Quigley (the "E.D. Pa. Litigation") alleging, among other things, that Franks is either the sole owner or majority owner of ATW.[16] On August 10, 2009, the plaintiffs in the E.D. Pa. Litigation moved for a TRO to enjoin the contemporaneous dissolution proceedings in this Court, but that motion was denied. Brady wrote that the parties hoped to settle the E.D. Pa. Litigation, but that "so long as FII's ownership of ATW remains an open question, the prospects of settling the [E.D. Pa.] [L]itigation are low and the potential costs of litigation very high."[17] Brady, therefore, recommended that the Court distribute evenly to Tulskie and Quigley (through PBS) all of FII's assets which, he believed, consisted solely of FII's ownership interest in ATW.[18] Brady further suggested that after such distributions were made, Tulskie and Quigley, if the latter chose to participate, could seek to have the E.D. Pa. Litigation dismissed. Based on the November 24 Letter and the

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15 *Id*.

16 *Id*.; D.I. 11 Ex. 3. The complaint in the E.D. Pa. Litigation also alleged: (1) civil violations of 18 U.S.C. §§ 1961-68; (2) a breach of the stock purchase agreement; (3) a breach of contract regarding a line of credit agreement and guaranties; (4) a breach of contract regarding a revolving line of credit agreement; and (5) fraud. *Id*.

17 Brady Nov. 24 Letter at 2.

18 *Id*. at 2-3. According to Brady, FII's continuing corporate existence only would have "served to prolong the EDPA Litigation and further diminish the potential returns to FII's creditors and shareholders." D.I. 11 at 5. He also stated that the termination of FII's existence would have relieved Tulskie of the obligation to pay for both his own and FII's defense. *Id*.

absence of any objection, I entered an order on December 10, 2009 granting Brady's proposed plan of distribution of FII's sole apparent asset, ATW (the "December 10 Order").[19]

On December 23, 2009, Brady, citing the recent discovery of additional potential assets and liabilities of FII, filed an emergency motion to amend the December 10 Order to withdraw his appointment as Receiver and appoint Tulskie as the sole director of FII.[20] He noted that, although he originally believed FII's liabilities amounted to less than $10,000, new documentation from Tulskie suggested they could be as high as $76,000 to $170,000.[21] Brady also stated that since his November 24 Letter, he had learned of a second litigation that named FII as a defendant. Specifically, on December 21, 2009, Brady was informed that Tricome had sued FII, Franks, Tulskie, and Quigley in Pennsylvania's Montgomery County Court of Common Pleas (the "Montgomery County

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19 D.I. 10.

20 D.I. 11. The emergency apparently stemmed from the fact that after two extensions Tulskie, Quigley, and FII, the defendants in the E.D. Pa. Litigation, had until December 29, 2009 to file a responsive pleading. *Id*. at 4.

21 D.I. 11 at 6. In addition, Brady discovered that FII might have additional assets, including receivables of approximately $13,000, a potential 50% interest in a trademark for "NutraPro," and an alleged loan from FII to ATW in the amount of $73,246.95. *Id*. But, FII's poor record keeping prevented Brady from determining accurate values for FII's assets and liabilities. *Id*.

Litigation"). In that litigation, Tricome alleged, among other things, that he is the founder and owner of ATW.[22]

Brady sought to be relieved as Receiver primarily to preserve FII's limited assets. He provided the following explanation:

> In light of Mr. Quigley's abandonment of his position as a director of FII, Mr. Tulskie's continued costs associated with his own litigation defenses, and Mr. Tulskie as FII's sole source of cash, the Receiver respectfully suggests that the best interests of FII would be served by an order declaring that Mr. Tulskie is the sole director of FII. With Mr. Tulskie as the sole director, the prior director deadlock in light of Mr. Quigley's absence would likewise disappear. In addition, FII would not incur the additional costs currently incurred as a result of the Receiver's work. Rather, in light of common interests, Mr. Tulskie's appointment would streamline litigation costs for both FII and Mr. Tulskie. By minimizing costs to FII, its creditors would also enjoy greater possibilities for satisfaction of amounts owed. Mr. Tulskie, as the sole director, would be vested with the authority to resolve the [E. D. Pa.] and Montgomery County Litigations, account for liabilities and assets, and perhaps ultimately wind-up FII.[23]

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[22] *Id*. at 6-7 and Ex. 3. Brady reported that Tricome had filed a summons in the Montgomery County Litigation on February 7, 2007. *Id*. at 7. Despite having later filed a Statement of Intention to Proceed on August 15, 2009, however, Tricome had not yet filed a complaint when Brady filed his emergency motion. *Id*.

[23] *Id*. at 9.

After considering Brady's submission, I entered an order dated December 29, 2009 granting his emergency motion and appointing Tulskie as FII's sole director (the "December 29 Order").[24]

On August 25, 2010, this Court received a letter from Tricome requesting that the Court reconsider its prior orders and issue a TRO against Tulskie, Quigley, FII, and others to enjoin certain allegedly tortious and criminal conduct.[25] According to Tricome, the December 29 Order appointing Tulskie as sole director of FII began a chain of events that resulted in a theft of funds from two of ATW's bank accounts on April 22, 2010.[26] Based on the Letter, it also appears that Tricome mistakenly believes that this Court's prior orders determined conclusively that ATW is majority owned by FII.[27]

C. Requested Relief

Tricome is not a party to this Action. Nevertheless, he claims an interest in ATW and filed a lengthy letter with several exhibits, requesting an "Emergency Temporary Restraining Order." Specifically, Tricome asks this Court to: (1) freeze the assets of Tulskie and Quigley; (2) restrain Tulskie and Quigley "from doing anything with" ATW; (3) order ATW's banks to refund to Tricome an amount of money representing the amount withdrawn by Tulskie; (4) restrain various law firms from "doing anything with"

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24 D.I. 12.

25 Tricome's Letter.

26 *Id*. at 1.

27 *Id*.

ATW; (5) order Tulskie to stop defaming, and have no contact with, Franks; (7) ask the district attorney and the FBI to investigate Tulskie and a number of other individuals; and (8) file complaints with the Delaware and Pennsylvania Bars regarding fraudulent conduct by various lawyers.[28]

II. ANALYSIS

A. Clarification of the Nature and Stage of this Case

Before discussing the substance of Tricome's request, it is important to review the nature of this Action. This case seeks dissolution of FII under DGCL § 273, nothing more. Petitioner is Tulskie. Respondent, PBS (*i.e.*, Quigley through his ownership of PBS), never appeared.[29] For several months, Brady acted as the Receiver for FII.

The applicable statute, § 273, states in relevant part:

> (a) If the stockholders of a corporation of this State, having only 2 stockholders each of which own 50% of the stock therein, shall be engaged in the prosecution of a joint venture and if such stockholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either stockholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the stockholders, file with the Court [] a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon by both stockholders, the corporation be dissolved. . . .

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[28] *See id*. at 6.

[29] Unless otherwise noted, references to Quigley herein are intended to include PBS, where appropriate.

> (b) Unless both stockholders file with the Court [] (1) within 3 months of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof, and (2) within 1 year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan had been completed, the Court [] may dissolve such corporation and may by appointment of 1 or more trustees or receivers with all the powers and title of a trustee or receiver appointed under § 279 of this title, administer and wind up its affairs. . . .[30]

Section 273 avoids the necessity of unanimity for dissolution when there are only two stockholders who each own a 50% interest in a joint venture.[31] To obtain dissolution under this statute, a petitioner must satisfy three threshold requirements by demonstrating that (1) there are only two stockholders (2) engaged in a joint venture and (3) they are unable to agree about the desirability of continuing the joint venture.[32] If these three requirements are met, the determination of whether to dissolve a corporation still is left to the discretion of the Court.[33] But, if the requirements are satisfied, the Court should use its discretion to deny dissolution sparingly because such dissolution "should not be

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30 8 *Del. C.* § 273.

31 *See In re Data Processing Consultants, Ltd.*, 1987 WL 25360, at *1 (Del. Ch. Nov. 25, 1987).

32 Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 8-11[a][2], at 8-232-36 (2000) (hereinafter "Wolfe & Pittenger").

33 Wolfe & Pittenger, *supra* note 32, § 8-11[a][2], at 8-238.

judicially interfered with in the absence of a showing of bad faith . . . ."[34] Any alleged bad faith must relate to the seeking of a dissolution and not to collateral claims or actions between those concerned.[35]

Pursuant to § 273, I dissolved FII and approved an initial plan of discontinuance and distribution for FII's assets in my July 9 Order. In addition, consistent with this Court's authority regarding winding up a dissolved corporation's affairs,[36] I appointed Brady as Receiver to propose and oversee a final distribution of FII's assets. In my December 10 Order, I approved Brady's proposal to distribute in equal shares to Tulskie and Quigley whatever percentage ownership FII held in ATW, which then appeared to be FII's only asset. In my December 29 Order, I granted Brady's emergency motion to amend the December 10 Order to remove him as Receiver and appoint Tulskie as the sole director of FII. Nothing in the December 29 Order, however, changed the status of FII's

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34 *In re Arthur Treacher's Fish & Chips*, 1980 WL 268070, at *3 (Del. Ch. July 1, 1980).

35 Wolfe & Pittenger, *supra* note 32, at 8-240 (citing *Data Processing Consultants*, 1987 WL 25360, at *14, for the proposition that this Court has identified only one circumstance in which the bad faith defense may suffice to defeat a § 273 claim: where "one joint-venturing shareholder seeks dissolution at a particular time in order to free himself to exploit a specific future business opportunity personally that would rightfully belong to the company if it should happen to continue to exist as a going concern at that future time").

36 8 *Del. C.* § 273(b); *Data Processing Consultants*, 1987 WL 25360, at *1.

dissolution. That is, I left untouched my order to dissolve FII as well as my approval of Brady's plan of discontinuance and distribution of FII's assets.[37]

Thus, as it stands today, I understand that FII is in dissolution with Tulskie overseeing the winding up of FII's business pursuant to the plan of distribution I authorized in my Orders of July 9, December 10, and December 29. There may be some ambiguity, however, as to the effect of the December 29 Order on the December 10 Order in terms of Brady's earlier recommendation that FII's ownership in ATW, whatever it is, be distributed equally to Tulskie and PBS. Brady's emergency motion stated that, "In light of the recent discovery regarding FII's liabilities, it would not be in the best interests of FII to distribute FII's ownership in ATW to Mr. Tulskie and PBS."[38]

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[37] In retrospect, the December 29 Order may have been worded inartfully to the extent it purported to appoint Tulskie as "the sole director" of FII. In case there is any ambiguity, my intent was, upon the withdrawal of Brady as Receiver, to exercise the Court's authority under 8 *Del. C.* § 279 to "appoint 1 or more of the directors of the corporation [*i.e.*, Tulskie] to be trustees . . . of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation." 8 *Del. C.* § 279. Under § 279, a receiver is any neutral party other than a director of a dissolved corporation appointed to take charge of and distribute the assets of such corporation. 1 R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations and Business Organizations* § 10.21, at 10-62 n.320 (3d ed. 1998). In contrast, a trustee under § 279 is a person who was a director of the dissolved corporation appointed for the same purpose. *Id*.

[38] D.I. 11 at 8.

The implication is that, as of that time, Brady had not distributed the ATW ownership interest to Tulskie and PBS. The record in this Action does not indicate what, if anything, has happened since that time. To clarify the present state of affairs regarding FII, therefore, and as stated in more detail *infra* in the Conclusion of this Letter Opinion, I have decided to require the parties to submit a report and intend to hold a conference with Tulskie, Pileggi, and Brady to review the current status of FII and the actions taken with respect to it.

B. How Should the Court Treat Tricome's Letter?

Although styled as a motion for a TRO, Tricome's Letter is difficult to categorize because he is not a party to this action and has not asserted a claim in this Action against any party to it. To be eligible to request a TRO from this Court, Tricome must have asserted a claim against at least one party or properly requested permission to intervene in this Action. Because he has not asserted any such claim, I treat Tricome's Letter as a motion to intervene under Court of Chancery Rule 24 with a supplemental request for a TRO.

Tricome's request also can be viewed as a request under Rule 60(b) for relief from a "final judgment, order or other proceeding" in this Action based on "mistake" or "inadvertence" or because "the judgment is void" or for "any other reason justifying relief from the operation of the judgment."[39] Tricome conceivably could argue that one

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[39] Ct. Ch. R. 60(b). Rule 60(b) provides in pertinent part: "On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative

or both of the orders entered in this Action on December 10 and December 29, 2009, were the product of mistake or inadvertence, were void, or otherwise should be clarified or changed.

C. Should the Court Grant Tricome's Motion to Intervene?

1. Standard for a Motion to Intervene

In certain situations a nonparty may intervene in a pending case before this Court, either as of right or as permitted by the Court in its discretion. Rule 24(a) governs intervention as of right and states that

> [u]pon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.[40]

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from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation."

[40] Ct. Ch. R. 24(a).

A potential intervenor "need only claim, rather than prove, an interest in the subject of the litigation; the validity of that claimed interest is assessed by reference to the allegations accompanying the motion to intervene, and such allegations are accepted as true."[41]

Even if a person does not have a right to intervene, he still may be permitted to intervene under the less exacting standard of Rule 24(b), which allows intervention "(1) [w]hen a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common."[42] If a person desires to intervene, he must serve a motion so indicating upon all of the parties, stating the grounds therefore, as well as a pleading setting forth the claim or defense for which intervention is sought.[43] "Necessarily, however, under either variety of intervention the applicant must, as a threshold matter, present a potentially valid claim."[44]

2. Application of the standard to Tricome's Letter

Based on the allegations in Tricome's Letter, I find that he is not entitled to intervene under the rubric of either mandatory or permissive intervention, except possibly to seek Rule 60(b) relief as to this Court's December 10 and December 29 orders.

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41 *Harris v. RHH P'rs, LP*, 2009 WL 891810, at *3 (Del. Ch. Apr. 3, 2009).

42 *See* Ct. Ch. R. 24(b); *United Rentals, Inc. v. RAM Hldgs., Inc.*, 2007 WL 4327770, at *1 (Del. Ch. Nov. 29, 2007).

43 Ct. Ch. R. 24(c).

44 *United Rentals, Inc.*, 2007 WL 4327770, at *1.

Preliminarily, I note that Tricome, who is self-represented, has not identified any statute that gives him a right, unconditional or conditional, to intervene here. Nor is the Court aware of any such statute. Thus, I turn first to Rule 24(a)(2) and whether Tricome "claims an interest relating to the property or transaction which is the subject of the action" and, if so, whether he "is so situated that the disposition of the action may as a practical matter impair or impede [his] ability to protect that interest."[45]

The "property" that is subject to this Action is FII, not ATW. I empowered the Receiver to account for FII's assets and create a plan of distribution for those assets.[46] The Receiver initially determined that FII's sole asset was some degree of ownership of ATW. Given that only two people, Tulskie and Quigley (through his ownership of PBS), claimed a potential ownership interest in FII, my December 10 Order approved the Receiver's recommendation that whatever interest FII had in ATW be distributed evenly to those two interested parties.[47] The December 10 Order dealt only with distributing an asset of FII. It did not address any issue regarding who owns ATW and in what percentage. Nor has this Court ever addressed, let alone determined, the exact percentage of FII's ownership of ATW. Likewise, this Court has not sanctioned any action taken by

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45 Ct. Ch. R. 24(a).

46 D.I. 8.

47 D.I. 10.

anyone with respect to ATW other than permitting the Receiver to distribute evenly to Tulskie and Quigley whatever interest FII had in ATW on or after December 10, 2009.

Brady's emergency motion to amend my prior order did not change this. The issue presented by that motion was who should govern FII during the winding up period of its dissolution. At all relevant times, the only two people who appeared to have an interest in owning and running FII were Tulskie and Quigley. Tricome alleges a myriad of claims against those two individuals, but he does not claim a direct or ownership interest in FII. At most, Tricome might be considered a creditor of some sort of FII in that he has taken steps to pursue a legal claim against FII and others. Based on the evidence before this Court showing that only two people claimed such a direct interest in running FII, one of whom has failed to participate in this Action, and for the reasons stated in the Receiver's emergency motion, I determined that Tulskie should be the one to control FII's assets during the remainder of the winding up process. This Court has not been called upon to approve or evaluate any actions taken by Tulskie with respect to those assets, including ATW, and has not done so. Indeed, the extent to which such issues would come within the limited scope of this action under DGCL § 273 is debatable.[48]

Because Tricome has not asserted any basis for claiming a direct ownership interest in FII, his interest in this Action is limited to that of a creditor who arguably

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[48] *See infra* Part II.B.3.

might have an interest in ensuring that Tulskie is authorized to act on behalf of FII. In that limited sense only, Tricome may be entitled to intervene as of right in this Action.

For the same reasons, I will not permit Tricome to intervene in any broader sense under the less exacting standard of Rule 24(b)—*i.e.*, when an applicant's claim or defense and the main action have a question of law or fact in common. As explained above, Tricome appears to misunderstand the nature of this Action. All that has been determined is that FII should be dissolved and Tulskie should oversee the process of winding it up; the rulings in this Court have settled ownership and governance issues between the two people directly interested in FII: Tulskie and Quigley. No determinations have been made regarding any matters relating to ownership or governance of ATW. These issues are not now, nor have they ever been, before this Court. Moreover, while Tricome alleges bad faith conduct on the part of Tulskie, among others, he has not alleged that Tulskie's bad faith conduct relates to Tulskie's seeking to dissolve FII. Rather, Tricome's claims allege bad faith relating to collateral matters. As such, they do not provide a valid defense to FII's dissolution.[49] Thus, Tricome's myriad complaints pertaining to ATW do not present a question of law or fact in common with the narrow issue of FII's dissolution that is presented in this case. As a result, he may not intervene here to assert those claims, with the possible exception noted previously.

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[49] Wolfe & Pittenger, *supra* note 32, at 8-240 (citing *In re Data Processing Consultants, Ltd.*, 1987 WL 25360, at *14 (Del. Ch. Nov. 25, 1987)).

3. Tricome's request for a TRO

Even if Tricome did have standing to intervene for purposes other than challenging what has occurred in this Action pertaining to the dissolution of FII, he still would not be entitled to the relief requested in his Letter. An action for dissolution under DGCL § 273 is a summary proceeding that is narrow in scope.[50] In a § 273 action, this Court considers only issues immediately relevant or directly related to the dissolution at issue and not collateral matters.[51] Consequently, "a § 273 proceeding generally is not the appropriate vehicle in which to seek damages [or] . . . the imposition of a constructive trust for breach of fiduciary duty," or to assert counterclaims and defenses raising other collateral matters, including tortious conduct.[52]

Tricome has alleged wrongdoing against a number of parties, some of whom are not before this Court. To the extent his allegations do not pertain to the dissolution of FII and, instead, relate to ownership and governance of ATW or alleged tortious or criminal conduct with respect to ATW or otherwise, this narrow § 273 action is not a proper

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50 *See, e.g.*, *Friendly Ghost Enters., LLC v. McWilliams*, 2007 WL 2198767, at *2 n.6 (Del. Ch. July 27, 2007); *Xpress Mgmt., Inc. v. Hot Wings Int'l, Inc.*, 2007 WL 1660741, at *5 (Del. Ch. May 30, 2007); *Data Processing Consultants*, 1987 WL 25360, at *5 (analogizing the limited scope of § 273 to other DGCL provisions that permit summary proceedings, including 8 *Del. C.* §§ 211, 220, and 225).

51 *See Data Processing Consultants*, 1987 WL 25360, at *5 ("Indeed, claims of breach of fiduciary duty in general will not be entertained by the Court of Chancery in the context of a Section 273 proceeding."); *see also* Wolfe & Pittenger, *supra* note 32, § 8-11[a][2], at 8-237-41.

52 *See* Wolfe & Pittenger, *supra* note 32, § 8-11[a][2], at 8-238.

vehicle in which to pursue such claims.[53] Thus, there is no basis for this Court to enter a TRO of the kind Tricome requests. This decision, however, is without prejudice to his ability to pursue his claims in a separate action in whatever forum he chooses, including as part of one of the other pending actions described previously. He also is free to lodge a complaint with law enforcement authorities or professional disciplinary bodies or file a law suit against Tulskie, Quigley, FII, or any of the other persons mentioned in his Letter. Based on the procedural posture and tightly circumscribed nature of this Action under § 273, however, Tricome's ability to participate in it is very limited, if he can participate at all.

III. CONCLUSION AND ORDER

For the foregoing reasons, I deny Tricome's apparent motion to intervene under Rule 24 and his related request for a TRO. I leave open, however, the possibility that Tricome may be able to intervene in this Action to the extent necessary to confirm that any actions taken on behalf of FII that he challenges were properly authorized.

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53 For example, in the first of his nine requests for TRO-type relief, Tricome asks this Court to "[f]reeze Mr. Quigley and the Tulskie's assets due to the theft [of ATW assets] and the piercing of the corporate veil." Tricome's Letter at 6. The underlying conduct that is the subject of this request is collateral because it involves actions that Tulskie, through FII, allegedly took to steal funds from ATW. Nothing in this Letter Opinion precludes Tricome from pursuing this claim in a separate action, but he may not pursue it in this Action because the alleged conduct does not relate to FII's dissolution. The only possible exception is if there is some defect in the authorization provided to Tulskie to act on behalf of FII in connection with its dissolution.

In addition, I hereby order Tulskie, Brady, and Pileggi, either separately or collectively, to submit within 20 days of this Letter Opinion a report to apprise the Court of the status of the winding up of FII's business and the progress made on the plan of discontinuance and distribution of FII's assets approved by the Court on July 9, 2009. The report shall account for all income or assets acquired and expenditures made by FII from March 16, 2009, when this action was instituted, until the date of his report. The report also shall indicate the current status of FII's ownership interest in ATW. Upon receipt of Tulskie's status report, I will schedule a hearing pertaining to FII's dissolution at which I will expect Tulskie, Brady, and Pileggi to appear. Tricome may participate in that hearing, if he chooses, but only to the extent indicated in this Opinion.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor