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

LEO E. STRINE, JR.
CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: August 2, 2011
Date Decided: August 11, 2011

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RE: *Sheldon H. Solow v. Aspect Resources, LLC, et al.*
Civil Action No. 20397-CS

Dear Counsel:

This case was reassigned to me on February 24, 2011. At that point, the last docketed activity by the court or the parties was a January 11, 2011 letter issued by former Chancellor Chandler in which he advised the parties that although he likely had good cause to dismiss the action under Rule 41(e) for failure to prosecute,[1] he

[1] Court of Chancery Rule 41(e) provides:

> Subject to the provisions of Rules 23, 23.1 and 23.2 in each cause pending wherein no action has been taken for a period of one year, the court may upon application of any party, or on its own motion, and after reasonable notice, enter an order dismissing such cause *unless good reason for the inaction is given*, or the parties have stipulated with the approval of the court as to such matter. Ct. Ch. R. 41(e) (emphasis added).

nonetheless requested that the parties report back to him within 20 days on whether the case was still being actively pursued or an order of dismissal would be entered.[2]

None of the parties to this action, including the plaintiff, Sheldon H. Solow, ever responded to that letter,[3] and I therefore dismissed the action under Rule 41(e) in a March 9, 2011 order.[4]

Nearly four months later, on July 7, I received a letter from Solow's former counsel,[5] in which he sought, on Solow's behalf, to have my dismissal order vacated on the ground that Solow did not receive Chancellor Chandler's letter and therefore did not receive notice that his case was subject to dismissal. I responded in a letter of my own, in which I wrote:

> Mr. Solow shall explain why he has taken no action to prosecute this case for more than two years and seemingly did not even make efforts to provide Chancellor Chandler or the Register In Chancery with contact information upon assuming the obligation over two years ago of representing himself in prosecuting this case.[6]

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[2] Dkt. 131, Tran. ID 35303037, at 1 (Letter from Chancellor Chandler to Richards, Layton & Finger, P.A. and Ashby & Geddes (January 11, 2011)).
[3] Non-party Noble Energy Corporation did respond to the letter, but only to note that there were "no outstanding requests for judicial action relating to Noble or the subpoena" that had been served on it several years earlier. Dkt. 132, Tran. ID 35673176 (Letter from Noble's counsel to Chancellor Chandler (January 31, 2011)).
[4] *Solow v. Aspect Res., LLC*, C.A. No. 20397-VCS (Del. Ch. Mar. 9, 2011) (ORDER).
[5] Solow was represented in this action by the law firm of Richards, Layton & Finger, P.A. until the firm withdrew on March 5, 2009. *Solow v. Aspect Res., LLC*, C.A. No. 20397-CC (Del. Ch. Mar. 5, 2009) (ORDER).
[6] Dkt. 124, Tran. ID (Letter to all parties regarding order to vacate (July 15, 2011)).

Shortly after my letter, new counsel for Solow filed appearances on his behalf, and formally moved to vacate my dismissal order. In that motion, Solow correctly pointed out that he had in fact supplied the Register In Chancery with his address over two years ago, in March 2009, the same time he undertook the prosecution of this action *pro se*,[7] but did not receive Chancellor Chandler's January 2011 letter because it was sent to his former counsel, not to Solow's personal address.

Solow thus moves to vacate my dismissal order under Rule 60(b)(6) on the ground that he did not receive the requisite notice under Rule 41(e). Moreover, says Solow, there is "'good reason' [under Rule 41(e)] why the case should not have been dismissed," most notably the fact that Solow has now retained substituted counsel suddenly eager to prosecute this case to the end.[8]

The problem for Solow, however, is that this court's error in not acknowledging the address provided by Solow highlights the very indolence that supports the original dismissal order. Had Solow made even the smallest of efforts to prosecute this case for the more than two years that preceded my order, one suspects that this clerical mistake would have been promptly detected, and rectified. To wit, had Solow — as a plaintiff — been prosecuting the case and making filings, or retained new counsel to do so, the court would have no doubt been aware of where communications to Solow should go. But,

[7] *See* Dkt. 124, Tran. ID 24220245, at 1 (Letter from Sheldon to the Register In Chancery (March 13, 2009)).

because Solow did nothing to press his case, the administrative oversight did not get corrected. "It is settled law [in Delaware] that the trial court has discretion to dismiss an action for failure to prosecute."[9] Moreover, "[l]itigants, whether represented by counsel or appearing *pro se*, must diligently prepare their cases for trial or risk dismissal for failure to prosecute."[10]

To that point, it is undisputed that for a period of over two years — from the time Solow filed his March 13, 2009 letter with the Register In Chancery until his substituted counsel entered an appearance on his behalf in July 2011 — Solow did absolutely nothing to prosecute the case.[11] In fact, Solow only retained substituted counsel over four months *after* I dismissed the case and twelve days *after* I issued my own letter instructing Solow to explain his inaction.

To the extent that Solow now claims that he was not *originally* afforded "reasonable notice" under Rule 41(e) because he did not receive Chancellor Chandler's letter, the precise reason for my July 15 letter was to allow Solow to "explain why he has

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[8] Pl. Mem. at 1.
[9] *Draper v. Med. Ctr. of Delaware*, 767 A.2d 796, 798 (Del. 2001) (citations omitted).
[10] *Id.* at 799.
[11] *See, e.g.*, *Michaels v. Lesser*, 275 A.2d 797, 799 (Del. Ch. 1971) (dismissing an action under Rule 41(e) where "the docket show[ed] no action of any kind by plaintiffs [for approximately three years] with the exception of the two statements made by plaintiffs' counsel in response to inquiries from the Register."); *see also Park Centre Condo. Council v. Epps*, 723 A.2d 1195, 1199 (Del. Super. 1998) (dismissing an action for failure to prosecute under an analogous provision of the Superior Court Rules because "[a] case cannot be permitted to linger lifelessly on the Court's docket . . ., [and] [i]f a party's failure to pursue an action over an extended period

taken no action to prosecute this case for more than two years," i.e., to allow Solow to show the "good reason," under Rule 41(e), "for the inaction" in this case that would support vacating the dismissal order.[12] In the event that Solow failed in that endeavor, vacating the dismissal order because Solow did not receive notice *before* I dismissed his case only to enter an identical one in its place immediately after vacatur would be inefficient and unnecessary. Rather, vacatur would be ordered only if good reason for the failure to prosecute was shown.

And Solow has not shown good reason. Solow's exceedingly tardy retention of counsel, and a generalized claim that at some point during the spring and fall of 2010 the parties engaged in "substantive settlement negotiations"[13] does not constitute "good reason" for Solow's failure to do anything to move this case forward since March of 2009.[14] Delay of this kind is not a trifle, it costs adversaries and the court system time and money. Even more important, as time passes, memories dim and events recede. It is fundamentally unfair for an indolent plaintiff to demand that a defendant have a nagging worry over her head and then face proceedings at a date far distant from the relevant

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of time is based upon nothing more than gross neglect, the Court may decide dismissal is appropriate.").

[12] Ct. Ch. R. 41(e).

[13] Pl. Mem. at 4.

[14] *E.g.*, *Lesser*, 275 A.2d at 799 (observing that although the plaintiffs had filed a motion for summary judgment, that motion did not save their suit from dismissal for failure to prosecute because "it seems clear that plaintiffs have filed the present motion for summary judgment *only under pressure of the motion to dismiss for lack of prosecution*.") (emphasis added).

events.[15] It is not too much to expect a plaintiff to take his own case seriously enough to press a case forward. Over two years of doing nothing is inexcusable and prejudicial.

Because the record indisputably shows that Solow, the plaintiff, has taken no action in this case for over two years, I deny his motion to vacate under Rule 60(b)(6).

IT IS SO ORDERED.

Very truly yours,

*/s/ Leo E. Strine, Jr.*

Chancellor

LESJr/eb

[15] ARTHUR R. MILLER, ET AL., 9 FEDERAL PRACTICE & PROCEDURE § 2370 (3d ed. 2011) ("Federal Rule 41(b), which allows the court to order a dismissal because of the plaintiff's failure to prosecute, is intended as a safeguard against delay in litigation and harassment of a defendant."); *see also Parks v. Ingersoll-Rand Co.*, 380 F. Appx. 190, 194 (3d Cir. 2010) (observing in an analysis of a motion to dismiss for failure to prosecute that a plaintiff's "failure to prosecute the case [can] prejudice[]" the defendant because a "failure to prosecute [may] result[] in the irretrievable loss of evidence, the dimming of witnesses' memories, or deprivation of information through non-cooperation with discovery.").