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Case No. Multi-Case

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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September 30, 2015

Via* File & Serve*Xpress
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Mr. and Mrs. Medhat Banoub
213 Michelle Court
Newark, DE 19702

George H. Seitz, III, Esquire
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
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Re: *Tanyous v. Banoub*; C.A. No. 3402-VCN
Banoub v. Happy Child World, Inc.; C.A. No. 6769-VCN
Banoub v. Happy Child World, Inc.; C.A. No. 8076-VCN
Date Submitted: June 23, 2015

Dear Mr. and Mrs. Banoub and Mr. Seitz:

I write to set forth my thoughts on the issues addressed during the recent hearing. The tenor of that gathering was more harmonious than I had anticipated, and I left hoping that progress would be made. The absence of substantive, constructive input from the participants suggests that my optimism was not warranted.

I will deal with the issues as I understand them. Given the history of this matter, I anticipate that I will overlook some topics of disagreement. I also

concede that the combination of complicated subject matter and self-represented litigants may result in a less formal approach than one ordinarily might expect. At issue are two discovery motions under Court of Chancery Rules 34 and 36 and two motions to dismiss under Court of Chancery Rule 41(e).

1. *C.A. No. 3402-VCN*

Defendants' Motion to Compel Second Set of Production Requests turns largely on who is to pay the cost of copying. Plaintiffs shall make the records available for inspection, as they have offered. Defendants shall review the documents and identify those they want copied. Plaintiffs shall arrange for, and pay for, the copying.[1]

Without first reviewing those documents which Plaintiffs have offered to produce, Defendants cannot fairly complain about the production and cannot

[1] The Court has discretion in allocating the costs of discovery. *See, e.g.*, *Omnicare, Inc. v. Mariner Health Care Mgmt. Co.*, 2009 WL 1515609 (Del. Ch. May 29, 2009). The burden on Plaintiffs of copying, under these circumstances, is relatively minimal, and may be relatively substantial for Defendants.

identify with any particularity the documents which they are missing.[2] Thus, the Defendants' motion to compel production is denied, subject to Defendants' right to renew the motion after completing the inspection opportunity offered by Plaintiffs.

With respect to Defendants' Motion to Compel Direct Responses to Requests for Admission, some of the requests are drafted confusingly. Nonetheless, Plaintiffs must parse through them and admit the facts which can be admitted; deny the facts which can be denied; and identify those statements which are not factual or otherwise do not warrant a response. To the extent that related litigation in Egypt is at issue and the documents are in Arabic, there has been no showing that Mr. Tanyous cannot deal with the language barrier, either through paying for translation services or through assistance of his representatives in Egypt.[3]

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[2] As for Mr. Tanyous's personal records for accounts maintained in a foreign bank, Defendants have offered no plausible explanation for why those documents would be either relevant or likely to lead to the discovery of admissible evidence.

[3] *See, e.g., Kellner v. Interlakes (Canada) Realty Corp.*, 1982 WL 17860 (Del. Ch. July 6, 1982).

2. *C.A. No. 6769-VCN*

The delay in this books and records action under 8 *Del. C.* § 220 has been far too long.[4] However, a substantial part of the problem may be attributable to the self-represented litigants' lack of knowledge about the Rules and the Court's processes. As a general matter, it is the nonmoving party's obligation to justify delay.[5] Nonetheless, under the circumstances, it is not reasonable to charge the Plaintiffs with the type of responsibility for the delay that would warrant dismissal of the action. Thus, the motion to dismiss under Court of Chancery Rule 41(e) is denied.

3. *C.A. No. 8076-VCN*

This is an appraisal action. It arises from the same general facts that have resulted in the other two actions. Dismissal for failure to prosecute, especially in a case as complicated as this, is not warranted, largely for the same reasons as set

[4] Whether the books and records which the Plaintiffs seek would be better obtained through the discovery in the companion appraisal litigation is a question that need not be addressed now. It does, however, seem likely that there is substantial overlap.

[5] *See Lane v. Cancer Treatment Ctrs. of Am., Inc.*, 2000 WL 364208 (Del. Ch. Mar. 16, 2000).

forth with respect to the related Section 220 action. Accordingly, the Motion to Dismiss for Failure to Prosecute is denied.

Thus, the litigation will go forward. How the various cases, especially the appraisal action, will be brought to closure is not easy to determine. Whether it is even feasible for self-represented litigants to handle cases in the nature of appraisal is a troubling question. The answer to that question, however, is not one for the Court to reach now. It is unfair to Mr. Tanyous to allow this litigation to languish indefinitely. Thus, Mr. and Mrs. Banoub and Mr. Seitz are requested to confer in an attempt to agree upon a schedule to bring all of these matters to conclusion. If that scheduling effort is not be successful, the Court will set a schedule.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K