

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

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February 18, 2016

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Re: *Spring Real Estate, LLC d/b/a Spring Capital Group v.  
Echo/RT Holdings, LLC*  
C.A. No. 7994-VCN  
Date Submitted: December 10, 2015

Dear Counsel:

Nominal Defendant and Cross-Claim Plaintiff RayTrans Holdings, Inc. (“Holdings”), through David M. Klauder, the Chapter 7 trustee for the bankruptcy estate of Holdings (the “Trustee”), brings cross-claims against Defendants RayTrans Distribution Services, Inc. (“RayTrans Distribution”), Echo/RT

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Holdings, LLC (“Echo/RT”), and Echo Global Logistics, Inc. (“Echo,” and together with RayTrans Distribution and Echo/RT, the “Defendants”) seeking an accounting, avoidance of certain transfers among Defendants, and an injunction prohibiting any further transfers of RayTrans assets by Defendants until all creditors of Holdings are paid in full.<sup>1</sup> Echo and Echo/RT have moved to dismiss the Cross-Claims.

## I. BACKGROUND

A brief summary of the facts follows.<sup>2</sup> Holdings, a Delaware corporation, wholly owned RayTrans Trucking, LLC (“RayTrans Trucking”), Universal Trans, LLC (“Unitrans”), and RayTrans Distribution, a now dissolved Illinois corporation.<sup>3</sup> RayTrans Distribution “provided freight brokerage and logistical services through a series of network transportation professions and RayTrans Trucking and Unitrans provided several third-party owner-operators that

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<sup>1</sup> RayTrans Holdings, Inc.’s Am. Verified Cross-Cls. Against Defs. Echo/RT Holdings, LLC, Echo Global Logistics, Inc., and RayTrans Distribution Services, Inc. (“Cross-Cls.” or the “Cross-Claims”) Wherefore clause.

<sup>2</sup> For a more detailed account, see *Spring Real Estate, LLC v. Echo/RT Hldgs., LLC*, 2013 WL 6916277 (Del. Ch. Dec. 31, 2013) (the “December 2013 Opinion”).

<sup>3</sup> Cross-Cls. ¶ 6.

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specialized in flatbed, over-dimensional, van, and automobile shipments.”<sup>4</sup> As of December 31, 2007, following certain acquisitions, RayTrans Distribution’s assets were valued at \$11,148,009.<sup>5</sup> Holdings was created on January 1, 2008, to provide corporate support to “all of the entities comprising the ‘RayTrans Distribution’ companies.”<sup>6</sup>

The Trustee alleges that, as claims of certain Holdings creditors were pending in Indiana state court, “the assets of RayTrans Trucking and Unitrans were transferred to RayTrans Distribution and in turn to Holdings.”<sup>7</sup> On June 2, 2009, also while the Indiana claims were pending, Holdings and RayTrans Distribution entered into an asset purchase agreement with Echo/RT for the sale of substantially all of RayTrans Distribution’s assets to Echo/RT for \$12,550,000<sup>8</sup> and the

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<sup>4</sup> *Id.* ¶ 14.

<sup>5</sup> *Id.* ¶ 18.

<sup>6</sup> *Id.* ¶ 19.

<sup>7</sup> *Id.* ¶ 24.

<sup>8</sup> This \$12,550,000 figure is based on an initial payment of \$6,050,000 and an additional \$6.5 million provided certain earn outs are satisfied. Defs. Echo/RT Holdings, LLC’s and Echo Global Logistics, Inc.’s Opening Br. in Supp. of Their Mot. to Dismiss RayTrans Holdings, Inc.’s Am. Verified Cross-Cls. (“Defs.’ Opening Br.”) Ex. A (“Asset Purchase Agmt.”) § 1.5.

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assumption of certain liabilities (the “APA”).<sup>9</sup> Echo/RT made an initial payment of \$6,050,000 as required under the APA, but no further payments were made. As a result of the APA, the Trustee continues, RayTrans Distribution dissolved and, on April 25, 2013, Holdings filed for Chapter 7 bankruptcy.<sup>10</sup> Holdings’ bankruptcy schedules list zero dollars in assets and approximately \$3,126,000 in liabilities, all of which are unsecured.<sup>11</sup> The Trustee concludes that the APA has allowed Echo/RT to “enjoy the benefits of the Raytrans Distribution companies’ assets that were secretly siphoned off to [Echo/RT], leaving Holdings unable to fulfill its obligations to [its] creditors.”<sup>12</sup>

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<sup>9</sup> Cross-Cls. ¶¶ 4-5, 7, 25. Prior to the APA, all RayTrans companies were controlled by James A. Ray (“Ray”). *Id.* ¶ 20. The Trustee alleges that Echo was a party to the APA because it guaranteed the purchase. David M. Klauder, In His Capacity as the Chapter 7 Trustee for the Bankruptcy Estate of RayTrans Holdings, Inc.’s Opp’n to Defs. Echo/RT Holdings, LLC’s and Echo Global Logistics, Inc.’s Mot. to Dismiss (“Pl.’s Answering Br.”) 6; Asset Purchase Agmt. § 11.16.

<sup>10</sup> Cross-Cls. ¶¶ 1, 8-10.

<sup>11</sup> *Id.* ¶ 13.

<sup>12</sup> *Id.* ¶ 27.

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## II. PROCEDURAL HISTORY

On October 31, 2012, Spring Real Estate, LLC d/b/a Spring Capital Group (“Spring Capital”) filed a complaint against Echo/RT and Echo, alleging successor liability and fraudulent transfer in connection with the APA.<sup>13</sup> Holdings filed for Chapter 7 bankruptcy on April 25, 2013, and the Trustee filed his claims against Defendants on September 10, 2013. On December 31, 2013, the Court issued the December 2013 Opinion dismissing with prejudice Spring Capital’s claims.<sup>14</sup> On April 10, 2014, Holdings filed a Notice of Removal of its Cross-Claims with the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).<sup>15</sup> On June 18, 2014, the Bankruptcy Court remanded the Cross-Claims, noting the state law nature of the claims and that “federal courts would not have jurisdiction over the Cross-Claims but for its relation to the

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<sup>13</sup> Verified Compl. ¶¶ 29-40. On April 2, 2013, Spring Capital filed an amended complaint following Echo/RT’s and Echo’s Motion for Judgment on the Pleadings. Spring Capital became a creditor of RayTrans Distribution by purchasing default judgments entered in favor of the bankruptcy estates of Sierra Concrete Design, Inc. and Trevi Architectural, Inc. *Id.* ¶¶ 2, 6.

<sup>14</sup> *See Spring Real Estate*, 2013 WL 6916277, at \*1.

<sup>15</sup> Notice of Filing of Notice of Removal 1-2.

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bankruptcy case.”<sup>16</sup> On November 3, 2014, Holdings, through the Trustee, filed the Cross-Claims which are challenged by the present Motion to Dismiss. On April 24, 2015, Holdings, through the Trustee, filed in the Bankruptcy Court a complaint seeking to avoid the same transfer at issue here pursuant to federal, as opposed to state, fraudulent transfer law.<sup>17</sup>

### **III. CONTENTIONS**

Echo/RT and Echo (the “Echo Defendants”) move to dismiss the Trustee’s Cross-Claims asserting that the Trustee lacks standing to assert that the APA amounted to a fraudulent transfer, the APA did not constitute or accomplish a fraudulent transfer, and Echo is not liable under the APA.<sup>18</sup> The Trustee, on behalf of Holdings’ creditors, argues in response that the automatic stay imposed by

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<sup>16</sup> *RayTrans Hldgs., Inc. v. Echo/RT Hldgs., LLC*, Case No. 13-11084(CSS) (Bankr. D. Del. filed June 20, 2014) (order remanding the cross-claims).

<sup>17</sup> Letter From Scott B. Czerwonka, Esquire, enclosing a copy of the Complaint filed in the Bankruptcy Court on April 24, 2015, at Ex. A (July 8, 2015). The Bankruptcy Court’s remand occurred before the Trustee’s filing in the Bankruptcy Court of federal fraudulent transfer claims regarding the same transaction. In light of that subsequent filing, abstaining from ruling on the Trustee’s state law claims asserted here until the Bankruptcy Court rules on the federal claims may make sense. Nonetheless, because the case was remanded and the parties agree that it is ripe to proceed, the Court will do so.

<sup>18</sup> Defs.’ Opening Br. 10-11, 19.

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Holdings' bankruptcy filing rendered the December 2013 Opinion "void by operation of law," the Trustee has exclusive standing to assert the Cross-Claims, and the APA violated Delaware and Illinois fraudulent transfer laws.<sup>19</sup>

#### IV. ANALYSIS

##### A. *Legal Standard on Defendants' Motion to Dismiss*

Delaware courts, on a motion to dismiss, accept as true all well-pleaded factual allegations in the complaint; if such facts are sufficient to support a claim upon which relief may be granted, the court will deny the motion.<sup>20</sup> The court will not, however, "accept every strained interpretation proposed by the plaintiff."<sup>21</sup> "If the well-pled factual allegations of the complaint would entitle the plaintiff to relief under a reasonably conceivable set of circumstances, the court must deny the motion to dismiss."<sup>22</sup>

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<sup>19</sup> Pl.'s Answering Br. 12-14, 17.

<sup>20</sup> *Caspian Alpha Long Credit Fund, L.P. v. GS Mezzanine P'rs 2006, L.P.*, 93 A.3d 1203, 1205 (Del. 2014).

<sup>21</sup> *Id.*

<sup>22</sup> *Stephen G. Perlman, Rearden LLC v. Vox Media, Inc.*, 2015 WL 5724838, at \*9 (Del. Ch. Sept. 30, 2015).

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*B. The Trustee Does Not Have Standing to Sue For Fraudulent Transfer  
on Behalf of RayTrans Distribution*

The Trustee argues that it has authority to bring fraudulent transfer claims to avoid a transfer of assets from RayTrans Distribution, Holdings' subsidiary, to Echo/RT. Specifically, the Trustee contends that bankruptcy trustees "may avoid any transfer of an interest of the debtor in property . . . that is voidable under applicable [state] law,"<sup>23</sup> and that the phrase "an interest of the debtor in property" includes "all legal or equitable interests of the debtor in property as of the commencement of the case."<sup>24</sup> The Trustee deduces therefrom, in conclusory fashion, that Holdings' interest in RayTrans Distribution's stock constitutes property of Holdings' bankruptcy estate, and that because the value of that stock was diluted by the transfers pursuant to the APA, it has authority to unwind such transfers.<sup>25</sup>

While the Trustee accurately defines the property in the debtor's estate, his application of the definition to the assets in question is contrary to established law.

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<sup>23</sup> Pl.'s Answering Br. 15 (quoting 11 U.S.C. § 544(b)).

<sup>24</sup> *Id.* (quoting 11 U.S.C. § 541(a)(1)).

<sup>25</sup> *Id.*

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A challenged transfer “must be a transfer ‘of an interest of the debtor in property.’”<sup>26</sup> Property of the debtor “is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings.”<sup>27</sup> Accordingly, the debtor’s property consists of “all legal or equitable interests of the debtor in property as of the commencement of the case,” regardless of where it is located or by whom it is held.<sup>28</sup> Courts first look to state law “in determining whether the debtor has an interest in property.”<sup>29</sup> Under state law,

[t]he property of a debtor’s estate generally does not include the property of the debtor’s non-filing subsidiaries. The debtor’s estate includes the debtor’s equity interest in its subsidiary, but not the subsidiary’s assets. This distinction flows from the basic principle under state corporate law that a corporation is a separate legal entity from its shareholders. Simply put, a “parent’s ownership of all of the

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<sup>26</sup> *In re Am. Int’l Refinery*, 402 B.R. 728, 741 (Bankr. W.D. La. 2008) (emphasis removed) (quoting 11 U.S.C. § 547(b)).

<sup>27</sup> *Begier v. I.R.S.*, 496 U.S. 53, 58 (1990). Essentially, an interest is property of the debtor “for purposes of Section 547(b) if its transfer will deprive the bankruptcy estate of something which could otherwise be used to satisfy the claims of creditors.” *In re Am. Int’l Refinery*, 402 B.R. at 741 (quoting *In re Bullion Reserve of N. Am.*, 836 F.2d 1214, 1217 (9th Cir. 1988)).

<sup>28</sup> 11 U.S.C. § 541(a).

<sup>29</sup> *In re Am. Int’l Refinery*, 402 B.R. at 742.

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shares of the subsidiary does not make the subsidiary's assets the parent's."<sup>30</sup>

Further, an act of a subsidiary that decreases the value of the shares of the subsidiary owned by its parent does not confer to a trustee of the parent standing to challenge the subsidiary's transfer.<sup>31</sup>

One exception exists to the general rule that a parent has no property interest in the assets of a subsidiary. This general rule is based on the premise that a corporation's assets are owned by the corporation, which is considered by state law to be a legal entity distinct from its shareholders.<sup>32</sup> Thus, where the subsidiary is a mere alter ego of the parent to the extent that the Court may engage in "reverse

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<sup>30</sup> *Id.* (quoting *In re Regency Hldgs. (Cayman), Inc.*, 216 B.R. 371, 375 (Bankr. S.D.N.Y. 1998)); accord *Kreisler v. Goldberg*, 478 F.3d 209, 214 (4th Cir. 2007) ("The fact that a parent corporation has an ownership interest in a subsidiary, however, does not give the parent any direct interest in the *assets* of the subsidiary.").

<sup>31</sup> *Kreisler*, 478 F.3d at 214 ("[A]n automatic stay does not prevent a non-debtor company from taking an action that might affect the value of a debtor's stock.").

<sup>32</sup> *Id.* at 213 ("It is a fundamental precept of corporate law that each corporation is a separate legal entity with its own debts and assets, even when such corporation is wholly owned by another corporate entity."); *In re Am. Int'l Refinery*, 402 B.R. at 742; *PSL Air Lease Corp. v. E.B.R. Corp.*, 1972 WL 124882, at \*6 (Del. Super. Sept. 28, 1972) ("As a rule a corporation will be viewed as a separate legal entity until sufficient reason to the contrary exists."), *aff'd*, 313 A.2d 893 (Del. 1973).

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veil-piercing,” the Court may treat the assets of the subsidiary as those of the parent for purposes of a trustee’s standing to void allegedly fraudulent transfers of such assets.<sup>33</sup>

Here, the Trustee asserts an interest not in Holdings’ assets, but in those of RayTrans Distribution, Holdings’ wholly-owned subsidiary.<sup>34</sup> Nowhere in the Cross-Claims or the Trustee’s Answering Brief does the Trustee allege that RayTrans Distribution was an “alter ego” of Holdings, or that the Court should for any other reason disregard the separate corporate structures.<sup>35</sup> Thus, Holdings has no direct interest in the assets of RayTrans Distribution, and the Trustee has no

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<sup>33</sup> *In re Am. Int’l Refinery*, 402 B.R. at 742-46.

<sup>34</sup> The Trustee, in his Cross-Claims, alleges that Holdings is a creditor of RayTrans Distribution, but this allegation is conclusory and based solely the transfer of RayTrans Distribution’s assets under the APA. Cross-Cls. ¶ 33. Nowhere does the Trustee allege that Holdings is entitled to payment from RayTrans Distribution other than in connection with the APA, and the Trustee’s sole argument in his Answering Brief supporting his standing to bring the Cross-Claims is Holdings’ ownership of RayTrans Distribution’s stock. Pl.’s Answering Br. 15.

<sup>35</sup> *BASF Corp. v. POSM II Properties P’ship, L.P.*, 2009 WL 522721, at \*8 n.50 (Del. Ch. Mar. 3, 2009) (“Delaware public policy does not lightly disregard the separate legal existence of corporations.”). Although RayTrans Distribution is now dissolved, the parties make no reference to the current state of the company’s assets or whether such assets succeed to Holdings.

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standing to assert that the Defendants' transfer of assets pursuant to the APA was fraudulent.

*C. RayTrans Distribution's Transfer of Assets Pursuant to the APA  
was not Fraudulent*

Even assuming the Trustee has authority to challenge transfers made by Holdings' subsidiaries, his claims for fraudulent transfer fail to state a claim upon which relief may be granted.<sup>36</sup> The Court, in the December 2013 Opinion, dismissed for failure to state a claim a challenge to the precise transfer at issue here pursuant to the same legal theory.<sup>37</sup> The result is no different this time around.

First, the Trustee argues that reliance on the December 2013 Opinion is misplaced because that case is void by operation of the automatic stay invoked upon Holdings' Chapter 7 filing.<sup>38</sup> Whether or not this argument is valid,<sup>39</sup> the

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<sup>36</sup> The Echo Defendants assert, and the Trustee does not challenge, that the Delaware and Illinois fraudulent transfer statutes are "essentially the same." Defs.' Opening Br. 11. The Court therefore treats them as such for purposes of this Motion to Dismiss.

<sup>37</sup> *Spring Real Estate*, 2013 WL 6916277, at \*6-7.

<sup>38</sup> Pl.'s Answering Br. 11-13.

<sup>39</sup> Although the Court need not reach the merits of this argument, it notes that while an automatic stay precludes "the commencement or continuation . . . of a judicial . . . action or proceeding against the debtor that was or could have been

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Court's reliance on the December 2013 Opinion is not due to the opinion's precedential value—it is merely a convenient analytical tool given its nearly identical factual and legal context.

To support a claim for fraudulent transfer, the Trustee, at this stage in the litigation, must allege facts from which the Court may draw a reasonable inference that the transfer was made “(1) [w]ith actual intent to hinder, delay or defraud any creditor of the debtor; or (2) [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor” either (a) was insolvent or became insolvent as a result of the transfer, (b) engaged in or was about to engage in a transaction with respect to which its remaining assets would be unreasonably

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commenced before the commencement of the case, . . . [11 U.S.C. § 362(a)(1)] is generally said to be available only to the debtor, not third party defendants or co-defendants.” *Kreiser*, 478 F.3d at 213 (first and second alterations in original) (citation omitted). While an exception exists when “there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real-party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor,” that is not the case here. *Id.*

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small; or (c) intended to incur or reasonably should have believed it would incur debts beyond its ability to pay.<sup>40</sup>

The Trustee argues that his allegations in the Cross-Claims that RayTrans Distribution's assets were valued at \$11,148,009 eighteen months before entering into the APA, that the APA "called for" a payment of \$12,550,000, and that Holdings owes in excess of \$3,126,000 to its creditors support a claim for fraudulent transfer. He further contends that "actual intent to defraud" exists because Ray retained possession of the transferred property by accepting post-transaction employment with Echo/RT, the transfer was concealed from Holdings' creditors and made during a creditor lawsuit, RayTrans Distribution and Holdings became insolvent shortly after the transfer was made, and the transfer was made shortly before a substantial debt was incurred (*i.e.*, a judgment in a creditor's lawsuit). The crux of the Trustee's argument is that Ray, as a controller of Holdings and therefore RayTrans Distribution, transferred RayTrans Distribution's

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<sup>40</sup> 6 *Del. C.* § 1304; *Seiden v. Kaneko*, 2015 WL 7289338, at \*13 (Del. Ch. Nov. 3, 2015); *In re Plassein Int'l Corp.*, 428 B.R. 64, 67 (D. Del. 2010).

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assets to Echo/RT for less than reasonably equivalent value, and then retained such assets by accepting employment with Echo/RT.

This argument fails on both accounts. First, the APA provided reasonably equivalent value for the assets transferred. Although Echo/RT paid only \$6,050,000, the APA provided for a purchase price of up to \$12,550,000, provided certain earn-outs were accomplished.<sup>41</sup> Further, the \$11,148,009 valuation of RayTrans Distribution's assets took place on December 31, 2007, eighteen months before entering into the APA.<sup>42</sup> Finally, whether RayTrans Distribution properly allocated the proceeds of the transfer to its creditors is of no consequence to whether the payment received in consideration for its assets was reasonably equivalent in value. As the Court stated in the December 2013 Opinion, "what a debtor like RayTrans [Distribution] decides to do with money it receives from the

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<sup>41</sup> Asset Purchase Agmt. §§ 1.5, 1.7(b)-(c). Even absent the earn-out provisions, however, the Trustee has not alleged facts from which the Court may reasonably infer that a purchase price of over \$6 million is not reasonably equivalent value in return for RayTrans Distribution's assets.

<sup>42</sup> Cross-Cls. ¶ 18.

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sale of assets has no bearing on whether the amount paid is a fair price or reasonably equivalent value for the assets sold.”<sup>43</sup>

Second, the Cross-Claims are insufficient to support a reasonable inference that RayTrans Distribution intended to defraud its creditors. Such intent can be inferred from certain factors listed in Delaware’s and Illinois’s fraudulent transfer statutes.<sup>44</sup> The Cross-Claims allege that the facts summarized above support the Trustee’s argument that the transfer was intentionally fraudulent. These facts, however, do not provide a sufficient basis from which the Court may infer that the APA was entered into with the intent to fraudulently transfer RayTrans Distribution’s assets.<sup>45</sup> While post-transaction insolvency may suggest that a transfer is fraudulent, the transfer here was for reasonably equivalent value, and as stated, what the debtor does with the money it receives has no bearing on the

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<sup>43</sup> *Spring Real Estate*, 2013 WL 6916277, at \*7 (internal quotation marks omitted). Further, “[a]ny argument that the Purchase Agreement was not an arm’s-length transaction is unsupported by specific allegations and thus without merit.” *Id.* The fact that Ray accepted employment with Echo/RT is insufficient, without more, to infer that the transaction took place other than at arm’s length.

<sup>44</sup> 6 *Del. C.* § 1304(b); 740 *ILCS* 160/5(b).

<sup>45</sup> Cross-Cls. ¶ 35.

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adequacy of the consideration.<sup>46</sup> Further, that Holdings' or RayTrans Distribution's creditors may not have known of the APA is not itself sufficient to infer that the APA was intended to defraud RayTrans Distribution's creditors, especially where the value received was reasonably equivalent to the value of the assets sold.<sup>47</sup> Therefore, because RayTrans Distribution had no intent to defraud its creditors and received reasonably equivalent value in return for its assets, the APA did not amount to a fraudulent transfer.

*D. The Trustee's Request for Leave to Amend*

The Trustee, in his Answering Brief, requests leave to amend the Cross-Claims. He supports this request by claiming that he has "been provided little to no documentation from Mr. Ray," and that he is "hopeful that documentation relating to the relationship between Defendants and [Holdings] may be produced through discovery."<sup>48</sup> Court of Chancery Rule 15(aaa) provides that a party may

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<sup>46</sup> See *supra* text accompanying note 43.

<sup>47</sup> The Trustee also alleges a claim for constructive fraudulent transfer. See Pl.'s Answering Br. 22. Because the value received under the APA was reasonably equivalent to the assets transferred, however, the Trustee's constructive fraudulent transfer claim fails as well.

<sup>48</sup> *Id.* at 26.

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“file an amended complaint, or a motion to amend in conformity with this Rule, no later than the time such party’s answering brief . . . is due.” Should the party fail to do so and the Court subsequently dismisses the pleading under Rule 12(b)(6), “such dismissal shall be with prejudice . . . unless the Court, for good cause shown, shall find that dismissal with prejudice would not be just under all the circumstances.”<sup>49</sup>

The Trustee chose neither to file amended cross-claims nor to move to amend in accordance with Rule 15. Instead, he lodged his Answering Brief in opposition to the Motion to Dismiss. Accordingly, his request for leave to amend is subject to Rule 15(aaa)’s “good cause” requirement. The Trustee’s allegation of insufficient information fails to show good cause as to why the Court should grant his request. First, the request does not address how granting leave to amend would rectify the Trustee’s standing shortfalls. Second, the Trustee knew of the alleged information deficit at the time he filed the Cross-Claims. Moreover, nowhere does the Trustee explain exactly what he expects to find if he receives additional

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<sup>49</sup> Ct. Ch. R. 15(aaa).

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information, or why he would be entitled to discovery. Accordingly, the Trustee's request for leave to amend the Cross-Claims is denied.<sup>50</sup>

## **V. CONCLUSION**

For the foregoing reasons, the Echo Defendants' motion to dismiss the Trustee's Cross-Claims is granted.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Register in Chancery-K

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<sup>50</sup> Even if the Trustee's request were subject instead to Rule 15(a)'s "leave shall be freely given when justice so requires" standard, it would likely still fail for lack of any indication of what it would encompass or how it would address the standing shortfalls.