

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

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: May 10, 2022

Date Decided: May 17, 2022

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RE: *Badr Abdelhameed Dhia Jafar v. Vatican Challenge 2017, LLC*,
C.A. No. 2020-0151-SG

Dear Counsel:

This letter briefly considers, and denies, the Plaintiff's Application for Certification of an Interlocutory Appeal and Request for Stay Pending Appeal (the "Application").¹ The Application requests that I certify for interlocutory appeal an April 25, 2022 order implementing my letter opinions dated February 8, 2022 and March 4, 2022 (together with the implementing order, the "Opinions").² On May 10,

¹ Pl.'s Appl. Certification Interlocutory Appeal Request Stay Pending Appeal, Dkt. No. 77 [hereinafter the "Application"].

² See Order Granting Receiver's Fees Costs, Dkt. No. 75 [hereinafter the "Order"]; *Jafar v. Vatican Challenge 2017, LLC*, 2022 WL 365142 (Del. Ch. Feb. 8, 2022); *Jafar v. Vatican Challenge 2017, LLC*, 2022 WL 630371 (Del. Ch. Mar. 4, 2022).

2022, the former receiver in this matter (the “Receiver”) filed an opposition to the Application.³ The Receiver, I note, characterizes the Opinions as constituting a partial final, rather than interlocutory, decision. The Plaintiff is the master of his appeal, however, and I consider the Application as submitted, under Supreme Court 42(b), without consideration of whether the issue appealed is truly interlocutory.

The Application seeks interlocutory review of my holdings in the Opinions shifting some fees incurred by the Receiver in this matter from the Defendant to the Plaintiff.⁴ Specifically, I held that the Plaintiff is required to pay 98,841.60 in fees and costs incurred by the Receiver in this matter, with interest at the legal rate beginning to accrue sixty days after February 9, 2022.⁵ The Application also seeks a limited stay of the Opinions pending resolution of the appeal.⁶ For the reasons set forth below, I decline to certify an interlocutory appeal of the Opinions, and deny the stay request.

I. ANALYSIS

Supreme Court Rule 42(b)(i) states that interlocutory appeals shall not be certified “unless the order of the trial court decides a substantial issue of material

³ Former Receiver’s Response Opp. Pl.’s Appl. Interlocutory Appeal Request Stay Pending Appeal, Dkt. No. 79.

⁴ Appl. ¶ 1.

⁵ Order ¶ 1.

⁶ Appl. ¶ 2.

importance that merits appellate review before a final judgment.”⁷ Rule 42(b)(ii) cautions that “[i]nterlocutory appeals should be exceptional, not routine, because they disrupt the normal procession of litigation, cause delay, and can threaten to exhaust scarce party and judicial resources.”⁸ In deciding whether to certify an interlocutory appeal, this Court, consistent with the Rule, considers whether the following factors apply:

(A) The interlocutory order involves a question of law resolved for the first time in this State; (B) The decisions of the trial courts are conflicting upon the question of law; (C) The question of law relates to the constitutionality, construction, or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order; (D) The interlocutory order has sustained the controverted jurisdiction of the trial court; (E) The interlocutory order has reversed or set aside a prior decision of the trial court, a jury, or an administrative agency from which an appeal was taken to the trial court which had decided a significant issue and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; (F) The interlocutory order has vacated or opened a judgment of the trial court; (G) Review of the interlocutory order may terminate the litigation; or (H) Review of the interlocutory order may serve considerations of justice.⁹

“Once the Court considers these factors and conducts its ‘own assessment of the most efficient and just schedule to resolve the case,’ the Court must then consider

⁷ Supr. Ct. Rule 42(b)(i).

⁸ Supr. Ct. Rule 42(b)(ii).

⁹ Supr. Ct. Rule 42(b)(iii)(A)–(H).

whether the likely benefits of interlocutory review outweigh the likely costs.”¹⁰ “If the balance is uncertain, the trial court should refuse to certify the interlocutory appeal.”¹¹

A. The Opinions Did Not Decide a Substantial Issue of Material Importance.

This is a books-and-records action under Section 220. The Defendant LLC defaulted. The Plaintiff requested that Alisa Moen be designated Receiver in order to satisfy the Plaintiff’s record demands. The Receiver did her duty, incurring legal fees. The implementing Order of the Court put the burden on the LLC to pay the Receiver. No payment, however, was forthcoming. The Receiver sought her fees from the Plaintiff. In equity, I shifted most of these costs onto the Plaintiff for whose benefit and at whose request they were incurred, with a right of recovery on the Plaintiff’s part against the LLC. Accordingly, I have ordered the Plaintiff to make a payment to the Receiver. This order, embodied in the Opinions, decides a substantial issue, but one that is collateral to the issues under Section 220, and therefore does not support interlocutory appellate review.¹²

¹⁰ *Tetragon Fin. Grp. Ltd. v. Ripple Labs Inc.*, 2021 WL 942791, at *2 (Del. Ch. Mar. 11, 2021).

¹¹ Supr. Ct. Rule 42(b)(iii).

¹² *In re Delaware Pub. Sch. Litig.*, 2022 WL 1220075, at *1 (Del. Ch. Apr. 26, 2022) (interlocutory appeal certification denied because challenged opinion awarding fees did not decide a “substantial issue” relating “to the merits of the case”).

B. The Application Fails to Establish Any of the Rule 42(b)(iii) Factors.

The Plaintiff cites only one Rule 42(b)(iii) factor—that appeal is necessary in service to “considerations of justice.”¹³ The “justice” referenced is the Plaintiff’s desire to avoid paying the Receiver, based on what it considers an erroneous decision. This is understandable, but does not support interlocutory appeal. This action is largely at an end. Pending is the Plaintiff’s motion to add the principal of the LLC as a party defendant, from whom he will attempt to recoup his payment to the Receiver. If he is successful, any appeal will likely be moot. Otherwise, and if the Plaintiff is correct concerning error in the Opinions, presumably the Plaintiff may recoup any payment following an appeal of a final judgement. Accordingly, I deny certification under Rule 42. An Order is attached.

C. The Request for a Stay Pending Appeal is Denied.

I consider this request under Supreme Court Rule 42. That analysis requires my consideration of the four factors set forth in *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Commission*: (1) the likelihood of success on the merits of the appeal; (2) whether Plaintiffs would suffer irreparable harm if the injunction is not granted; (3) whether Defendants would suffer substantial harm if the injunction is granted; and (4) whether the injunction would serve the public interest.¹⁴

¹³ See Supr. Ct. Rule 42(b)(iii)(H).

¹⁴ 741 A.2d 356, 357–59 (Del. 1998).

For purposes of my analysis, I assume without deciding that the likelihood of success on appeal is high. None of the other *Kirpat* factors favor a stay.

Accordingly, I deny the request.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

cc: All counsel of record (by *File & ServeXpress*)

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

BADR ABDELHAMEED DHIA)	
JAFAR,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2020-0151-VCG
)	
VATICAN CHALLENGE 2017, LLC,)	
)	
Defendant.)	

**ORDER DENYING LEAVE TO APPEAL FROM INTERLOCUTORY
ORDER**

This seventeenth day of May, 2022, the Plaintiff Badr Abdelhameed Dhia Jafar having made application under Rule 42 of the Supreme Court for an order certifying an appeal from the interlocutory order of this Court, dated April 25, 2022; and the Court having found that such order does not decide a substantial issue of material importance regarding the merits of this action, and that none of the criteria of Supreme Court Rule 42(b)(iii) apply;

IT IS ORDERED that the Court’s order of April 25, 2022, is hereby not certified to the Supreme Court of the State of Delaware for disposition in accordance with Rule 42 of that Court.

/s/ Sam Glasscock III
Vice Chancellor