

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

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Submitted: March 15, 2006
Decided: April 3, 2006

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**RE: *Parfi Holding AB, Gunnar Gillberg, Plenteous Corp. and Grandsen, Ltd.
v. Mirror Image Internet, Inc., Xcelera.Com, Inc., Alexander M. Vik,
Gustav Vik and Hans Magnus Fajerson***
C.A. No. 18507

Dear Counsel and Plaintiffs:

This matter is before the court on exceptions from the report of Special Master Paul R. Regan. Professor Regan was appointed as Special Master to hear in the first instance the motion of plaintiffs' counsel, Lieff, Cabraser, Heimann & Bernstein, to withdraw its representation of the plaintiffs in this action. That appointment was designed to be as protective of the plaintiffs as possible — permitting the plaintiffs and Lieff Cabraser a chance to air their differences in a proceeding that did not involve me as the trial judge. If the non-prevailing party before the Special Master chose not to take exception to his ruling, there would have been no reason for me to consider the motion or

read the record relevant to it, which necessarily involved a good deal of attorney-client communications.

In his well-reasoned, restrained, and thorough opinion, the Special Master concluded that the motion for withdrawal should be granted. The plaintiffs did not accept that ruling and have filed exceptions.

In his opinion, the Special Master concluded that Lieff Cabraser had established adequate grounds for withdrawal under Rule 1.16 of the Delaware Lawyers' Rules of Professional Conduct. Specifically, the Special Master found that Lieff Cabraser's desire to withdraw was appropriate under Rule 1.16(b)(4), which permits withdrawal when a "client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement," Rule 1.16(b)(6), which permits withdrawal when the "representation . . . has been rendered unreasonably difficult by the client," and Rule 1.16(b)(7), which permits withdrawal when other good cause exists.

Per *DiGiacobbe v. Sestak*, I must review the Special Master's rulings on a de novo basis.¹ Being faithful to that mandate, I have reviewed the voluminous record presented to the Special Master and the relevant law. That record is, it can be fairly said, one of the most extensive ever compiled in the context of a motion for counsel's withdrawal filed in this court. A review of that record reveals abundant support for the Special Master's conclusions. The plaintiffs' own communications to Lieff Cabraser constitute irrefutable support for the Special Master's conclusions regarding the propriety of Lieff Cabraser's request for withdrawal under the Delaware Lawyers' Rules of Professional Conduct.

¹ *DiGiacobbe v. Sestak*, 743 A.2d 180, 181 (Del. 1999).

Given the extensive and well-documented findings of the Special Master, there is no reason for me to dilate on the record evidence that indisputably demonstrates that his decision was correct as a matter of law.² What does bear mentioning is that the plaintiffs have advanced arguments regarding the fairness with which the Special Master proceeded.³ This is regrettable and consistent with the plaintiffs' attacks on Lieff Cabraser during the course of their relationship with that firm. A de novo review indicates that the Special Master went out of his way to permit the plaintiffs to present abundant evidence and argumentation, demonstrated great sensitivity to the plaintiffs' own desire to limit the exposure of attorney-client communications in the Special Master's Report, and carefully and respectfully considered the myriad arguments the plaintiffs made, both before his initial draft report and when the plaintiffs filed exceptions to his draft report. I find no reasonable basis for the plaintiffs' challenge to the fairness of the proceedings before the Special Master, who completed his duties in a swift, professional, and fair manner.

Unfortunately, this litigation has been stalled for a long period of time now. Although some of the delay has resulted from the typical hiccups of complex litigation, most of the delay has been attributable to conduct by the plaintiffs themselves. Although

² I will not address the plaintiffs' numerous exceptions to the Special Master's Report individually. The rambling exceptions do not raise issues that undermine the Special Master's well-reasoned conclusion or that bear discussion. Rather, they all tend to demonstrate the correctness of the Special Master's rulings. For example, for the first time in their reply brief, the plaintiffs raise a frivolous challenge to the jurisdiction of this court to consider Lieff Cabraser's motion to withdraw. *See* Plaintiffs' Reply Brief 7-8.

³ For example, the plaintiffs erroneously accuse the Special Master of writing "a passionate submission of the kind a counsel would make on the part of his client replete with the prejudicial expressions, omissions, distortions, mischaracterizations and selective use of evidence." Plaintiffs' Exceptions to Final Report 7 (filed on Jan. 24, 2006).

the defendants advanced colorable arguments as to why that conduct justified dismissal of this action, this court did not grant the defendants' motion to dismiss this action, but instead set in place a process of discovery during which a record could be developed to assess what, if any, redress should be afforded the defendants due to the plaintiffs' approach to this litigation and a related arbitration. As the Special Master observed, the plaintiffs frustrated that process to the detriment of the progression of their own case.

Now, having comported themselves in a manner that fully justifies Lief Cabraser's motion for withdrawal, the plaintiffs, who are all corporate entities purporting to serve as derivative plaintiffs (i.e., as fiduciaries), must find successor counsel or this action cannot continue.⁴ The plaintiffs have been on notice for a lengthy period of time that they should be making arrangements in the event that Lief Cabraser's motion was granted. Given that reality, the plaintiffs are provided six weeks to find successor counsel.⁵ If successor counsel does not enter an appearance by May 15, 2006, then this action will be dismissed.

⁴ In Delaware, artificial entities must be represented by counsel. *See Transpolymer Indus., Inc. v. Chapel Main Corp.*, 582 A.2d 936 (table), 1990 WL 168276, at *1 (Del. Sep. 8, 1990); *Mateson v. Mateson*, 1997 WL 225752, at *1 (Del. Ch. Apr. 29, 1997) (noting that "in no event may the corporation appear pro se"). A logical extension of this requirement is that a derivative plaintiff, who steps into the shoes of the corporation, also must be represented by counsel. *See Phillips v. Tobin*, 548 F.2d 408, 411-12 (2d Cir. 1976) ("Courts have repeatedly held that the substantive right in a stockholder's derivative suit is that of the corporation . . . Since a corporation may not appear except through an attorney, likewise the representative shareholder cannot appear without an attorney.").

⁵ The plaintiffs' claim that they cannot find successor counsel rings hollow. The ownership of the claims the plaintiffs have advanced is now highly concentrated. If those claims are really worth the half-billion dollars the plaintiffs have claimed, or even a tenth or less of that amount on an expected value basis, the plaintiffs can raise capital from their equity investors to fund the retention of substitute counsel on a non-contingent basis. Moreover, to the extent that the plaintiffs' own torpor and other conduct makes it difficult to obtain successor counsel on a

Finally, the Delaware lawyer who has acted as local counsel for the plaintiffs, Melanie Sharp, has moved to withdraw. Ms. Sharp did not move to withdraw earlier because she was needed to play the delicate and awkward role of acting as a conduit for the plaintiffs and Lieff Cabraser during the pendency of the motion this opinion resolves. It obviously would be inequitable and utterly inconsistent with the basis on which she was retained for Ms. Sharp to be forced to continue this litigation on her own. Moreover, the same reasons that warrant Lieff Cabraser's withdrawal also justify Ms. Sharp's. Her motion to withdraw is hereby GRANTED.

For all these reasons, the exceptions to the Special Master's Report are denied. Ms. Sharp shall deliver this opinion to the plaintiffs immediately and certify for the record that she has done so. The plaintiffs shall obtain successor counsel by May 15, 2006. If the plaintiffs do not obtain successor counsel by that date, the defendants shall submit an order providing for the dismissal of this action.

IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor

contingent or non-contingent basis, that is not the fault of Lieff Cabraser, the Special Master, or this court. In this regard, there is no reliable evidence that the plaintiffs have made serious efforts to find successor counsel or to secure funding for that purpose. This is not a case involving an indigent person facing eviction or criminal prosecution. Rather, this is a corporate case involving plaintiffs who are sophisticated participants in commerce. Plenty of businesses and middle-income and even affluent individuals must carefully consider whether the expected value of their claims justifies going out-of-pocket to pay the required prosecution costs. The plaintiffs here are simply in that typical boat as to both their claims here and their overlapping request for damages in arbitration.