

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

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Peter J. Walsh, Jr.
Melony R. Anderson
Potter Anderson & Corroon LLP
1313 North Market Street, 6th Floor
Wilmington, DE 19899-0951

David L. Finger
Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-1155

Re: *Gomi Investors, LLC, et al. v. Schimmell Holdings, Inc., et al.*
Civil Action No. 2278-N

Dear Counsel:

This letter responds to plaintiffs' motion to expedite. Plaintiffs and defendant Schimmell Holdings, Inc. ("Schimmell Holdings") were co-venturers: They planned to form a Delaware limited liability company for the purpose of developing a parcel of real estate in Los Angeles, California.¹ This deal fell apart, but not before defendant filed the certificate of formation creating the Delaware limited liability company (the "LLC"). Plaintiffs believe that defendant's formation of the LLC was unauthorized

¹ Compl. ¶ 2.

and improper. Accordingly, they have refused to transfer title to the parcel of land to the LLC.

On December 2, 2005, Schimmell Holdings filed a lawsuit in California seeking an order to quiet title to the California parcel of land and seeking specific performance of an alleged agreement to transfer title of the land to the LLC (the “California litigation”). This lawsuit is proceeding towards a trial expected to take place in Spring 2007.²

Plaintiffs, who are defendants in the California litigation, filed a complaint in this Court on July 14, 2006, attacking the validity of the formation of the LLC. The complaint seeks declarations that: (1) Schimmell had no authority to file the certificate of formation creating the LLC; (2) Schimmell is not the manager of the LLC, despite the fact that the certificate of formation gives him managerial powers; and (3) the certificate of formation is void.³ In connection with their complaint, plaintiffs filed a motion to expedite. Defendant opposes the motion to expedite.

A motion to expedite may be granted where a movant has established “good cause.” To meet this standard, a plaintiff must articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable

² *Id.* ¶ 35.

³ *Id.* ¶¶ 38-46.

injury.⁴ Plaintiffs argue they may suffer three types of irreparable harm: (1) plaintiffs cannot take out a construction loan until the California litigation is resolved, and by then the interest rate on the loan may have increased; (2) the California litigation prevents them from immediately constructing apartment units on the property, costing them the value of lost earnings; and (3) the California litigation prevents them from acting immediately, in the face of a housing market that may continue to decline.⁵

After consideration of the parties' briefs and submissions, I agree with defendant that a motion to expedite is not warranted in this case. In effect, plaintiffs are requesting expedited proceedings in this Court in order to expedite the California litigation. The California court is the proper venue for making a motion to expedite the California litigation. Furthermore, to the extent the California litigation puts plaintiffs at risk of irreparable harm, the California court is the proper venue for requesting protective measures in connection with that litigation.⁶

⁴ *Madison Real Estate Immobilien-Anlagegesellschaft Beshränkt Haftende KG v. Geno One Financial Place LP*, 2006 WL 456779, at *2 (Del. Ch. Feb. 22, 2006) (citing *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199, at *6 (Del. Ch. Nov. 15, 1994)).

⁵ Mot. to Expedite Proceedings, ¶¶ 8-11.

⁶ Defendant asserts that the California court has already put in place protective measures for the benefit of plaintiffs. The complaint makes no mention of these protective measures and defendant's allegations as to their existence do not form the basis for my decision.

I also reject plaintiffs' motion because they have failed to show that there is a threat of irreparable injury. If plaintiffs are correct and the California litigation causes them to pay a higher interest rate on their loan, lose valuable profits, and makes it more difficult to rent the apartments due to a declining housing market, then the California court can remedy these losses by awarding money damages. Not one of the three threats of harm identified by plaintiffs is irreparable in the sense that money damages would be inadequate.

For the reasons stated above, plaintiffs' motion to expedite is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:wbg