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Via LexisNexis File & Serve and First Class Mail

George H. Seitz, III, Esquire
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
Wilmington, DE 19899-0068

Mr. Medhat Banoub
Ms. Mariam Banoub
30 Jonathan Drive
Newark, DE 19702-6103

Re: *Tanyous v. Banoub*
C.A. No. 3402-VCN
Date Submitted: January 24, 2012

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

An order implementing the Court's bench ruling on January 24, 2012, regarding the Plaintiffs' Motion to Open Sealed Documents Pursuant to Chancery Court Rule 5(g)(4) is being filed.

The Defendants have sought leave to file a counterclaim. The Plaintiffs oppose that request and seek dismissal of the counterclaim, primarily because several of the claims date back a decade and, thus, should be time-barred. The Plaintiffs seek an accounting regarding the operations of Happy Child World from

June 20, 2001. Defendants' proposed counterclaim could perhaps be just as easily viewed as a setoff in the nature of an affirmative defense. In light of the Defendants' status as self-represented litigants, a certain leniency should be extended to them with regard to pleading standards. That would bring them within the scope of the last sentence of Court of Chancery Rule 8(c) which authorizes the Court to treat a counterclaim which perhaps should have been designated as a defense as if it had been properly designated.

Litigating facts that occurred a decade ago is not something anyone should aspire to. The Plaintiffs, however, are seeking to do that; no real reason has been offered why the "other side" of the accounting should not also be presented by the Defendants. From the inherent nature of an accounting, the absence of the prejudice that the Plaintiffs might otherwise suffer militates against preclusion

based on the doctrine of laches.[1] Accordingly, Defendants' request for leave to assert a counterclaim is granted.[2] An implementing order accompanies this letter.

When we last gathered, there were extended discussions regarding how this matter should proceed. Mr. Seitz indicated that his clients were interested in moving for summary judgment on a number of, perhaps five, issues. Although I am somewhat skeptical, given the nature of this case and its history, that summary judgment is a procedural device likely of success, I will not deny Mr. Seitz the opportunity to seek that relief on behalf of his clients. I ask that Mr. Seitz and the Defendants confer to propose a schedule for any submittals that remain necessary if that is the course of conduct chosen. If Mr. Seitz decides not to pursue summary judgment, I request that he advise Chambers.

I acknowledge Mr. Seitz's request, set forth in his letter to the Court of April 24, 2012, that this matter be assigned to a Master. For several reasons, that

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[1] *See Petroplast Petrofisa Plasticos S.A. v. Ameron Intern. Corp.,* 2011 WL 2623991, at *14 (Del. Ch. July 1, 2011) ("To prevail on a laches defense, a defendant must show that: (1) the plaintiff had knowledge of his claim; (2) he delayed unreasonably in bringing that claim; and (3) the defendant suffered resulting prejudice.") (citation omitted).

[2] Leave to amend is generally freely granted. Ct. Ch. R. 15(a). Denial is appropriate if the claim to be asserted would fail for any of the reasons set forth in Court of Chancery Rule 12(b)(6). This would typically include a time-bar.

request must be denied. First, the Court's Masters are fully occupied. Second, this matter has an extended and convoluted history. Any reassignment would necessitate a lengthy "learning curve." Finally, the remaining disputes are, for the most part, fact intensive. Because any decision reached by a Master would be subject to *de novo* review, not only of her conclusions of law but also of her findings of fact,[3] the possibility of repetitive and inefficient proceedings seems too likely.

I also may be unpersuaded that any further discovery would be productive, but I cannot make that decision at this point. I also note that there may be a difference between discovery which has been sought and, in someone's view, not fully complied with, and discovery which has not yet been served.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[3] *See DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999) ("[T]he standard of review for a master's findings-both factual and legal-is *de novo*.").