

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

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: August 31, 2011
Dated Decided: November 28, 2011

Mr. Domenic Tricome
649 S. Henderson Road, A508B
King of Prussia, PA 19406-3568

Andrew J. Rennick, Esq.
The Stewart Law Firm
The Nemours Building
1007 Orange Street, Suite 1400
Wilmington, DE 19801

RE: *In re Food Ingredients International, Inc.*
Civil Action No. 4422-VCP

Dear Counsel and Mr. Tricome:

This action concerns the dissolution of Food Ingredients International, Inc. (“FII”) pursuant to 8 *Del. C.* § 273.¹ By a motion submitted August 31, 2011, as amended on September 26 (collectively, the “August 31 motion”), Domenic Tricome seeks to intervene and requests sanctions against various counsel who have appeared in the proceedings. Additionally, Tricome seeks to have the Court contact the U.S. Attorney to

¹ For additional details concerning the facts of this case and the parties involved, I refer the reader to the Background section of this Court’s Letter Opinion decided November 18, 2010. *In re Food Ingredients Int’l, Inc.*, 2010 WL 4812967, at *1 (Del. Ch. Nov. 18, 2010) [hereinafter 2010 Opinion].

commence criminal prosecutions against those same counsel. This Letter Opinion constitutes the Court's ruling on Tricome's August 31 motion.

While Tricome is not a party to this action, his August 31 motion is, in large part, similar to a letter he submitted to the Court on August 25, 2010 (the "2010 letter"). At that time, he also moved to intervene to protect his claimed interest in All the Whey, Inc. ("ATW"), a Pennsylvania corporation of which both he and FII claim to be the majority shareholder. Concerned that this Court's supervision over the dissolution of FII and distribution of its assets, including FII's claimed interest in ATW, would interfere with his own claimed interest in ATW, Tricome requested a TRO enjoining FII, its former court-appointed Receiver, its sole director and current Trustee, and various counsel involved in FII's dissolution from asserting any control over ATW and its assets. Additionally, he requested that the Court order the district attorney, FBI, and Delaware and Pennsylvania bar associations to initiate investigations regarding criminal and fraudulent conduct by those same parties and counsel.

On November 18, 2010, this Court issued a Letter Opinion (the "2010 Opinion") denying Tricome's motion to intervene and various requests for relief. Among other things, the Court explicitly clarified that "dissolution under [8 *Del. C.*] § 273 is a summary proceeding that is narrow in scope"² and that the Court has "not address[ed] any issue regarding who owns ATW and in what percentage. Nor has the Court ever

² *Id.* at *7 (footnote omitted).

addressed, let alone determined, the exact percentage of FII's ownership of ATW."³ Moreover, the 2010 Opinion made clear that to whatever extent Tricome may have articulated litigable claims of wrongdoing against FII or individuals involved in this matter, those claims fell outside the relatively narrow scope of a dissolution proceeding. Consequently, this case is not the procedurally proper vehicle to raise those claims or seek corresponding relief.⁴ The Court expressly stated, however, that nothing in the 2010 Opinion precludes Tricome from pursuing his claims in a separate action or from directly lodging complaints with law enforcement and professional disciplinary authorities.⁵

Tricome's August 31 motion alleges many of the same facts and advances many of the same claims addressed in the 2010 Opinion. For example, Tricome continues to assert that he and William Franks collectively own 100% of ATW, that FII's former Receiver, an attorney, submitted forged documents to the contrary to this Court, and that, before the Court issued its 2010 Opinion, FII's sole director and current Trustee, with the assistance of his own counsel, exploited those forged documents to fraudulently withdraw significant funds from ATW's bank accounts.⁶ Similarly, in the August 31 motion,

³ *Id.* at *6.

⁴ *See In re Data Processing Consultants, Ltd.*, 1987 WL 25360, at *5 (Del. Ch. Nov. 25, 1987).

⁵ 2010 Opinion, 2010 WL 4812967, at *7 & n.53.

⁶ Mot. ¶¶ 4, 33, 36. The Court does not take lightly the fact that Tricome has made accusations of wrongdoing against the former directors of FII, a Delaware corporation, including a former director who now serves as FII's Trustee in connection with winding up its affairs. Furthermore, the process of winding up a

Tricome again seeks to intervene in this action, to impose sanctions on FII's former Receiver and other counsel, and to have this Court order the U.S. Attorney to initiate investigations against those individuals for conspiring to commit fraud, stock fraud, and perjury.⁷

Tricome contends that the Court should consider his essentially duplicative motion because of newly discovered evidence relating to the alleged wrongdoing. In particular, after the Court issued the 2010 Opinion, Tricome filed a complaint for professional misconduct with the Delaware Supreme Court's Office of Disciplinary Counsel against FII's former Receiver. The Receiver responded to Tricome's complaint by letter dated June 24, 2011, and Special Disciplinary Counsel shared that letter with Tricome on July 6, 2011.⁸ In responding to Tricome's allegations of professional misfeasance, the Receiver stated that, among other work performed on behalf of FII, he corresponded with counsel defending FII in a federal lawsuit and with counsel to FII's sole director and Trustee regarding this dissolution proceeding.⁹ In Tricome's view, "[t]his work . . .

corporation under Delaware law can be complicated, especially where, as here, litigation against the company is pending in another jurisdiction. Accordingly, in supervising that process, this Court has required that the Trustee be represented by a Delaware attorney while acting on behalf of FII. *See* Tr. of Conf. Concerning Mot. to Withdraw, Docket Item ("D.I.") # 27, at 14-16 (Feb. 21, 2011).

⁷ Mot. at 20.

⁸ *Id.* ¶¶ 7-8.

⁹ Mot. Addendum (Sept. 26, 2011) Ex. I at App. 26-27.

makes it perfectly clear that [all three attorneys were] committing stock fraud” and perjury.¹⁰

Regardless of the merits of Tricome’s contention that the working relationship among attorneys representing the various parties to this dissolution proceeding evinces nefarious conduct on their part, the Court again must deny at the threshold Tricome’s request to intervene. The purpose of a § 273 proceeding, like this case, is the resolution of a deadlock between two equal stockholders of a joint venture corporation who cannot agree whether to continue or dissolve the business.¹¹ To intervene under Court of Chancery Rule 24, either by right or by permission, the applicant must claim an interest in the subject of the litigation.¹² In this case, the subject of the litigation is confined to FII itself and, more specifically, to the limited question of whether to order its dissolution and the distribution of its assets.

There is no dispute that Tricome has no direct or ownership interest in FII. At most, he has claims against FII or its directors or agents, either in his individual capacity or on behalf of ATW, and in that sense he may be a potential creditor of FII.¹³ That is, to

¹⁰ Mot. ¶ 28; *see also* Mot. ¶ 8.

¹¹ *See generally* Donald J. Wolfe, Jr. & Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery* § 8.11[a][2][i] (2010).

¹² 2010 Opinion, 2010 WL 4812967, at *6; *Harris v. RHH P’rs, L.P.*, 2009 WL 891810, at *3 (Del. Ch. Apr. 3, 2009); *United Rentals, Inc. v. RAM Hldgs., Inc.*, 2007 WL 4327770, at *1 (Del. Ch. Nov. 29, 2007).

¹³ *See* 2010 Opinion, 2010 WL 4812967, at *6.

the extent Tricome has any interest related to this action, it subsists in his asserted ownership of ATW. While Tricome denies or questions whether ATW is among FII's assets susceptible to distribution, this Court has not attempted to resolve any dispute as to the ownership of ATW or otherwise sanction any action taken by anyone with respect to ATW.¹⁴ In fact, on March 21, 2011, the Court explicitly ordered that “[w]hatever ownership interest FII may have in ATW shall remain as an asset of FII until further Order of this Court,” and also noted that it “has made no determination as to the extent of FII's ownership interest in ATW, which reportedly is being disputed in litigation in Pennsylvania.”¹⁵ In addition, as when he submitted his 2010 letter, “Tricome's myriad complaints pertaining to ATW do not present a question of law or fact in common with the narrow issue of FII's dissolution that is presented in this case.”¹⁶ Accordingly, the Court denies Tricome's request to intervene.

The newly discovered evidence purporting to substantiate claims of conspiracy, fraud, and perjury do not affect the Court's reasoning. Such claims are beyond the “tightly circumscribed nature” of the § 273 proceeding now before the Court.¹⁷ Just as with the 2010 Opinion, however, the Court emphasizes that nothing contained herein precludes or prejudices Tricome's ability to pursue those claims independently in a

¹⁴ *Id.*

¹⁵ Order, D.I. # 31, at 2 (Mar. 21, 2011).

¹⁶ 2010 Opinion, 2010 WL 4812967, at *7.

¹⁷ *Id.*

separate action in the forum of his choice. Likewise, he remains free to initiate contact with law enforcement and professional disciplinary authorities on his own.

For the foregoing reasons, the Court denies Tricome's motion to intervene, for sanctions, and to contact the U.S. attorney for criminal prosecution.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor