

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

SAM GLASSCOCK III  
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

November 5, 2012

Salih Hall  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

Amir Fatir  
SBI #137010, Unit W  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

RE: Keefe Commissary Network LLC, *et al.* v. Delaware Department of  
Correction, *et al.*,  
Civil Action No. 7838-VCG

Dear Messrs. Hall and Fatir:

This letter is in response to your “Motion for Relief from Judgment Pursuant to Court of Chancery Rule 60(b).” This matter was brought by Plaintiffs Keefe Commissary Network LLC and Richard Timmons, objecting to the Delaware Department of Correction entering into a contract to provide prison commissary services with Swanson Services Corporation, awarded pursuant to a public bidding process. That award was withdrawn and the underlying matter was dismissed pursuant to a request by the Plaintiffs accompanied by a proposed Order filed with

the Court on October 11, 2012. My Order dismissing the action was filed on October 15, 2012. Sometime thereafter, you attempted to file a “Motion for Intervention Pursuant to Court of Chancery Rule 24(a)(2),” together with a “Complaint in Equity.”<sup>1</sup> You were informed by this Court on October 17, 2012 that this motion to intervene had not been accepted because the matter was closed. You were informed that you could file your “Complaint in Equity” as a separate matter, at your discretion.

Instead, you have filed the instant Motion for “relief from judgment on the basis of fraud.”<sup>2</sup> The single allegation of wrongdoing by the original Plaintiffs is explicated at paragraph 6 of the Motion:

In attempting to prevent intervention by the real party of interest and the potential of reducing the bid to limits of 205 markup, and having already used the litigation as leverage to force the DOC to re-bid the contract, plaintiff has moved to voluntarily dismiss the action pursuant to Court of Chancery Rule 41(a)(a)[sic], in an attempt to block the Intervening Party from intervention after having been served.<sup>3</sup>

This allegation fails to allege fraud of an adverse party, as required to reopen a judgment under Court of Chancery Rule 60(b)(3). The Motion also states that the “profit markup” of the now-defunct contract was unlawfully large and that “[t]he Intervening Party argues that an act that violates expressed policy is by itself fraud

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<sup>1</sup> I have attached the instant Motion, the Motion to Intervene, and the proposed “Complaint in Equity” to this Letter Opinion.

<sup>2</sup> Mot. Relief. J. 1.

<sup>3</sup> *Id.* ¶ 6.

within the meaning of Rule 60(b) . . . .”<sup>4</sup> The fact that the contract which was the subject of the underlying litigation may have been unlawful does not demonstrate fraud in the entry of the Dismissal Order under Rule 60(b), however. More fundamentally, perhaps, the underlying action involved an objection to the actions of the State of Delaware in awarding a contract that is now void.

According to the Motion to Intervene, the your complaint is that the “current contract does not recognize the trust status of the [Commissary] account,” that the contract “exceed[s] the allowable profit margin on items sold by the commissary contrary to longstanding DOC policy and practice, subjecting the inmate population to a monopoly held by a for profit corporation and unrestrained price gouging,” and that the Department of Corrections owes fiduciary duties to the inmates, which fiduciary duties are being breached due to the operation of the Commissary.<sup>5</sup> With respect to the contract at issue in the underlying action, that contract never took effect and cannot support the allegations raised in the Motion to Intervene. The underlying matter was dismissed, and there is no action left in which to “intervene.” Nothing in this letter prevents you from filing a separate action raising the issues included in the Motion to Intervene or the Complaint in Equity to the extent you find it appropriate to do so.

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<sup>4</sup> *Id.* ¶ 10.

<sup>5</sup> Mot. Intervention Pursuant Ct. Ch. R. 24(a)(2) ¶¶ 9-10.

For the reasons above, the proposed intervenors' "Motion for Relief from Judgment Pursuant to Court of Chancery Rule 60(b)" is denied. To the extent that the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

*/s/ Sam Glasscock III*

Sam Glasscock III

cc: C. Malcolm Cochran, Esquire  
Chad Shandler, Esquire  
Travis Hunter, Esquire  
Catherine Damavandi, Esquire