

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

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

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Date Decided: September 13, 2013

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Re: ENI Holdings, LLC v. KBR Group Holdings, LLC
Civil Action No. 8075-VCG

Dear Counsel:

This matter involves the acquisition of Roberts and Shaefer Co. (“R&S”) by Defendant KBR Group Holdings, LLC (“KBR”) from Plaintiff ENI Holdings, LLC (“ENI”) pursuant to a stock purchase agreement (“the SPA”). Under the SPA, the parties placed a portion of the purchase price in an escrow fund to satisfy any indemnification claims authorized by the terms of the SPA. The dispute before me involves whether the entire escrow fund should be released to ENI or whether, based on allegations made by KBR via counterclaim, it is entitled to a portion of this fund. KBR’s counterclaims are the subject of a pending Motion to Dismiss before me. This Letter Opinion will briefly address KBR’s request to enjoin further proceedings in a related ongoing arbitration brought under the terms of the

SPA. During the pendency of this action, that request has become, essentially, moot. In any event, injunctive relief is denied, for the reasons that follow.

The purchase price of R&S was based in part upon its working capital, and the parties created a second escrow fund under the terms of the SPA to cover working capital adjustments. In accordance with the SPA, ENI was to estimate the working capital of R&S as of the closing date. Then, within sixty days of the closing, KBR was to deliver to ENI *its* determination of R&S's working capital as of that time. ENI could then dispute that determination in accordance with the procedures outlined in the SPA. Specifically, the SPA required that the parties attempt to resolve any such dispute. If the parties failed to reach a resolution, the matter was to be referred to binding arbitration in order for an arbitrator to determine actual working capital. This determination would result in an adjustment to the purchase price. Such a proceeding is currently before the arbitrator; extensive efforts at arbitration have already taken place.

KBR seeks a preliminary injunction of any further proceedings before the arbitrator. Because the issues involved in this request were largely mooted by clarification of the parties' positions during briefing and by clarification of the law by our Supreme Court in *Viacom International v. Winchell*,¹ decided while this matter was being briefed, the Motion for a Preliminary Injunction must be denied.

¹ 2013 WL 3678786 (Del. July 16, 2003).

KBR's counterclaims before me involve allegations that ENI manipulated certain financial data in order to improperly maximize the purchase price. Initially, KBR based its request to enjoin the arbitration on two grounds. First, KBR argued that ENI might improperly assert that this Court, in its consideration of issues in KBR's counterclaims for indemnification, would be bound by the arbitrator's decision as to working capital. In briefing and at argument, ENI made it clear that all issues involving the indemnification claims are properly before this Court and conceded that the arbitrator's decision on actual working capital will have no conclusive effect here. Second, KBR contended that the validity of a revised arbitration notice provided by ENI was a matter which must be decided by this Court, not the arbitrator. In light of the Supreme Court's decision in *Viacom International*, KBR withdrew this argument.

The parties have contractually agreed to submit the issue of actual working capital to the arbitrator. Nothing at that arbitration will preclude KBR's right to recover on its indemnification claims pending here. Therefore, KBR cannot demonstrate irreparable harm should the arbitration go forward.²

As KBR is unable to demonstrate an element necessary to the relief sought,

² In order to be entitled to preliminary injunctive relief, the movant must demonstrate a probability of success on the merits, that irreparable harm will result absent entry of the relief sought, and that equities favor the relief sought. *Koehler v. NetSpend Holdings Inc.*, 2013 WL 2181518, at *9 (Del. Ch. May 21, 2013). Since KBR cannot demonstrate that irreparable harm will result absent an injunction, it is not entitled to the relief that it seeks.

its request for preliminary injunctive relief is denied.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III