

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GATZ PROPERTIES, LLC, a )  
Delaware limited liability company, ) No. 148, 2012  
and WILLIAM A. GATZ, )  
 ) Court Below: Court of Chancery  
Defendant Below, ) of the State of Delaware  
Appellants, )  
 ) C.A. No. 4390  
v. )  
 )  
AURIGA CAPITAL )  
CORPORATION, a Delaware )  
Corporation, PAUL ROONEY, )  
HAKAN SOKMENSEUR, DON )  
KYLE, IVAN BENJAMIN, and )  
GLENN MORSE, )  
 )  
Plaintiffs Below, )  
Appellees. )

Submitted: November 28, 2012

Decided: December 14, 2012

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices, constituting the Court *en Banc*.

Upon appeal from the Court of Chancery. **AFFIRMED.**

Steven L. Caponi (argued) and Elizabeth A. Sloan, Esquires, Blank Rome LLP, Wilmington, Delaware, for appellants.

John L. Reed (argued), R. Craig Martin and Scott B. Czerwonka, Esquires, DLA Piper LLP, Wilmington, Delaware, for appellees.

***PER CURIAM:***

The Court has considered carefully the appellees' motion for attorney fees incurred in defending this appeal, the appellants' response thereto, and the appellees' reply. This Court has authority to award attorney fees in appropriate cases.<sup>1</sup> In this case, however, whether the appellants acted in bad faith in pursuing this appeal is a question possibly requiring findings of fact that are better addressed by the Court of Chancery.<sup>2</sup> We, therefore, deny the appellees' motion without prejudice to their right to pursue in the Court of Chancery their claim for attorney fees on appeal.

The motion for attorney fees is DENIED without prejudice. The Clerk is directed to issue the mandate forthwith.

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<sup>1</sup> See *Leighton v. Beatrice Cos.* 1987 WL 4630 (Del. Oct. 16, 1987) (awarding attorney fees after appeal was dismissed for appellant's lack of standing).

<sup>2</sup> See *Brice v. Dep't of Correction*, 704 A.2d 1176, 1179 (Del. 1998) (noting that an equitable exception to the American Rule that each party is responsible for payment of its own attorney fees is when the losing party has acted in bad faith).