

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DOUGLAS L. HALLETT,	§
	§
Third-Party Defendant	§ No. 499, 2002
Below-Appellant,	§
	§
v.	§ Court Below-Court of Chancery
	§ of the State of Delaware,
CARNET HOLDING	§ in and for New Castle County
CORPORATION,	§ C.A. No. 17638
	§
Cross-Claim and	§
Nominal Defendant	§
Below-Appellee.	§

Submitted: December 26, 2002

Decided: February 4, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices

ORDER

This 4th day of February 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Douglas L. Hallett, has filed an appeal from the Court of Chancery's August 12, 2002 order extending its April 3, 2002 confidentiality order, which placed under seal documents filed by Hallett that contained privileged communications. The defendant-appellee, CARNET Holding Corporation, has moved to affirm the judgment of the Court of

Chancery on the ground that it is manifest on the face of Hallett's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) This appeal stems from a derivative action filed in the Court of Chancery by one of CARNET's shareholders against CARNET and certain of its officers and directors. Hallett, who was then a CARNET shareholder as well as its general counsel, retained outside counsel to represent CARNET in the litigation. After the litigation was settled, with the shareholders agreeing to sell their shares to a third party, the plaintiff in the derivative action filed a petition seeking attorney's fees from CARNET's former shareholders, including Hallett.

(3) Hallett filed a brief claiming that CARNET's counsel should be disqualified from representing CARNET in the fee litigation and attached documents containing communications between him and CARNET's counsel in support of his position. On April 3, 2002, the Court of Chancery granted CARNET's motion to seal the documents and entered a confidentiality order. On August 12, 2002, the Court of Chancery granted a subsequent motion by CARNET to maintain the sealing of the documents. The record reflects that CARNET filed its motion after being notified by the Register in Chancery that

¹SUPR. CT. R. 25(a).

the documents would be unsealed unless a motion to maintain the sealing of the documents were filed.² Thereafter, the Court of Chancery also denied Hallett's request to disqualify CARNET's counsel.

(4) On September 5, 2002, Hallett filed a notice of appeal in this Court. Hallett sought appellate review of a) the Court of Chancery's refusal during a teleconference on August 23, 2002 to reconsider its earlier denial of Hallett's request to disqualify CARNET's counsel and b) the Court of Chancery's August 12, 2002 order maintaining the sealing of the documents. CARNET then filed a motion to dismiss Hallett's appeal. In an opinion dated November 25, 2002, this Court dismissed Hallett's disqualification claim and directed that briefing would proceed solely on the basis of the Court of Chancery's August 12, 2002 order maintaining the sealing of the documents.³

(5) In his opening brief, Hallett raises the following two claims: a) CARNET's counsel should be disqualified; and b) the documents placed under seal by the Court of Chancery did not contain privileged communications and should be made public.

²CT. CH. R. 5(g) (7).

³*Hallett v. CARNET Holding Corporation*, 809 A.2d 1159, 1163 (Del. 2002).

(6) In spite of this Court's previous dismissal of the disqualification issue, Hallett raises it again in his opening brief. CARNET has moved to strike the claim on the ground that this Court's prior opinion dismissed that portion of Hallett's appeal. It is clear that the claim must be stricken on that ground.

(7) Hallett's remaining claim that the Court of Chancery improperly ordered the documents to be maintained under seal is without merit. The proper standard of review governing a decision to enforce, modify or maintain an existing confidentiality order is abuse of discretion.⁴ There is nothing in this record suggesting that the Court of Chancery abused its discretion either by placing the documents containing the privileged communications under seal or by maintaining the sealing of the documents.⁵

(8) It is manifest on the face of Hallett's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled

⁴*Hallett v. CARNET Holding Corporation*, 809 A.2d 1159, 1163 (Del. 2002) (citing *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 790 (1st Cir. 1988), cert. denied 488 U.S. 1030 (1989)).

⁵During the teleconference on August 23, 2002, the Court of Chancery noted that the contested documents "on their face" constituted work product and attorney-client privileged communications.

Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that Hallett's first claim is STRICKEN.⁶

IT IS FURTHERMORE ORDERED that, pursuant to Supreme Court Rule 25(a), CARNET's motion to affirm is GRANTED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁶We also hereby strike Hallett's separately filed "motion to disqualify." In addition, CARNET has moved to strike certain arguments contained in Hallett's brief, at pp. 25-28 and 32-34, that were not presented to the Court of Chancery in the first instance. We hereby strike those arguments. SUPR. CT. R. 8. To the extent that Hallett has attempted to respond to CARNET's motion to affirm without a request from the Court, we also strike any such response. SUPR. CT. R. 25(a).