MHL

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DISTRICT

DAVID GROCHOCINSKI, not individually, but solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of CMGT, INC. Plaintiff, v. MAYER BROWN ROWE & MAW LLP, RONALD B. GIVEN, and CHARLES W. TRAUTNER, Defendants.	)	No. 06 C 5486 Judge Virginia M. Kendall

MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, R. Gerard (Gerry) Spehar ("Spehar"), acting *pro se*, moves to intervene in this action as a matter of right for the purpose of protecting his personal and professional reputation, CFA credential, and ability to earn a living. To that purpose, Spehar offers evidence and argument in his contemporaneously filed Motion to Alter or Amend this Court's erroneous and injurious March 31, 2010 Opinion and Final Order (the "2010 Opinion"), pursuant to Federal Rule of Civil Procedure 59. Spehar also seeks a due process opportunity to face his accusers and defend his Motion to Alter or Amend before this Court at oral hearing.

ARGUMENT

SPEHAR IS ENTITLED TO INTERVENE IN THIS ACTION AS A MATTER OF RIGHT. Spehar seeks to intervene under Federal Rule of Civil Procedure ("Rule") 24(a)(2), which states in relevant part:

> (a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

I earn my living as a financial consultant, and my ability to attract and retain clients materially depends on my good name and professional reputation. The 2010 Opinion scathes my good name and reputation. It is a matter of public record that is easily accessible to the general public via Google and other Internet search engines. Internet searches are now commonplace to screen and vet business relationships. Anyone can publish the Opinion for any purpose at any time. The 2010 Opinion will undoubtedly be cited in subsequent public pleadings and opinions.

The 2010 Opinion finds, states or infers that:

1. I am an unprincipled "puppetmaster"[1] who controlled and directed an elaborate, far-reaching, "unseemly" (2010 Op. at 19) and "odious" (*Id.* at 21) fraud by which "the integrity of the judicial system would be called into question" (*Id.* at 16),
2. I intentionally misrepresented CMGT's business and financial status and the true basis for Spehar Capital, LLC's ("SC") damages in sworn testimony to a California Court (*Id.* at 6, 20, 21, 22, 23, 25 and 27),[2]

[1] "Grochocinski merely took Spehar's orders and followed them. ... To frustrate matters more, Spehar's hand-selected attorney, Joyce, repeatedly obstructed the truth-seeking process... Spehar was the puppetmaster and Grochocinski his puppet." (2010 Op. at 23 and 24)

[2] "In order to get the $17 million judgment, Spehar described CMGT to the California judge as an on-going lucrative business involving the internet connection of human resource directors linked together through a state of the art computer program. As Spehar knew at the time, he had blocked the infusion of capital into CMGT by obtaining the TRO of the infusion deal and no new deal was permitted under the wording of the TRO. ... To represent to the California judge that Spehar would obtain stock and compensation of over $16 million three years down the road from this entity that was unable to keep its head above water, and which he single-handedly prevented from obtained the much-needed capital that might give it a gasp of air, was a

3. I "encouraged [plaintiff] Grochocinski to file the [malpractice] lawsuit without investigation" (*Id.* at 11), and
4. I directed my obedient "puppet[s]" and "prox[ies]"[3] Grochocinski and (by implication) special counsel Edward T. Joyce and Associates ("Joyce"),[4] to take contrary positions in two different courts (*Id.* at 31),
5. I did all of this to "fulfill a personal feud with Given and CMGT and to collect on a judgment that was obtained by misrepresentation" (*Id.* at 25)

Although outrageous and erroneous, these findings, statements and inferences will nevertheless be extremely damaging if not corrected. They will surely devastate my good name, professional reputation and ability to earn a living. Unfortunately, in this day and age, "An attack unanswered is an attack believed."[5]

Moreover, I am also a Chartered Financial Analyst ("CFA"), and the CFA credential is also important to my ability to earn a living. The 2010 Opinion, if not altered or amended, will almost certainly cause the loss of my CFA credential. The CFA Institute's Professional Conduct Statement requires all CFAs to disclose if they are:

> "[T]he subject of, a defendant in, or respondent in any investigation, civil litigation, arbitration, or other action or proceeding in which my professional conduct...is at issue."

---

direct misrepresentation to the California court of the stability of the company and his likelihood of recovery from it in the future. "No fraud is more odious than an attempt to subvert the administration of justice." (2010 Op. at 20-21) *Emphasis Added.*

[3] "Grochocinski acted at all times as a proxy for the real party in this case, SC. ... Grochocinski merely took Spehar's orders and followed them. ... To frustrate matters more, Spehar's hand-selected attorney, Joyce, repeatedly obstructed the truth-seeking process... Spehar was the puppetmaster and Grochocinski his puppet. ... Grochocinski is really bringing SC's personal claim against Defendants." (2010 Op. at 19, 23, 24 and 25)

[4] Joyce is one of Illinois' most respected, experienced and successful commercial litigators, and has been selected to "Illinois Super Lawyers" from 2005 through 2010. Grochocinski has been a U.S. bankruptcy trustee and practicing bankruptcy attorney in Illinois for over 20 years.

[5] "You're entitled to be called a fool, idiot, bonehead, slob, screwball. But an attack unanswered is an attack believed." Alan Simpson, Former Republican U.S. Senator from Wyoming.

Accordingly, I had previously disclosed Defendant's "unclean hands" allegation to the CFA Institute after this Court opened discovery on that issue. Upon review at that time, the CFA Institute explicitly instructed me to report back on the matter once the "unclean hands" issue was determined.

My contemporaneously filed Motion to Alter or Amend proves:

1. I did not mislead the California Court. My testimony was true and correct and that court was fully and properly informed and had a clear and correct understanding of (a) CMGT's business and financial status and prospects at that time and (b) the actual basis of Spehar Capital's damages, when it granted and entered the Default Judgment;
2. Grochocinski and Joyce are far from my puppets and proxies. It is both a matter of public record and common knowledge that the Spehar-Grochocinski relationship started out very badly and has remained unrelentingly acrimonious and rocky since. In fact, our highly contentious and excruciatingly long pre-filing negotiation of the Finance Order at issue here, and our subsequent three-year legal battle in three separate legal actions that Grochocinski filed to alter our sharing deal under that order, are all clearly evidenced in the public record in this district. (*Id.* at 31)[6] In short, Grochocinski and I could not agree on the color of money, much less co-operate in a 6-year elaborate scheme to defraud three separate courts and the world's eighth-largest law firm, simply to make money.

[6] *See* U.S. Dist. Ct., N.D.Ill., Apl. 09 cv 2822, Amd. Desig. of Rcd, Doc. 1 at 20-29.

I also don't believe anyone who knows Ed Joyce would consider him or his firm anyone's puppets. To the contrary, in my experience Joyce was always very professional, very firm, and in absolute control of both the malpractice investigation and this litigation;

3. I did not encourage Grochocinski to file the malpractice lawsuit without investigation. Near the end of a grueling and thorough eight-month investigation by Joyce that had produced (a) strong evidence of Defendants' malpractice (even fraud), (b) Joyce's assessment that there are valid and actionable damages, and (c) Joyce's clear statement to me that it was fully satisfied as to merit and as to damage on at least one count, I asked Grochocinski to encourage Joyce, if Joyce had in fact decided to withdraw, to at least file a complaint based on the sufficiency of his prior investigation before the statute of limitations expired, so that new special could then do its own investigation, if it deemed further investigation necessary.[7] I believe that was a proper and reasonable

---

[7] Spehar 7/28/06 email, Def. 56.1 Stmt., Ex. J, Doc. 138-18 at 34, stating: "Hopefully it won't come to this, but if it does..."

Spehar Dep. at 165-171, Def. 56.1 Stmt., Ex. K, Doc. 138-24:

> Q. In what way do you think that Mr. Joyce had not complied with the reasonable investigation requirement in his agreement?
>
> A. **First of all, I would read that with the "should he attempt to terminate." I think Joyce did a reasonable investigation.** From the outset of very early on after the initial meeting in Denver with me and the grilling that they did of me, I think everyone was fairly convinced, in fact very convinced that there w[as] merit here. And I was operating on that supposition all the way through here, that we were really only dealing with damage issues. So all these questions with regards to the other shareholders, I don't know what value there would eventually come out of that, because, like I said, they were all very biased against me. But should Joyce attempt to terminate, I would have wished that he would have done that, because if there was some question -- **I had understood at this point in time that we had kind of resolved or were getting close to resolving the damage issues; that there was really no issue about merit, and that's where these guys came in was merit. So, if there was now some issue in Joyce's mind about merit, I would have hoped that he would have investigated it further. I don't think there was.** ... So that's -- that's where we were at.

request and also believe that is how Grochocinski understood my email. Shortly after that email, Joyce informed both Grochocinski and me that he would file the malpractice complaint, and the contingent concerns expressed in that email became moot; and

4. I have never encouraged Grochocinski or Joyce to take a position in this malpractice action that is in any way contrary to the position SC took in its California Action. Nor does Grochocinski, as my proxy, "admit SC never should have obtained a judgment for damages in the California litigation." I have honestly and consistently argued:

    a) SC's 2003 California contract claim was meritorious and its 2004 Default Judgment is valid,

---

Q. And what additional investigation do you think Mr. Joyce would have been required to do had he attempted to terminate the agreement?

A. **That would depend on what he was going to terminate based on. If it was a determination based on merit, like I said, this should have been done then. I would have hoped he would have investigated a lot more people if he had serious questions about merit. It was my understanding he did not. But at this point in time, I wasn't really fully aware of the reasons for termination if it was going to happen; or if it was going to happen, I was just getting at that point in time some bad feelings about the potential for it. ...**

Q. Okay. And was it after that meeting [in Denver in Nov. 2005] that you thought the issue of [merit] was a done deal? ...

A. No, it went on for some point after that. I mean, this is on the face of it a strange case, as the judge noted, so there's a lot to, I think, mostly get comfortable with me about. You know, it's how I react to questions, what the truth of what I'm saying is. To me that is an awful lot of this case. So this -- just the same sort of grilling that you're doing here I was getting from Joyce, and it took a little bit of that for them to get comfortable. I don't know exactly when I felt or when I was told that they were comfortable with the merit aspects of it, but it was sometime early on after a few months at least.

Q. Why do you think this is a strange case?

A. **Why do I think it's a strange case? Because it appears to be strange to the judge ... [Y]ou need to get beneath the surface of those things to really understand what's going on. That's what we are here to do.**

Q. Okay.

A. **Appearances can be deceiving.** *(Emphasis added).*

b) Defendants caused SC's Newco dispute with CMGT, then wrongly advised CMGT about the Newco dispute, and then acted as CMGT's counsel for SC's California Action; In September 2003, SC was in as desperate financial shape as CMGT, but was forced to take legal action by Defendants adamant and unreasonable refusal to even discuss settlement. SC initially sought a TRO only to prevent an inequity and hoping to cause settlement discussions;

c) Upon filing, SC expected that substantial CMGT shareholder and Los Angeles litigator Byron Hollins would represent CMGT to protect his investment ($120,000), perhaps even *pro bono*;

d) When Defendants instead represented CMGT and stated that CMGT would contest SC's litigation in Chicago, I then knew that SC would necessarily have to withdraw its action before trial because it simply could not afford the prohibitive retainers required to litigate against one of the world's largest law firms, or the exorbitant costs of litigating in a distant venue;

e) Defendants knew that SC could not afford to litigate against Mayer Brown, especially in Chicago;

f) But for Defendants' failure to appear at the California TRO or PI hearings, CMGT would have avoided the Default Judgment and been fully funded, which Defendants admit,[8] and

[8] "The Spehar Lawsuit did not prohibit CMGT from getting financing. It prohibited CMGT only from closing the Newco Deal. ... CMGT would have won the case at any time if it had just defended itself. In fact, if CMGT had defended itself, it would have won the preliminary injunction hearing and would have closed the Newco Deal." (Def. Feb. 7, 2007 Reply at 9 and 19) *Emphasis added*

g) Per CMGT's own Projections that were entered in the record at the February 26, 2004 Damages Prove Up Hearing, at which Defendants had a duty to appear and contest damages, CMGT would have become a highly successful and profitable company.

That is entirely consistent with Grochocinski's stated position in this action because, under this set of facts, Grochocinski is not required to litigate the "case-within-a-case."

Spehar Is Not Adequately Represented By The Existing Parties.

This matter has been before this Court for over three years now, and the existing parties have filed numerous pleadings and argued several oral hearings. After all of that, the many scathing and erroneous findings in the Opinion with respect to my intent and conduct are themselves abundant and sufficient proof that my interests are not adequately represented by the existing parties. I have often asked Grochocinski and Joyce to vigorously correct this Court's very negative and very wrong opinion of me. They have always contended it is immaterial since I am not a party to this action. Quite obviously, that stance did not adequately protect my good name and reputation in this Court's eyes, nor the viability of this action.

Moreover, over the past three years Grochocinski has litigated three separate legal actions against SC, one of which is still in litigation (2010 Op. at 30-31). It is impossible for Grochocinski or his counsel to adequately represent the interests of a legal adversary.

Summary

A full and fair reading of the full body of information and evidence considered by the California Court at its February 26, 2004 Damages Prove Up hearing, coupled with my unredacted testimony *and* the March 18, 2003 judgment itself, indisputably shows that I did not misrepresent to the California Court. In fact, the California Court was fully and correctly informed about CMGT, and sufficiently advised of the premises of SC's damages when it granted and entered the Default Judgment. I respectfully pray that this Court's finding that I misrepresented to the California Court be so altered or amended.

My July 28, 2006 email to Grochocinski, coupled with my January 19, 2009 Deposition testimony and other evidence regarding Joyce's thorough and sufficient eight month prior investigation, shows that I did not encourage the filing of this action without investigation. I respectfully pray that this Court's finding that I encouraged Grochocinski to file this action without investigation be so altered or amended.

Under the facts of this case, SC's position in the California litigation is entirely consistent with proving Defendants' malpractice in this litigation. I respectfully pray that this Court's finding that Grochocinski, as my puppet and proxy, "admits that SC never should have obtained a judgment for damages in the California litigation" (2010 Op. at 28, FN 13) be so altered or amended.

Finally, as my Motion to Alter or Amend shows, there is abundant material evidence that Defendants themselves came to this Court with unclean hands to claim that Grochocinski (my puppet and proxy) and I have unclean hands. As a matter of law, Defendants Motion for Summary Judgment, and this Court's dismissal of this action based on that motion, is barred by the clean hands doctrine; I pray that this Court so find.

Conclusion

To protect my good name, professional reputation, CFA credential, and ability to earn a living, I intervene to set the record straight and correct this Court's erroneous and injurious findings about me. I respectfully request an oral hearing so that this Court, and Defendants if they wish, can directly question me under oath. I would welcome that opportunity to defend my intent, conduct and merit before my accusers. I respectfully submit that equity, if not due process, demands that this Court grant me that opportunity to answer the vicious personal attacks in its 2010 Opinion before those outrageous and erroneous findings become final in the public record. And I respectfully pray that this Court will reinstate this action, let justice run its course, and let a jury of our peers decide which of us has unclean hands. This Court will not regret that decision.

"An attack unanswered is an attack believed."

Respectfully submitted,
Gerry Spehar, CFA

By _____
Gerry Spehar, (Acting Pro Se)
1625 Grandview Avenue
Glendale, CA 91201
818-247-5558
Fax: 818-247-0616

The parties to this action and the names, addresses, and telephone numbers of their respective attorneys are as follows:

PLAINTIFF

David E. Grochocinski
Grochocinski, Grochocinski & Lloyd, Ltd.
1900 Ravinia Place
Orland Park, IL 60462
Telephone –708-226-2700

Edward T. Joyce
Arthur W. Aufmann
Robert D. Carroll
EDWARD T. JOYCE & ASSOC., P.C.
11 South LaSalle Street, Ste., 1600
Chicago, Illinois 60603
Telephone – (312) 641-2600
Atty No. 32513

DEFENDANT

MAYER BROWN ROWE & MAW LLP and
RONALD B. GIVEN
71 South Wacker Drive
Chicago, IL 60606-4716
Telephone – (312) 782-0600

Stephen Novack
Mitchell L. Marinello
Steven J. Ciszewski
Novack and Macey LLP
100 N. Riverside Plaza
Chicago, IL 60606
Telephone – (312) 419-6900

CERTIFICATE OF SERVICE

I, Gerry Spehar, certify that I caused a copy of the attached 1) *Motion to Intervene and (2) Motion to Alter or Amend* to be served on the parties listed above, by Chicago Messenger Service, prior to 6:00 p.m. this 28th day of April, 2010.