IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT GALLAGHER a/k/a BOBBY FREEMAN,	§	No. 102, 2013
Plaintiff Below-Appellant,	§	Court Below-Court of Chancery of the State of Delaware
v.	§	C.A. No. 8181
RICHARD LONG, as Trustee for the Richard S. and Cynthia Long Trust, and LGF ENTERPRISES, LLC,	§	
Defendants Below-Appellees.	§	

Submitted: April 17, 2013
Decided: April 30, 2013

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

O R D E R

This 30th day of May 2013, upon consideration of the appellant's opening brief and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Robert Gallagher, has filed an appeal from the Court of Chancery's February 28, 2013 order granting the motion to dismiss of the defendants-appellees, Richard Long and LGF Enterprises, LLC (collectively, "Long"). Gallagher also appeals from the Court of Chancery's denial of his motions for recusal and for oral argument. Long

has moved to affirm the judgment of the Court of Chancery on the ground that it is manifest on the face of the opening brief that the appeal is without merit.[1] We agree and affirm.

(2) The record before us reflects that, in or about 2006, Long filed a complaint for specific performance in the Court of Chancery alleging that Gallagher, who had entered into a joint venture called LGF Enterprises, LLC ("LGF") with Long and a Ms. Franklin, failed to make certain celebrity memorabilia available to be photographed and insured in preparation for exhibition at a hotel in Las Vegas. Gallagher moved to dismiss the complaint. Long, in turn, moved for an order compelling inspection of the memorabilia.

(3) A hearing was scheduled in the Court of Chancery. Neither Gallagher nor Franklin appeared. The Court of Chancery denied Gallagher's motion to dismiss and granted Long's motion to inspect the memorabilia. Later, when Gallagher and Franklin refused to permit the inspection, the Court of Chancery held them in contempt and ordered them to return the items of memorabilia they had removed.

(4) When Gallagher and Franklin failed to comply with the Court of Chancery's order, Long sought another order holding them in contempt

[1] Supr. Ct. R. 25(a).

and the dissolution of LGF. The Court of Chancery again found Gallagher and Franklin in contempt and ordered that an auction of the memorabilia be held in order to reimburse, to the extent possible, the $1.2 million Long had invested in LGF. Gallagher appealed and this Court affirmed.[2] The auction took place on June 26 and 27, 2009. The record reflects that Gallagher was duly notified of the auction, Long received the proceeds of the auction and LGF was dissolved in February 2010.

(5) In January 2013, approximately three and a half years after the auction, Gallagher filed another complaint against Long in the Court of Chancery alleging breach of fiduciary duty in connection with the liquidation of LGF. Gallagher also sought oral argument and the recusal of the Chancellor, who issued the contempt orders, on the ground that the Chancellor is biased against him. Long then filed a motion to dismiss Gallagher's complaint. In its February 28, 2013 order, the Court of Chancery denied Gallagher's motions for oral argument and recusal of the Chancellor and granted Long's motion to dismiss on the ground of laches.

(6) In this appeal from the Court of Chancery's February 28, 2013 order, Gallagher claims, in essence, that the Chancellor erred and/or abused

[2] *Gallagher v. Long*, Del. Supr., No. 383, 2007, Jacobs, J. (Nov. 6, 2007).

his discretion when he denied Gallagher's motions for oral argument and recusal and granted Long's motion to dismiss.

(7) Gallagher's first claim is that the Chancellor abused his discretion when he denied the motions for oral argument and recusal. Whether to grant a motion for oral argument is within the discretion of the Court of Chancery.[3] As noted by the Chancellor, the record in this case was adequate to render a decision on the motions and, therefore, it was unnecessary to schedule oral argument. We find no abuse of discretion on the part of the Chancellor in so deciding. Moreover, the Chancellor properly engaged in the two-part analysis required by this Court in determining that recusal was not required.[4] We, therefore, find no error or abuse of discretion on the part of the Chancellor in denying Gallagher's motion for recusal.

(8) Gallagher also claims that the Chancellor erred when he dismissed the complaint. This Court reviews *de novo* the Court of Chancery's decision to dismiss a complaint on the ground of laches.[5] Dismissal of a complaint on the ground of laches requires the establishment

[3] Ch. Ct. R. 7(b) (4).
[4] *Home Paramount Pest Control v. Gibbs*, 953 A.2d 219, 222 (Del. 2008) (on a motion for recusal, the judge must be satisfied, as a matter of subjective belief, that he can decide the matter free of bias or prejudice and also must be satisfied that there is no appearance of bias sufficient to cast doubt on the judge's impartiality).
[5] *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009).

of a) knowledge of the claim by the plaintiff; b) unreasonable delay in bringing the claim; and c) resulting prejudice to the defendant.[6]

(9) In this case, Gallagher's complaint alleged a breach of fiduciary duty on the part of Long in connection with the auction of the celebrity memorabilia. The record reflects that the auction took place approximately three and a half years previously and that Gallagher was notified of it. Moreover, in accordance with the Court of Chancery's order, Long received the proceeds of the auction. Finally, LFG, the joint venture that had been formed to market the memorabilia, was dissolved approximately three years before Gallagher's complaint was filed. Our *de novo* review reveals no error on the part of the Chancellor in dismissing Gallagher's complaint as barred by laches under these circumstances.

(10) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

[6] *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 210 (Del. 2005).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice