

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

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

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Date Decided: June 12, 2013

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Re: Rich v. Fuqi International Inc.
Civil Action No. 5653-VCG

Dear Counsel:

This matter is a summary action by the Plaintiff seeking a long-overdue stockholders' meeting of Fuqi International, Inc. ("Fuqi"). By Order of June 1, 2012, I directed Fuqi to hold a stockholders' meeting no later than September 19, 2012. Fuqi failed to hold an annual meeting by that date. By Order of October 10, 2012, I once again directed Fuqi to hold an annual meeting no later than December 17, 2012. On October 22, 2012, Fuqi moved for entry of a partial final judgment under Rule 54(b) or alternatively for certification for interlocutory appeal. I denied that motion on November 5, 2012. On November 6, 2012, Fuqi sought interlocutory appeal from the Supreme Court. The Supreme Court denied that petition on November 9, 2012.

Fuqi then sought relief from my Orders from the United States District Court for the District of Delaware, seeking “a declaration that Regulations 14A and 14C promulgated by the Securities and Exchange Commission under Section 14 of the Exchange Act preempt Section 211 of the Delaware General Corporation Law.”¹ Fuqi sought injunctive relief, as well as a temporary restraining order, against my Orders compelling Fuqi to hold its annual stockholder meeting.² The District of Delaware heard Fuqi’s motion for a temporary restraining order on an expedited basis, and, in a ruling from the bench on November 16, 2012, denied Fuqi’s motion.³ Fuqi then moved for a preliminary injunction, which was likewise denied on December 17, 2012.⁴ Since that time, Plaintiff Rich has moved to hold Fuqi in contempt of my Orders. On June 10, 2013, I held a hearing on a Rule to Show Cause why Fuqi should not be held in contempt for breach of my order.

The Plaintiff points out that Fuqi has violated my order to hold a stockholders’ meeting and has not suggested that it will ever comply. The Plaintiff seeks recourse of monetary sanctions or appointment of a receiver to liquidate the corporation.

Fuqi concedes that it has not complied with my order. It suggests that the Board cannot do so without putting the corporation and its directors in legal

¹ See Letter to Court from Fuqi Int’l, Inc. 1, Nov. 14, 2012.

² *Id.*

³ *In re Fuqi Int’l, Inc.*, Civil Action No. 12-1457-UNA, at 37:3-6 (D. Del. Nov. 16, 2012) (TRANSCRIPT).

⁴ *In re Fuqi Int’l Inc.*, 2012 WL 6589152, at * 3 (D. Del. Dec. 17, 2012).

jeopardy, since it has not filed audited financial statements and therefore is prohibited by federal law from going forward with a stockholders' meeting. The flaw in that syllogism is that Fuqi has failed to explain why it has not produced audited financial statements for several years, nor has it suggested when, if ever, it might do so.

It is clear that Fuqi is in contempt of my Orders and that a remedy is needed. I am concerned that the coercive remedy suggested by the Plaintiffs, payment of a significant daily fine, will only further damage the stockholders. Likewise, appointing a receiver to liquidate the corporation strikes me as draconian in light of the serious but remediable violation of a Court Order here.

I find that the appropriate remedy here is appointment of a receiver, for a limited basis. This is consistent with this Court's opinion in *Judy v. Preferred Communication Systems, Inc.*⁵ A receiver should be appointed with plenary authority to ensure that the corporation holds a stockholders' meeting within 90 days of this Letter Opinion. The receiver should (1) evaluate whether audited financials sufficient to comply with SEC regulations can be filed; (2) if not, evaluate whether an exemption should be sought from the SEC; and (3) explore any other considerations pertinent to a holding of the stockholders' meeting. The

⁵ See *Judy v. Preferred Commc'n Sys., Inc.*, C.A. No. 4662-CC, at 50-54 (Del. Ch. Dec. 4, 2009) (TRANSCRIPT)(appointing a receiver to determine which stockholders were entitled to vote at an annual meeting). See also *Williams v. Calypso Wireless, Inc.*, 2012 WL 424880, at *6 (Del. Ch. Feb. 8, 2012) ("The natural assignment for such a receiver would be to conduct the meeting of stockholders and seat the newly elected board.").

receiver shall be vested with authority sufficient to conduct this investigation. The stockholders' meeting shall be held within 90 days of the date of this Opinion; however, the receiver may seek modification of this timetable if doing so is in the best interests of the corporation and its stockholders. The parties should confer and provide a form of order consistent with this Letter Opinion. The parties should agree on the identity of the receiver or inform me if they are unable to so agree. To the extent that the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III