COURT OF CHANCERY OF THE STATE OF DELAWARE

SAM GLASSCOCK III VICE CHANCELLOR COURT OF CHANCERY COURTHOUSE 34 THE CIRCLE GEORGETOWN, DELAWARE 19947

July 23, 2013

John G. Harris
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1201 N. Orange Street
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Andrew Durham, pro se 7440 Fountain Head Drive Annandale, Virginia 22003

Re: Durham v. Grapetree, LLC; Civil Action No. 6167-VCG

Dear Counsel and Litigant:

This Section 220 action was resolved by a settlement agreement on April 14, 2012. This Letter Opinion, together with my bench rulings made at a hearing held on June 28, 2013, constitute my decision on Plaintiff Andrew Durham's outstanding Motion to Enforce the Settlement Agreement. For the following reasons, I deny that Motion.

At the hearing on the Motion, Durham contended that the Defendant, Grapetree, LLC, had failed to live up to the settlement agreement in various ways. The Defendant responded that most of the alleged breaches had been, or would be, cured.¹ The sole alleged breach remaining after the hearing involved Durham's request for Grapetree's bank records under the terms of the Settlement Agreement,

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¹ For example, the Defendant explained that bound guestbooks had been provided to both rental properties, and the Defendant also committed to provide Durham access to certain information via email, rather than through a website. Oral Arg. Tr. 15:10-18; 11:13-19, June 28, 2013.

which provides that "[a]ny missing banking records from January 1, 2008 through the date of this Agreement will be obtained from the appropriate financial institution and provided to all members of Grapetree within one month of notification of such missing documents." Durham was unable to articulate at the hearing which banking records had not been provided after notification, which according to Durham he had submitted to Grapetree in the form of letters which had gone unanswered. I permitted Durham to supplement the record by submitting his initial notification made to Grapetree, which purportedly directed the LLC to obtain and distribute missing documents required to be produced under the Settlement Agreement.³

Durham has since filed two notification letters sent to Grapetree.⁴ Those letters do not contain notification of missing bank records under the Settlement Agreement, however. In his letters to Grapetree, Durham requested "Quickbooks reports," "banking records," and "receipts." These requests are no more specific

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² Pl.'s Mot. to Enforce Settlement Agreement, Ex. A \P 2.

³ Oral Arg. Tr. 17:6-20:21.

⁴ Andrew Durham's Letter to the Court, Exs. 4-5, July 5, 2013

⁵ Durham submitted two letters which allege that Grapetree has breached the Settlement Agreement. The first letter (the "February 7 Letter") demanded that Grapetree "provide copies of all of the attached receipts post Jan 1, 2008 within 30 days." *Id.*, Ex. 4. The second letter (the "March 4 Letter") requested "banking records and Quickbooks reports." *Id.*, Ex. 5. Because of my decision here, I need not reach the issue of whether those letters represent timely notification under the Settlement Agreement.

than Durham's statements at oral argument. As I said at the hearing "[y]ou've

either got to tell me now [what documents you need] or I'm going to deny [the

motion], Mr. Durham. This is the time. Tell me what it is you need, and if I think it

is required by the agreement, I will order it." Again, Durham has failed to answer

my question specifically. In light of the parties' agreement that Durham is

currently able to access the Quickbooks records, and in light of the Defendant's

agreement to send him that information via email, I find that Durham has failed to

show that the Defendants are not in compliance with the Settlement Agreement.⁷

Accordingly, Durham's Motion to Enforce the Settlement Agreement is DENIED,

and this matter will be closed.

To the extent the forgoing requires an order to take effect, IT IS SO

ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

⁶ Oral Arg. Tr. 17:12-15.

⁷ Durham's argument that Grapetree is violating the Settlement Agreement by failing to properly

"maintain" the Quickbooks records is unavailing. Oral Arg. Tr. 10:16-21. Nothing in the

Settlement Agreement requires Grapetree to provide a certain level—or any level—of

"maintainence" with regard to the Quickbooks records.

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