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Re: *In re: AETEA Information Technology, Inc.*
C.A. No. 9535-VCN
Date Submitted: October 23, 2014

Dear Counsel:

Intervenor Lauren Sardis ("Intervenor" or "Ms. Sardis") has moved to compel discovery in a proceeding brought under 8 *Del. C.* § 279 for the appointment of a receiver for AETEA Information Technology, Inc. ("AETEA" or the "Company"), a dissolved Delaware corporation. Section 279 actions are generally narrowly focused statutory proceedings with limited discovery. However, this case is complicated by Intervenor's contention that Petitioner Jeffrey I. Sardis ("Petitioner" or "Mr. Sardis") is utilizing Delaware's statute to

circumvent a New York State divorce judgment, which, according to Intervenor, forbids Mr. Sardis from self-dealing with AETEA.[1]

Mr. Sardis has indicated that he might purchase AETEA's assets from the receiver. While a sale by a Court-appointed receiver would generally be the antithesis of self-dealing, Intervenor asserts that in this case, such action would constitute the final step of an illicit scheme to eliminate her interest in the Company cheaply. She advances equitable defenses against a receiver's appointment, which, according to her, is a device attempting to "cleanse" Petitioner's inequitable conduct.

I. BACKGROUND

A. *Petitioner Requests a Receiver for AETEA*

AETEA was formed as a Delaware corporation on November 13, 2003. Petitioner is the Company's president and only director. The sole stockholder is a Delaware corporation, JLAJ Holding Corp. ("JLAJ"), of which Petitioner is also the president and single director. He owns JLAJ with Intervenor, who is his ex-wife. Petitioner and Intervenor own two-thirds and one-third of JLAJ's common

[1] This letter opinion also decides Petitioner's Cross-Motion for a Protective Order.

stock, respectively. Their ownership percentages were established by a Stipulation of Settlement (the "Settlement") that resolved their divorce proceedings.

The parties were divorced in New York State in 2009, after having entered into the Settlement in September 2008. Along with the Settlement, they entered into the JLAJ Holding Corp. Stockholders Agreement (the "Stockholders Agreement"), which set forth terms and conditions regarding the operations of JLAJ and AETEA. Intervenor's rights under the Settlement and Stockholders Agreements were in lieu of alimony and maintenance. The Stockholders Agreement contemplates a sale of AETEA through which the Intervenor would receive the value of her interest.

On April 15, 2014, Petitioner filed the Verified Petition for Appointment of Receiver for AETEA with this Court. The parties do not dispute that AETEA was dissolved in technical compliance with the Delaware General Corporation Law ("DGCL"). In his capacity as AETEA's sole director, Petitioner acted by written consent to adopt resolutions to (i) dissolve the Company, (ii) approve a Plan of Liquidation and Dissolution (the "Plan"), and (iii) submit the Plan to the Company's sole stockholder, JLAJ, for approval. JLAJ approved the dissolution

and the Plan based on Petitioner's action by written consent. AETEA's Certificate of Dissolution was filed with Delaware's Secretary of State on April 11, 2014.

The Plan directed Petitioner to seek the appointment of a receiver to negotiate the sale of AETEA's property and assets, potentially to an entity owned by or affiliated with him. Petitioner insists that an independent receiver will ensure that AETEA's winding up and liquidation are fair and equitable to all stakeholders.

B. *Ms. Sardis Intervenes*

Intervenor objects to the appointment of a receiver on the grounds that AETEA's dissolution, allegedly undertaken in violation of the Settlement and Stockholder Agreements, is invalid and unenforceable. She claims that any sale of AETEA's assets must be an "Approved Sale" as defined by the Stockholders Agreement, which prohibits a sale to Petitioner or any entity affiliated with him.[2] Intervenor charges Petitioner with attempting to avoid his contractual obligations and defrauding her of value to which she is entitled under the divorce agreements. Supposedly, Petitioner caused AETEA's financial condition to deteriorate so that

[2] This restriction does not appear in the plain language of the Stockholders Agreement.

he could purchase the Company at a low price. He purportedly dissolved AETEA and requested a receiver in order to disguise his scheme as an arm's length transaction.

Petitioner retorts that Intervenor is inappropriately attempting to expand the scope of this Section 279 proceeding. While he may be right in the abstract, Petitioner has represented to the Supreme Court of the State of New York (the "New York Court"), in current post-judgment divorce proceedings, that "[Ms. Sardis] is already actively engaged in litigating the substance of [the New York] matter before the Court of Chancery of the State of Delaware."[3] The New York Court determined "that a simultaneous action is currently pending in Delaware involving similar issues and that the defendant will have the opportunity therein to object to the appointment of a receiver and to seek nullification of the Certificate of Dissolution and restoration of the company to its prior corporate status."[4] At this stage, it appears appropriate to allow Intervenor a degree of latitude not typically warranted in similar proceedings.

[3] Intervenor's Reply in Supp. of Mot. to Compel and Opp'n to Pet'r's Mot. for Protective Order ("Intervenor's Reply") Ex. 6 ¶ 7.
[4] Pet'r's Reply in Supp. of Cross-Mot. for Protective Order Exhibit A, at 2.

C. *Petitioner's Previous Motion for a Protective Order*

On July 31, 2014, the Court denied Petitioner's previous Motion for a Protective Order (the "First Motion") and allowed Intervenor to depose Petitioner because "Ms. Sardis has a reasonable basis for wanting to delve into how, with respect to the dissolution/receivership, we have gotten to where we are."[5] Ms. Sardis had identified certain topics on which it appeared appropriate to question Petitioner.[6] The Court urged the parties to exercise discretion in establishing the deposition's scope, but set no explicit limitations on the appropriate subject matter.

The First Motion also addressed Intervenor's requests for production of an appraisal of AETEA that was conducted before its dissolution, the related engagement letter, and the materials upon which the appraiser relied. Before the Court heard argument, Petitioner had already produced the appraisal. The Court, in ordering Petitioner also to produce the engagement letter, observed that the letter

[5] Transaction ID 55892306 (Tr. of Oral Arg. on Pet'r's Mot. for Protective and Scheduling Orders ("Oral Arg.")) 58.
[6] For example, "the actions that are the subject of the dissolution, the decisions that were made, the going forward, what's happening now . . . ." *Id.* at 46.

"may or may not establish the objectives of the appraisal, the terms or means by which the appraisal is to be done, that is relevant to the validity of the appraisal."[7]

D. *Intervenor's Current Motion to Compel and Petitioner's Cross-Motion for a Protective Order*

Intervenor deposed Petitioner on September 18, 2014, at which point her current Motion to Compel (the "Motion") was pending. The Motion requested (i) AETEA's 2007-2008 financial statements, (ii) Petitioner's personal financial statements, and (iii) the post-acquisition balance sheet for AETEA that Petitioner prepared in anticipation of buying the Company.[8] Further, Intervenor requested that the Court order Petitioner to sit for a second deposition if those documents were not produced in time for the first.

Petitioner had suggested postponing the deposition until the Court could rule on the Motion. However, Intervenor opted to proceed on the original schedule. During the deposition, Petitioner's counsel instructed him not to answer certain

[7] *Id.* at 57.
[8] These documents were subsequently produced, mooting much of the Motion. *See* Intervenor's Reply 5; Transaction ID 56337874 (Letter from Intervenor's counsel, Nov. 14, 2014); Transaction ID 56265404 (Letter from Intervenor's counsel, Oct. 29, 2014).

questions and barred Intervenor from inquiring into several topics. Petitioner's counsel expressed his belief that the Court had specifically limited the deposition's scope.

Intervenor therefore requests an order requiring Petitioner to sit for further questioning. She hopes to address the areas placed off-limits (or for which she received inadequate answers) during the first deposition and to ask questions regarding the documents, now produced, originally the subject of this Motion. Further, during the deposition, Intervenor learned that draft versions of the previously produced final appraisal of AETEA exist. She seeks an order requiring production of those drafts.

Petitioner has moved for a protective order to prevent Intervenor from deposing him further.

II. ANALYSIS

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any

other party . . . ."[9] The discovery rules are designed to permit broad discovery and information may be discoverable if it is "reasonably calculated to lead to the discovery of admissible evidence."[10] However, the Court may grant a protective order limiting discovery when "justice [so] requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."[11]

Determining relevance requires a context-specific inquiry that is dependent on the manner in which the litigation has been framed. Although information may be discoverable despite its inadmissibility at trial, discovery is unwarranted if it cannot possibly lead to evidence pertinent to resolving the matter at hand. As discussed above, Intervenor has raised issues that may somewhat broaden the scope typical of a Section 279 proceeding.

A. *The Second Deposition*

In its July 31, 2014, bench ruling, the Court denied Petitioner's First Motion, thereby permitting Intervenor to depose him. While the Court "caution[ed] that some discretion be used in establishing the scope of the deposition," it did not set a

[9] Ct. Ch. R. 26(b)(1).
[10] *Id.*
[11] Ct. Ch. R. 26(c).

scope on questioning.[12] Rather, the Court merely recognized that the list of topics suggested by Intervenor sounded reasonable but set no specific limitations. Therefore, Petitioner will be made available for additional questioning regarding the questions he was instructed not to answer and the topics into which Intervenor was barred from inquiring.[13]

Further, Petitioner will answer questions regarding the documents initially sought through this Motion.[14] Intervenor cannot realize the full potential benefit of these documents unless she is allowed to question Petitioner regarding their contents. While the Court has some sympathy for the fact that Petitioner offered to postpone the deposition until the Court ruled on this Motion, the fact that a second

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[12] *See* Oral Arg. 58.

[13] Because broad discovery is typically allowed if reasonably calculated to lead to admissible evidence, and this case includes potentially relevant issues not found in most Section 279 actions, inquiry into these areas is permitted. Given this ruling, Intervenor may also revisit the questions for which the Petitioner gave inadequate responses during the first deposition. These questions, outlined in Exhibit 1 to Intervenor's Reply, deal with Petitioner's decision to dissolve the Company, the actions he hopes the receiver will take, why he is interested in purchasing AETEA, and how he envisions his potential purchase.

[14] These documents are: (i) AETEA's 2007-2008 financial statements, (ii) Mr. Sardis's personal financials, and (iii) the post-acquisition balance sheet.

Questioning regarding documents produced by SunTrust, the bank that operated AETEA's credit facility, concerning AETEA's dissolution and sale is also proper.

deposition would have been appropriate regardless (because of the topics and questions to which Petitioner failed to respond) alleviates the Court's concerns of burdening the Petitioner.[15]

While Intervenor has suggested taking the deposition in New York, Petitioner argues that Delaware is the appropriate location. Petitioner initiated these proceedings in this Court, and as his choice of forum, Delaware is presumptively the appropriate location for the deposition. As there is no compelling reason to depart from this standard rule, Petitioner shall be deposed in Delaware, unless otherwise agreed by the parties.

B. *Drafts of Final Appraisal*

During Petitioner's deposition, Intervenor learned that there are earlier drafts of AETEA's appraisal. Petitioner requests these drafts because, apparently, after seeing the draft, Petitioner provided information to the appraiser regarding AETEA's loss of a major customer, which supposedly impacted the overall value

[15] Petitioner's deposition is not to stray beyond the questions and topics that Intervenor was barred from asking about (or received inadequate answers) at the first deposition, the documents produced by SunTrust relating to AETEA's dissolution and sale, and the documents produced that were initially the subjects of Intervenor's Motion.

of the Company.[16] For reasons similar to why the Court compelled production of the engagement letter, *i.e.*, "context," Petitioner will produce the drafts of the appraisal. These documents meet the relatively low standard of "relevant to the subject matter involved in the pending action" and not privileged.[17]

III. CONCLUSION

For the foregoing reasons, Intervenor's Motion to Compel is granted and Petitioner's Cross-Motion for a Protective Order is denied. Petitioner will produce drafts of the appraisal and sit for additional questioning concerning the documents produced in connection with this Motion,[18] and the topics on which he would not testify (or answered inadequately) in his previous deposition.

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[16] This issue was not raised until the Intervenor's Reply because the deposition was not taken until after she filed the Motion. It was addressed in Intervenor's Reply and in subsequent correspondence.

[17] Ct. Ch. R. 26(b)(1). *Cf. Hexion Specialty Chems., Inc. v. Huntsman Corp.*, 2008 WL 3878339, at *1 (Del. Ch. Aug. 22, 2008) (compelling the production of documents prepared by or relating to the activities of defendant's financial advisor because the financial advisor was not a trial consultant pursuant to Court of Chancery Rule 26(b)(4)(B), and the documents sought did not fall within the ambit of attorney work product).

[18] This would include documents relating to AETEA's dissolution and sale as produced by SunTrust.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K