IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAUL A. FOX, MERCURY ASSETS, LLC, and MERCURY TRUST, on behalf of themselves and derivatively on behalf of FOX PAINE & COMPANY, LLC,	§	No. 259, 2010
	§	Court Below-Court of Chancery of the State of Delaware
Plaintiffs-Counterclaim Defendants Below, Appellants,	§	C.A. No. 3187
v.	§	
W. DEXTER PAINE, III,	§	
Defendant-Counterclaim Plaintiff Below, Appellee.	§	

Submitted: May 5, 2010
Decided: May 28, 2010

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

O R D E R

This 28th day of May 2010, it appears to the Court that:

(1) The plaintiffs-appellants, Saul A. Fox, Mercury Assets, LLC, and Mercury Trust, on behalf of themselves and derivatively on behalf of Fox Paine & Company, LLC (collectively, "Fox"), have petitioned this Court, pursuant to Supreme Court Rule 42, to appeal from the Court of Chancery's interlocutory rulings on April 5, 2010 and April 9, 2010, which enjoined Fox and related entities from pursuing arbitrations filed in New

York and California and lawsuits filed in California pending the completion of discovery, briefing, argument and decision on two motions filed by Fox and defendant-appellee W. Dexter Paine, III ("Paine") on December 24, 2009 and March 29, 2010, respectively, in the underlying Court of Chancery litigation.[1]

(2) On April 30, 2010, the Court of Chancery refused to certify an interlocutory appeal to this Court pursuant to Rule 42 on the grounds that a) the motion for certification failed to meet any of the criteria set forth in Rule 42; and b) the motion for certification failed to meet any of the criteria set forth in *Kirpat, Inc. v. Del. Alcoholic Bev. Control Comm'n*, 741 A.2d 356, 357 (Del. 1998).

(3) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances.[2] We have examined the Court of Chancery's interlocutory rulings on April 5, 2010 and April 9, 2010 according to the criteria set forth in Rule 42. In the exercise of its discretion, this Court has concluded that such exceptional circumstances as would merit interlocutory review of the rulings of the Court of Chancery do not exist in this case.

---

[1] Fox also has filed in this Court a petition for writs of mandamus and prohibition in connection with the Court of Chancery's April 5 and April 9, 2010 orders in Supr. Ct. No. 260, 2010.
[2] Supr. Ct. R. 42(b).

NOW, THEREFORE, IT IS ORDERED that the within interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice