IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RIVERSIDE FUND V, L.P., and RIVERSIDE AMCAD BLOCKER CORP.,	)	
	)	C.A. No.: N14C-10-038 EMD CCLD
Plaintiffs,	)	
v.	)	
VISAGAR SHYAMSUNDAR, JUPITER TECHNOLOGY HOLDINGS, LLC, RONALD F. CORNELISON, and EDWARD BERKOWITZ,	)	
Defendants.	)	

MEMORANDUM ORDER DENYING, IN PART, AND GRANTING, IN PART, DEFENDANT SHYAMSUNDAR'S MOTION TO DISMISS COUNT III OF THE SECOND AMENDED CROSS-CLAIM OF DEFENDANT CORNELISON

Upon consideration of the Complaint (the "Complaint") filed by Plaintiffs Riverside Fund V, L.P. and Riverside AmCad Blocker Corp. (collectively, "Riverside") on October 3, 2014; the Second Amended Cross-Claim Against Visagar Shyamsundar (the "Cross-Claim") filed by Defendant Ronald F. Cornelison on September 4, 2015; Defendant Shyamsundar's Motion to Dismiss Count III of the Second Amended Cross-Claim of Defendant Cornelison (the "Motion") filed by Defendant Visagar Shyamsundar on September 14, 2015; Defendant Cornelison's Response in Opposition to Defendant Shyamsundar's Motion to Dismiss Count III of the Amended Cross-Claim (the "Response") filed by Mr. Cornelison on November 12, 2015, and the attached exhibit submitted by Mr. Cornelison with the Response, the Court finds and holds as follows:

1. Upon a motion to dismiss, the Court (i) accepts all well-pleaded factual allegations as true, (ii) accepts even vague allegations as well-pleaded if they give the opposing

party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[1] However, the court must "ignore conclusory allegations that lack specific supporting factual allegations."[2]

2. Mr. Shyamsundar contends that Count III of the Cross-Claim fails to state a claim because there is no indemnification or contribution right under the Amended and Restated Operating Agreement of Jupiter Technology Holdings, LLC (Jupiter) (the "Jupiter Operating Agreement"). Mr. Cornelison argues that the Jupiter Operating Agreement, in conjunction with the allegations made in the Complaint, supports a claim for contribution and/or indemnification. After review of the relevant pleadings and the record in this civil action, the Court holds -- at this stage in the proceedings -- that Count III of the Cross-Claims states a sufficient indemnification claim. The Court also holds that Count III of the Cross-Claims does not state a sufficient claim for contribution.

3. Section 11.1(a) of the Jupiter Operating Agreement states:

> In any proceeding brought by, or in the right of, the LLC or brought by, or on behalf of, the Members of the LLC, no Manager or its Affiliates shall be liable to the LLC or its Members for monetary damages with respect to any transaction occurrence or course of conduct, whether before, on, or after the effective date of this Agreement, except for liability resulting from such Manager or its Affiliates having engaged in gross negligence, willful misconduct, knowing violation of the criminal law or any federal or state securities law, or Prohibited Conduct.

Mr. Shyamsundar was a Member and the Managing Member of Defendant Jupiter Technology Holdings, LLC ("Jupiter"). Mr. Cornelison was a Member of Jupiter. In Count IV of the Complaint, Riverside alleges that Mr. Shyamsundar, Mr. Cornelison, and Jupiter breached the EPA by making false representations.

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[1] *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 227 A.3d 531, 536 (Del. 2011); *Doe v. Cedars Academy*, 2010 WL 5825343, at *3 (Del. Super. Oct. 27, 2010).
[2] *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998).

4. At this stage of the proceedings, the Court cannot find that Mr. Cornelison would not be entitled to recover under any reasonably conceivable sets of circumstances on an indemnification claim under the Jupiter Operating Agreement. Under Section 11.1(a), Mr. Shyamsundar, as Jupiter's Manager, would have to indemnify Mr. Cornelison, a Jupiter Member, for monetary damages caused by Mr. Shyamsundar's willful misconduct. A jury could find that Mr. Shyamsundar's alleged false representations to Riverside constitute "willful misconduct" under Section 11.1(a). This is the type of question of fact that the Court cannot decide on a Civil Rule 12(b)(6) motion to dismiss.

5. The Court further finds that no claim for contribution is available. A claim for contribution arises as a claim between joint tort-feasors.[3] Mr. Shyamsundar and Mr. Cornelison are not joint tort-feasors because Riverside's Complaint does not list any tort against both Mr. Shyamsundar and Mr. Cornelison. The Complaint alleges that Mr. Shyamsundar and Mr. Cornelison breached their contract with Riverside. Therefore, there can be no contribution by Mr. Shyamsundar towards Mr. Cornelison.

For the foregoing reasons the Motion is **DENIED in part and GRANTED in part**.

IT IS SO ORDERED.

January 5, 2016
Wilmington, Delaware

/s/ *Eric M. Davis*
Eric M. Davis, Judge

[3] *Reddy v. PMA Ins. Co.*, 20 A.3d 1281, 1284 (Del. 2011).