

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

Sam Glasscock, III  
VICE CHANCELLOR

CHANCERY COURTHOUSE  
34 The Circle  
GEORGETOWN, DELAWARE 19947

July 23, 2013

Andrew Durham  
7440 Fountain Head Drive  
Annandale, VA 22003

John G. Harris, Esquire  
Berger Harris, LLC  
1201 North Orange Street  
One Commerce Center, 3<sup>rd</sup> Floor  
Wilmington, DE 19801

RE: Durham v. Grapetree LLC  
C.A. No. 7325-VCG

Dear Litigants:

This letter involves Andrew Durham's Motion to Compel Production and Motion for a Continuance of the Trial, which is currently scheduled for August 26, 2013. The Amended Complaint included derivative claims by Andrew Durham on behalf of Grapetree LLC, seeking accounting for funds allegedly misappropriated by two other members of Grapetree LLC, Jeff and Dee Durham.<sup>1</sup> That portion of the Plaintiff's Complaint was withdrawn, since he concededly failed to satisfy the demand requirement before bringing suit purportedly on behalf of the LLC.<sup>2</sup>

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<sup>1</sup> Am. Compl. ¶ 107, Aug. 8, 2012.

<sup>2</sup> See, e.g., *Wood v. Baum*, 953 A.2d 136, 140 (requiring a derivative plaintiff suing on behalf of an LLC to make pre-suit demand or plead demand futility).

What remains of the action is the Plaintiff's request to be reimbursed for expenditures made on behalf of the LLC. In order to justify such reimbursement, the Plaintiff will need to demonstrate that the LLC Agreement provides for such reimbursement and what sums he expended on behalf of the LLC that are eligible for such reimbursement. Those are the issues remaining for trial. Notwithstanding the straightforward nature of this action, emotions in this family dispute run high, civility correspondingly low, and motion practice has been overabundant. A number of issues were resolved orally at a hearing held June 28, 2013; this letter addresses two motions upon which decision was reserved.

The Plaintiff, who is *pro se*, filed a request for "production and interrogatories" on January 2013.<sup>3</sup> That request seeks an explanation of Jeff Durham's authority to "charge for his time";<sup>4</sup> educational and professional resumes and other documents pertaining to the background of Jeff Durham;<sup>5</sup> a "copy of all the gifts/reimbursements given to the staff at Les Chaudieres"<sup>6</sup>—apparently, a property owned by the LLC; and a "true and correct copy of all the reimbursements given to Jeff and Dee's friends."<sup>7</sup> Each of those items is a request for documents potentially relevant to the withdrawn derivative claims but not to the Plaintiff's reimbursement claim. The requests do not appear to be designed to

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<sup>3</sup> Pl.'s Letter to Court, Ex. D, Jul. 8, 2013.

<sup>4</sup> *Id.* ¶ 2.

<sup>5</sup> *Id.* ¶ 4.

<sup>6</sup> *Id.* ¶ 6.

lead to the discovery of admissible evidence. Therefore, the Plaintiff's motion to compel those items of discovery is denied.

The Plaintiff also seeks "copies of all LLC and managing members' meeting minutes and other written notes or emails pertaining to reimbursement of owners."<sup>8</sup> Because that request seems reasonably designed to lead to the discovery of evidence relevant to the issues for trial, the motion to compel production is granted with respect to that request. The Defendant shall produce these documents within thirty days. Finally, the Plaintiff seeks receipts for "bill payment" for expenditures made by Jeff and Dee Durham and "car rentals and airfares" for members of the LLC.<sup>9</sup> To the extent those requests seek to discover reimbursements or direct payments to LLC members of the type which for which the Plaintiff seeks reimbursement, the request may lead to the discovery of admissible evidence, depending on the resolution of the legal issues relating to the right of reimbursement under the LLC agreement. Given my decision to address those issues before trial, explained below, I reserve decision on this portion of the motion to compel pending the outcome of that inquiry.<sup>10</sup>

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<sup>7</sup> *Id.* ¶ 7.

<sup>8</sup> *Id.* ¶ 3.

<sup>9</sup> *Id.* ¶ 5.

<sup>10</sup> The Plaintiff has also requested "copies of any and all writings or photos or other exhibits on which [the Defendant intends] to rely" at trial. *Id.* ¶ 8. Obviously, those documents must be produced prior to trial.

Next, the Defendant has failed to answer the Plaintiff's Request for Admissions. Large portions of the Request for Admissions are trivial, argumentative or related solely to the withdrawn derivative claims. Because the admissions requested are thus overbroad, to the extent the Plaintiff's motion seeks admissions in response to his request, the motion is denied.

Finally, I turn to the Plaintiff's request to continue the trial, currently scheduled for August 26, 2013. The Plaintiff gives two reasons for his request for a continuance. First, he argues that he needs time to pursue additional discovery. However, as found above, only limited discovery remains to be completed. He also states that the month of August would be an inconvenient time for him to present his case, as he takes that entire month for vacation in Maine. Neither of these reasons is persuasive. However, upon examining the record, it appears to me that before any evidentiary presentation is made, it is appropriate to address the legal issue of what reimbursements are available to a non-managing member of the LLC. Although no party has filed a motion for summary judgment or partial summary judgment, it would be helpful to have submissions on this issue prior to trial. Therefore, the trial is continued. The parties shall file opening memoranda by September 16, 2013 and answering memoranda by October 7, 2013 on the Plaintiff's right to reimbursement under the LLC agreement. The parties shall confer and, to the extent appropriate, agree on a stipulated record as to the

reimbursement sought and the circumstances under which the expenses were incurred by the plaintiff, and incorporate that record in the memoranda. To the extent factual disputes remain for trial, the memoranda should disclose that, as well.

To the extent that the above requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Vice Chancellor

cc: Register in Chancery