IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

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) C.A. No. K09C-02-030 JTV
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Submitted: October 17,, 2012 Decided: January 29, 2012

Neil Wallace, Pro Se.

Donald L. Gouge, Jr., Esq., Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff Wallace's
Motion to Compel **DENIED**

VAUGHN, President Judge

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ORDER

Upon consideration of the plaintiff's Motion to Compel, the defendant's opposition, the parties' supplemental letters to the Court, and the record of this case, it appears that:

This action arises out of the dissolution of an employment relationship. 1. On April 24, 2009, the plaintiff, Neil Wallace ("Wallace"), filed an amended complaint alleging breach of contract, or, in the alternative, promissory estoppel for alleged failure of defendants, Geckosystems International Corp. the ("Geckosystems") and R. Martin Spencer ("Spencer"),² to pay him for services rendered during his employment. On September 20, 2012, Mr. Wallace moved to compel Spencer, a resident of Georgia, to appear for a deposition in this case. Mr. Spencer, however, has never been served with process. At the presentation of the motion on September 28, 2012, which was attended by Mr. Wallace and counsel for Geckosystems, Mr. Wallace argued that Mr. Spencer had submitted to the jurisdiction of the Court by filing an answer on May 20, 2009. If Mr. Spencer has, indeed, filed an answer, the Court would have the authority to order him to submit to a deposition. The issue is whether Mr. Spencer did enter a personal appearance in the action by filing an answer and is, therefore, subject to the jurisdiction of the Court.³

 $^{^{1}}$ Mr. Wallace is $pro\ se$ in this case, but he is a lawyer admitted in New York and Florida.

² Mr. Spencer is the President and CEO of Geckosystems.

³ See Super. Ct. Civ. R. 5(aa) ("[A] defendant may appear although a summons has not been served upon the defendant. Appearance may be made by . . . the service or filing of any motion or

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- 2. On May 20, 2009, Mr. Spencer wrote a letter to the Court on Geckosystems stationary which he signed as President/CEO. In the letter, Mr. Spencer states "we find ourselves in difficult financial times just like so many other small businesses across the United States. Additionally, twenty days to respond to this complaint has not allowed us enough time to hire an attorney practicing law in the State of Delaware. Our company is domiciled in Georgia." He also inquires in the letter whether Mr. Wallace must apply for *pro hac vice* admission to the case or whether he can represent himself. He next states: "Enclosed are my answers to his first submitted complaint. Please allow these to be a part of the court record regarding this case." The May 20 letter was interpreted by the Court as requesting an extension of time to file an answer for Geckosystems, which was granted.⁴
- 3. The answer attached to the May 20 letter is entitled "FACTS as Submitted by Plaintiff and Rebuked by Defendants." The two page document admits and denies certain allegations in a format similar to answers commonly filed in this Court, but it is unsigned.
- 4. Mr. Spencer contends that the letter and answer in no way purport to bind him personally, and were solely on behalf of Geckosystems. He also contends that the unsigned answer is in contravention of Superior Court Civil Rule 11(a)

pleading purporting to be responsive to, or affecting the complaint ").

⁴ Letter to the Superior Court from R. M. Spencer dated May 20, 2009, D.I. 8. The request was granted on June 11, 2009, but Geckosystems was unable to obtain counsel, and on January 11, 2010, a default judgment was entered against it. Geckosystems filed a motion to vacate the default judgment, but that motion was denied on July 18, 2011.

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because it lacks a signature, and must be stricken unless corrected. Mr. Spencer declines to cure the defect. Mr. Wallace contends that the language and context of the letter submission demonstrate that Mr. Spencer intended for the answer to be his own, and not Geckosystems'. Mr. Wallace also claims that Mr. Spencer's signing of the "cover letter" combined with his request to make the answer part of the court record satisfies the requirements of Rule 11.

- 5. As an initial matter, I find that the answer attached to the May 20 letter was intended by Mr. Spencer to be one for himself individually. One of the purposes of the letter request was to request an extension of time for Geckosystems to answer. In addition, some of the language in the letter suggests that Mr. Spencer may have been aware that a corporation needs to answer through an attorney. Finally, Mr. Spencer's use of the phrase "my answer" creates an inference that he was filing the answer for himself individually.
- 6. The central question then becomes whether Mr. Spencer's answer is defective for its failure to adhere to Rule 11's signature requirement. Rule 11(a) provides in pertinent part:

Every pleading, motion, and other paper shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or

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⁵ Transpolymer Indus., Inc. v. Chapel Main Corp., 582 A.2d 936, 1990 WL 168276, at *1 (Del. Sept. 18, 1990) (TABLE) ("[A] corporation, being an artificial entity, can only act through its agents and, before a court only through an agent duly licensed to practice law.").

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The Superior Court in Hunter v. McGee noted, "[i]t follows from this last sentence

of Rule 11(a) that a failure to sign a pleading, even an original complaint, is not a

fatal error. It is an irregularity which can be corrected."⁷

7. The May 20 letter need not be read in conjunction with the attached

answer in the manner that the plaintiff advances. The letter and the attached answer

are separate documents with different purposes. I am not persuaded that Mr.

Spencer's signature on the May 20 letter should be deemed to be a signature on the

answer. I conclude that Mr. Spencer's answer fails to satisfy Rule 11(a)'s signature

requirement. Since Mr. Spencer declines to sign the answer, it is stricken. I therefore

conclude that Mr. Spencer has not entered an appearance in the action.

8. For the foregoing reasons, the Motion to Compel is *denied*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary

cc: Order Distribution

File

⁶ Super. Ct. Civ. R. 11(a).

⁷ Hunter v. McGee, 820 A.2d 1167, 1169 (Del. Super. 2001).

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