COURT OF CHANCERY
OF THE
STATE OF DELAWARE

J. TRAVIS LASTER
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

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Date Decided: July 6, 2012

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RE: *Coughlin v. South Canaan Cellular Investments, LLC*, C.A. No. 7202-VCL

Dear Counsel:

The respondents requested fee shifting under the bad faith exception to the American Rule. Because the request itself was made in bad faith, I award the petitioner fees and costs of $17,906.

FACTUAL BACKGROUND

On February 1, 2012, petitioner Frank M. Coughlin, a member of respondents South Canaan Cellular Investments, LLC and South Canaan Cellular Equity, LLC (together, the "South Canaan LLCs" or the "LLCs"), filed a petition seeking dissolution of the LLCs. Under Section 5.1 of both operating agreements, filing a voluntary bankruptcy petition constitutes an event of dissolution. On January 25, 2009, each LLC filed a voluntary bankruptcy petition. Coughlin sought a declaration that the South Canaan LLCs had dissolved in accordance with the terms of their operating agreements.

The South Canaan LLCs opposed the petition. On March 5, 2012, they moved for judgment on the pleadings. In their briefs, the LLCs accepted that they were in the winding up process, but inexplicably continued to dispute that they had dissolved. *See, e.g.*, Resp'ts' Opening Br. ("OB") 6 (arguing that the petition "fails to set forth facts sufficient to meet Delaware's standard for judicial dissolution of an LLC"); *id.* at 10 ("[T]here is no factual basis from which it can plausibly be suggested that Mr. Coughlin is entitled to dissolution of the [South Canaan] LLCs."). Instead, they incoherently argued that the Court was prohibited from declaring that they were dissolved "[e]ven if the companies' boards were violating the Operating Agreements by failing to dissolve." OB 15. In their reply brief, the South Canaan LLCs requested fee shifting under the bad

faith exception to the American Rule, arguing that Coughlin lacked a good faith basis for pursuing the petition for dissolution.

On May 10, 2012, I heard argument on the motion for judgment on the pleadings. When asked whether his clients would stipulate that they were dissolved, the lawyer who was then counsel for the LLCs evasively responded that "[w]e're willing to stipulate that we filed for bankruptcy, and that under the LLC agreements, filing for bankruptcy is an event causing dissolution." Tr. 8. He would not, however, concede that the LLCs were dissolved. Only after being asked the question again, and after consulting with his client, did counsel stipulate that the South Canaan LLCs were dissolved under the plain language of their operating agreements.

LEGAL ANALYSIS

Delaware follows the American Rule, which generally requires that, "regardless of the outcome of litigation, each party is responsible for paying his or her own attorneys' fees." *In re SS & C Techs., Inc. S'holders Litig.*, 948 A.2d 1140, 1149 (Del. Ch. 2008). "The bad faith exception to the American Rule applies in cases where the court finds litigation to have been brought in bad faith or finds that a party conducted the litigation process itself in bad faith, thereby unjustifiably increasing the costs of litigation." *Beck v. Atl. Coast PLC*, 868 A.2d 840, 850-51 (Del. Ch. 2005). A trial court may grant a bad faith fee award during the pendency of ongoing litigation "as a sanction for making frivolous legal arguments or engaging in bad-faith litigation tactics." *In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256, at *6 (Del. Ch. June 27, 2011).

"The bad faith exception is not lightly invoked." *Beck*, 868 A.2d at 851. "[L]awyers should think twice, three times, four times, perhaps more before seeking Rule 11 sanctions or moving for fees under the bad faith exception. . . . These types of motions are inflammatory." *Katzman v. Comprehensive Care Corp.*, C.A. No. 5892-VCL, at 13 (Del. Ch. Dec. 28, 2010) (TRANSCRIPT). An unwarranted motion for fee shifting under the bad faith exception can itself justify a finding of bad faith and fee shifting.[1]

[1] *See New Castle Shopping, LLC v. Penn Mart Disc. Liquors, Ltd.*, 2009 WL 5197189, at *2 (Del. Ch. Oct. 27, 2009) (noting that an unwarranted request for sanctions can itself be the basis for sanctions); *Wilkerson v. Harleysville Mut. Auto. Ins. Co.*, 1993 WL 144593, at *3 (Del. Ch. Apr. 23, 1993) (denying a motion for sanctions as being "without merit—a circumstance that is perilously close itself to being a violation of Rule 11"); *see also Local 106, Serv. Empls. Int'l Union v. Homewood Mem'l Gardens, Inc.*, 838 F.2d 958, 961 (7th Cir. 1988) (affirming district court's *sua sponte* grant of sanctions for filing an unwarranted motion for sanctions.); *Harris v. WGN Cont'l Broad. Co.*, 650

The unjustified refusal of the South Canaan LLCs to acknowledge the fact of their dissolution forced Coughlin and the Court to expend resources on unnecessary litigation. The South Canaan LLCs exacerbated the situation by seeking a bad faith fee award in their reply brief. That unfounded and ill-timed request was itself made in bad faith. Coughlin not only had a good faith basis for seeking a determination that the South Canaan LLCs were dissolved, but was entitled to such a determination as a matter of law under the plain terms of the operating agreements.

Coughlin seeks $17,906 in fees and costs. The request is reasonable and appropriately supported by detailed time entries. *See Aveta Inc. v. Bengoa*, 2010 WL 3221823, at *4 (Del. Ch. Aug. 13, 2010).

CONCLUSION

Within ten days, the respondents shall pay the petitioner $17,906 as an award of fees and costs. IT IS SO ORDERED.

Very truly yours,

/s/ J. Travis Laster.

J. Travis Laster
Vice Chancellor

F. Supp. 568, 576 (N.D. Ill. 1986) ("[A] claim of violation of Rule 11 is a serious charge and can itself form the basis of a Rule 11 sanction.").