EFiled: Aug 20 2012 01:17PM EDT
Filing ID 45987337
Case Number 144,2011

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LINDA MERRITT (a/k/a LYN MERRITT, et al. **Defendants -below, Appellants,**	)	
v.	)	**No. 144-2011**
R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	**On Appeal from The Court of Chancery**
Plaintiffs-Below-Appellees,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, et als.	)	
Nominal Defendants-Below Appellees.	)	

THIRD AMENDED OPENING BRIEF OF APPELLANTS LINDA MERRITT, MER-LYN FARMS, LLC AND MERRITT LITIGATION SUPPORT, INC.

Filing Date: August 20, 2012

Erik C. Grandell, Esquire
DE Supreme Court ID # 2708
1473 Spruce Avenue
Wilmington, DE 19805
(302) 757-6627

Thomas D. Schneider, Esquire
122 South Providence Road
Wallingford, PA 19086
(610) 565-1134
Admitted *pro hac vice*

TABLE OF CONTENTS

TABLE OF CITATIONS

NATURE OF PROCEEDINGS

This is an appeal from a final order dismissing this case on February 21, 2011. Delaware Supreme Court Rule 6(a)(i). The purpose of this appeal is to contest the Chancery Court's orders (a) denying appellant Lyn Merritt her right to indemnification for counsel fees under operating agreements that she entered into with the appellees; (b) ordering Merritt's removal as managing member of ten Delaware limited liability companies ("Entities") and appointing a receiver to manage and liquidate the Entities; and (c) holding Merritt and other appellants in civil contempt. This appeal also contends that the Honorable William Chandler, the judge who presided over this case, should have recused himself from the outset due to his ties with the receiver and appellee R&R Capital, LLC ("R&R").

SUMMARY OF ARGUMENT

1. Merritt is entitled to advancement of expenses and attorneys fees associated with this litigation pursuant to § 9.1 of the Entities' operating agreements, which requires the Entities to indemnify Merritt, as Managing Member, for all liabilities and expenses arising from any action to which she is a party as a result of her service to or management of the Entities so long as her conduct does not constitute gross negligence, willful misconduct or bad faith. The plain language of the agreement requires indemnification, as does a prior decision entered in New York state court in litigation between the same parties.

2. The order removing Merritt as managing member contradicts the plain language of § 4.5 of the Entity agreements, which only permitted Merritt's removal for fraud committed in the course of her duties as managing member. The Chancery Court held incorrectly that Merritt could be removed for fraud outside of her role as managing member – conduct which fell outside the bounds of the Entity agreements. Furthermore, the Chancery Court misinterpreted the agreement by holding that Merritt could be removed for conduct that had no material adverse effect on the entities or other member. Finally, the Chancery Court ignored the New York court's prior

order denying R&R's motion in that forum to remove Merritt as managing member.

3. The Chancery Court abused its discretion by holding Merritt in contempt merely for attempting to prosecute her rights in New York court. Moreover, the court erred by (a) holding Merritt in contempt without affidavits or evidentiary hearings, (b) holding two entities Mer-Lyn and Merritt Litigation Support, Inc., in contempt, even though they are not parties to this case and had no prior notice of possible contempt sanctions, and (c) imposing sanctions of some $15 million dollars, grossly in excess of the actual damages claimed by the Receiver.

4. Information that surfaced after the final order in this case demonstrates that Judge Chandler should never have presided over these proceedings. Judge Chandler resigned in April 2011 and joined the law firm of Wilson Sonsini. He then stated that Wilson Sonsini "will keep its existing relationships with firms in Delaware, and I will supplement local Delaware counsel." Appx. 1241 (interview transcript). The "local counsel" connected to Wilson Sonsini turns out to be none other than the Receiver in this case, Kurt Heyman of Proctor Heyman, and R&R's counsel, Richards Layton and Finger. Wilson Sonsini has worked together with Heyman and Richard Layton and Finger in multiple cases. An objective observer

would find an appearance of impropriety that requires *vacatur* of all of Judge Chandler's decisions in favor of Heyman and R&R.

STATEMENT OF FACTS

In 2003, appellant Lyn Merritt and Leonard Pelullo, her fiancé, were introduced to Ira Russack, owner of appellee R&R, by Russack's cousin, Michael Blumenthal, a New York attorney who had represented Pelullo for over twenty years. Appx. 904. Blumenthal told Russack that Pelullo was a convicted felon but was out on bail based on a federal court's order granting him a new trial based on the government's *Brady* violations (*U.S. v. Pelullo*, N.J. CR No. 94-246, Civ. No. 01-124). After full disclosure of Pelullo's background, Russack decided to become a partner with Merritt in various real estate transactions and thoroughbred race horses. In late 2003, Merritt and R&R formed ten Delaware limited liability companies ("Entities")[1] as vehicles for these investments. Merritt was designated Managing Member of the Entities. Appx. 904-05. Blumenthal represented Merritt, R&R and the Entities through his law firm.

On June 30, 2005, Pelullo returned to prison when the Third Circuit reversed the new trial order. *U.S. v. Pelullo*, 399 F.3d 197 (3d Cir. 2005). The next day, R&R ceased funding

[1] The Entities include Merritt Land, LLC; Hope Land, LLC; Moore Street, LLC; Pandora Farms LLC; Unionville Land, LLC; Grays Ferry Properties, LLC; Knick The Knack Farms, LLC; and Buck and Doe Run Valley Farms, LLC. Pandora Farms LLC changed to PDF Properties, LLC, and PDF Properties, LLC in turn owns 100% of Pandora Farms, LLC and Pandora Racing, LLC.

the Entities and attempted to take control of them. Appx. 905. Unable to force Merritt out as Managing Member, R&R resorted to litigation. *Id*.

The New York action. In November 2005, pursuant to a venue provision within the Entities' operating agreements, R&R filed a civil complaint against Merritt in New York state court alleging mismanagement and fraud in her operation of the Entities. Appx. 34-71. R&R alleged fraud on the basis of Merritt's 2004 sale of three pinhooking horses[2] of "inferior quality" in connection with her purchase of R&R's interest in the Entities' thoroughbred race horse business. R&R also filed a separate motion requesting Merritt's removal as Managing Member based on the pinhooking transaction. In February 2006, R&R filed an amended complaint incorporating its request for Merritt's removal and repeating the allegations of fraud pertaining to the pinhooking transaction. Appx. 72-109.

R&R loses in New York trial court. In October 2006, after an evidentiary hearing on R&R's request to remove Merritt, the New York judge denied R&R's request, declaring the issue of removal "off the table". Appx. 646-75. This decision foreclosed R&R from seeking Merritt's removal in any

[2] A pinhooking horse is a young thoroughbred trained for a brief period with the expectation that it will be sold at auction or through private sale for a higher price.

other court (including Delaware) based on its alleged claims of 2004-05 misconduct. In February 2007, after close of R&R's case in chief, the New York judge granted Merritt's motion for a directed verdict and dismissed R&R's claims for damages and fraud, a final order on R&R's claims under CPLR 4401. Appx. 908. In December 2007, the judge dismissed the balance of R&R's claims as to the alleged sale of its interest in the Entity-owned race horse business. The parties agreed to mediation as testimony began on Merritt's counterclaims. During mediation, on January 17, 2008, the judge reaffirmed Merritt's right to indemnify herself from Entity assets for expenses she bore after R&R ceased funding in July 2005. Appx. 573-79. Mediation ended unsuccessfully after two months, but instead of finishing trial, R&R retained new counsel and filed a motion to recuse the judge. The judge denied the motion, and the First Department Appellate Division affirmed. *R&R Capital LLC v Merritt*, 56 A.D.3d 370 (1st Dept. 2008). Disgruntled by the New York rulings, R&R filed five actions against Merritt in other jurisdictions (including Delaware) on 2004-05 issues. Appx. 903.

Pennsylvania federal action. R&R's first action outside of New York was a federal action in the Eastern District of Pennsylvania seeking possession ("replevin") of the pinhooking horses. Appx. 624-33. This action expressly referred R&R's

request in the New York action to remove Merritt as managing member of the Entities. Appx. 629 (paragraph 17 stating "these three horses are not owned, and never have been owned, by the companies formed by Merritt, and, thus, the issues raised here are not part of the New York dispute"). Subsequently, R&R amended its complaint to add a count for rescission of the pinhooking transaction which repeated the allegations of fraud R&R had made in New York. Appx. 634-645. Merritt repeatedly told the Pennsylvania court that these matters were under the exclusive jurisdiction of the New York court, but the Pennsylvania court refused to relinquish R&R's replevin and rescission claims. Appx. 915.

Pennsylvania state court action. R&R also filed an action in Pennsylvania state court attempting to block Merritt from paying the LLC's bills and indemnify herself from the sale of one of the Entities' assets in Pennsylvania. The court quickly sent the matter back to the New York court for adjudication, and R&R abandoned the action. The New York court granted Merritt's motion for distribution of the proceeds from the sale of an LLC asset, PDF Properties LLC. R&R appealed to New York's Appellate Division.

Delaware actions. In June 2008, R&R filed another action in Delaware's Chancery Court seeking dissolution of the Entities. On August 19, 2008, the Delaware Court dismissed

the Petition on the basis that the members had waived judicial dissolution under the Entity operating agreements. *R&R Capital LLC v Buck and Doe Run Valley Farms LLC*, 2008 WL 3846318 (Del. Ch. 2008). Appx. 647-71.

R&R did not appeal, opting instead to file a second action in Delaware Chancery Court, a declaratory judgment action seeking Merritt's removal as Managing Member and liquidation of the Entities and listing the federal pinhooking action R&R in Pennsylvania as a ground for removal. R&R represented that this removal action arose from "new" factual circumstances which arose after the New York court dismissed R&R's case in chief in 2007. In response, Merritt filed a motion in the New York court to enjoin R&R from proceeding in Delaware and Pennsylvania. R&R's Delaware counsel claimed to the New York court that "the facts that are at issue [in Delaware] all occurred in 2008. They are not a relitigation of the litigation before your Honor." Appx. 585; *see also* Appx. 146 (same representation by R&R in appellate brief in New York). Delaware counsel added that "the facts that underline both of the actions in Delaware are different facts than the facts that were at issue before your Honor." Appx. 136-37. In December 2008, the New York court rejected R&R's argument and enjoined R&R from proceeding in Delaware on matters which were pending in New York, or could have been

brought in New York. Appx. 142-44. R&R again appealed to New York's Appellate Division.

New York appellate proceedings. In March 2009, New York's Appellate Division reversed the New York trial court's funding order. *R&R Capital v. Merritt*, 60 AD 3d 328, 875 NYS 2d 65 (2009) ("[the trial court,] in granting the motion and permitting the disbursements sought by [Merritt] with limited exceptions, lacked jurisdiction over plaintiff's claims, since the relief sought did not relate to a cause of action raised in the initial complaint, nor was the issue involved previously litigated in this action"). On the same date, R&R filed its opening brief in New York's Appellate Division in its appeal from the order enjoining R&R from litigating in Delaware ("injunction appeal"). R&R falsely asserted that the Delaware case had nothing to do with the New York litigation because the Delaware case involved 2008 conduct.

On April 17, 2009, the Eastern District of Pennsylvania held in favor of R&R in the replevin/rescission action. On April 30, 2009, R&R filed a reply brief in the New York injunction appeal. R&R did not mention its victory in Pennsylvania but instead continued to insist falsely that the Delaware action concerned claims that "were never before the New York court and over which the New York court did not have jurisdiction". In June 2009, New York's Appellate Division

reversed the order enjoining R&R from proceeding in Delaware. *R&R Capital v. Merritt*, 63 AD 3d 565 (1st Dept. 2009).

R&R prevails in Delaware Chancery Court with representations that contradict its assertions in New York. Within days after winning in New York, R&R filed a motion for summary judgment in Delaware that belied its argument in its New York appeal. R&R asked the Chancery Court to remove Merritt as Managing Member based exclusively on the 2004-05 conduct in the pinhooking action, the very conduct R&R told the New York appellate court had no place in Delaware proceedings. Appx. 171-84.

In response to R&R's summary judgment motion, Merritt's attorneys moved to modify the status quo order for advancement of legal fees or, in the alternative, to withdraw from the case if the Court denied advancement. On July 10, 2009, the Chancery Court denied advancement on the ground that advancement of fees was premature "until the Court is able to resolve finally the rights and liabilities and responsibilities of the various parties involved in these entities." Appx. 193. The Court also permitted Merritt's counsel to withdraw, leaving Merritt without counsel. Appx. 193-94. Merritt lacked financial resources to hire new counsel and was forced to defend against R&R *pro se*.

On July 24, 2009, Merritt filed a *pro se* brief in opposition to R&R's summary judgment motion with a supporting affidavit. Appx. 210-683. Several weeks later, she filed a cross motion for summary judgment. On September 3, 2009, without discovery or a hearing, the Chancery Court granted R&R's motion for summary judgment and *sua sponte* removed Merritt as Managing Member of the Entities "in the interests of justice" with a Receiver to be appointed to wind up the Entities' affairs. Appx. 801-08. The Chancery Court's decision to dissolve the Entities contradicted its decision in R&R's first Delaware action that R&R had waived judicial dissolution under the Entity operating agreements. *R&R Capital LLC v Buck and Doe Run Valley Farms LLC*, 2008 WL 3846318 (Del. Ch. 2008). On September 14, 2009, the Court denied Merritt's cross motion for summary judgment (without discovery or hearing), Appx. 809-15, denied her motion to vacate or stay the September 3, 2009 order, denied her request for an independent examiner in lieu of a receiver and appointed Kurt Heyman, Esquire as independent receiver and Paul Seitz CPS-CVA to assist Heyman as forensic accountant. *Id*.

In another unusual twist, after denying fees and costs, the Court faulted Merritt for not having counsel and threatened her with contempt for alleged violations of

procedure. The Court stated on September 17, 2009 that it had been "lenient" with Merritt due to her *pro se* status, but that her "unfamiliarity with fundamental rules of civil procedure in the Delaware court system may have a negative effect on [her] litigation position. Put differently, lawyers do add value, which is which is why you were strongly encouraged to retain counsel." Appx. 816. In April 2010, the Court stated that it would no longer respond to Merritt's *pro se* letters, since the court-appointed receiver was the only person entitled to communicate with the Court. Appx. 937.

On June 28, 2010, the court held Merritt and her wholly owned companies, Mer-Lyn and MLS, in contempt of its orders, removed her as a member of the Entities and declared Merritt and her wholly owned companies claim of $10 million against the Entities null and void. Appx. 964-68. Thereafter, Merritt filed a Rule 60(b) motion to vacate the contempt order and recuse Chancellor Chandler from the case based on newly discovered evidence of his *ex parte* communications with the Receiver and R&R. Appx. 975. On February 21, 2011, the Court entered an order dismissing the case, denying the Rule 60(b) motion and the recusal motion. Appx. 1127-1237. Merritt, Mer-Lyn and MLS filed a timely notice of appeal from the final order.

ARGUMENT

I. QUESTION PRESENTED: WHETHER THE CHANCERY COURT'S DENIAL OF ADVANCEMENT OF LEGAL FEES RUN AFOUL OF THE PLAIN LANGUAGE OF THE ENTITY OPERATING AGREEMENTS AND BASIC PRINCIPLES OF CLAIM PRECLUSION? [Preserved in Chancery Court at Appx. 193-94]

Scope of review. This Court exercises non-deferential *de novo* review of facts and law in an appeal from the trial court's denial of indemnification and advancement of legal fees. *Brown v. Division Of Family Services*, 14 A.3d 507, 509 (Del. 2011).

Merits of argument. Merritt is entitled to advancement of expenses and attorneys fees associated with this litigation pursuant to § 9.1 of the Entities' operating agreements, which requires the Entities to indemnify Merritt, as Managing Member, for all liabilities and expenses arising from any action to which she is a party as a result of her service to or management of the Entities so long as her conduct does not constitute gross negligence, willful misconduct or bad faith. Appx. 17-18. The same provision requires the Entities to pay Merritt's expenses and fees in any such action as they are incurred in advance of the outcome of the action: "[E]xpenses (including legal and other professional fees and disbursements) incurred in any proceeding will be paid by the Company, as incurred in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf

of such Indemnified Party to repay such amount if is shall ultimately be determined that such Indemnified Party is not entitled to be indemnified by the Company as authorized hereunder." *Id*.

This provision is binding and enforceable. *Senior Tour Players 207 Management Company LLC v. Gold Tour 207 Holding Company LLC*, 853 A.2d 124 (Del. Ch. 2004); *Stifel Fin. Corp. v. Cochran*, 809 A 2d 555, 561 (Del. 2002) (recognizing Delaware's strong public policy interest in promoting indemnification to encourage people to serve as directors); *DeLuca v. K Kat Mgmt. LLC*, 2006 WL 224058, *7 (Del. Ch. Jan. 23, 2006) (indemnification contracts should be read in favor of indemnification in light of Delaware's pro-indemnification policies). Advancement of fees and costs does not depend on the merits of the underlying claims but only on whether the claimant is entitled to advancement under the applicable terms of the agreement or applicable statute. *Senior Tour Players 2007*, *supra*, 853 A.2d at 126-27; *Ridder v. City Fed. Fin. Corp.*, 47 F.3d 85, 87 (3d Cir. 1995).

"When a business official is accused of serious wrongdoing. . .the right to advancement is critical as that right secures the funds for the official to defend herself." *DeLuca*, *supra*. Cutting off fees and costs to business litigants is "a harm that could never be undone..." *Tafeen v.*

Homestore Inc., 2005 WL 1314782, *2 (Del. Ch. May 26, 2008). The Court's refusal to advance fees and costs caused Merritt's attorneys to withdraw from the case, broke Merritt financially, and left her powerless to defend against R&R's multiple lawsuits. This was clear error under the plain language of § 9.1 of the Entity agreements.

Not only did the Chancery Court countenance a breach of the Entity agreements, but the Court violated basic principles of claim preclusion by refusing to award indemnification. In January 2008, eight months before R&R filed the present case in Delaware, the New York court granted Merritt's request for indemnification and advancement of legal fees pursuant to § 9.1 of the operating agreements. Appx. 572-79. R&R did not appeal this order.[3]

Res judicata bars a party from re-litigating the same cause of action after a judgment has been entered in a prior suit involving the same parties or their privies. Five elements are relevant in determining whether res judicata applies: (1) the court making the prior adjudication had jurisdiction, (2) the parties in the present action are either the same parties or in privity with the parties from the prior

[3] Merritt argued in her opposition to summary judgment in the Chancery Court that the New York Court had already decided the advancement in her favor, thus barring R&R from asserting otherwise in Delaware. The Chancery Court ignored Merritt's argument.

adjudication, (3) the cause of action must be the same in both cases or the issues decided in the prior action must be the same as those raised in the present case, (4) the issues in the prior action must be decided adversely to the plaintiff's contentions in the instant case, and (5) the prior adjudication must be final. *Bailey v. City of Wilmington,* 766 A.2d 477, 481 (Del. 2001). Res judicata extends to all issues which might have been raised and decided in the first suit as well as to all issues that actually were decided. *Playtex Family Products Inc. v. St. Paul Surplus Lines Ins. Co.*, 564 A.2d 681, 683 (Del. 1989). In this matter, the New York court had jurisdiction over the action filed by R&R against Merritt. The parties in New York are the same parties that are before this Court. The New York court decided the same issue in question here, indemnification, in Merritt's favor. Finally, the New York court dismissed R&R's action against Merritt in its entirety. Since all elements of res judicata are satisfied, the Chancery Court was required to enforce the New York order.

Principles of comity also required the Chancery Court to enforce the New York order. "Comity permits one state to give effect to the laws of a sister state, not out of obligation, but out of respect and deference. Thus, '[a] cause of action arising under the laws of one state ... will not be enforced

by another state as a matter of right but, rather upon principles of comity.'" *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1218 (Del. 1991) (*citing*, *inter alia*, *Tyson v. Scartine,* 118 A.2d 795, 795-96 (Del. Supr. 1955)). Since the New York court decided the same issue between the same parties, the Chancery Court should have enforced the New York court's decision "out of respect and deference." *Id*. It failed to do so, and for absolutely no valid reason.

Merritt suffered severe prejudice due to the Chancery Court's refusal to enforce the indemnity provision of the Entity agreements. The Court described these proceedings as "probably one of the most complex and convoluted morasses of litigation I have ever been engaged in, in over 25 years." Appx. 1197. The Court was correct on this point, given R&R's prosecution of cases against Merritt in multiple jurisdictions – yet this is precisely the reason that Merritt so desperately needed counsel to represent her in Delaware and precisely why denial of fees and costs was so harmful to her case. She could not possibly litigate these proceedings by herself, but that is what the Court forced her to do. To compound the prejudice, the Court criticized Merritt for acting *pro se* after denying her the funds she needed to obtain counsel. Appx. 816 (Chancery Court's threat to stop being "lenient" to Merritt even though she was *pro se*).

In a nutshell, the Court committed an error of law by denying fees and costs to Merritt in spite of the plain language of the Entity agreements. This step was quite puzzling, given the Court's statement in R&R's first Delaware action that it is essential to guard the freedom of contract principle "lest the courts erode the primary attraction of limited liability companies. . .[the] enforce[ement] of voluntary agreements of sophisticated parties in commerce." *R&R Capital v. Buck & Doe*, *supra*, 2008 WL 3846318, *7; Appx. 647-671. The only way to undo the prejudice suffered by Merritt is to reverse all orders entered against her in the absence of counsel, direct that she receive fees and costs from the Entities to defend herself in all Delaware proceedings, and permit her to litigate the "morass" of claims raised by R&R with counsel.

II. QUESTION PRESENTED: WHETHER THE CHANCERY COURT ERRED BY GRANTING R&R'S MOTION FOR SUMMARY JUDGMENT AND ORDERING MERRITT'S REMOVAL AS MANAGING MEMBER, SINCE MERRITT'S ALLEGED MISCONDUCT FELL OUTSIDE THE SCOPE OF THE ENTITY AGREEMENTS, AND SINCE PRINCIPLES OF RES JUDICATA PROHIBITED R&R FROM SEEKING MERRITT'S REMOVAL OUTSIDE OF THE NEW YORK COURT? [Preserved in Chancery Court at Appx. 801-08]

Standard of review. The Court's scope of review in an appeal from the trial court's grant of summary judgment is de novo, not deferential, as to both facts and law. *Arnold v. Society for Savings Bank Corp. Inc.*, 650 A.2d 1270, 1276 (Del. 1994). Summary judgment is appropriate only when there are no questions of material fact and the moving party is entitled to judgment as a matter of law. *Williams v. Greier*, 671 A.2d 1368, 1375 (Del. 1996). In deciding a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party and the moving party generally has the burden of demonstrating that there is no material question of fact. *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979).

Argument. The order removing Merritt as managing member contradicts the plain language of § 4.5 of the Entity agreements, which only permitted Merritt's removal for fraud committed in the course of her duties as managing member. The Chancery Court held incorrectly that Merritt could be removed for fraud outside of her role as managing member – conduct which fell outside the bounds of the Entity agreements.

Furthermore, the Chancery Court misinterpreted the agreement by holding that Merritt could be removed for conduct that had no material adverse effect on the entities or other member.

Section 4.5 provides:

> REMOVAL OF MANAGING MEMBER FOR CAUSE. The Managing Member may be removed as Managing Member for 'cause' upon the unanimous written demand of the remaining members. Such written demand shall set forth with specificity the facts giving rise to such Cause. As used herein, *a removal for 'cause' shall mean that the Managing Member to be removed shall have (a) engaged in fraud or embezzlement, (b) committed an act of dishonesty, gross negligence, willful misconduct, or malfeasance that has had a material adverse effect on the Company or any other Member, or (c) been convicted of any felony*. . .a Managing Member that has been removed for cause pursuant to this Section 4.5 shall be deemed removed on the date of delivery of the written demand required by the first sentence of this Section 4.5, and such removal shall immediately terminate all of such Managing Member's rights and privileges hereunder, other than the right to receive payments required by this Section 4.5. The rights and remedies of the Members pursuant to this Section 4.5 shall be in addition to and shall not in any way limit or restrict any other rights or remedies at law or in equity of the Company or the Members.

Appx. 11-12 (emphasis added).

The Chancery Court ordered Merritt's removal on the ground that the Pennsylvania federal court found "fraud" in the pinhooking action by ruling against Merritt on the issue of rescission. The Pennsylvania federal court had determined that Merritt and her fiancé, Pelullo, induced R&R to purchase Lipstick/Pulpit, a pinhooking horse, through fraud:

> Pelullo, who was Merritt's employee and who handled the details of the sale for her, told the Russacks that the

> three pinhooking horses that R&R was purchasing were "the three best yearlings" that they could purchase, even though Pelullo knew that Merritt had attempted to return Lipstick/Pulpit to Fasig-Tipton on the basis of Dr. Reid's diagnosis of laminitis. Neither Pelullo nor Merritt disclosed to the Russacks that Merritt had sought to return the horse, or disclosed that the horse was lame, or disclosed the August 2004 report of Dr. Reid or the New Bolton veterinarians' October 2004 report. In these circumstances, the statement that Lipstick/Pulpit was one of the best horses available was a knowing misstatement not in accord with the facts and therefore fraudulent.

R&R Capital LLC v. Merritt, et al, 632 F. Supp. 2d 462, 479 (E.D.Pa. 2009). This finding concerned a transaction that was *independent* from Merritt's role as Managing Member of the Entities. R&R conceded this very point in its Delaware motion for summary judgment by incorporating its pleadings from the Pennsylvania pinhooking action, Appx. 177-78, which pleadings stated that the companies formed with Merritt never owned the pinhooking horses, and that the pinhooking issues raised in Pennsylvania (and, by incorporation, in Delaware) were not part of the New York dispute. Appx. 251. Section 4.5(a), however, limits the grounds for removal to fraud by the "Managing Member," so the act giving rise to removal must occur in connection with performance of managing member duties. The conduct in the pinhooking transaction fell outside of Merritt's duties as managing member and thus outside the scope of § 4.5(a).

Nor did Merritt's conduct support removal under § 4.5(b), because there was no "material adverse effect on the Company or any other Member." Since R&R admits that the pinhooking transaction was unrelated to companies formed with Merritt, this transaction could not possibly have harmed any Entity or any Member *in his capacity as a member of an Entity*.

Had the parties intended the Entity Agreement to permit removal of the Managing Member for fraud or misconduct of any kind, they would have used the language in § 4.5(c) permitting the Managing Member's removal for "convict[ion] of *any* felony." The word "any" indicates that the felony conviction need not be for Entity-related conduct; any felony conviction for Entity-related or non-Entity-related misconduct will trigger removal. The absence of "any" from § 4.5(a) and (b) demonstrates that these sections have significantly smaller reach: the fraud or misconduct in these sections must be fraud in the performance of Managing Member duties or harm against an Entity or a Member in his capacity as a member of an Entity.

Although Merritt believes § 4.5's language is clear, the proper remedy in the event this Court finds the language unclear is to remand the case for submission of parol evidence to the Chancery Court. *Eagle Industries v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. Supr. 1997) ("when there

is uncertainty in the meaning and application of contract language, the reviewing court must consider the evidence offered in order to arrive at a proper interpretation of contractual terms"). Blind acceptance of R&R's self-serving interpretation of § 4.5 is improper. Acceptance of R&R's interpretation would pose grave danger to the many LLC's formed under Delaware law, who could find themselves torn apart by accusations of "fraud" or "dishonesty" that are totally unrelated to the operation of these entities.

Another reason why Merritt's removal was improper is that res judicata principles barred R&R from seeking removal in any forum other than New York. R&R's amended complaint in New York, filed two years before the Delaware action, requested Merritt's removal on the basis of the pinhooking transaction. Appx. 72-109. The New York court dismissed all counts of R&R's amended complaint via directed verdict in 2007, a final order on R&R's claims under CPLR 4401. Appx. 901. Thus, res judicata barred R&R from requesting Merritt's removal in Delaware for pre-2007 conduct such as the pinhooking transaction. Stated in terms of the five res judicata elements, the New York court had jurisdiction over the action filed by R&R against Merritt; the parties in New York are the same parties in Delaware; the New York court decided the same issue in question here in Merritt's favor; and the New York

court dismissed R&R's action against Merritt in its entirety, a final order under New York law. Since all elements of res judicata are satisfied, the Chancery Court was required to enforce the New York court's order.

In an attempt to circumvent res judicata defenses, R&R claimed in Delaware that Merritt should be removed for alleged post-2007 conduct, viz., her acts of contempt during the pinhooking case in Pennsylvania federal court. This argument runs aground because the Pennsylvania judge issued a decision in 2009 rejecting R&R's motion to hold Merritt in contempt. *R&R Capital LLC v. Merritt*, 2009 WL 1653097 (E.D.Pa. June 9, 2009). As in the case of alleged pre-2007 misconduct, R&R's claims of post-2007 misconduct fails under res judicata principles.

Still another reason for reversing the Chancery Court is its decision to remove her as managing member was *sua sponte* and not requested by R&R. R&R had requested Merritt's removal in the first Delaware action it filed but not in the second. The Chancery Court held in the first action that R&R waived its right to seek dissolution in the Entity Agreements. *R&R Capital LLC*, *supra*, 2008 WL at 3846318. But although R&R did not request dissolution in its second action, the Chancery Court *sua sponte* abandoned its decision in the first case and ordered dissolution, purporting to remove Merritt based on

R&R's removal request in the first action. This *sua sponte* decision to grant a remedy requested in an entirely different action is most unusual disconcerting and, of course, severely prejudicial to Merritt, thereby requiring relief.

III. QUESTION PRESENTED: WHETHER THE CHANCERY COURT ABUSED ITS DISCRETION BY ENTERING A CONTEMPT ORDER AND SANCTIONS AGAINST MERRITT AND HER WHOLLY OWNED COMPANIES, MER-LYN FARMS, LLC AND MERRITT LITIGATION SUPPORT, INC.? [Preserved in Chancery Court at Appx. 964-68]

Standard of review. This Court's scope of review on an appeal from a finding of contempt and the sanctions imposed for contempt is abuse of discretion. *Gallagher v Long*, 940 A. 2d 945 (Del. 2007). In a contempt proceeding, the moving party must prove a violation of a court order by clear and convincing evidence. *Dickerson v. Castle*, 1991 WL 208467, * 4 (Del. Ch. October 10, 1991). In the case at bar, the Chancery Court found Ms. Merritt in contempt without applying the clear and convincing standard of proof.

Argument. A brief factual history will place the Court's abuse of discretion in context. On October 9, 2009, Merritt notified the Receiver of her wholly owned companies right Mer-Lyn, contractual right to manage and occupy the Buck & Doe farm. Appx. 862-69, 871-73. Thereafter, on November 16, 2009, Merritt again detailed Mer-Lyn's rights under the contracts and stated that the Entities owed Mer-Lyn a substantial amount of money under Entity/Mer-Lyn contracts, and that Mer-Lyn had the right to occupy the Buck & Doe farm. Appx. 890-94.

On October 30, 2009, the Receiver terminated Mer-Lyn as the manager of the Buck & Doe Farm as of November 1, 2009,

terminated Merritt/Mer-Lyn's right to use the farm and requested that Merritt/Mer-Lyn horses and employees vacate the Buck & Doe Farm. Appx. 874-77. Prior to the auction to sell the remaining assets of Unionville Land LLC (Benzal property) and Merritt Land LLC (90 Acres), the Receiver set the reserves for the sale of those assets, and Merritt objected to the reserves as too low. The Receiver rejected Merritt's objections. Appx. 938-39. On the day of the sale, April 20, 2010, the Benzal property received a bid of $250,000, which was less than half the mortgage of $430,000 with MidAtlantic bank, where Merritt is the borrower and guarantor of the mortgage on behalf of the jointly owned Unionville Land LLC Entity. As to Merritt Land's 90 acres, the Receiver entered into a contract to sell the property for $1,250,000, approximately $50,000 more than the MidAtlantic mortgage (where Merritt is the guarantor of the mortgage), $100,000 less than the original purchase price of the property, and $2,000,000 less than the appraised value.

On April 22-23, 2010, Merritt objected to the sale because it would not generate enough money to pay Mer-Lyn and the creditors. The Receiver responded that if there was no money to pay the creditors, they would not be paid, and refused to discuss this problem with Merritt. Appx. 940-43. On April 27, 2010, Mer-Lyn filed mechanics liens against

property owned by Unionville Land LLC (Benzal), Merritt Land LLC (Apple Grove) and Buck & Doe Run Valley Farms LLC (Hannum Farm) in the Court of Common Pleas of Chester County, Pennsylvania, the situs of the properties, for money the Entities owed Mer-Lyn. Under Pennsylvania law, Mer-Lyn had 6 months from the time of termination of its contracts to file mechanics liens. 49 P.S. § 1502.

On May 7, 2010, based on the Receiver's refusal to pay Mer-Lyn under its contracts with the Entities, Mer-Lyn was rendered insolvent and filed for bankruptcy in the Eastern District of Pennsylvania Bankruptcy Court.[4] On June 22, 2010, the Receiver filed a motion for contempt alleging that Merritt violated the Chancery Court orders of September 14, 2009, November 9, 2009 and February 25, 2010. Appx. 944-58. In a footnote, the Receiver added:

> Notwithstanding that fact that Mer-Lyn is not a party to these proceedings, under Chancery Court Rule 65(d), an injunction is binding upon 'the parties to the action, their officers, agents, servants, employees, and

[4] On June 16, 2010, the Bankruptcy Court dismissed the case on the basis that Mer-Lyn failed to file certain documents. Mer-Lyn filed a motion for reinstatement. On June 22, 2010, while the motion for reinstatement was pending, the Receiver filed his motion for contempt against Merritt with proposed sanctions. On June 29, 2010, the Bankruptcy Court reinstated Mer-Lyn's bankruptcy. Appx. 969-71. The Receiver filed a motion in the bankruptcy court to dismiss the Mer-Lyn bankruptcy or, in the alternative, to modify the automatic stay. On July 9, 2010, the Bankruptcy Court entered an order dismissing the bankruptcy.

> attorneys, and upon those persons in active concert or participation with them who receiver actual notice of the order by personal service or otherwise.' Merritt should not be heard to argue that Mer-Lyn was not bound by the Injunction Order, particularly given her duplicity on the issue of whether she or Mer-Lyn owned the horses and whether she or Mer-Lyn was manager of Buck & Doe. Moreover, this Court's September [14, 2009 order] expressly requests 'Merritt or [her]... affiliates' to submit any claims they have against the Receivership Entities to the Receiver, so Mer-Lyn is clearly bound by this Court's orders.

Appx. 952-53.

The Receiver also alleged that Merritt violated the court's order by pursuing her claims in the New York action that was pending since November 2005, three (3) years before this action was filed:

> Merritt has also defied this Court's orders by continuing to litigate in the New York Court her entitlement to possess the Farm. Indeed, Merritt specifically sought an order from the New York Court granting Merritt and Mer-Lyn 'the right to use the Buck & Doe Property' without any obligation to pay rent. With regard to these actions, Merritt is in violation of paragraphs 3 and 4 of this Court's February 25, 2010 Injunction Order, which required Merritt to vacate the farm immediately, paragraph 10 of this Court's September 14, 2009 Order , and paragraph 3 of this Court's November 9, 2009 Order, in which this Court retained exclusive jurisdiction over this matter.
>
> By presenting personal claims and liabilities, including those of her solely owned companies, against their Receivership Entities in the New York Court rather than submitting those claims to the Receiver, Merritt is also in contempt of this Court's Order. Specifically, per her stated intention to 'present[] to Judge Ramos all of the liabilities that [Merritt] and [her] companies have incurred on behalf of the [Receivership Entities]', Merritt sought an order from the New York Court indemnifying her 'for all third party bills, including,

> but not limited to, counsel fees and litigation costs'. With regard to these actions, Merritt is in violation of paragraph 10 of this Court's September 14, 2009 Order, and paragraphs 3 and 8 of this Court's November 9, 2009 Order, which granted this Court exclusive jurisdiction over this matter and specifically required Merritt and her affiliates to submit all claims against the receivership Entities to the Receiver.

Appx. 954.

Contrary to the Receiver's representations in his motion for contempt that he was unaware that Merritt asserted Mer-Lyn's right to occupy and manage the Buck & Doe farm, Merritt sent the Receiver several emails detailing the New York proceedings and Mer-Lyn's contracts and rights with the Entities. Appx. 862-73, 890-98.

On June 22, 2010, the Receiver filed a motion for contempt against Merritt without a supporting affidavit alleging that Merritt had violated the Chancery Court's orders. On June 28, 2010, without an affidavit or receiving any sworn testimony from the Receiver, the Court entered its contempt order against Merritt based solely on the Receivers allegations in his motion and at oral argument and imposed sanctions on Merritt and her wholly owned companies, Mer-Lyn and MLS, neither of whom are parties to this case or were named in the contempt motion. The Court (a) barred Merritt, Mer-Lyn or MLS from recovering from the Entities for mechanics liens filed in Pennsylvania; (b)ordered Merritt's removal as a

member of the Entities; (c) ordered Merritt to vacate her horses, employees and belonging from the farm leased by Buck & Doe Valley Farms, LLC, withdraw her appeal of an eviction order entered against her in Pennsylvania with regard to a farm leased by Buck & Doe, withdraw her mechanics liens against the Entities, and withdraw her claims in New York against assets of the Entities. Appx. 964-68. The sanctions were in excess of $15 million dollars: $10 million in claims that Merritt, Mer-Lyn and MLS had against the Entities and $5 million in remaining Entity assets transferred to R&R after the court wiped out Merritt's interests in the Entities. Appx. 895-98, 878-84, 931-36.

After the contempt order, the Receiver disclosed in an unrelated pleading that the Entities may have at most incurred $150,000 in costs in connection to the alleged contempt violations. Merritt thereupon filed a motion pursuant to Delaware Rule 60(b) to vacate the contempt order, arguing that the sanctions imposed by the court of approximately $15 million far exceeded the costs allegedly incurred by the Receiver. On February 21, 2011, the Court denied the motion from the bench. Appx. 1127-1237.

It was an abuse of discretion to hold Merritt in contempt merely because she was pursuing her rights in the first-filed New York action. Finding Merritt in contempt because she was

pursuing her rights in the first-filed New York action and attempting to enforce the order entered by the New York court years before this case began is not clear and convincing evidence of contempt. Merritt has found no case law that supports the Chancery Court's finding of contempt against Merritt from pursuing her claims in a separate case that predates the filing of the instant case and any order issued thereafter. Essentially, the Chancery Court held Merritt in contempt for pursuing her rights in a sister state court and prevailing in the court after a trial on R&R's case in chief, briefing and argument - all prior to the commencement of this case. The Chancery Court's order forcing Merritt to withdraw her claims in the New York action and pursuing those claims is a clear violation of the established principles of comity. Delaware courts should decline to enjoin its citizens from proceeding in actions filed in sister states after a Delaware action. *Examen, Inc. v. VantagePoint Venture Partners 1996*, 2005 WL 1653959 (Del. Ch. 2005) ("the regular issuance of injunctions against the ordinary procession of a second-filed action in a sister state. . .risks giving substantial offense to the judicial system of other states, most often for no reason"). The same principle applies with even greater force when, as here, the action in a sister state was filed before the action in Delaware.

Furthermore, not one of the orders allegedly violated state that Merritt must withdraw her claims from the New York action. None of these orders purport to assert jurisdiction over the New York matter. Not one of these orders state or assert that the Chancery Court has authority to override any orders by a New York court that has prior jurisdiction over Merritt's claims.

It was an abuse of discretion to hold Merritt in contempt without affidavits, sworn testimony, proof of a substantial violation. The Chancery Court ignored other basic rules of procedure. Court of Chancery Rule 70(b), which speaks "directly to the matter of contempt," *In re Tyson Foods, Inc.*, 919 A.2d 563, 599 (Del. Ch. 2007), states that "[f]or failure to obey a restraining or injunctive order or to obey or to perform any order, an attachment may be ordered by the court upon filing in the case of an affidavit...setting forth the facts constituting the disobedience." Here, the Receiver failed to file an affidavit or provide sworn testimony at the June 25, 2010 oral argument which supported his allegations of disobedience. The failure to submit an affidavit in connection with a contempt motion precluded the Chancery Court from making any finding of contempt.

A finding of contempt cannot rest upon mere technical violations but only for failure to obey the court in a

"meaningful way". *Palmigiano v. DiPrete*, 700 F. Supp. 1180 (D.C. Or. 1988). The Receiver presented no decision of any kind or affirmative sworn expert testimony as to the validity of the Mer-Lyn's mechanics liens. By his own admission, he had not even reviewed Mer-Lyn's claims. Appx. 959-63 (receiver's admission during contempt hearing that "I had not even gotten to the issue of the validity of the debts per se" and "I had not gotten to the validity of the underlying member claims"). These facts show that Chancery Court's order of contempt is legally deficient. Any "ambiguities and omissions in orders redound to the benefit of the person charged with contempt." *Ford v. Kammerer*, 450 F.2d 279, 280 (3d Cir. 1971). Merritt respectfully submits that this rule should be given even further weight in this instance in light of the fact that none of the orders that the Receiver alleged were violated on any basis. A finding of contempt may only "be established if the order allegedly violated is clear and unambiguous." *Accusoft Corporation v Palo*, 237 F.3d 31, 47 (1st Cir. 2001). The underlying order must have "no reasonable doubt as to what behavior was to be expected." *Id*. at 48 (*citing Gilday v. Dubois*, 124 F.3d 277, 282 (1st Cir. 1997)). A vague or indefinite order will prevent the defendant from being "punished for doing what he did in view of lack of certainty as to what it prohibited or directed."

Harris v. City of Philadelphia, 47 F.3d 1342, 1350 (3d Cir. 1995). There has been a total failure of proof that Merritt is in contempt of the Chancery Court's orders.

The Chancery Court abused its discretion by holding Merritt in contempt for occupying the Buck & Doe Farm, even though she never occupied the farm personally. The farm was always occupied by Mer-Lyn, a fact litigated in the New York action, and the Receiver concedes that Mer-Lyn is not a party to his action. The Receiver's attempt to avoid that barrier by asserting that Chancery Court Rule 65(d) applies to Mer-Lyn is unavailing, but Mer-Lyn's rights to occupy and manage the Buck & Doe farm has been decided by the New York and will be pursued in that Court.

The sanctions were grossly excessive. Civil contempt serves two purposes: (1) to coerce compliance with the order being violated, and (2) remedy injury suffered by other parties. The Court should tailor sanctions for contempt to remedy the injury and is obligated to use the least possible power adequate to the end proposed..." *Aveta Inc. v Bengoa*, 986 A.2d 1166 (Del. Ch.2009). The sanctions exceed any alleged damage incurred by the Entities. The order stripped Merritt of her 50% membership interest in the Entities, cancelled any distribution from the Entities to which she was entitled; forced her to withdraw her claims in the New York

action against R&R, a case that was litigated for over 5 years and was filed by R&R three years before the instant case; forced her to withdraw her defense to an eviction initiated by the Receiver against her in Chester County, Pennsylvania; and declared the debts void that are owed by the Entities to Mer-Lyn and MLS. The sanctions are in excess of $10 million, grossly out of proportion to the possible damages of $150,000 (by the Receiver's own admission) that could have possibly been incurred by the Entities for the alleged violation of the Court's orders. Appx. 1136.

The sanctions upon Merritt, Mer-Lyn and MLS are contrary to federal and state law that "the sanction imposed on a civil contemnor for his past conduct may not exceed the actual damages caused by his violation of the courts order. Relief granted in civil contempt proceedings is compensatory ... [and] must not exceed the actual damages caused the offended party by a violation of the courts order." *Quinter v. Volkswagen of America*, 676 F.2d 969 (3rd Cir. 1982); *Dickerson v. Castle*, 1991 WL 208467 (Del. Ch. October 10, 1991) ("While in a criminal contempt proceeding any penalty for contumacious behavior is punitive in nature this is a proceeding for civil contempt. The only purpose for finding the defendant in contempt and assessing a penalty here would be to force them to obey the order").

There have been no pleadings filed in connection to the contempt proceeding that delineates any alleged damages sustained by the Entities. Nor did the Court hold an evidentiary hearing or make findings on the amount of damages incurred by the Entities due to the alleged violations. The Court thus gave R&R a windfall profit by making it the de facto 100% member of the Entities and voiding millions of dollars in claims owed by the Entities to Merritt and her Entities despite lack of actual damages and the failure to theorize damages in excess of $150,000.

The contempt order is a clear violation of Mer-Lyn and MLS's due process rights. Neither Mer-Lyn nor MLS are a party to this litigation nor were they named in the motion for contempt as a party to the alleged violation of the Court's orders. In fact, MLS was not even mentioned in the contempt motion. *County of Sacramento v Lewis*, 523 U.S. 833, 845-846 (1998) ("The core concept of due process is "protection against arbitrary action"). It is hard to imagine more arbitrary judicial behavior than this. The only time MLS was mentioned by the Receiver during the contempt proceedings is when he submitted a revised proposed order to the court including MLS as a party to the sanctions. See Receiver's revised order and letter dated 06/28/10; Trans. ID 31859655. "Due process requires that a potential contemnor be given

notice and a hearing regardless of whether the contempt is civil or criminal in nature". *Newton v AS&S, Inc.*, 918 F.2d 1121, 1127 (3d Cir. 1991) (*citing In re grand Jury Proceedings*, 795 F.2d 226, 236 (1st Cir. 1996)). The contempt order must be vacated in its entirety, including the order transferring the remaining assets of the Entities to R&R.

IV. QUESTION PRESENTED: WHETHER ALL ORDERS BY THE CHANCERY COURT BE VACATED, AND ALL PROCEEDINGS SHOULD BEGIN ANEW BEFORE ANOTHER CHANCERY COURT JUDGE, DUE TO JUDGE CHANDLER'S RELATIONSHIP WITH THE RECEIVER AND COUNSEL FOR R&R, INFORMATION THAT RECENTLY SURFACED AFTER JUDGE CHANDLER'S RESIGNATION FROM THE BENCH? [Evidence acquired after the filing of Merritt's appeal, but still ripe for review pursuant to *Ebersole v. Evans Builders*, No. 476, 2010, C.A. No. 09-A-09-002 (Delaware Supreme Court, 2/7/11)]

Standard of review. The reason for all of the foregoing bizarre decisions could well be a longstanding relationship between Judge Chandler and the Receiver, Kurt Heyman of the law firm of Proctor Heyman, and a longstanding relationship between Judge Chandler and R&R's counsel, the law firm of Richard, Layton and Finger. A judge cannot preside over a case if he subjectively determines that he cannot hear the case free of bias or prejudice. Second, if the judge has determined subjectively that he has no bias, then he must determine objectively whether there is an appearance of bias sufficient to cause doubt about his impartiality. *Ebersole v. Evans Builders*, No. 476, 2010, C.A. No. 09-A-09-002 (Delaware Supreme Court, 2/7/11). Information about these improper relationships came to light after Judge Chandler resigned from the bench in April 2011, so the record does not touch upon this issue. Nevertheless, this Court has exercised jurisdiction over similar cases in the past. *Ebersole*, *supra*.

Argument. Judge Chandler, the jurist who entered all of the orders against Merritt in this case, resigned from the

bench in April 2011. In an interview with the New York Times, he stated that he joined the large nationally based firm of Wilson Sonsini, and that Wilson Sonsini "will keep its existing relationships with firms in Delaware, and I will supplement local Delaware counsel." Appx. 1239-42 (interview transcript). The “local counsel” connected to Wilson Sonsini turns out to be none other than the Receiver, Kurt Heyman, and R&R’s counsel, Richards Layton and Finger.

Wilson Sonsini has represented the same clients with the Receiver and his firm, Proctor Heyman, in multiple cases. *Ingres Corp. v. CA, Inc.*, 8 A.3d 1143 (De. 2010) & 2009 WL 4575009 (Del.Ch. Dec. 7, 2009); *Globis Partners, L.P. v. Plumtree Software, Inc.*, 2007 WL 4292024 (Del.Ch. 2007); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622 (D. Del. 2007).

Wilson Sonsini has also represented clients together with Richards Layton and Finger in multiple cases, once in a case before Judge Chandler. *In re Trados Inc. Shareholder Litigation*, 2009 WL 2225958 (Del.Ch. 2009) (Chandler, J.); *Donahue v. Corning*, 949 A.2d 574 (Del. Ch. 2008); *Khanna v. McMinn*, 2006 WL 1388744 (Del. Ch. 2006); *Leung v. Schuler*, 2000 WL 1478538 (Del. Ch. 2000); *In re U.S. Robotics Corporation Shareholders Litigation*, 1999 WL 160154 (Del. Ch. 1999).

The longstanding alliances between Judge Chandler's new law firm, the Receiver, and R&R's counsel create an appearance of impropriety (and perhaps actual impropriety) in Judge Chandler's handling of the present case. *Ebersole* is analogous. There, a hearing officer presided over the claimant's hearing at the Industrial Accident Board but then joined the law firm representing the employer before the Board issued its decision. This Court held that an appearance of impropriety required reversal of the Board's decision:

> Given the hearing officer's duties and the fact that, between the time of the hearing and the decision, the hearing officer interviewed with and began working for the law firm that represented the employer in this case, the hearing officer should have recused herself. An objective observer, particularly one without knowledge of her specific duties in this case, would view these circumstances with great suspicion. This result is necessary in order to promote public trust and confidence in our judicial system.

Id. at 6.

The same result should occur here. The judge who handled Delaware proceedings against Merritt joined the law firm allied both with the Receiver and R&R's counsel shortly after the conclusion of proceedings in Chancery Court. That judge consistently issued draconian decisions against Merritt and in favor of the Receiver and R&R without any evidentiary proceedings and allowed R&R to circumvent orders on the same subject matter entered against R&R in New York. An objective

observer would find these circumstances highly suspicious. Allowing the judge's decisions to stand will impair public trust in the judicial system.

An additional suspicious circumstance concerning Judge Chandler's relationship with the Receiver is the fact that the judge held an *ex parte* telephone conference with the Receiver during this case. The Receiver claimed in a court filing on February 2, 2011 that he did not mislead the Court as to the value of the Entity assets to R&R because "on or about October 6, 2010, the Court placed a call to the Receiver who is acting as the Court's agent in this matter, to gain a better understanding of the Receivership Entities Liquid assets would be minimal after payments of professionals, such that there would likely be little if any 'money' left to distribute to R&R under proposed order would consist principally of certain real property assets unable to sell. The Receiver further informed the Court that "the most significant of these assets, the leasehold interest in the farm, could have substantial value." See Trans ID 35718379, Receiver's reply in support of his motion to dismiss at pgs 4-5. One day after this *ex parte* communication, Judge Chandler entered an order denying Merritt's motion to vacate the contempt order against her, denying her leave to file an interlocutory appeal, and transferring over $4 million dollars

of the Entities' remaining assets to R&R. Appx. 1013. Merritt did not learn of this *ex parte* communication until the Receiver's filing in February 2011; both Judge Chandler and the Receiver concealed its occurrence for four months from October to February. And when the *ex parte* communication came to light in February 2011, Judge Chandler still denied Merritt relief without an evidentiary hearing because of (as he put it) the "integrity" of Heyman -- his future ally when he left the bench several months later. Appx. 1224.

This *ex parte* conference and its concealment, in conjunction with Judge Chandler's new employment with Wilson Sonsini, casts all of Judge Chandler's decisions in this case in a suspicious light. Under the principles articulated in *Ebersole*, Merritt is entitled to relief in the form of *vacatur* of all of Judge Chandler's orders against her in Delaware.

Respectfully Submitted:

Dated: August 20, 2011

/s/ Erik C. Grandell
Erik C. Grandell, Esquire
DE Supreme Court ID # 2708
1473 Spruce Avenue
Wilmington, DE 19805
(302) 757-6677

/s/ Thomas Schneider
Thomas Schneider, Esquire
122 South Providence Road

Wallingford, PA 19086
(610) 565-1134
Admitted *pro hac vice*

V. INDEX TO ORDERS THAT ARE THE SUBJECT OF THIS APPEAL

Tab No.	Date	Description
1.	09/08/08	Status Quo Order
2.	02/25/09	Transcript – pgs 1, 24-26 Denies Merritt's motion to modify the 09/08/08 status quo order, the motion to pay attorneys fees and to order advancement rights under the LLC Agreements
3.	02/25/09	Order Confirming rulings made at the telephone conference (2/25/09 transcript) Denying Merritt's motion to modify status quo order, the motion to pay attorneys fees and to order advancement rights under the LLC Agreements
4.	03/31/09	Order Denies Merritt's motion to modify the status quo order, denying the motion to advance attorney fees and expenses associated with five overlapping and pending cases in four jurisdictions (all five cases brought by R&R and FTP against Merritt) and to order advancement rights under the LLC Agreements
5.	05/20/09	Revised Status Quo Order
6.	07/10/09	Transcript – pgs 1-2, 8-9 Denies motion to modify the status quo order to allow advancement of attorney fees to Merritt. Grants Merritt's counsel motion to withdraw from the case.

Tab No.	Date	Description
7.	09/03/09	Order Granting R&R's motion for summary judgment on Count 1 of the amended complaint. Denies Merritt's motion for summary judgment. Appoints a receiver to wind up the business and affairs of the Entities. Finds that the Chancery Court is not barred from hearing or allowing R&R to bringing the claims seeking removal of Merritt as manager of the Entities pertaining to the pinhooking transaction. Removes Merritt as manager of the Entities bases on the pinhooking transaction.
8.	09/14/09	Order Denies Merritt's motion to vacate or stay the Court's September 3, 2009 Letter Decision and Order. Denies Merritt's request that the Court appoint an "independent examiner in lieu of a receiver". Denies Merritt's request to appoint Louis C. Bechtel as either "examiner" or receiver. Denies Merritt's objection to paragraph 7 of plaintiffs' Proposed Order Appoints Kurt Heyman as receiver and Paul Seitz as forensic accountant and orders the wind up and dissolve of the Entities
9.	09/14/09	Order Implementing The September 3, 2009 Decision
10.	09/16/09	Order Denies Merritt's 09/14/09 letter requesting sanctions against plaintiff's counsel in this action.
11.	09/17/09	Order Denies Merritt's request for an order certifying an interlocutory appeal pursuant to Supreme Court Rule 42.

Tab No.	Date	Description
12.	11/09/09	Order Ordering that Kurt Heyman, Receiver, have sole authority over the Receivership Entities. Ordering that this Court shall retain exclusive jurisdiction over this matter. Ordering that the lawfirm of Proctor Heyman LLP, shall not, by reason of Mr. Heyman's service as receiver, be conflicted from serving as counsel in unrelated matters wherein the parties to this action (including any related entities, employees and associates), or their respective counsel participate as adverse parties, third parties, interested entities or individuals, counsel or adverse parties or otherwise.
13.	02/25/10	Order Granting Receiver's motion for declaratory and injunctive relief. Granting Receiver authority to evict Merritt from the farm lease of Buck & Doe Run Valley Farms, LLC
14.	03/11/10	Order Denies Merritt's application for certification of an interlocutory appeal and to stay enforcement of this Court's 02/25/10 Order.
15.	04/13/10	Order Denies Merritt's 04/06/10 letter seeking advancement of legal fees and other relief.

Tab No.	Date	Description
16.	06/28/10	Order Granting the Receiver's motion for contempt against Merritt. Ordered Merritt to vacate her horses, employees and belongings from the farm, withdraw her appeal of the eviction order by the Pennsylvania court with respect to the farm. Ordered Merritt to withdraw the Mer-Lyn Farms, LLC mechanics' lien claims against Buck & Doe Run Valley Farms, LLC, Merritt Land, LLC and Unionville Land, LLC. Ordered Merritt to withdraw her claims in the New York court that seek to establish any entitlement to any assets of the Receivership Entities.
17.	10/07/10	Letter Order Granting Receiver's proposed order submitted on 09/27/10, permitting the receivership entities to be dissolved and the case ended.
18.	10/07/10	Order Ordering that the claims submitted by Phillips, Goldman & Spence, P.A., McComsey Builders, Inc. against the Entities is denied. Ordered that the Receiver transfer the remaining assets to R&R, FTP or their designees.
19.	10/21/10	Letter Order Denies Merritt's motion to vacate the order dated 06/28/10. Denies Merritt's request to certify an interlocutory appeal.
20.	12/13/10	Letter Order The Court took no action on the ex parte communications, and did not reveal the October 6th conversation with Receiver Heyman regarding the remaining assets of the LLCs.

Tab No.	Date	Description
21.	02/21/11	Transcript of Hearing – pgs 1, 94-107 Denied Merritt’s motion to vacate contempt order. Denies Merritt’s Recusal Motion. Grants Receiver’s Motion to Dismiss.
22.	02/21/11	Order Ordered that the recipient rights of Pandora Farms, LLC’s Pennsylvania Horse Breeders Association breeder awards to R&R.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company, Plaintiffs, v. LINDA MERRITT (a/k/a LYN MERRITT), Defendant. and BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company, Nominal defendants.	)	C.A. No. 3989-CC

[PROPOSED] ORDER[1]

Plaintiffs having moved this Court for an order preserving the *status quo* pending resolution of the above-captioned action;

[1] Unless otherwise defined herein, capitalized terms have the meanings set forth in the complaint (Trans. ID 21153301).

IT IS ORDERED, for good cause shown, that pending resolution of the above-captioned action:

1. The Entities (either individually or collectively) shall not:

   a. enter into any agreement with respect to a merger, tender offer, restructuring or recapitalization;

   b. incur any new debt;

   c. transfer, encumber, exchange, expend, pledge, loan or otherwise dispose of, directly or indirectly, any asset;

   d. transfer, encumber, exchange, expend, pledge, loan or otherwise dispose of, directly or indirectly, any funds to Merritt, Peter Pelullo or their affiliates;

   e. engage in, enter into, or agree to any transaction, contract or agreement the value of which exceeds $1000, or any combination of transactions, contracts or agreements with an aggregate value in excess of $5,000;

   f. cause the dissolution, liquidation or winding up of the Entities; or

   g. institute any legal proceedings, including without limitation, any proceedings in bankruptcy.

2. The restrictions contained in paragraph 1 above apply to the manager of the Entities and any other person(s) purporting to act on behalf of the Entities. Moreover, the restrictions contained in paragraph 1 apply to all assets and funds of the Entities irrespective of the bank account(s) the funds are contained in or the name in which the assets are titled.

3. The restrictions imposed by this Order may be waived on a case-by-case basis by written agreement of the Plaintiffs. The parties shall notify the Court of any modifications to the terms of this Order by providing the Court with such modifications. The Court may modify the restrictions of this Order upon application of any party for good cause shown.

_____

The Honorable William B. Chandler, III

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: William B Chandler

File & Serve Transaction ID: 21394200

Current Date: Sep 08, 2008

Case Number: 3989-CC

Case Name: R & R Capital LLC vs Linda Merritt

/s/ Judge William B Chandler

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a/ LYN MERRITT),	)	
Defendant,	)	
AND	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, et al.,	)	
Nominal Defendants.	)	

- - -

Via telephone
Chancery Court Chambers
Wilmington, Delaware
Wednesday, February 25, 2009
10:35 a.m.

- - -

BEFORE: HON. WILLIAM B. CHANDLER, III, Vice Chancellor.

- - -

TELEPHONE CONFERENCE

- - -

days to complete that supplementation and further answers to those pending document requests and interrogatories. I do that only because, as I said, I view that as procedural, and I do it with the understanding that it will be discovery that can be used in any forum, not just this one, in the event this litigation does not go forward and litigation does go forward in New York or Pennsylvania with respect to these entities.

Now, the other thing I'm going to do, since Mr. Farnan has persuaded me that I should, out of respect for Justice Ramos' decision, effectively honor his injunction, it seems to me that I have to do that completely with respect to all the substantive matters that are before me, which includes the motion to modify the status quo order, the motion to pay attorneys' fees and to order advancement rights. All of those matters are substantive in nature, and to rule on those in favor of Mr. Farnan would be effectively proceeding with this litigation, which the defendants here have successfully argued before Justice Ramos should not be going forward, because it's in bad faith.

And so I will formally, therefore,

deny any motion to alter or modify the status quo order, or to direct the payment of any attorneys' fees or any advancement rights under the LLC agreements, because I view those as substantive decisions, that I should not consider if in fact this litigation is prosecuted in bad faith.

Let me be clear on one further point, however. The fact that I am not going to modify the status quo order, and that I'm staying this litigation, does not in any way whatsoever lift or vacate the status quo order. That order remains in effect. It is a binding order of this Court. It binds the parties and it binds counsel. Until a higher authority, which in my case is the Delaware Supreme Court, reverses me, and directs me to vacate or to modify the status quo order, I view that as binding authority, and I will enforce it to the letter. If there are any violations of that order, then I expect contempt applications to be made, and we will proceed down that road, if people want to do that.

I have said before, and I will repeat it again: Anyone who believes that the status quo order that I have entered is illegal or improper

should immediately apply to me for certification of an interlocutory appeal to the Delaware Supreme Court under Supreme Court Rule 42, which I will sign in two heartbeats and happily send you to the Supreme Court of Delaware to seek a reversal of my status quo order.

But until then, and until it is reversed, I want everyone to understand I view it as binding authority, and nothing from any other court in any other state -- is the way I understand the law -- would change the fact that there is a binding order entered in this court.

So with that, I think I have disposed of all the matters that are pending before me at the moment, and to the extent that an order is necessary to implement anything I have said, it's so ordered.

MR. ROLLO: Thank you, Your Honor.

THE COURT: Thank you, very much, counsel.

MR. FARNAN: Thank you, Your Honor.

THE COURT: Goodbye, now.

(Recess at 11:04 a.m.)

- - -

CERTIFICATE

I, WILLIAM J. DAWSON, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 27 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated. The ruling was edited by the Chancellor subsequent to the hearing.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 5th day of March, 2009.

/s/William J. Dawson
Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 187-PS
Expiration: Permanent

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

February 25, 2009

Richard P. Rollo
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Brian E. Farnan
Phillips Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, DE 19806

Re: *R & R Capital LLC v. Buck & Doe Run Valley Farms LLC*
Civil Action No. 3803-CC
R & R Capital LLC v. Linda Merritt
Civil Action No. 3989-CC

Dear Counsel:

I write simply to confirm my rulings during today's telephone conference. First, I granted the motion to stay all further proceedings in this action until such time as the New York Court of Appeals has determined the validity of Justice Ramos's injunction order. Second, despite the stay of this proceeding, I granted plaintiff's motion to compel further responses to outstanding document requests and interrogatories and I granted defendants 30 days from this date in which to provide full and complete responses to all outstanding discovery. The parties should agree that any discovery in this matter may be used in litigation pending in any other jurisdiction. Third, I denied the defendants' motion to modify or alter the existing status quo order in this case. I also denied the defendants' applications for the payment for certain attorneys' fees and for certain alleged advancement rights of defendant Merritt. Just to be clear, the effect of these rulings is to stay further briefing on the motion for summary judgment regarding count 3. In addition, as I stated during the telephone conference, this Court's status quo order remains in full force and effect.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

March 31, 2009

Richard P. Rollo
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Brian E. Farnan
Phillips Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, DE 19806

Re: *R & R Capital LLC v. Buck & Doe Run Valley Farms LLC*
Civil Action No. 3803-CC
R & R Capital LLC, et al. v. Linda Merritt
Civil Action No. 3989-CC

Dear Counsel:

I have your correspondence dated March 27 in this litigation. Based on that correspondence, a review of my earlier rulings in this case, and the substance of defendants' motions, I conclude as follows.

First, defendants' motion to modify the status quo order is denied. As I explained earlier, I do not intend to take any substantive actions in this case until the appeal of Justice Ramos's injunctive order has been completed. Accordingly, the provisions of my earlier status quo order remain in effect until such time as this Court changes them or until an appellate court changes them. No basis exists for modifying the status quo order at this time.

Second, again as I explained earlier I expect defendants to comply with all outstanding discovery obligations by the date specified in this Court's order. I deny any application to alter or modify the discovery deadlines that I earlier imposed on the defendants.

Finally, I deny the defendants' application to prohibit the use of discovery in this action in lawsuits pending in other jurisdictions. The entire purpose of enabling discovery to be coordinated in this multi-jurisdictional litigation is to save time and money and to conserve judicial resources. For that reason, I deny defendants' request to prohibit the use of discovery in other actions during the stay in these lawsuits.

I believe this resolves, for the moment, the outstanding issues pending before me. If I am mistaken about that, please advise me at your earliest convenience.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant.	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	)	
Nominal defendants.	)	

[PROPOSED] *STATUS QUO* ORDER PENDING RESOLUTION OF PLAINTIFFS' MAY 8 MOTION FOR CONTEMPT[1]

[1] Capitalized terms not defined herein have the meanings assigned to such terms in the Amended Complaint. Trans. ID 21225483 (Amended Complaint).

WHEREAS, this Court has entered orders in C.A. No. 3803 (the "DE Dissolution Action") and C.A. No. 3989 (the "DE Removal Action"; collectively with the DE Dissolution Action, the "DE Actions"), which were intended to preserve the *status quo* pending resolution of the DE Actions (the "Existing *Status Quo* Orders");[2]

WHEREAS, Plaintiffs have filed a motion for contempt relating, in part, to defendant Merritt's alleged violations of the Existing *Status Quo* Orders (the "Contempt Motion")[3] involving certain bank accounts identified in response to Plaintiffs' interrogatory number 19 in the DE Removal Action.[4]

IT IS ORDERED, for good cause shown, that pending resolution of the Contempt Motion:

1. No new bank accounts may be opened by the Entities, Merritt Litigation Support, LLC, Mer-Lyn Farms, LLC, or the Big L Ranch, LLC. To the extent Merritt opens, or is maintaining, any bank account that is not listed in Merritt's response to Plaintiffs' interrogatory number 19, then: (i) within three business of the creation of any such bank account (or within three business of the date of this order for any account existing as of the date of this order), Merritt will supplement Merritt's response to Plaintiffs' interrogatory number 19 with information sufficient to identify such accounts;

---

[2] Trans. ID 20225052 (June 12, 2008) (original DE Dissolution Action *status quo* order); Trans. ID 21279102 (Aug. 28, 2008) (revised DE Dissolution Action *status quo* order); Trans. ID 21401506 (Sept. 8, 2008) (DE Removal Action *status quo* order).

[3] Trans. ID 25099310 (Motion).

[4] Trans. ID 25084525 (Merritt's interrogatory responses). The term "Bank Accounts" refers collectively to all of the bank accounts identified in response to Plaintiffs' Interrogatory number 19 in the DE removal action. Specific bank accounts are identified herein by the owner's name and the last 4 numbers of the account.

(ii) any such bank account shall fall within the definitions of "Merritt's Bank Accounts" and Merritt's personal accounts, as those terms are used in this order; and (iii) the statements for any such accounts shall be produced in accordance with Paragraph 10 below.

2. Cash shall not be withdrawn from any of the Bank Accounts; provided, however, that Merritt may make cash withdrawals of her personal funds from her personal accounts.[5]

3. Any payment or transfer from the Bank Accounts (other than her personal accounts[6]) shall be made only by standard check or electronic transfer. Each such check shall identify: (i) the payee; (ii) the purpose for the expenditure; and (iii) the invoice, if any, that is being paid.

4. No funds shall be transferred from any of the Entities' Bank Accounts[7] to any of the Bank Accounts belonging to Merritt, Mer-Lyn, Merritt Litigation Support, and/or Big L (collectively, "Merritt's Bank Accounts").[8]

5. Any funds (including checks or cash) currently in the possession, custody or control of Merritt (including any funds in Merritt's Bank Accounts) that Defendants know or reasonably should know belong to any of the Entities, shall be deposited or

[5] Merritt (9463), Merritt (3325) and Merritt (0893).
[6] Merritt (9463), Merritt (3325) and Merritt (0893).
[7] Buck & Doe (1369), Grays Ferry (3710), Grays Ferry (1356), Grays Ferry (6280), Hope Land (5999), Merritt Land (4007), PDF (1330), and Unionville (1314).
[8] Merritt (9463), Merritt (3325), Merritt (0893), Mer-Lyn (0852), Merritt Litig. (0849), Merritt Litig. (3647), and Big L (1275).

transferred into the Entity's Bank Accounts on or before the close of business on Friday, May 22, 2009.

6. Any funds (including checks or cash) that belong to any of the Entities shall be deposited or transferred into the Entity's Bank Accounts within three business days of such funds coming into the possession, custody or control of Merritt after the submission of this order by the parties.

7. Defendants are not permitted to make any payments or withdrawals from the Entities' Bank Accounts without the prior written consent of the Plaintiffs.

8. The Entities shall not make any payments or otherwise dispose of any funds or assets, other than payments made from the Entities' Bank Accounts in accordance with the restrictions contained herein.

9. The Existing *Status Quo* Orders will remain in full force and effect.

10. Merritt shall provide Plaintiffs' counsel with copies (via email to psweeney@certilmanbalin.com and rollo@rlf.com) of any bank statement(s) for the Bank Accounts within five business days of the Defendants receiving such statement(s). Within five business days of this order, Merritt shall provide Plaintiffs' counsel with copies (via email to psweeney@certilmanbalin.com and rollo@rlf.com) of any bank statement(s) for the Bank Accounts that: (i) are dated March 1, 2009 or later, and (ii) have not yet been produced to Plaintiffs in this action that are in Merritt's possession, custody or control.

11. The Parties agree to be bound by the terms of this Order pending the entry (or rejection) by the Court of this Order, and any violation of its terms shall be subject to the same sanctions and penalties, as if this Order had been entered by the Court.

12. The restrictions imposed by this Order may be waived on a case-by-case basis by written agreement of the Plaintiffs. The parties shall notify the Court of any modifications to the terms of this Order by providing the Court with such modifications. The Court may modify the restrictions of this Order upon application of any party for good cause shown.

_____

The Honorable William B. Chandler, III

This document constitutes a ruling of the court and should be treated as such.

Court:	DE Court of Chancery Civil Action
Judge:	Multi-case
File & Serve Transaction ID:	25241978
Current Date:	May 20, 2009
Case Number:	Multi-case
Case Name:	Multi-case

/s/ Judge William B Chandler

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Petitioners,	:	
v	:	Civil Action No. 3803-CC
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, and PANDORA RACING, LLC, a Delaware limited liability company,	:	
Respondents.	:	

CHANCERY COURT REPORTERS
New Castle County Courthouse
500 North King Street - Suite 11400
Wilmington, Delaware 19801-3768
(302) 255-0524

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,

Plaintiffs,

v

LINDA MERRITT (a/k/a LYN MERRITT),

Defendant,

and

BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, and PANDORA RACING, LLC, a Delaware limited liability company,

Nominal Defendants.

Civil Action No. 3989-CC

- - -

Chancery Court Chambers
Chancery Court Courthouse
34 The Circle
Georgetown, Delaware
Friday, July 10, 2009
1:37 p.m.

- - -

BEFORE: HON. WILLIAM B. CHANDLER III, Chancellor.

- - -

TELEPHONIC RULINGS OF THE COURT ON PETITIONERS'/PLAINTIFFS' MOTION TO VACATE STAY, RESPONDENT/DEFENDANT MERRITT'S MOTION TO MODIFY STATUS QUO ORDER, COUNSEL FOR RESPONDENT/DEFENDANT MERRITT'S MOTION TO WITHDRAW, DISCUSSION ON PETITIONERS'/PLAINTIFFS' MOTION FOR CONTEMPT AND SUMMARY JUDGMENT SCHEDULING

- - -

APPEARANCES: (via speakerphone)

RICHARD P. ROLLO, ESQ.
Richards, Layton & Finger, P.A.
for Petitioners/Plaintiffs

BRIAN E. FARNAN, ESQ.
Phillips, Goldman & Spence, P.A.
for Respondent/Defendant Linda Merritt

- - -

that's in only one of the matters; is that right?

MR. FARNAN: That's all that's been filed, Your Honor. I am pretty confident we won't [sic] be moving to withdraw from the other case; but that -- we filed a motion for advancement, and then the motion to withdraw is conditioned on that motion being denied. Ms. Merritt is not a defendant in the second action and does not have -- there's no advancement rights in the second action. But we are -- I can tell Your Honor we are most likely going to file a motion to withdraw in the other case; but once -- we're waiting for the stay to get lifted before we do that.

THE COURT: Okay. Well, with respect to the motion to -- I'm sorry. Am I correct that there's also, Mr. Farnan, a motion filed and pending that requests that I modify the status quo order to allow advancement of fees to Ms. Merritt?

MR. FARNAN: Yes. That motion was originally filed back in September.

THE COURT: Right.

MR. FARNAN: And then we renewed it, and Your Honor deferred ruling on that in light of the stay. And then we refiled it, and I think it was

about three weeks ago, Your Honor. Yeah.

THE COURT: All right. Well, then, let me address that.

My view is that no one should be advanced any fees in this litigation -- neither Ms. Merritt nor any of the plaintiffs who have brought the actions -- until the Court is able to resolve finally the rights and liabilities and responsibilities of the various parties involved in these entities. Whether or not parties should remain as managing members, whether they should remain as members and what the respective responsibilities of the various members are in these entities is an open question. And my view is that it would be imprudent to order or authorize advancement of fees before the Court has made those ultimate determinations.

And so based on that reasoning, I deny the motion to modify the status quo order to authorize or permit advancement of attorneys' fees to Ms. Merritt.

Now, that takes that motion off the pending list. The next one, I guess -- we're back to the one I was referring to. Your application, Mr. Farnan, to withdraw as counsel. I'm going to

grant your motion effective at the end of this conference call. So at the end of this conference call I will electronically execute the order that allows you to withdraw as counsel for Ms. Merritt in the one action. And I can tell you if your representation is that you're going to likewise move in the companion action, I will also sign that order.

Now, having done that, Ms. Merritt is going to be unrepresented in this case except for Mr. Fioravanti, whose admission has been made pro hac vice by your firm, I believe, Mr. Farnan.

MR. FARNAN: Your Honor, can I address that?

THE COURT: Yes.

MR. FARNAN: Because I don't think that is the case.

THE COURT: Okay.

MR. FARNAN: In -- in the -- what's been termed as the removal action, Mr. Fioravanti has never been admitted pro hac vice. We have never moved to have him admitted pro hac vice. He appeared on one conference call at my request because of the background needed for the New York litigation. So he's never appeared in the action that you just

allowed us to withdraw from.

THE COURT: What about in the other action?

MR. FARNAN: In the earlier action he appeared -- initially Ms. Merritt -- or the entities had other counsel -- and I don't remember who it was -- who moved his admission pro hac vice. And then this year, when it came time to renew that application, I did not renew it. And I don't know what effect that has on the application, but we didn't renew his application in January.

MR. ROLLO: Your Honor, this is Mr. Rollo. Might I briefly comment on this issue?

THE COURT: Certainly.

MR. ROLLO: Mr. Fioravanti was entered pro hac vice at the beginning of the first action. He argued on behalf of Ms. Merritt; and when the second action was filed, he appeared at the scheduling -- I mean the conference where it was argued about the status quo order and, in fact, argued on Ms. Merritt's behalf. While it is correct that a formal pro hac vice was not filed, on at least two transcripts he has participated and been listed as entering an appearance.

It seems as if Mr. Fioravanti is attempting to distance himself from this action because in other courts he has taken the position that well, he's not involved in Delaware, notwithstanding the fact that he's making arguments to Your Honor on her behalf in both actions.

He can't have it both ways. And he can't now run from this Court and have Ms. Merritt proceed as pro se with him acting as shadow counsel, as he's done in -- in Pennsylvania. She's listed as pro se in an action, yet he still is there giving her legal advice.

I would submit that that's improper under our rules for how pro hac is supposed to work. In one sense, whether Mr. Fioravanti is or is not counsel in the action, it shouldn't affect how the action, I believe, should go forward.

So if Your Honor believes that Mr. Fioravanti has entered an appearance, we still fundamentally, I think, need to resolve the question of is he going to retain local counsel or is he going to withdraw or seek to withdraw from Your Honor.

MR. FARNAN: Just for the record, when Mr. Fioravanti represents to another court he's not

involved, I can tell you he has not been involved at all since we've been representing the entities or Ms. Merritt except for appearing on teleconference with Your Honor to assist me when questions about New York would come up. He's never drafted a letter, never even commented on a brief or a motion. So with the action he hasn't been admitted pro hac in, I think it's clear. The other action, I thought by not renewing his pro hac that was essentially a withdrawal; but I'll let Your Honor rule on that. I'm, you know ...

THE COURT: Well, I'm not sure I'm going to be prepared to rule today whether or not renewing his pro hac vice status operated as a withdrawal or not.

Frankly, you know, I've assumed that Mr. Fioravanti was properly admitted pro hac vice in this matter because he has appeared on the conference calls with the Court and with other counsel. And I recognize, Mr. Farnan, you typically took the laboring oar and argued, but Mr. Fioravanti did inject himself into those arguments. And I, frankly, just assumed that he had been properly admitted. And, again, perhaps imprudently on my part, I assumed that he had

been admitted pro hac vice in both proceedings, 3989 as well as 3803.

I realize now I'm -- I'm mistaken about that, and that was my error, because I would have insisted that that be done in both, because we frequently were discussing both of these cases.

But for now, I don't really think it matters. I'm going, as I said, to allow you, Mr. Farnan, and your law firm to withdraw as counsel in both of these actions at the end of this phone call. Whenever you file your motion in the other action, I will sign that one as well.

Ms. Merritt and the entities will all have to get counsel, and Ms. Merritt will have to have local counsel. If she wants to maintain Mr. Fioravanti as her lawyer, she will have to through him obtain local counsel to enter their appearance for her and move his admission in the proper way in one or both of these actions. But that's -- I view that as a matter for another day.

So all I want to do now is, given that I've ruled, I believe, on two and perhaps three of the outstanding motions, I wonder if I could just get you to help me understand what motions are now still

CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 4 through 23 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 13th day of July 2009.

/s/ Neith D. Ecker

Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 113-PS
Expiration: Permanent

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: August 24, 2009
Decided: September 3, 2009

Richard P. Rollo
Brock E. Czeschin
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Ms. Linda Merritt (**Via E-mail & U.S. Mail)**
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital, LLC v. Merritt*
Civil Action No. 3989-CC

Dear Counsel and Ms. Merritt:

I have concluded that oral argument is unnecessary. Thus, the argument scheduled for September 29, 2009, is cancelled. This is my decision on the pending motions.

This lawsuit arises out of a protracted dispute concerning the continued operation and management of nine Delaware limited liability companies: Buck & Doe Run Valley Farms, LLC, Grays Ferry Properties, LLC, Hope Land, LLC, Merritt Land, LLC, Unionville Land, LLC, Moore Street, LLC, PDF Properties, LLC, Pandora Farms, LLC, and Pandora Racing, LLC (collectively the "Entities;" Pandora Farms, LLC and Pandora Racing, LLC will be independently referred to as the "Pandora Entities"). Plaintiffs R&R Capital, LLC ("R&R") and FTP Capital, LLC ("FTP") seek summary judgment on Count I of their amended complaint, which seeks a declaration that defendant Linda Merritt was validly removed as manager and member of the Entities. Defendant Merritt has also moved for summary judgment. For the reasons set forth below, I grant plaintiffs' motion for summary judgment and deny defendant's motion, and appoint a receiver to wind up the business and affairs of the Entities.

I. BACKGROUND

Since their inception, Merritt has been a member and the manager of the Entities. Plaintiffs also are members of the Entities, and have certain contractual rights under the operating agreements of the Pandora Entities. Merritt is the only manager of the Pandora Entities; PDF Properties, LLC is the sole member.

From its rocky beginning, the parties' working relationship has completely deteriorated. In early 2007, Merritt allegedly told plaintiffs that she was selling real estate owned by Hope Land, LLC for approximately $300,000. Plaintiffs were told that they would receive approximately $130,000 from that sale, and that Merritt would be entitled to $149,984.50. Plaintiffs contested the distribution of the sale proceeds, but Merritt sold the property without plaintiffs' consent. Plaintiffs claim that no distribution was ever made to them. Merritt contends that the sale proceeds were used to pay LLC expenses, but she has failed to provide an accounting to prove this assertion.

In addition, the parties disagreed over the management of Grays Ferry Properties, LLC. Plaintiffs allege that they invested over $836,000 to purchase abandoned properties from the City of Philadelphia, refurbish them, and then sell them as affordable housing. Grays Ferry purchased twenty-one such properties. In April 2007, plaintiffs allege that Merritt intended to convey one of the properties to Peter Pelullo to satisfy a purported obligation Merritt owed to his construction company. Pelullo was a member of Grays Ferry. Plaintiffs objected to the transfer. Merritt then allegedly disclosed that the property was already titled in Pelullo's name, and that at least twelve properties owned by Grays Ferry were actually titled in the name of Peter Pelullo or his company. Plaintiffs allege that Merritt later sold several properties to Pelullo at below market value, violating section 4.2(b) of the Grays Ferry operating agreement.

Furthermore, plaintiffs have serious disagreements with Merritt over the management of the Pandora Entities. The Pandora Entities were formed to raise and breed race horses. Plaintiffs allege that while Merritt was authorized to maintain thirty-six horses on the premises, she actually maintained sixty-three horses on the premises. The extra horses amounted to a combined value of $1,300,000. Plaintiffs allege that Merritt was either maintaining the extra horses with common LLC resources, or buying extra horses for the Pandora Entities without authorization.

Additionally, on July 23, 2008, East Marlborough Township filed an action against Unionville Land, LLC claiming that Merritt allowed a building located in the heart of Unionville's Historic District to go into serious disrepair. Plaintiffs also allege that Merritt has not dissolved Moore Street, LLC according to its operating agreement, which provides that dissolution shall occur upon the sale of all or substantially all of the

LLC's assets. Plaintiffs allege that Moore Street sold its only asset and that Merritt has failed to take steps to wind up or dissolve the LLC.

Overall, plaintiffs allege that Merritt's conduct has been nothing but dilatory and self-serving. Plaintiffs further allege that (1) Merritt has failed to timely pay city, state and/or federal taxes related to the Entities, (2) there are outstanding judgments and/or liens against the Entities as a result of Merritt's conduct, and (3) many of the Entities have had their certificates of formation cancelled by the State of Delaware for failing to pay their required annual taxes or for failing to maintain a registered agent for service of process.

In turn, Merritt has alleged a litany of grievances concerning plaintiffs' conduct. Merritt alleges that she was consistently and fraudulently mislead by Ira Russack, the owner of R&R, because he concealed that he had pleaded guilty to filing a false income tax return. Merritt argues that Russack's felony conviction prevented the Pandora Entities from obtaining a racing license in New York, and hampered the operations of the Entities. Moreover, Merritt contends that plaintiffs consistently harassed and tampered with the effective operation of the Entities and prevented Merritt from successfully operating the Entities. As should be painfully obvious by this point, the working relationship of the Entities' members is completely dysfunctional and beyond repair or reconciliation.

On August 20, 2008, plaintiffs sent Merritt notice of her removal as manager of the Entities for "cause" pursuant to Section 4.5 of the Entities' operating agreements, and Section 3.5 of the Pandora Entities' operating agreements.

The Entities' operating agreements set forth the basis for a manager's removal for cause as follows:

> The Manager may be removed as Manager for "Cause" upon the written demand of [Plaintiffs]. Such written demand shall set forth with specificity the facts giving rise to such Cause. As used herein, a removal for "Cause" shall mean that the Manager to be removed shall have (a) engaged in fraud or embezzlement, (b) committed an act of dishonesty, gross negligence, willful misconduct, or malfeasance that has had a material adverse effect on the Company or any other Member, or (c) been convicted of any felony.[1]

[1] Compl., Ex. A. The defined terms in the operating agreements for the various entities differs slightly, but not materially. In addition, Section 4.5 of the operating agreements for the so-called Owned Entities is identical in all relevant respects to Section 3.5 of the Pandora Entities' operating agreements. *See id*. at Exs. A-I. Accordingly, I need not differentiate between Section 4.5 of the Owned Entities and Section 3.5 of the Pandora Entities.

The removal notice was based on Merritt's conduct that was subject to an action entitled *R&R Capital v. Merritt*, C.A. No. 06-1544, before Judge Mary McLaughlin of the United States District Court, Eastern District of Pennsylvania (the "Pennsylvania Action"). The Pennsylvania Action arose from a dispute between the parties concerning the purchase, possession and ownership of three thoroughbred "pinhooking" horses. R&R purchased the horses from Merritt's wholly-owned company, Mer-Lyn Farms, LLC. In the Pennsylvania Action, R&R sought to obtain possession of two of the pinhooking horses and sought to rescind the transaction whereby it purchased the third pinhooking horse, based on Merritt's misrepresentations regarding the health of the horses.

On April 17, 2009, Judge McLaughlin issued an Order finding in favor of R&R on its rescission and replevin claims and in favor of Merritt with regard to certain expenses associated with training and caring for the horses. Judge McLaughlin found that Merritt engaged in fraud in connection with the challenged transaction. In her written opinion, Judge McLaughlin specifically found that "R&R was induced to purchase [the horses] on the basis of statements by Pelullo and Merritt that were both fraudulent and material. . . . In these circumstances, the statement that [the horse] was one of the best horses available was a knowing misstatement not in accord with the facts and therefore fraudulent."[2]

II. ANALYSIS

A. Summary Judgment

Pursuant to Court of Chancery Rule 56, a motion for summary judgment shall not be granted unless "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."[3] The moving party has the burden of establishing that no genuine issue of material fact exists, and the court must draw all reasonable inferences in favor of the nonmoving party.[4]

B. Removal

Pursuant to Section 4.5 of the Entities' operating agreements, a manager "may be removed as Manager for "Cause" upon the written demand of [Plaintiffs]" if the demand is given "with specificity" as to "the facts giving rise" to the fact that the manager "engaged in fraud" or that the manager engaged in dishonesty that "had a material adverse effect on the Company *or any other Member*."[5] On August 20, 2008, plaintiffs

---

[2] *R&R Capital, LLC v. Merritt*, No. 06-1554, McLaughlin, J. (E.D. Pa. Apr. 17, 2009).
[3] Ct. Ch. R. 56(c).
[4] *Estate of Carpenter v. Dinneen*, 2007 WL 1114082, at *4 (Del. Ch. Apr. 11, 2007).
[5] *See* note 1, *supra*.

provided Merritt with specific notice that she was being removed as manager for cause. The "cause" listed in the notice was Merritt's fraudulent and material misrepresentations regarding the pinhooking horses.

Merritt argues that plaintiffs are estopped by the doctrine of *res judicata* from bringing their removal claim before this Court based on the pinhooking transaction because that issue was already litigated and decided in New York. I disagree. The elements of *res judicata* are well established. A party claiming that *res judicata* bars a claim in a subsequent action must demonstrate that: "(1) the court making the prior adjudication had jurisdiction; (2) the parties in the present action are either the same parties or in privity with the parties from the prior adjudication; (3) the prior adjudication was final; (4) the causes of action were the same in both cases or the issues decided in the prior action were the same as those raised in the present case; and (5) the issues in the prior action were decided adversely to the party's contention in the instant case."[6]

The third element, whether the earlier adjudication was final, is dispositive in this case. While the pinhooking transaction was alleged by plaintiffs in their New York complaint, Justice Ramos did not make a final adjudication with regard to the pinhooking transaction as it related to the removal action. Merritt alleges that Justice Ramos dismissed plaintiffs' amended complaint, including the pinhooking transaction. Justice Ramos, however, only demanded that the issues be held over for a trial on the merits. He did not specifically dismiss the claims based on the pinhooking transaction. In fact, Justice Ramos did not even mention the claims based on the pinhooking transaction in his analysis. I am hard-pressed to find anything in the New York record concerning the pinhooking transaction. Indeed, I am not alone in this futility. Judge McLaughlin in the Pennsylvania Action also failed to find that Justice Ramos specifically ruled on the pinhooking transaction. Judge McLaughlin wrote:

> Merritt's interpretation of Justice Ramos' ruling is unsupportable. Nothing in the transcript of the December 10, 2007, proceedings before Justice Ramos suggests that he intended to encompass the pinhooking horses in his ruling. . . . Nowhere in the December 10 hearing transcript does Justice Ramos, or any counsel or witness, refer to the pinhooking horses, either directly or indirectly, nor is any evidence presented to the court concerning those horses.[7]

Since I cannot find that Justice Ramos disposed of the issues surrounding the pinhooking transaction in a final adjudication, I reject Merritt's assertion that this Court is barred from hearing, or that plaintiffs are barred from bringing claims seeking removal of Merritt as manager of the Entities on account of the fraud related to the pinhooking

---

[6] *Julian v. E. States Constr. Serv., Inc.*, 2009 WL 1211642, at *5 (Del. Ch. May 5, 2009).
[7] *See* note 2, *supra*.

transaction. In addition, and for the same reason that the pinhooking issue has not been finally adjudicated on the merits, I find no basis for Merritt's collateral estoppel or judicial estoppel defenses. Those defenses are similarly rejected.

Merritt also argues that plaintiffs have misinterpreted Section 4.5 of the Entities' operating agreements. Merritt insists that even if she perpetrated a fraud against plaintiffs, as long as the Entities did not suffer a "material adverse effect" as a result of the fraudulent behavior she cannot be removed as manager for cause. This is an incorrect interpretation of Section 4.5.

In a dispute requiring contract interpretation, summary judgment is appropriate only where the contract is unambiguous.[8] "Ambiguity exists 'when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.'"[9] I find no ambiguity here. In fact, the plain language of Section 4.5 of the Entities' operating agreement gives rise to only one reasonable meaning. According to Section 4.5(a), if a party committed fraud it could be removed as manager for cause. There is no qualification under Section 4.5(a) that demands the fraud result in "material adverse effect" to the Entities. The "material adverse effect" language falls only under Section 4.5(b). The more straightforward and grammatical reading of Section 4.5 leads to the correct interpretation—once it has been established that a member has committed fraud, the other members can remove that member as manager of the Entities for cause.

Even if I believed that the "material adverse effect" language found in Section 4.5(b) applied to Section 4.5 in its entirety, Merritt would still not receive the outcome that she desires. In such a scenario, the full language of Section 4.5 would then be interpreted to read that the fraudulent act must have "had a material adverse effect on the Company *or any other Member*." Merritt's fraudulent conduct, however, was directed toward the plaintiffs—other members of the Entities. Clearly this action falls under the plain meaning of the "material adverse effect" language in that members of the Entities were materially harmed by Merritt's fraudulent acts. Accordingly, given that Judge McLaughlin in the Pennsylvania Action found that Merritt had committed fraud against plaintiffs, I find that Merritt's actions in connection with the pinhooking transaction establish that "cause" existed under Section 4.5 and conclude that such fraudulent acts provide plaintiffs with the right to remove Merritt as manager of the Entities for cause.

Finally, as a last ditch effort, Merritt claims that the August 2008 notice was not immediately effective because there was never a judicial finding of "cause" when the notice was sent to her and that such a finding is inappropriate under the procedural

---

[8] *In re Nextmedia Investors, LLC*, 2009 WL 1228665, at *3 (Del. Ch. May 6, 2009).
[9] *Id.* (quoting *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992)).

posture of summary judgment. In August 2008, however, when the notice was given, Merritt was not immediately removed as manager but rather remained in office pending a finding of "cause" by this Court. When plaintiffs issued the notice, they appropriately pointed to what they reasonably believed were Merritt's fraudulent actions. Plaintiffs believed that these actions constituted fraud and enabled them to dismiss Merritt for cause as contemplated in the Entities' operating agreements. Indeed, Judge McLaughlin decided this issue in favor of plaintiffs and against Merritt in the Pennsylvania Action. Thus, I conclude that the August 2008 removal notice was proper and effective. Accordingly, Merritt has been removed as manager for cause. This conclusion also means that Merritt's summary judgment motion on the same issue is denied.

C. Appointment of Receiver

The removal of Merritt as *manager* of the Entities will not end this matter. Merritt apparently is still a member of the Entities and it is obvious that resentment, disagreements and suspicions exist between the parties. Moreover, the parties' working relationship as managers and members of the Entities is, to put it mildly, dysfunctional. Plaintiffs, in their June 2, 2008 petition, sought dissolution, or in the alternative, the appointment of a receiver for the winding up of the Entities. In accordance with that original request, and in the interests of justice for all the parties involved, I am directing the parties to submit, within seven (7) days of today, the name of a potential receiver to manage the business and affairs of the Entities until such time as they can be effectively wound up. The parties should attempt to agree upon a receiver and inform this Court within seven (7) days of today. If the parties cannot agree, I will appoint a receiver within ten (10) days from this date.

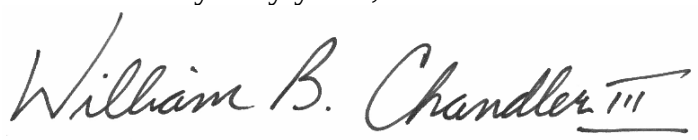
III. CONCLUSION

By this decision, I order the following relief: (1) the stay earlier imposed in this case is vacated; (2) summary judgment on Count I of the amended complaint is entered in favor of plaintiffs and against defendant Merritt; (3) defendant Merritt was validly removed as manager of the entities as of August 20, 2008; (4) Merritt shall take no further action in her capacity as manager of the entities, except that she may take all necessary steps to transfer control of the entities and their assets to the independent receiver; (5) the receiver shall take all steps necessary to conduct an accounting, pay all appropriate expenses and debts of the entities, and pay the balance of any capital account owed to Merritt and other members, and legally dissolve the entities; (6) a receiver will be appointed in accordance with this Court's instructions.

Plaintiffs shall submit an appropriate implementing order no later than noon, Tuesday, September 8, 2009.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

WBCIII:meg

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	C.A. No. 3989-CC
v.	)	
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	)	
Nominal defendants.	)	

ORDER

This Order is entered this 14th day of September, 2009, and is entered in response to (1) Ms. Merritt's two September 9, 2009 letters (totaling 23 pages); (2) Ms. Merritt's September 10, 2009 letter (6 pages); (3) Mr. Rollo's September 9, 2009 letter regarding

plaintiffs' Proposed Order (5 pages); (4) Mr. Rollo's September 9, 2009 letter (6 pages); (5) Mr. Rollo's September 10, 2009 letter (2 pages, with 6 pages of attachments).

Now, therefore, it is ORDERED:

1. Ms. Merritt's request to vacate or stay this Court's September 3, 2009 Letter Decision and Order is DENIED;

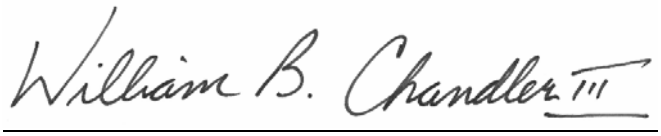
2. Ms. Merritt's request that the Court appoint an "independent examiner in lieu of a receiver" is DENIED;

3. Ms. Merritt's request that the Court appoint Louis C. Bechtel as either "examiner" or receiver is DENIED;

4. Ms. Merritt's objection to paragraph 7 of plaintiffs' Proposed Order is DENIED;

5. Kurt Heyman, Esquire, of Proctor Heyman LLP is appointed as the Independent Reciever, and Paul C. Seitz CPS, CVA of Seitz Consulting LLC shall assist the receiver as Forensic Accountant, effective immediately. As set forth in the Implementing Order entered simultaneously on this date, Mr. Heyman and Mr. Seitz shall take all steps necessary to (i) conduct an accounting of the Entities and KTK; (ii) wind up the affairs of the Entities and KTK consistent with the terms of their respective operating agreements; (iii) dissolve the Entites and KTK; and (iv) pay the balance of any capital account to the members consistent with the terms of the relevant operating agreements;

6. All other requests made in any of the letters, identified above are DENIED.



Chancellor

Dated: September 14, 2009

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	)	
Nominal defendants.	)	

ORDER IMPLEMENTING THE SEPTEMBER 3, 2009 DECISION

WHEREAS, plaintiffs R&R Capital, LLC, and FTP Capital, LLC ("Plaintiffs") have moved for summary judgment (the "Plaintiffs' Motion")[1] against defendant Linda

[1] Trans. ID 25899255 (Plaintiffs' Motion).

Merritt (a/k/a Lyn Merritt) ("Merritt") on Count I of the Amended Complaint,[2] which seeks a declaration that Merritt was validly removed as manager of nominal defendants Buck & Doe Run Valley Farms, LLC, Grays Ferry Properties, LLC, Hope Land, LLC, Merritt Land, LLC, Unionville Land, LLC, Moore Street LLC, PDF Properties, LLC, Pandora Farms, LLC, Pandora Racing, LLC (the "Entities") as of August 20, 2008, pursuant to the terms of their respective operating agreements.

WHEREAS, Plaintiffs also sought a declaration that Merritt was validly removed as manager of Knick the Knack Farms, LLC ("KTK"), a wholly owned subsidiary of Merritt Land, LLC, as of July 31, 2009, pursuant to the terms of its operating agreement.[3]

WHEREAS, Merritt has moved for summary judgment against Plaintiffs on all counts raised in the Amended Complaint ("Merritt's Motion").[4]

IT IS ORDERED, for good cause shown, that:

1. Merritt's Motion is denied.

2. Plaintiffs' Motion is granted.

3. The parties shall confer, in good faith, upon the identity of a mutually acceptable independent receiver (the "Receiver") to: (i) conduct an accounting of the Entities and KTK; (ii) wind up the affairs of the Entities and KTK consistent with the terms of their respective operating agreements; (iii) dissolve the Entities and KTK; and

[2] Trans. ID 21225483 (Amended Complaint).
[3] Trans. ID 26386975 at ¶ 68-70 (Reply Brief).
[4] Trans. ID 26672254 (Merritt's Motion).

(iv) pay the balance of any capital accounts to the members consistent with the terms of the relevant operating agreements.

4. On or before September 10, 2009, the parties shall submit the name of a mutually acceptable proposed Receiver to the Court. If the parties fail to do so, the Court will independently appoint a Receiver.

5. Upon the appointment by this Court of the Receiver, the status quo orders entered in this Action (and in C.A. No. 3803) shall be vacated.

6. The Receiver shall take all steps necessary to: (i) conduct an accounting of the Entities and KTK; (ii) wind up the affairs of the Entities and KTK consistent with the terms of their respective operating agreements; (iii) dissolve the Entities and KTK; and (iv) pay the balance of any capital accounts to the members consistent with the terms of the relevant operating agreements.

7. Fifty percent (50%) of the costs and expenses associated with the Receiver shall be charged to Merritt's capital accounts. Fifty percent (50%) of the costs and expenses associated with the Receiver shall be charged to Plaintiff's capital accounts. To the extent that either Merritt's or Plaintiffs' capital account balances are insufficient to pay their respective share of the Receiver's expenses, such party shall be liable for any remaining balance.

8. Merritt is deemed removed as manager of the Entities for cause as of August 20, 2008, pursuant to the terms of their operating agreements. Merritt shall take

no further action in her capacity as manager of the Entities, except that Merritt shall take all necessary steps to transfer control of the Entities and their assets to the Receiver.

9. Merritt is deemed removed as manager of KTK for cause as of July 31, 2009, pursuant to the terms of its operating agreement. Merritt shall take no further action in her capacity as manager of KTK, except that Merritt shall take all necessary steps to transfer control of KTK and its assets to the Receiver.

10. This Court reserves jurisdiction over all matters arising from or relating to the above-discussed accounting, winding up and dissolution of the Entities and KTK. To the extent that Merritt or Plaintiffs (or their respective affiliates) are purportedly (i) owed debts by the Entities or KTK, or (ii) owe debts to the Entities or KTK, such debts shall be submitted exclusively to the Receiver to be resolved in connection with the accounting.

William B. Chandler III

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

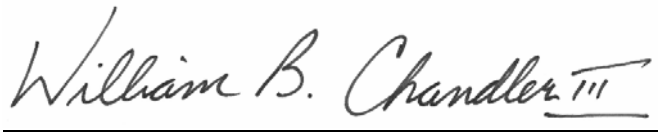
R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	)	
Nominal defendants.	)	

ORDER

This Order is entered in response to (1) Ms. Merritt's September 14 letter requesting sanctions against plaintiffs' counsel in this action, and (2) Mr. Rollo's September 15 letter responding to the foregoing request by Ms. Merritt.

Now, therefore, it is ORDERED, for good cause shown, that:

1. The requests set forth in Merritt's September 14 letter are DENIED.



Chancellor

Dated: September 16, 2009

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

September 17, 2009

Via E-Mail

Ms. Linda Merritt
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital, LLC v. Merritt*
Civil Action No. 3989-CC

Dear Ms. Merritt:

I have your September 15, 2009 letter. You appear to be asking me to enter an order certifying certain rulings, on an interlocutory basis, to the Delaware Supreme Court. Although I have been lenient (because of your *pro se* status) in allowing you to submit letters in lieu of formal motions or pleadings as required by the Rules of this Court, there are consequences to litigants who fail to comply with the formal Rules that govern legal proceedings. In other words, your *pro se* status, and your unfamiliarity with fundamental rules of civil procedure in the Delaware court system, may have a negative effect on your litigation position. Put differently, lawyers do add value, which is why you were strongly encouraged to retain counsel.

Nevertheless, I have carefully considered your most recent letter, as well as all of your previous letters and attachments. I am not persuaded by your arguments or assertions, most of which are wholly unsupported and many of which are plainly inaccurate. Accordingly, I deny your request for an order certifying an interlocutory appeal pursuant to Supreme Court Rule 42. As I understand Rule 42, you may petition the Supreme Court for an order to certify this case for appeal, even though I have denied your request because I do not believe the certification criteria under Rule 42 have been met.

To repeat, your request for certification of an interlocutory appeal is DENIED.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

WBCIII:meg

xc: Richard P. Rollo

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Plaintiffs,	:	
v.	:	C.A. No. 3989-CC
LINDA MERRITT (*a/k/a* LYN MERRITT),	:	
Defendant,	:	
and	:	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	:	
Nominal defendants.	:	

ORDER

The Receiver in the above-captioned matter having moved the Court pursuant to Ch. Ct. R. 148 for relief from the Receivership Rules (Rules 149-168) and certain ancillary relief, and good cause having been shown therefor,

IT IS HEREBY ORDERED that:

1. Kurt M. Heyman, Esquire, having been appointed by the Court as Independent Receiver ("Receiver") of the Receivership Entities,[1] shall have sole authority to act on behalf of the Receivership Entities and to take such actions as he deems appropriate on all issues involving the liquidation and dissolution of the Receivership Entities, including issues which would ordinarily come before the managing members of the Receivership Entities. In exercising his authority as Receiver, Mr. Heyman may, but is not required to, consult with the Receivership Entities' members or their representatives. Mr. Heyman is also authorized to take all action that he reasonably deems necessary to discharge his duties as Receiver, including such actions as may be necessary to become familiar with the business and governance of the Receivership Entities.

2. The Receiver shall have authority to prosecute, defend, compromise, and abandon suits or claims in the name of, and for and on behalf of, the Receivership Entities, whether civil criminal or administrative, gradually settle and close the Receivership Entities' businesses, dispose of and convey the Receivership Entities' property, discharge or make reasonable provision for the Receivership Entities' liabilities, distribute to the members any remaining assets for the Receivership Entities, and perform all other acts necessary for the liquidation and winding up of the Receivership Entities.

3. The Court shall retain exclusive jurisdiction over this matter. Mr. Heyman's decisions and actions as Receiver and Paul Seitz's decisions and actions as Forensic Accountant hereunder shall be binding upon all current and former members of the Receivership Entities,

[1] The "Receivership Entities" include the Nominal Defendant entities as well as non-party Knick the Knack Farms, LLC.

and shall only be subject to review by this Court, for abuse of discretion, breach of the duty of loyalty or gross negligence.

4. Mr. Heyman and Mr. Seitz shall not have liability to the Receivership Entities or its members for acts taken by them in good faith pursuant to this Order and the Orders dated September 14, 2009, in the above-captioned matter.

5. The Receivership Entities shall, jointly and severally, indemnify and hold harmless the Receiver and the Forensic Accountant against any claims arising out of the performance of their duties as Receiver and Forensic Accountant. Such indemnification obligation shall include the time of the Receiver and the Forensic Accountant at their respective hourly rates set forth in this Order. The Receivership Entities shall, jointly and severally, advance all expenses (including attorneys' fees, and the Receiver and/or the Forensic Accountant's time) incurred by the Receiver and/or Forensic Accountant in responding to or defending any investigation, action, suit or proceeding to which the Receiver and/or Forensic Accountant is required to respond, or is made or is threatened to be made a party by reason of the fact of his position as Receiver or Forensic Accountant, in advance of the final disposition of any such investigation, action, suit or proceeding. Advancement or indemnification required by this paragraph shall be made in accordance with and on the same terms as provided for in paragraph 6 of this order.

6. Mr. Heyman shall be compensated for his time at the hourly rate of $495 and for expenses reasonably incurred by him in the discharge of his duties. Mr. Seitz shall be compensated for his time at the hourly rate of $300 and for expenses reasonably incurred by him in the discharge of his duties. Messrs. Heyman and Seitz shall submit invoices for their services to counsel for the Plaintiffs and to the Defendant, who is proceeding *pro se*. If the parties or

counsel for the parties believe the invoices to be improper or unreasonable, they may make appropriate application to the Court that the invoice not be paid. In the absence of a Court order directing that the invoice not be paid, all invoices submitted by Messrs. Heyman and Seitz shall be paid by the Receivership Entities within ten (10) days after their submission to the parties or counsel for the parties.

7. The Receiver shall submit a quarterly Receivership Report to the Court and the parties or counsel for the parties within twenty (20) days of the last day of any quarter that he is serving as Receiver, setting forth the status of the liquidation and winding up of the Company.

8. The Receivership Report prescribed in paragraph 7 hereof shall be in lieu of the reporting requirements set forth in Rules 149-168 of this Court, which Rules shall not be applicable in this proceeding. Notwithstanding the foregoing, the Receiver shall file with the Court the inventory, list of creditors and list of members required by Chancery Court Rule 151. In lieu of the Register in Chancery, the Receiver shall send the notice to creditors required by Chancery Court Rule 153, in a form to be approved by the Court, and will file proof of giving such notice to the Court. The Receiver shall have full power and authority to resolve all claims submitted in response to the notice on behalf of the Receivership Entities, and shall submit any claims that he is unable to resolve to the Court for resolution.

9. The Receiver's power as Receiver may be exercised in whole or in part by his authorized agents and representatives. Mr. Heyman is expressly authorized to employ the services of his law firm at normal hourly rates (discounted by 10%) and/or to retain outside attorneys, accountants and other professionals as he deems necessary to fulfill his duties hereunder.

10. The law firm of Proctor Heyman LLP shall not, by reason of Mr. Heyman's service as Receiver, be conflicted from serving as counsel in unrelated matters wherein the parties to this action (including any related entities, employees and associates), or their respective counsel participate as adverse parties, third parties, interested entities or individuals, counsel to adverse parties or otherwise.

11. When the dissolution of the Receivership Entities is complete, the Receiver shall make an application to the Court for the dismissal of this action. Any claim by any party or any putative creditor of any of the Receivership Entities against the Receiver and/or the Forensic Accountant, for any action or inaction in their capacities as such, may only be brought within this action in this Court prior to the dismissal of this action.

_____

Chancellor

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: William B Chandler

File & Serve Transaction ID: 27882936

Current Date: Nov 09, 2009

Case Number: 3989-CC

Case Name: R & R Capital LLC vs Linda Merritt

/s/ Judge William B Chandler

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Plaintiffs,	:	
v.	:	C.A. No. 3989-CC
LINDA MERRITT (*a/k/a* LYN MERRITT),	:	
Defendant,	:	
and	:	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	:	
Nominal defendants.	:	

ORDER

The Receiver in the above-captioned matter filed a Motion for Declaratory and Injunctive Relief ("Motion"), and good cause having been shown therefor,

IT IS HEREBY ORDERED this 25th day of February, 2010, that:

1. The Motion is GRANTED;

2. The Receiver validly exercised his authority to evict Defendant Lyn Merritt ("Merritt") from the property leased by Nominal Defendant Buck & Doe Run Valley Farms, LLC (the "Farm"), located at 395 Upland Road, Kennett Square, Pennsylvania, as of December 31, 2010;

3. Merritt shall vacate the Farm immediately, if she has not done so already;

4. Merritt shall remove her horses and personal effects from the Farm immediately, if she has not done so already;

5. Merritt is barred from reentering the Farm effectively immediately other than for the express purpose of complying with this Order;

6. Merritt shall not reenter the Farm without express permission from the Receiver;

7. The Receiver shall be permitted to charge Merritt a reasonable rental rate for her use of the Farm from January 1, 2010, through the time that she vacates the Farm;

8. The Receiver shall be permitted to assess the expenses of pursuing eviction-related relief against Merritt in the ultimate distribution of the Receivership Entities' assets; and

9. Nothing herein shall preclude the Receiver from seeking additional relief to that set forth above.

William B. Chandler III
Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

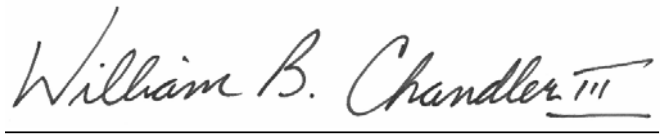
R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	)	
Nominal defendants.	)	

O R D E R

On application of defendant Linda Merritt for certification of an interlocutory appeal and to stay enforcement of this Court's February 25, 2010 Order, it is

ORDERED that (1) Merritt's application is DENIED because her application fails to satisfy any of the requirements for certification of an interlocutory appeal under

Supreme Court Rule 42(b); and (2) Merritt's motion for a stay of this Court's February 25, 2010 Order is DENIED because it is futile and without merit.



Chancellor

Dated: March 11, 2010

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

April 13, 2010

Richard P. Rollo
Brock E. Czeschin
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Kurt M. Heyman
Proctor Heyman LLP
1116 North West Street
Wilmington, DE 19801

Ms. Linda Merritt (**Via U.S. Mail)**
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital LLC v. Merritt*
Civil Action No. 3989-CC

Dear Counsel and Ms. Merritt:

Defendant Merritt's April 6, 2010 letter seeking advancement of legal fees and other relief is DENIED. Ms. Merritt has made identical requests in the past and each time the Court has denied her requests, for multiple reasons. Serial motions waste judicial time and effort. Given the numerous and repeated instances where Ms. Merritt files prolix restatements of positions or arguments that have already been ruled upon by the Court, I will no longer reply to Merritt's letters. Ms. Merritt is required, on pain of contempt, to comply with this Court's orders *unless and until she secures their reversal by the Delaware Supreme Court*. The Receiver is the only person who should be communicating with this Court regarding the disposition of the Delaware entities, *until the Delaware Supreme Court rules otherwise*.

IT IS SO ORDERED.

Sincerely,

William B. Chandler III

William B. Chandler III

WBCIII:meg

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Plaintiffs,	:	
v.	:	C.A. No. 3989-CC
LINDA MERRITT (*a/k/a* LYN MERRITT),	:	
Defendant,	:	
and	:	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	:	
Nominal defendants.	:	

ORDER

The Receiver in the above-captioned matter having moved the Court pursuant to Chancery Court Rule 70(b) to find Linda Merritt ("Merritt") in contempt of this Court's Orders, the Court having read and considered the briefs submitted by the Receiver and Merritt in connection therewith, and the Court having heard argument thereon at a contempt hearing held on June 25, 2010, and good cause having been shown therefor,

IT IS HEREBY ORDERED this _____ day of _____, 2010, that:

1. The Receiver's Motion for a Finding of Contempt Against Linda Merritt ("Motion") is GRANTED;

2. For the reasons stated in the Motion and at the contempt hearing, Merritt is found in contempt of this Court's Orders dated September 14, 2009, November 9, 2009 and February 25, 2010, for having done the following actions in violation of those Orders:

a. Having failed to vacate her and/or Mer-Lyn Farms, LLC's horses, employees and belongings from the Farm leased by Buck & Doe Run Valley Farms, LLC; having opposed the Pennsylvania eviction proceedings and having appealed the Pennsylvania eviction order with respect to the Farm; having continued to litigate her and Mer-Lyn Farms, LLC's purported rights to occupy the Farm in proceedings in New York; and having caused Mer-Lyn Farms, LLC to file a mechanics lien claim with respect to the Farm;

b. Having caused Mer-Lyn Farms, LLC to file a mechanics lien claim with respect to the Apple Grove property owned by Merritt Land, LLC, and otherwise having frustrated the sale of the Apple Grove property pursuant to the terms of its pending sale contract;

c. Having caused Mer-Lyn Farms, LLC to file a mechanics lien claim with respect to the property owned by Unionville Land, LLC; and

d. Having failed to correct the foregoing violations of this Court's Orders by noon on Monday, June 28, 2010, despite having been given the opportunity to do so by the Court prior to the entry of this Order,

3. As a result of the foregoing actions in contempt of this Court's Orders, it is hereby ordered and adjudicated that:

a. Merritt and her controlled entities, including but not limited to Mer-Lyn Farms, LLC and Merritt Litigation Support, Inc., are not entitled to any recovery from Buck & Doe Run Valley Farms, LLC, Grays Ferry Properties, LLC, Hope Land, LLC, Merritt Land, LLC, Unionville Land, LLC, Moore Street LLC, PDF Properties, LLC, Pandora Farms, LLC, Pandora Racing, LLC and Knick the Knack Farms, LLC (the "Receivership Entities"), and any such claims (including but not limited to any such claims forming the bases for the mechanics liens claims filed by Mer-Lyn Farms, LLC against Buck & Doe Run Valley Farms, LLC, Merritt Land, LLC and Unionville Land, LLC, and any claims that Merritt or Mer-Lyn Farms, LLC are entitled to occupy the Farm leased by Buck & Doe Run Valley Farms, LLC) are hereby declared to be null and void; and

b. Merritt is hereby removed as a member of all the Receivership Entities, and shall not be entitled to any distribution of the Receivership Entities' assets at the conclusion of their dissolution and winding up.

4. It is further ordered that Merritt is under a continuing obligation to comply with this Court's Orders in the following ways:

a. Merritt is again ordered to vacate her horses, employees and belongings from the Farm leased by Buck & Doe Run Valley Farms, LLC, including but not limited to any horses, employees and belongings owned or controlled by Mer-Lyn Farms, LLC or any other entities under Merritt's control;

b. Merritt is ordered to withdraw her appeal of the eviction order entered by the Pennsylvania court with respect to the Farm leased by Buck & Doe Run Valley Farms, LLC;

c. Merritt is ordered to withdraw the mechanics' lien claims she filed on behalf of Mer-Lyn Farms, LLC against Buck & Doe Run Valley Farms, LLC, Merritt Land, LLC and Unionville Land, LLC; and

d. Merritt is ordered to withdraw her claims in the New York court that seek to establish any entitlement to any assets of the Receivership Entities, including but not limited to any interest in the Buck & Doe Run Valley Farms, LLC Farm property or lease.

_____

Chancellor

This document constitutes a ruling of the court and should be treated as such.

Current Date: Jun 28, 2010

Case Number: 3989-CC

Case Name: R & R Capital LLC vs Linda Merritt

/s/ Judge William B Chandler

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

October 7, 2010

Richard P. Rollo
Brock E. Czeschin
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Kurt M. Heyman
Proctor Heyman LLP
1116 North West Street
Wilmington, DE 19801

Ms. Linda Merritt
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital, LLC v. Merritt*
Civil Action No. 3989-CC

Dear Counsel and Ms. Merritt:

I have entered the Order submitted by the Independent Receiver on September 27, 2010. This Order, as entered, will permit the receivership entities to be dissolved, and this case ended. Once the Receiver has paid all claims that are legally owed and the accounting is filed, a Final Order can be entered. Once the Final Order is entered, any party may appeal any of my earlier rulings in this case. As it does not appear that there will be any material amount of money left for distribution after payment of all legitimate debts and after payment of the Receiver, I see no reason to interfere with the Receiver's proposed method and process for final dissolution and winding up of the entities.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Plaintiffs,	:	
v.	:	C.A. No. 3989-CC
LINDA MERRITT (*a/k/a* LYN MERRITT),	:	
Defendant,	:	
and	:	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	:	
Nominal defendants.	:	

ORDER

The Independent Receiver in the above-captioned action having moved the Court to confirm the process by which the winding up of the affairs of the nominal defendants in the above-captioned litigation and non-party Knick the Knack Farms, LLC (the "Entities") shall be completed, and good cause having been shown therefor,

IT IS HEREBY ORDERED, that:

1. The claim submitted by Phillips, Goldman & Spence, P.A. against the Entities is hereby denied;

2. The claim submitted by McComsey Builders, Inc. against the Entities is hereby denied;

3. The Independent Receiver may transfer the remaining assets of the Entities to R&R Capital, LLC, FTP Capital, LLC, or their designees;

4. The Independent Receiver may maintain a reserve to pay for any remaining services to be provided by the Independent Receiver, and other expenses of the Entities pending their dissolution, with the amount of the reserve to be set by the Independent Receiver at his sole discretion; and

5. Upon completion of the final accounting, the Independent Receiver will submit the final accounting and certificates of dissolution to the Court for the Court's approval.

_____
Chancellor William B. Chandler, III

Dated:_____

This document constitutes a ruling of the court and should be treated as such.

Current Date: Oct 07, 2010

Case Number: 3989-CC

Case Name: R & R Capital LLC vs Linda Merritt

/s/ Judge William B Chandler

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

October 21, 2010

Via E-Mail

Ms. Linda Merritt
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital, LLC v. Merritt*
Civil Action No. 3989-CC

Dear Ms. Merritt:

I have your numerous letters and motions. I decline your invitation to interfere with the Receiver's efforts to wind-up and dissolve the entities. Your motion to vacate my June 28 Order is really an untimely motion for reargument. I also decline to certify an interlocutory appeal to the Delaware Supreme Court. Accordingly, all of your motions and requests are denied.

Very truly yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

xc: Kurt Heyman
Richard P. Rollo

WILLIAM B. CHANDLER III
CHANCELLOR

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

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

December 13, 2010

Via E-mail & U.S. Mail

Ms. Linda Merritt
699 West Glen Rose Road
Coatesville, PA 19320

Re: *R&R Capital, LLC v. Merritt*
Civil Action No. 3989-CC

Dear Ms. Merritt:

I have your December 6, 2010 letter. The Court receives correspondence from parties (such as your December 6 letter) that indicates all other parties have been copied on the correspondence. The Court has no method to verify that copies were sent or were received. The official record, however, clearly indicates that the letters were sent to you.

Nonetheless, the Court took no action on the November 22 letter from Mr. Rollo. In addition, the Court took no action on Mr. Heyman's October 6 letter until you had responded in your October 18 motion and your October 19 letter. Thus, even if your assertions are correct, no prejudice exists that justifies any action by this Court.

Sincerely yours,

William B. Chandler III

William B. Chandler III

WBCIII:meg

xc: Richard P. Rollo

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	)	
Plaintiffs,	)	
v.	)	C.A. No. 3989-CC
LINDA MERRITT (a/k/a LYN MERRITT),	)	
Defendant,	)	
and	)	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, et al.,	)	
Nominal Defendants.	)	

- - -

Chancery Courtroom No. 12C
New Castle County Courthouse
Wilmington, Delaware
Monday, February 21, 2011
2:30 p.m.

- - -

BEFORE: HON. WILLIAM B. CHANDLER, III, Chancellor.

- - -

ARGUMENT AND RULING ON MOTION TO DISMISS, MOTION TO VACATE CONTEMPT ORDER AND MOTION FOR RECUSAL

- - -

my instinct is to say, now, that I would like to -- a short reply, and I would like to reply to what the receiver filed. So my answer is I would like to reply if -- but I'm not 100 percent sure if you could wait, and I -- I would like to reply if you will give me the opportunity. I'm sorry.

THE COURT: I guess at this point, Ms. Merritt, I just fundamentally don't see anything to be gained by delaying this matter, dragging it out any further with more submissions. As I said, we have over 230 submissions in the file, and a number of them go right to this question. I know exactly what your arguments are with respect to the invalidity, in your view, of my order.

So I'm going to go ahead and rule today, and I'm going to deny your request that I vacate my earlier contempt order. That order, there is a record for it. There was a hearing. I gave you time to comply. In order to coerce you to comply, I told you what the remedy or what the Court would order if you didn't comply, and you didn't. So I entered the order then, finding contempt and granting the relief sought by the receiver. And that is what it is, so to speak. You can challenge that on appeal in

the Supreme Court of Delaware, and there is nothing more that I can really add to it, other than, as Mr. Rollo pointed out, there are probably a number of missed opportunities where I could have found you in contempt, but out of a sense of leniency or consideration for your pro se status, I didn't enter earlier orders that I was requested to enter, finding you in contempt for failure to comply with the discovery obligations that you have to comply with, or failing to comply with the Court's status quo order, when you violated it on a number of occasions by writing checks, serially, in excess of the amounts that the status quo order permitted you to write.

So there were a number of instances along the way where I just decided to wait and not do anything. Perhaps that was a mistake on my part and I should have acted on an earlier motion, but I didn't. I waited. I, frankly, waited for this reason, as well, not only out of a sense of leniency or commiseration with your situation, but also because of where the motion was coming from. I don't mean to insult Mr. Rollo or Mr. Sweeney, but I'm going to be very candid with you.

I don't really trust you, Ms. Merritt,

and I don't trust R&R Capital. I think all of you are in business together, and I have grave doubts about the legality of your businesses. I say that reluctantly, but I'm going to be candid with you. I don't think that you operated these LLCs -- and that R&R Capital did, either -- in a way that was legal and above board. I have so much doubt about that, and I mistrusted you and R&R Capital so much, that I was unwilling to grant contempt orders that they asked me to grant, because of that suspicion about their motives and their good faith in this litigation.

Now, it's another matter when the receiver, who is an independent officer of the Court, and who answers directly to the Court, who is not on either side of the litigation -- the receiver is not a party. It gains nothing from who wins or loses. The receiver is given a duty by the Court, what it's to do and how it's to do it. Mr. Heyman was picked by the Court, and Mr. Seitz and his firm were picked by the Court. They answered directly to me. They don't answer to you, and they don't answer to R&R Capital or the attorneys on that side.

I know you disagree with me, but the proof of their independence, the receiver and the

forensic accountant's independence, is that they have ruled against R&R Capital on a number of occasions when R&R Capital objected to things that the receiver and their forensic accountant were doing and saying. They objected, and they challenged it, and they lost. The receiver was doing the job that the receiver was charged to do.

The receiver is not an adversary. Several times you said the receiver is your adversary. I know you think the receiver is. I know you believe that in your heart. But just because people disagree with you doesn't mean that they are adversaries. It just means they disagree. They see it differently than the way you see it. Unfortunately, I see it differently than the way you see it. Also, like I said, I don't really trust R&R Capital, either, which is precisely why I wanted some neutral entity, somebody independent of you and R&R Capital, to come in, wind this business up, dissolve everything, pay all the creditors who were owed money, and try to salvage something.

Unfortunately, you resisted every step of the way. You fought the receiver and the forensic accountant tooth and nail. And that was your choice.

You had every right to do that, but it comes with consequences. I regret that those consequences are what they are, but those consequences were that when the receiver showed me how you had interfered with the receiver's ability to carry out the duty that I had imposed on the receiver, there was no choice except to try to find a way to get you to comply, to get you to go along and cooperate. That's what led to the contempt, and that's when I finally acted, despite the earlier requests from R&R Capital, that probably were meritorious, looking back on it in hindsight, with respect to discovery, the violations of the status quo order. But nonetheless, when the receiver asked me, and knowing the receiver's integrity and independence in this matter, that was the critical turning point in this case for the Court. So I granted that. I'm not going to go back now and revisit a decision that I made very carefully after listening to the receiver and after listening to you, because you spoke at length in your defense in that matter. And then after giving you additional time -- even after the hearing adjourned on that Friday, that hot Friday afternoon on July 25th, 2010, I gave you more time. I offered you another chance -- yet another chance -- to try to

demonstrate that you would cooperate, and that you wouldn't obstruct the receiver's efforts. And unfortunately, you didn't take my offer, and so the order was entered as I told you I would do it if you didn't comply in due course.

So I'm not going to go back now and revisit the order that I entered back in June of 2010. That order is there, and it stands until you get it reversed, if you can, on appeal. I understand that that is the way the process works.

Now with respect to your other motion, your motion, essentially, asking me to recuse myself, I want to be very clear about this, Ms. Merritt. As I have said from the beginning, I like you. You are a very personable individual and present well in the courtroom and you make good arguments. You're obviously well skilled. Even if not trained legally, you are skilled legally. I respect your ability to make your arguments. But on this one, I really question, you know, the good faith and integrity with which you bring this motion on. I pressed you very hard when you were speaking, because you made an accusation -- two accusations, really -- in your papers.

One was the accusation that there had been some suppression of the evidence regarding communications or contacts between the Court and Mr. Rollo or Mr. Sweeney or the R&R legal team. And I pressed on that because it's easy to hurl accusations and canards, but it's another thing to back them up. I asked you repeatedly: "Provide me with the evidence that you have that I have done anything improper and have in any way communicated with a party in an improper way," which is a very serious thing to charge a judge with doing. You have not offered me that. You have argued at length to me different things, but you have not said anything or given me anything that shows that I communicated with counsel for R&R in an ex parte way, without you having access to it through the public record.

So I really question why you persist in accusing me and accusing Mr. Rollo and Mr. Sweeney, of having done something improper. It's a very, very serious thing. So I don't hold it against you personally. You are obviously intensely, passionately worked up over this, which I understand, but when you hurl accusations of that kind without credible support for them, it really creates an inference that you now

are really acting in bad faith, that you no longer are willing to abide by the rules of the legal system. You are now outside of the legal system and resorting to any type of canard, malicious statement, or just unsupported statements that you can think of in order to achieve some objective that you have.

So that is why I really question why you make this charge. Even though I don't hold it against you for making it, I just wish that you had thought carefully about doing this and had some evidence to support it. If you did, I would recuse myself in a minute. I have been at this business too long to let something like this pass by and go unchallenged; that is, someone accusing me of acting in an unethical way, after 25 years. I'm not going to let you do that unchallenged.

I'm sorry if you felt I was being too harsh in my questioning of you, but that's why I was pressing you so hard to give me the evidence, show me where I have had some improper contact. And now you have heard Mr. Rollo and Mr. Sweeney at that lecturn, under penalty of perjury, swear they have never had any improper contact with me. So that's all I'm going to say about that. That is off to the side, and I'm

not going to address it, because there is nothing to address. It is simply an aspersion that you have cast on them and me that I'm going to ignore. And I'm obviously not going to recuse myself based on baseless canards and mischaracterizations.

Now, with respect to Mr. Heyman, that is a different matter. You allege that I have communicated with Mr. Heyman in an ex parte way, and that that is improper under the rules. Well, let's clear the air on this, because on October the 6th, or thereabouts, I did make a telephone call to Mr. Heyman. He didn't call me. I called him. That is because he is the court-appointed receiver. He works for me. He doesn't work for you. He doesn't work for R&R Capital. He works for me.

On October the 6th, when I was reviewing all the papers, including yours, there was an argument about whether there should be an escrow set up to hold a certain amount of cash money in escrow for some future purposes, either for ultimate distribution to you and to R&R Capital or to pay the receiver and the forensic accountant for their duties. Frankly, it wasn't clear to me how much cash was available. My main concern wasn't with you. It

wasn't with R&R Capital. My main concern was that the receiver and the forensic accountant got paid for all their hard work, because I have had too many cases where I have appointed receivers and at the end of the day, they don't get anything. The parties cut up everything and waste all the money, and the receiver, who does all the work, goes home penniless, with nothing to show for their effort. I, frankly, find that offensive.

The receiver is asked to do this, but not as a volunteer. There is no reason the receiver's practice and life and livelihood should suffer simply because the parties are so obdurate and obstinate and pig-headed they can't resolve this matter, and we have to have a receiver brought in to resolve it for them. It isn't fair to the receiver for them to go unpaid and uncompensated.

My sole and only reason for calling the receiver was to find out: "How much cash is there? Will there be enough cash in an escrow, or somewhere, to pay you and Mr. Seitz for all your work?" Mr. Heyman told me how much cash there was available, and it really wasn't that much. I was shocked at how little was left, frankly. So when I

heard what a nominal amount of cash was left, that is all I was interested in. That was the sum and substance of the conversation, and that was the purpose for the conversation.

Now, Mr. Heyman, as I said before -- and I'm repeating myself. I want to make it clear for the record. Mr. Heyman and I have had no other conversation in this case, ever, about the substance of this case. Nothing about the conversation has ever been about the merits -- no pun intended -- the merits of the case, your position substantively, versus R&R Capital's position substantively, or any of that. Because it didn't matter. That wasn't the receiver's job. The receiver had one job: Liquidate everything and then pay all the creditors, and then pay off the remainder to the members. That is the job. The only thing he could do was what I told him to do, and that's what his orders were.

So to the extent that there was a conversation, first of all, it was only about what amount of money was left, and would it be enough to pay Mr. Heyman and Mr. Seitz for their efforts. So to that extent, taking up the McGee case, it was purely administrative. It wasn't substantive about the

merits of this case. But it wouldn't matter even if it was, because Mr. Heyman isn't a party. He is the independent receiver. He answers to me. He is like an expert witness appointed by the Court. I have appointed dozens of them in my lifetime, to serve me as a witness in court. I'm allowed to talk to them, because they work for me. They are no different than the person sitting up here taking the report of this record or the person sitting up here. They were work with me, and I can talk to them any time I want to. I can talk to an expert witness that is appointed by the Court, and I can talk to a receiver that is appointed by the Court.

If I was going to engage in discussions about the substance of the case, and your legal position versus R&R, I would get R&R's counsel and I would get you, because I would want to hear what you thought. But I wasn't interested in legal positions. I was interested in one thing: Is there going to be any cash money left to pay Mr. Heyman and to pay Mr. Seitz? And that's what I called to find out. That's what I did find out. That's all I needed to know.

Then I went ahead and I ruled. And

after I ruled, you filed your letter of objection. And now you have briefed your letter of objection. And so you are free to make of this whatever you like, in whatever court you like, for as long as you like. I have ruled. That is the decision I have handed down. I'm handing to the clerk of the Court all of the exhibits that you provided to me today. I'm going to ask the clerk of the Court to make sure they are all marked and made and filed as part of this record.

In addition, I'm going to hand to the clerk the order, dated today, February 21, 2011, that grants the receiver the request the receiver has made, dismissing the case and allowing the case to be resolved finally. That order will be entered today, and you will be provided a copy off of LexisNexis free of charge. I will make sure the clerk provides you with a copy of that at no charge. All of the records that you were going to take downstairs, I would ask you to accompany the clerk. They will copy those for you, at no expense to Ms. Merritt, and make them available to you and to the other parties. I would ask that the clerk make sure that those records are filed electronically, scanned in electronically, made a part of the record for the eventual appeal to the

Supreme Court of Delaware.

THE CLERK: Yes, sir.

THE COURT: With that, counsel and Ms. Merritt, if there is nothing further, I have kept you much longer than I thought I would. I apologize for the lateness of the hour. Is there anything further that I can --

MS. MERRITT: Just one little thing. I was wondering, because there seems to be some confusion about the -- whether or not Mr. Heyman and Mr. Rollo cc'd me on those letters -- Mr. Rollo said he would look and see. I'm surprised he hasn't looked to see already, but could the Court ask Mr. Heyman and Mr. Rollo to provide their e-mail confirmations that they sent me those, or to say that they didn't send them, just so we know? I know, but it seems like the Court is unsure about it.

THE COURT: Mr. Rollo.

MR. ROLLO: Your Honor, it's an irrelevant point for this record. I would be happy to go back. It seems as if Mrs. Merritt is attempting to use this as discovery. If she is asking questions, as she has done the receiver, this is just a further continuation. It seems as if the final order should

be the final order. If she has issues, she can bring it at a later date.

MS. MERRITT: Your Honor indicated that I had, in bad faith, spoke about the ex parte communications. Those two communications are the receiver's letter from him to Your Honor, dated October 6th, and Mr. Rollo's letter dated November 22nd. So I don't see what the harm is in me having -- I mean, I know I didn't get them. They are being gray about it. Can we ask them for the copies?

THE COURT: Ms. Merritt, maybe Mr. Heyman or Mr. Rollo will have a different view of this, but I will tell you my view. I expressed it earlier.

It doesn't matter. Here is why it doesn't matter. There is an official public record of every document that gets filed. If you went down to the record, the LexisNexis record, and you couldn't find your letter of October 6th or Mr. Rollo's November 22, there would be a problem. But if you go down and check that record, those documents were filed on those dates, publicly. They were there. They were there for you. They were there for the entire universe to inspect. You are on constructive notice

of that filing.

Why do I say that? We have hundreds of people in this Court every day who are pro se, have no lawyer and have no computer at home. None, nothing, no laptop, no Blackberry, no computer. They are on constructive notice. The minute a lawyer in a case in which they are involved files something on that record, our rules say they are on constructive notice of the filing. It has to be that way. How can you have it any other way? They have to come in. It's their responsibility. It's a hardship, I know. They have to get in their car, drive to the courthouse, come into the Register's Office, ask to see the public access terminal, and they have to check it every day to see what has been filed. I know it's a hardship, but it's the way they have to operate. And what you are saying is that you do that. You mentioned to me earlier you have done that, too.

MS. MERRITT: On occasion. I didn't realize that was the policy, that I was required to get my correspondences and filings that way. I thought that the parties -- it was my understanding from early on that the parties were supposed to copy each other. I was unaware of what Your Honor was

saying now.

THE COURT: I'm sorry, Ms. Merritt. That is why I think I wrote to you and said one time that I don't have any independent way -- I get a letter from Mr. Heyman. You know how I get it? I go on LexisNexis and I print it off. I print the letter off, and I read it. And at the bottom of it, it says your name. But even if it didn't say your name, he has filed it electronically in the docket of the Court, so that I know that everyone who wants to see it, including you, can see it. But when I -- I think I wrote to you and said, "I don't have some way of going behind Mr. Heyman's letter and saying, 'Gee, I see that Ms. Merritt is copied. I wonder if she really got her copy or not?'" There is no way for me to do that. I couldn't get my work done if I went behind every letter and asked that same question. I wouldn't be able to get anything done.

I have rely on the fact that there is a public record, and that everyone has access to that. If you send the letter to me, I have to trust that Mr. Heyman got it and Mr. Rollo got it. If you copied them -- I don't know if you really did copy them or not, Ms. Merritt. I'm sure you did. I'm not

suggesting you didn't. But I'm saying I don't have any way of independently knowing that. I have to rely on the fact that: "Okay. I checked the docket. Ms. Merritt's letter is here, so Mr. Heyman and Mr. Rollo, constructively, they have to know it, too because it's right there." If they wanted to find out, they could find out. I'm not reading --

I guess what I'm trying to say, I know you feel that way, but I'm not treating you any differently than I treat them. They have to rely on the record, and you do, too.

Thank you, ma'am. Anything further, counsel?

MR. ROLLO: No, Your Honor. Thank you.

MR. HEYMAN: Thank you, Your Honor.

THE COURT: Court is in recess.

(Recess at 4:50 p.m.)

- - -

CERTIFICATE

I, WILLIAM J. DAWSON, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 111 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 29th day of March, 2011.

/s/William J. Dawson
Official Court Reporter
of the Chancery Court
State of Delaware

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

R&R CAPITAL, LLC, a New York limited liability company, and FTP CAPITAL, LLC, a New York limited liability company,	:	
Plaintiffs,	:	
v.	:	C.A. No. 3989-CC
LINDA MERRITT (*a/k/a* LYN MERRITT),	:	
Defendant,	:	
and	:	
BUCK & DOE RUN VALLEY FARMS, LLC, a Delaware limited liability company, GRAYS FERRY PROPERTIES, LLC, a Delaware limited liability company, HOPE LAND, LLC, a Delaware limited liability company, MERRITT LAND, LLC, a Delaware limited liability company, UNIONVILLE LAND, LLC, a Delaware limited liability company, MOORE STREET LLC, a Delaware limited liability company, PDF PROPERTIES, LLC, a Delaware limited liability company, PANDORA FARMS, LLC, a Delaware limited liability company, PANDORA RACING, LLC, a Delaware limited liability company,	:	
Nominal defendants.	:	

ORDER

The Receiver in the above-captioned matter having moved the Court to dismiss this action, and good cause having been shown therefor,

IT IS HEREBY ORDERED that:

1. This matter is dismissed.

2. Kurt M. Heyman, Esquire, having been appointed by the Court as Independent Receiver ("Receiver") of the Receivership Entities,[1] shall transfer the continuing recipient rights of Pandora Farms, LLC's Pennsylvania Horse Breeders Association breeder awards to R&R Capital, LLC.

3. Following the transfer of the recipient rights of Pandora Farms, LLC's breeder awards to R&R Capital, LLC, the Receiver shall use the Receivership Entities' remaining liquid assets to pay the outstanding fees due to the Receiver.

4. R&R Capital, LLC shall be responsible for any unpaid taxes of the Receivership Entities, including any fines or penalties as a result thereof, subject to any right of set-off that it may have against Defendant Linda Merritt or her solely-owned entities.

5. The Receiver is discharged from his duties as Receiver, except to the extent that he must complete certain administerial duties in accordance with this Order.

William B. Chandler III
Chancellor

February 21, 2011

[1] The "Receivership Entities" include the Nominal Defendant entities as well as non-party Knick the Knack Farms, LLC.