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October 12, 2026

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RE: *US INFRA SVCS Buyer, LLC, et al. v. JDB Capital Partners, LLC, et al.*, C.A. No. 2024-0097-LWW

Dear Counsel:

I write regarding defendant JDB Capital Partners, LLC’s request for leave to move for summary judgment.¹ Plaintiff-intervenor AIG Specialty Insurance Company and plaintiffs US INFRA SVCS Buyer, LLC and US INFRA SVCS, Inc. oppose the request.² After consideration, the request is denied.

The plaintiffs allege that JDB orchestrated a fraudulent “phantom revenue” scheme before the April 2020 closing of a purchase agreement.³ They filed this

¹ Def.’s Letter Seeking Leave to Move for Summ. J. (Dkt. 338) (“Def.’s Request”). This letter assumes an understanding of the overarching dispute.

² Pls.’ Letter in Opp’n to Def.’s Letter Seeking Leave to Move for Summ. J. (Dkt. 339) (“Pls.’ Opp’n”).

³ See Verified Am. Compl. (Dkt. 34) ¶¶ 7, 9.

action in February 2024.⁴ In a May 30, 2024 amended complaint, they asserted that the statute of limitations was tolled by the doctrine of fraudulent concealment until they discovered the alleged fraud in 2022.⁵ In January 2025, I granted in part and denied in part motions to dismiss brought by two sets of defendants.⁶ The plaintiffs' remaining claims (including those brought by the intervenor plaintiff) are set to be tried in December 2026.

JDB seeks leave to move for summary judgment on its laches and statute of limitations defenses.⁷ It argues that the plaintiffs' claims are time-barred because JDB engaged in no affirmative acts of post-closing concealment, and the post-closing acts of non-parties cannot be imputed to it.⁸ The plaintiffs disagree, asserting that JDB engineered the purported fraudulent scheme and allegedly manipulated financial disclosures to evade post-closing detection.⁹ They point to material fact disputes regarding JDB's intent, knowledge, and pre-closing acts of concealment.¹⁰

⁴ See Verified Compl. (Dkt. 1).

⁵ See Verified Am. Compl. (Dkt. 34) ¶ 35.

⁶ See Tr. of Jan. 27, 2025 Telephonic Rulings on Defs.' Mots. to Dismiss (Dkt. 82).

⁷ Def.'s Request 1, 8.

⁸ *Id.* at 2-3.

⁹ Pls.' Opp'n 1-2.

¹⁰ *Id.* at 2, 8.

Summary judgment may be appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹¹ “There is no ‘right’ to a summary judgment.”¹² “[T]he court may, in its discretion, deny summary judgment if it decides upon a preliminary examination of the facts presented that it is desirable to inquire into and develop the facts more thoroughly at trial in order to clarify the law or its application.”¹³

After reviewing the parties’ letters and the record to date, I conclude that genuine issues of material fact exist regarding JDB’s participation in the alleged fraud. Resolving the claims about JDB’s purported pre-closing conduct requires an assessment of intent and witness credibility that cannot be resolved on a paper record. As such, summary judgment would be imprudent.

Considering the disputes of material fact remaining, JDB has not shown good cause to proceed with summary judgment briefing, which may prove inefficient.¹⁴

¹¹ Ct. Ch. R. 56(a).

¹² *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002).

¹³ *In re El Paso Pipeline P’rs, L.P. Deriv. Litig.*, 2014 WL 2768782, at *9 (Del. Ch. June 12, 2014).

¹⁴ *Orloff v. Shulman*, 2007 WL 1862742, at *1 (Del. Ch. June 20, 2007) (explaining that the court denies requests for leave to file motions for summary judgment where such proceedings “are apt to waste, rather than conserve, the resources of the parties and the court”).

Even apart from factual disputes, “a more thorough exploration of the facts is needed to properly apply the law to the circumstances” presented.¹⁵ The application of tolling doctrines in this case is fact-intensive, and the court will benefit from weighing the evidence and witness testimony at trial rather than deciding the issue on the papers.¹⁶ Thus, the request for leave to move for summary judgment is denied. This case will proceed to trial.

In reviewing the docket to resolve the letter request, I noticed that there are several discovery motions that are either not fully briefed or are unresolved. Within five business days, the parties are asked to file a joint letter identifying the motions that are withdrawn and those that must be resolved (if any).

Sincerely yours,

/s/ Lori W. Will

Lori W. Will
Vice Chancellor

cc: All Counsel of Record

¹⁵ *In re Tri-Star Pictures, Inc., Litig.*, 1995 WL 106520, at *5 (Del. Ch. Mar. 9, 1995).

¹⁶ *See, e.g., MKE Hldgs., Ltd. v. Schwartz*, 2024 WL 3964332, at *3 (Del. Ch. Aug. 28, 2024) (observing that “it would be beneficial to inquire into the facts more thoroughly at trial to clarify whether there is a basis for tolling the statute of limitations period”).