

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MARTIN MELZER and ROLLIN	:	
LINDERMAN,	:	
	:	
Plaintiffs,	:	
	:	
v	:	Civil Action
	:	No. 3023-CC
CNET NETWORKS, INC., a Delaware	:	
corporation,	:	
Defendant.	:	

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Chancery Court
34 The Circle
Georgetown, Delaware
Wednesday, October 31, 2007
10:37 a.m.

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

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TELECONFERENCE ON MOTION OF ROBERT B. WEISER,
ESQUIRE FOR PROTECTIVE ORDER AND RULING

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34 The Circle
Georgetown, Delaware 19947
(302) 856-5645

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1 APPEARANCES:

2 (via telephone)

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4 DAVID L. FINGER, ESQ.
 4 CHARLES SLANINA, ESQ.
 4 Finger & Slanina, LLC
 5 for Robert B. Weiser, Esq.

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KEVIN G. ABRAMS, ESQ.
NATHAN A. COOK, ESQ.
Abrams & Laster, LLP.
for Defendant CNET Networks, Inc.

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THE COURT: Good morning, counsel.
ALL COUNSEL: Good morning, Your Honor.
THE COURT: Can everyone hear me all right?
ALL COUNSEL: Yes.
THE COURT: I think I have Mr. Finger and Mr. Slanina. Are you there?
MR. FINGER: Yes, Your Honor.
MR. SLANINA: Yes, Your Honor, we

11 are.

12 THE COURT: And I believe I have
13 Mr. Abrams and Mr. Cook?

14 MR. ABRAMS: That's correct, Your
15 Honor.

16 THE COURT: I thank you for being
17 available on short notice, but given there is a trial
18 scheduled on November 14 on this 220 books and
19 records action, I thought it might be important to
20 provide you with some guidance on the motion that, at
21 the moment, is the only motion I know of pending in
22 front of me. That motion is the motion of Robert
23 Weiser, Esquire for a protective order to prevent or
24 preclude the defendants from taking his deposition.

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1 Now, first, let me ask, am I mistaken
2 in that regard? Are there any other motions before
3 me that I am not aware of?

4 MR. FINGER: Well, Your Honor, this
5 is David Finger. I don't want to speak for the
6 defendants, of course, but they just filed a motion
7 for a commission to obtain a subpoena out-of-state to
8 serve to Mr. Weiser, who is a resident of
9 Pennsylvania. We objected to that, and the two are
10 related.

11 THE COURT: All right. Well, in
12 ruling on the protective order motion, we will rule
13 on that issue as well.

14 Is there anything you wanted to say,
15 Mr. Finger?

16 I mean, I am prepared to rule. I
17 don't really need oral argument. I have read your
18 submissions, and I am prepared to rule.

19 MR. FINGER: The only factual thing I
20 wanted to add, Your Honor -- and I don't know if this
21 is going to be relevant at all, I don't know what
22 Your Honor is going to rule, obviously -- at the last
23 deposition of the plaintiffs up in New York the other
24 week, Mr. Weiser was handed an envelope. They

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1 claimed they were serving the subpoena on him. It
2 was not a subpoena by our understanding of the word,
3 because it was something they put together on their
4 word processor. It didn't have a seal of the Court,
5 didn't have a signature of anyone at the Court of
6 Chancery, which a usual subpoena does. And I'm not
7 sure if they are taking the position that that was a
8 valid service of a subpoena. Of course, we believe
9 that Your Honor should grant the motion; but if Your
10 Honor doesn't, we would contend they still have to
11 get the commission and still have to get the subpoena
12 served properly there.

13 That factual point is all I wanted to
14 add to the record, Your Honor.

15 THE COURT: Well, my ruling is that
16 your motion for protective order should be and is
17 granted. So all of the issues about whether or not a
18 proper commission was issued or a proper subpoena are
19 moot. Having considered the issues surrounding the
20 proposed deposition of Mr. Weiser, I am satisfied

21 that there is absolutely no basis for going forward
22 with his deposition.

23 This matter is scheduled for trial,
24 as I mentioned, on November 14. Frankly, I am not

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1 even going to touch on any of the procedural issues
2 that are raised in the motion. The fact of the
3 matter is that 220 actions are narrow in scope and
4 they are very focused proceedings; and I am
5 hard-pressed to understand here why we would need to
6 depose an attorney who is one of the attorneys
7 representing Mr. Melzer and Mr. Linderman.

8 The issues before me on the 14th will
9 be: Are Mr. Melzer and Mr. Linderman stockholders of
10 CNET? From what I have read, that is undisputed;
11 they are stockholders.

12 The second question will be: Have
13 they complied with the technical requirements for
14 making a demand to inspect books and records of CNET?
15 Maybe someone is going to argue that they haven't
16 made a proper technical demand under Section 220, but
17 if they are going to make that argument, I have yet
18 to see any sign of it.

19 The third question, which is usually
20 the focal point of proceedings under 220, is whether
21 Mr. Melzer and Mr. Linderman have a proper purpose
22 for seeking inspection of books and records? Again,
23 everything that I have read indicates that they do
24 have a proper purpose. As they testified in their

1 depositions, they seek to inspect books and records
2 of CNET in order to investigate mismanagement or
3 waste, and to determine whether a derivative claim
4 can or should be brought if such mismanagement or
5 waste can be proven. Again, this is consistent with
6 a long line of cases in the Court of Chancery with
7 respect to a proper purpose. I don't see any
8 suggestion that that is in dispute or seriously in
9 question.

10 Next, to obtain the records, a
11 stockholder must demonstrate a credible basis for
12 believing that some wrongdoing or mismanagement has
13 occurred that he seeks to investigate. Here, that
14 threshold showing seems to be satisfied by what I
15 understand to be concessions or admissions by CNET
16 that, in fact, backdating or errors in dating --
17 which is the latest euphemism for backdating --
18 occurred at the company. It thus appears that the
19 credible basis requirement is also going to be fairly
20 easy to meet in this case.

21 Finally, we impose a requirement that
22 the inspection be limited to records that are
23 necessary and essential. This is part of the focus
24 on, or our euphemism in the Court for, "rightful

1 precision" in the demands that are made by
2 stockholders. And here, I don't know, there might be
3 an argument about the scope of the demand, but I
4 haven't seen it made yet. So perhaps that is what we
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5 will face on the 14th at the trial.

6 Given those circumstances -- that you
7 have two stockholders, clearly who are stockholders,
8 who have met the technical requirements, who have
9 indicated what their purpose is, that appears to be a
10 proper purpose on the face, that has a credible
11 basis, and that is necessary and essential for them
12 to make that investigation -- I am hard-pressed to
13 understand what we are going to be doing on the 14th.
14 But I will welcome all of you to Georgetown to be
15 enlightened about that.

16 For today's purposes, however, I
17 grant the protective order. Mr. Weiser does not have
18 to have his deposition taken, as to do so would be
19 totally wasteful, frivolous and unnecessary. It
20 would be an excursion into irrelevancies that have
21 nothing to do with the factors that I have just
22 identified as the focal points of a 220 trial.

23 It is a little disconcerting, in
24 fact, that I have had to take up your time to address

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1 this question, because I think if we were going to
2 disqualify 220 plaintiffs on the grounds that their
3 attorneys were the driving force in the litigation,
4 because the attorneys know more about Section 220 and
5 about potential derivative claims than the clients
6 do, we would have precious little 220 litigation in
7 this Court. Everyone would be disqualified on that
8 ground, or the ground that seems to be implicit in
9 the motion, namely, that Mr. Weiser may be interested

10 in his fee at the end of all of this, if he's able to
11 proceed and successfully pursue the derivative claims
12 in California where the Federal District Judge
13 specifically instructed the plaintiffs to file a 220
14 action in the Court of Chancery, and which was done
15 expressly in accordance with Judge Alsup's
16 instructions.

17 If, in fact, that was the motive for
18 this action -- that it was fee driven -- am I to
19 believe the defense lawyers don't collect fees for
20 working on this case on behalf of CNET? Perhaps
21 everyone should be disqualified under this theory? I
22 am not sure where that logic leads, ultimately. But
23 I have taken the time to read through your
24 submissions carefully and think about it carefully,

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1 and my decision it is to grant the motion for
2 protective order. Hopefully, you will have a lot
3 more for me to think about on the 14th.

4 Now, are there any questions,
5 counsel?

6 MR. FINGER: None from Weiser's
7 counsel. Thank you, Your Honor.

8 THE COURT: All right. Thank you
9 very much.

10 MR. ABRAMS: Thank you.

11 THE COURT: Goodbye.

12 (Adjourned at 10:55 a.m.)

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CERTIFICATE

I, JENNIE L. WASHINGTON, Official Court Reporter of the Chancery Court, State of Delaware, do hereby certify that the foregoing pages numbered 3 through 10 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 Georgetown, this 1st day of November, 2007.

/s/Jennie L. Washington
Official Court Reporter
of the Chancery Court
State of Delaware

Certification Number: 140-PS
Expiration: Permanent

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