

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AURIGA CAPITAL CORPORATION, a	:	
Delaware corporation, PAUL	:	
ROONEY, HAKAN SOKMENSEUR, DON	:	
KYLE, IVAN BENJAMIN, and GLENN	:	
MORSE,	:	
	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil Action
	:	No. 4390-CS
	:	
GATZ PROPERTIES, LLC, a	:	
Delaware limited liability	:	
company, and WILLAM A. GATZ,	:	
	:	
	:	
Defendants.	:	

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Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Wednesday, February 23, 2012
4:00 p.m.

- - -

BEFORE: HON. LEO E. STRINE, JR., Chancellor.

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TELECONFERENCE

CHANCERY COURT REPORTERS
500 North King Street
Wilmington, Delaware 19801
(302) 255-0521

1 APPEARANCES: (via telephone)

2 JOHN L. REED, ESQ.
3 DLA Piper LLP (US)
4 for Plaintiffs

5 STEVEN L. CAPONI, ESQ.
6 ELIZABETH A. SLOAN, ESQ.
7 Blank Rome LLP

8 -and-
9 DAVID E. ROSS, ESQ.
10 Seitz Ross Aronstam & Moritz
11 for Defendants

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1 THE COURT: Good afternoon. May I
2 have appearances for the record?

3 MR. REED: Your Honor, John Reed for
4 the plaintiff.

5 MR. CAPONI: Your Honor, Steve Caponi
6 for the defendants.

7 MR. ROSS: Your Honor, David Ross.
8 Mr. Seitz apologizes --

9 THE COURT: Mr. Ross, could you do
10 that again? And are you on a cell or on speakerphone?

11 MR. ROSS: Is that better?

12 THE COURT: That's much better.

13 MR. ROSS: David Ross from Seitz Ross
14 Aronstam & Moritz on the phone. I wanted to apologize
15 for Mr. Seitz --

16 THE COURT: That's understandable.
17 Don't worry about that.

18 MR. ROSS: He had a medical procedure.

19 THE COURT: Well, I wish I could say
20 I'm surprised about this, but I'm not.

21 Mr. Reed, the one problem I have with
22 your position is that -- and I want you to tell me
23 about the form of this affidavit. What I don't have
24 from you, which I confess to finding difficult, is

1 that when I use the term "reasonable," there are
2 standards for reasonableness that exist in the rules
3 of professional responsibility. And I don't have an
4 affidavit indicating that you went over the bills,
5 looked at whether there had been excessive time and
6 other things.

7 I mean, things happen. And I recall
8 some pleadings in this case that at times were a bit
9 fulsome. And I use that word in all its glory. And
10 I'm not saying that there's anything about the bills.
11 I mean, are they dismaying for everybody? Sure. Has
12 this case been expensive? Yeah. That's nothing that,
13 frankly, the Gatz interests should be surprised about.

14 But when can you review these bills
15 and actually provide a certification as to really
16 reasonableness?

17 MR. REED: Your Honor, I can do that
18 by the end of the day. And I will represent to the
19 Court that every single month when bills went out, I
20 was the one that reviewed them. I would have edited
21 them at the time to make sure that they were
22 reasonable before they ever went to the client. And
23 so at least what's on paper already represents one
24 review, and I will do it yet again. I've probably

1 done it since. I will do it yet again. And I will
2 file the required certification by the end of the day.

3 THE COURT: Right. But I want a
4 representation from you that this constitutes your
5 judgment as a reasonable -- what was reasonable and
6 necessary to perform the services, and that there
7 wasn't unnecessary duplication, yada, yada. Okay?

8 MR. REED: Correct. Yes. Thank you.

9 THE COURT: And I also mean that to be
10 done, and I'm assuming it will be done in good faith,
11 which means that to the extent that you identify
12 things that should be reduced, they should be reduced.

13 MR. REED: Believe me, I take
14 Your Honor's instructions to heart.

15 THE COURT: Other than that, at this
16 point, I frankly will say once again, I am being
17 charitable to the Gatz interests.

18 Mr. Caponi, your client --

19 MR. CAPONI: Yes, Your Honor.

20 THE COURT: You know, it's nice that
21 your client and you feel that you can simply ignore my
22 decision, but that's what you did. And frankly, I
23 consider the objection to the reasonableness of the
24 fees to be waived for noncompliance with my opinion.

1 I want to be careful and fair, and that's why I'm
2 requiring the certification from Mr. Reed.

3 I will also make the following
4 observation: I shifted fees, which is a rare thing to
5 do. I did it for reasons that were outlined in the
6 opinion. As was pointed out, the Court had expressed
7 concern about this case earlier and had expected that
8 a senior hand on each side would take hold.

9 To criticize the other side because
10 your side essentially ignored that judicial
11 instruction did not come with good grace. And I've
12 said this in similar contexts and will say again, it's
13 really easy if I have Herman Cain or Domino's bring me
14 a pizza with everything, and I chuck it against the
15 wall, that's really easy to do. Cleaning up the
16 resulting mess is more expensive and time consuming.

17 And things like leaving discovery to
18 the client, filing briefs without the senior attorney
19 on the case spending nearly enough time to have edited
20 them, making submissions to the Court of legal
21 propositions which are -- put it this way. If they
22 were advocacy for evolutions in the law, they weren't
23 portrayed as such, nor were they justified as such,
24 and were simply, to my mind, without really any basis

1 in substantial logic.

2 There were factual propositions pushed
3 continually in the case that had no basis in reality.
4 There were arguments made that were, frankly, undercut
5 by admissions of Mr. Gatz at trial. All this stuff
6 serves to make the litigation much more expensive and
7 time consuming than it would otherwise be.

8 And then when I very clearly indicate
9 that the defendants are to produce all their time and
10 then they fail to produce the records of someone who
11 entered their appearance as counsel of record, signed
12 onto briefs, I just don't get it. And I don't want an
13 explanation of it. Your time is up on that. You were
14 given the chance by Mr. Reed, and you didn't do it.

15 I don't attribute that to the Seitz
16 firm. It's yet another decision by Mr. Gatz' personal
17 counsel. That has injected more delay into the
18 litigation and more costs. And part of why the
19 exigency of the call is I understand bankruptcy is
20 being threatened.

21 So Mr. Reed, I regret that your
22 evening is going to be spent this way, but the sooner
23 you can send in that certification -- in the exercise
24 of modesty, I am not going to enter any fees for

1 haggling over the order, so let's excise that portion
2 of the fees. Obviously, I'll need an up-to-date
3 interest calculation. But my hope would be to enter a
4 final judgment tomorrow, so that if there is a
5 bankruptcy, we don't leave that hanging.

6 Mr. Caponi, is there a bankruptcy
7 filing in the works?

8 MR. CAPONI: I do not know,
9 Your Honor.

10 THE COURT: You do not know. Who
11 would know? Who has been bandying about the threat of
12 bankruptcy?

13 MR. CAPONI: Mr. Seitz.

14 THE COURT: Mr. Ross, is there a
15 bankruptcy filing imminent?

16 Mr. Ross?

17 MR. REED: Your Honor, it sounds like
18 we may have lost him.

19 THE COURT: Are you no longer
20 representing Mr. Gatz, Mr. Caponi?

21 MR. CAPONI: No, Your Honor, we do
22 represent Mr. Gatz. But in light of the comments the
23 Court made during the course of the trial, we thought
24 it was appropriate for general counsel at Blank Rome

1 to retain Mr. Seitz to serve as essentially conflicts
2 counsel to insure that we could not be accused or in
3 any way appear to be elevating our interests over that
4 of Mr. Gatz's.

5 And that's the role that Mr. Seitz has
6 been playing, essentially making sure that whatever
7 recommendations are to be made are in his best
8 interest and not potentially our best interest. So
9 subsequent to the decision, Mr. Seitz has been the one
10 communicating with Mr. Gatz.

11 THE COURT: Okay. Mr. Ross, are you
12 back on?

13 MR. REED: Your Honor, I don't know if
14 Your Honor has a court reporter there.

15 THE COURT: I do.

16 MR. REED: Okay. Just so the record
17 is clear, Mr. Seitz told me twice personally that
18 Mr. Gatz was -- the first time, he told me he was
19 going to file for bankruptcy. The second time the
20 discussion came up, he said he had no choice but to
21 file bankruptcy.

22 THE COURT: Well, then let's get to
23 your review. Again, please take it seriously to the
24 extent that when you look over things and apply the

1 relevant standards, to the extent that there's excess,
2 please eliminate it yourself.

3 MR. REED: I will, Your Honor.

4 THE COURT: So thank you all. And I
5 will look for that certification and a conforming
6 final judgment.

7 MR. REED: Thank you.

8 (Conference adjourned at 4:16 p.m.)

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CERTIFICATE

I, JEANNE CAHILL, Official Court Reporter for the Court of Chancery of the 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.

IN WITNESS WHEREOF I have hereunto set my hand this 23rd day of February, 2012.

/s/ Jeanne Cahill

Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 160-PS
Expiration: Permanent