

Grace Bros., Ltd. v. Siena Holdings, Inc.
 Del.Ch.,2008.
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UNPUBLISHED OPINION. CHECK COURT
 RULES BEFORE CITING.

Court of Chancery of Delaware.
 Re: GRACE BROTHERS, LTD.
 v.
 SIENA HOLDINGS, INC., et al.
Civil Action No. 184-CC.

Submitted: Jan. 16, 2008.
 Decided: Feb. 14, 2008.

[James S. Green](#), Seitz, Van Ogtrop & Green, P.A.,
 Wilmington, DE,
[Stephen E. Herrmann](#), Richards, Layton & Finger,
 P.A., Wilmington, DE.
[WILLIAM B. CHANDLER III](#), Chancellor.

*1 Dear Counsel:

Originally filed over four years ago, plaintiff Grace Brothers, Ltd.'s ("Grace Brothers") complaint challenges a reverse stock split effected by defendants in the fall of 2003 as a violation of [8 Del. C. § 155\(2\)](#) and as a breach of fiduciary duties. Presently before me is Grace Brothers' motion to compel. Filed in early October 2007, this motion asked the Court to compel defendants to produce certain requested documents and to answer one of plaintiffs interrogatories. By the time the parties finished briefing this motion in the second half of January 2008, much of that request had been mooted by defendants' voluntary production and responses. What remains is a request for a 1998 private placement memorandum prepared by Charenton Realty, Inc. As explained below, because this document is not relevant to the subject matter of the case, I deny plaintiffs motion to compel.

Rule 26 allows for "discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."^{FN1} The information specifically sought in a discovery request need not be admissible itself as "long as it is

reasonably calculated to lead to the discovery of admissible evidence."^{FN2} Where a party has failed to comply with reasonable and proper discovery requests, discovery may be compelled by the Court.^{FN3}

^{FN1}. Ct.Ch.R. 26(b)(1).

^{FN2}. [Meltzer v. CNET Networks, Inc., C.A. No. 3023-CC, 2007 WL 2593065, at *1 \(Del. Ch. Sept. 6, 2007\)](#).

^{FN3}. See, e.g., Ct. Ch. R. 37; [Ryan v. Gifford, C.A. No. 2213-CC, 2007 WL 4259557 \(Del. Ch. Nov. 30, 2007\)](#) (granting and denying various motions to compel).

[Section 155](#) of the Delaware General Corporation Law permits-but does not require-corporations to issue "fractions of a share." If a corporation chooses not to issue such fractional shares, it must "pay in cash the fair value of fractions of a share *as of the time when those entitled to receive such fractions are determined*"^{FN4} The Supreme Court has indicated that the meaning of "fair value" under [section 155\(2\)](#) is "independent of the definition of 'fair value' in Section 262"-the appraisal statute.^{FN5} The exhaustive approach to valuation that courts employ in the context of appraisal is not required by [section 155](#).^{FN6}

^{FN4}. [Del. C. § 155\(2\)](#) (emphasis added).

^{FN5}. [Applebaum v. Avaya, Inc., 812 A.2d 880, 892 \(Del.2002\)](#).

^{FN6}. See *id.* at 892-93; see also EDWARD P. WELCH, ANDREW J. TUREZYN, AND ROBERT S. SAUNDERS, FOLK ON THE DELAWARE GENERAL CORPORATION LAW § 155.1 n. 3 (5th ed.2007).

With this in mind, I cannot see how a 1998 private placement memorandum is relevant to the value of Grace Brothers' interest in 2003. The statute itself provides for the payment of the interest's fair value "as of the time when those entitled to receive

such fractions are determined;”^{FN7} not as of five years earlier. Plaintiff meekly argues that “[t]he private placement memorandum relates to shares of Siena,”^{FN8} but this vacuous statement falls far short of meeting plaintiff’s burden of demonstrating the requested document’s relevance. Plaintiff also notes that the fairness opinion given to the company regarding the 2003 reverse stock split at issue was prepared by Charenton Advisors, which is a division of Charenton Realty, the company that prepared the fairness opinion supporting the 1998 private placement memorandum. Defendants, however, have produced that 1998 fairness opinion voluntarily, and plaintiff has not explained why the private placement memorandum itself is relevant or necessary. Accordingly, I decline to compel defendants to produce it.

[FN7.8 Del. C. § 155\(2\).](#)

[FN8.](#) Pl.’s Reply Br. at 2.

*2 IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

Del.Ch.,2008.
Grace Bros., Ltd. v. Siena Holdings, Inc.
Not Reported in A.2d, 2008 WL 441390 (Del.Ch.)

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