



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: November 9, 2009
Decided: November 12, 2009

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Re: *Brandt v. CNS Response, Inc., et al.*
Civil Action No. 4867-CC
CNS Response, Inc. v. Brandt
Civil Action No. 4688-CC

Dear Counsel:

I have reviewed the arguments for and in opposition to defendants' motion for a protective order prohibiting the depositions of Chris Webster and Mark Desrosiers. For the reasons stated below, defendants' motion is denied.

Under Court of Chancery Rule 26(b)(1), "any matter, not privileged, which is relevant to the subject matter involved in the pending action" is discoverable where "*it relates to the claim or defense of the party seeking discovery . . .*"¹ In the trial

¹ Ct. Ch. R. 26(b)(1) (emphasis added).

scheduled for December 1-2, 2009 this Court will address plaintiff's motion for a preliminary injunction, which seeks to enjoin the voting of approximately 12,000,000 common shares—issued to various parties on August 26, 2009—in any election or action by written consent. Underlying plaintiff's preliminary injunction motion is Count II of plaintiff's counterclaim, which also seeks an order enjoining any voting of the shares issued on August 26.² Thus, the August 26 issuance *relates to* plaintiff's claim in the upcoming trial and matters pertaining to that issuance are discoverable. Plaintiff has produced an email in which Webster states that Desrosiers informed him of a plan between Desrosiers and third-party defendant George Carpenter to wrest control of the company from plaintiff.³ Plaintiff asserts that defendants' sought to effectuate this plan using the August 26 share issuance. Accordingly, plaintiff should be permitted to depose Webster and Desrosiers to explore what they know about the August 26 issuance.

Defendants argue that they will be unduly burdened by the depositions of Webster and Desrosiers because the other depositions presently being conducted “span the country.”⁴ The Court is not convinced by this argument. Webster and Desrosiers will be deposed in Irvine, California, where many depositions are already taking place. Thus, any burden created by the taking of depositions in multiple locations would not be increased by the deposition of these two individuals.

Defendants also argue that the depositions of Webster and Desrosiers will be unreasonably cumulative because any relevant information that these two individuals possess could be obtained in the already scheduled depositions of defendants' CEO, CFO, and certain of defendants' directors. The Court is not convinced by this argument either. While defendants' CEO, CFO, and directors will likely have information regarding the August 26 issuance, none were participants in the discussions between Webster and Desrosiers or between Desrosiers and Carpenter and, therefore, cannot be questioned about the specifics of those discussions. The discussions themselves are not cumulative.

² See Leonard J. Brandt's Mot. for Expedited Proceedings and Coordinated Disc. on Mot. for Prelim. Inj. ¶¶ 5-7.

³ Ex. A to Opp'n to Mot. for Protective Order Prohibiting the Dep. of Chris Webster and Mark Desrosiers.

⁴ Defs.' Mot. for a Protective Order Prohibiting the Dep. of Chris Webster and Mark Desrosiers ¶ 3.

In opposing defendants' motion for a protective order, plaintiff represents that "the purpose of the depositions is simply to flush out the nature of the plan of Desrosiers and Carpenter to wrest control of [the company] from Brandt."⁵ Plaintiff further represents that both depositions will be short.⁶ The Court expects that plaintiff will abide by these representations in that he will not seek to depose Webster and Desrosiers about matters that are not relevant to the August 26 issuance and will not conduct the depositions for a longer period than necessary to effectively explore Webster's and Desrosiers's knowledge of the August 26 issuance.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:arh

⁵ Opp'n to Mot. for Protective Order Prohibiting the Dep. of Chris Webster and Mark Desrosiers

[¶] 6.

⁶ *Id.*