



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: May 14, 2009
Decided: June 2, 2009

James S. Green
Seitz, Van Ogtrop & Green, P.A.
222 Delaware Avenue, Suite 1500
P.O. Box 68
Wilmington, DE 19989

Stephen E. Herrmann
Richard P. Rollo
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Re: *Grace Brothers, Ltd. v. Siena Holdings, Inc., et al.*
Civil Action No. 184-CC

Dear Counsel:

I have reviewed the briefs filed by Grace Brothers, Ltd. (“Grace”), in support of its motion to compel discovery, and Siena Holdings, Inc., et al. (“Siena”), in opposition. I conclude, for the reasons briefly stated below, Grace’s motion to compel should be granted.

Grace filed its complaint in January 2004, challenging a reverse stock split by Siena as a violation of 8 *Del. C.* § 155. Grace’s first request for production of documents included a request for emails between members of Siena’s board of directors.¹ Siena determined there was no need for the board of directors to search for the emails, and did not notify them to do so.² In a letter dated April 3, 2009,

¹ Pl.’s Mot. to Compel Ex. A.

² Def.’s Resp. to Pl.’s Mot. to Compel at ¶¶ 3-4.

Grace requested that Siena produce the emails.³ Siena responded on April 27, 2009, asserting that the process it used to determine whether emails should be produced was appropriate.⁴ Grace filed this motion to compel on May 8, 2009.

This Court will grant a motion to compel discovery for any non-privileged matter relevant to the subject matter of the pending action if it “appears reasonably calculated to lead to the discovery of admissible evidence.”⁵ When a party has failed to comply with reasonable discovery requests, the requesting party may apply for an order compelling discovery.⁶ The burden is on the objecting party to show that the information sought is privileged or improperly requested.⁷ “Because of the breadth of discoverable materials, objections to discovery requests, in general, will not be allowed unless there have been clear abuses of the process which would result in great and needless expense and time consumption.”⁸

Siena has not met its burden of showing that Grace’s document requests are improper. Discovery may be limited by the Court if it is “unreasonably cumulative or duplicative.”⁹ Siena has failed to demonstrate that Grace’s requests are unreasonable. Usually, duplicative requests will be forbidden when the objecting party shows that the discovery request is *fully* duplicative and meant to harass the producing party. Siena argues that it already produced the relevant emails when they produced the sender-side versions. Additionally, Siena asserts that its process of asking the directors about their document retention and email communication practices was sufficiently reasonable to determine if the directors had unique copies of any emails already produced from other sources. It concluded that the directors did not have any unique copies. Therefore, Siena did not instruct them to search their files for email communications.¹⁰ Siena’s position, however, may not result in producing all of the relevant documents because Siena failed to even ask that the directors look for any relevant emails in their accounts. Although Grace’s production request results in the directors producing some duplicative emails, I conclude that this added production would not be overly burdensome and would

³ Pl.’s Mot. to Compel Ex. E.

⁴ Pl.’s Mot. to Compel Ex. F.

⁵ Ch. Ct. R. 26(b)(1).

⁶ Ch. Ct. R. 37(a).

⁷ *Van de Walle v. Unimation, Inc.*, 1984 WL 8270, at *2 (Del. Ch. 1984).

⁸ *Id.* at *1.

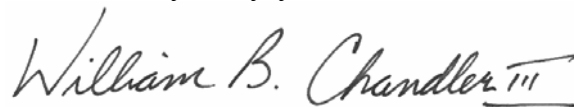
⁹ Ch. Ct. R. 26(b)(1).

¹⁰ Def.’s Resp. to Pl.’s Mot. to Compel at ¶3; *see, e.g.*, Pl.’s Mot. to Compel Ex. C (“Q. Have you performed any search of your computer to see if there are any emails related to your service on the special committee? . . . A. No, I haven’t.”).

not result in great expense for Siena. The production request is not fully duplicative, nor is it intended to harass Siena. Thus, Grace's production request "appears reasonably calculated to lead to the discovery of admissible evidence."¹¹

For the foregoing reasons, I grant Grace's motion to compel Siena's directors to produce any emails reasonably related to Grace's prior requests. Given that the Court has set a trial date for this case beginning on June 15, 2009, Siena must expeditiously produce these requested documents.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:pld

¹¹ Ch. Ct. R. 26(b)(1).