

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MASTER COM GROUP HOLDING USA,	:	
INC., a Florida corporation, and	:	
EUGENIO SANTOS,	:	
	:	
Plaintiffs,	:	
	:	
v	:	Civil Action
	:	No. 2017-0406-SG
NILTON RIBEIRO, CLAILE	:	
OPPENHEIMER, FRANCESCO RICCIULLI,	:	
and MARCOS OLIVEIRA,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
VIVI HOLDINGS, INC., a Delaware	:	
corporation,	:	
	:	
Nominal Defendant.:	:	

- - -
Chancery Courtroom No. 1
Court of Chancery Courthouse
34 The Circle
Georgetown, Delaware
Wednesday, June 14, 2017
2:55 p.m.
- - -

BEFORE: HON. SAM GLASSCOCK III, Vice Chancellor.

- - -
ORAL ARGUMENT ON PLAINTIFFS' MOTION FOR ENTRY OF A
STATUS QUO ORDER AND/OR TEMPORARY RESTRAINING ORDER
- - -

CHANCERY COURT REPORTERS
Leonard L. Williams Justice Center
500 North King Street - Suite 11400
Wilmington, Delaware 19801
(302) 255-0524

1 APPEARANCES:

2 THOMAS E. HANSON, JR., ESQ.
3 Barnes & Thornburg LLP

4 -and-

5 ALAN HAWKINS, ESQ.
6 General Counsel
7 Master Com Group Holding USA, Inc.
8 for Plaintiffs

9 MARGARET F. ENGLAND, ESQ.
10 Gellert, Scali, Buskenkell & Brown LLC
11 for Defendants

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1 THE COURT: Good morning, Counsel.

2 MR. HANSON: Good afternoon, Your
3 Honor.

4 MS. ENGLAND: Good afternoon.

5 THE COURT: I assume you've been
6 working away at narrowing issues. So I'm anxious to
7 hear what is left for me to do.

8 MR. HANSON: Your Honor, we have over
9 -- we appreciate the Court's indulgence.

10 THE COURT: Well, first of all, I
11 want to say, Mr. Hanson and Ms. England, I appreciate
12 you coming all the way down here. I know that's a
13 hike, but it's a huge help to me, and it's a pleasure
14 to see you both.

15 So where are we?

16 MR. HANSON: Your Honor, I believe we
17 have an agreement that a status quo order is
18 appropriate so the company can continue operating.
19 Obviously there's important work that's being done
20 that the parties would not want to stop at this point
21 while this dispute is pending.

22 THE COURT: I agree completely. That
23 has to be the result.

24 MR. HANSON: Great. Thank you, Your

1 Honor.

2 We're working from the most recent
3 version that we provided, that plaintiffs provided,
4 last Friday and is attached as Exhibit G to the reply
5 --

6 THE COURT: I'll ask my clerk, do we
7 have that exhibit in -- I didn't bring it up with me.

8 MS. ENGLAND: Your Honor, I have a
9 clean copy.

10 THE COURT: Okay, that would be great,
11 Ms. England. I appreciate that.

12 THE COURT CLERK: Thank you very much.

13 THE COURT: Thank you. All right.

14 MR. HANSON: And, Your Honor, I'm
15 providing plaintiffs, my understanding, of what we
16 discussed.

17 In the first paragraph, the defendants
18 requested that instead of the five board members that
19 we have listed and that we have proposed, that the
20 parties -- that we have -- that plaintiffs' position
21 is that the plaintiffs name three board members and
22 defendants name two board members that are vetted by
23 the plaintiff for industry knowledge, credibility, and
24 focus on advancement of the company. I understand

1 it's defendants' position that the board may be
2 expanded to six members and that each have three board
3 members. The reason that plaintiffs think that's not
4 a good idea is that it would create deadlock under the
5 order. So our position is three and two. Defendants'
6 position is three and three.

7 In paragraph 2, the defendants have
8 asked that the second sentence be stricken from that
9 paragraph that would allow Mr. Santos the ability to
10 make minor expenditures that do not exceed \$5,000.
11 Plaintiffs' position is we started out with \$10,000
12 for minor expenditures. It's customary in a status
13 quo order because the manager of the business needs to
14 have the flexibility to make minor expenditures while
15 he or she is managing the company pending resolution
16 of the dispute.

17 In order to potentially make it more
18 palatable to the defendants, we're willing to cap any
19 of those expenses at the average monthly total
20 expenditure amount for the first three quarters, which
21 would be approximately \$150,000. So we would -- so
22 those expenses, plus the expenses that the parties
23 agree should be made on Exhibit A, would not exceed
24 \$150,000. And the company -- and that's kind of the

1 customary expenses that the company's incurred this
2 year.

3 THE COURT: All right.

4 MR. HANSON: Paragraph 3, defendants
5 ask that we strike that paragraph, and we agree we're
6 able to do that.

7 THE COURT: Okay.

8 MR. HANSON: And then moving to
9 Schedule A, which is a list of expenses that the
10 parties agree should be paid on a monthly basis, the
11 first expense, SMP Solutions, defendants have asked
12 for a copy of the contract showing that that amount is
13 due. And plaintiffs are agreeable to do that.

14 The rent, MAI, they're -- appears to
15 be a minor issue. The base rent stated in the lease
16 is \$8,600 and then there are additional amounts --
17 additional rent due based on invoiced expenses. Our
18 understanding is that takes the rent to \$14,000. We
19 need to substantiate that to defendants and then
20 there's no disagreement there.

21 THE COURT: All right.

22 MR. HANSON: These other expenses from
23 Comcast down to QuickBooks, the parties are in
24 agreement that those should be made.

1 With regard to the CPA, we think
2 that's necessary because it's a public accounting CPA.
3 We're moving towards an IPO. That's the plan, the
4 company's plan, and that cost is appropriate and would
5 be supported by an invoice from the CPA. I think
6 defendants' position is that's unnecessary. So that's
7 still in dispute.

8 With regard to the payroll expenses,
9 there's reluctance on the plaintiffs' part to provide
10 the full names of the employees of the company, just
11 because of some behavior that my clients understand
12 has occurred since this dispute arose. What we are
13 willing to do, and I think is agreeable to defendants,
14 is to provide the full names for Ms. England's eyes
15 only just so she can confirm that these are real
16 people. And so I think that issue is resolved.

17 And then the last issue is Mr. Santos'
18 salary. His salary has been \$25,000 a month to manage
19 the operation. He's the only one that's managed the
20 company to this point. He formed it. He owns
21 preferred shares. He is the one on the ground
22 managing and making sure the development is being done
23 the way it's supposed to.

24 So under the status quo order, he

1 would continue to do that, and we believe he should be
2 compensated for doing that. He should not be
3 volunteering. He's working for the company on behalf
4 of the company. So we think it's appropriate for him
5 to continue to draw his \$25,000 a month in salary.

6 THE COURT: All right. Thank you.

7 MR. HANSON: Thank you, Your Honor.

8 THE COURT: Let me hear from
9 Ms. England.

10 MS. ENGLAND: Thank you, Your Honor.

11 THE COURT: And you agree those are
12 the remaining disputes?

13 MS. ENGLAND: I do. Those --

14 THE COURT: Okay.

15 MS. ENGLAND: Well, actually, there
16 was one item on the Exhibit A -- and does Your Honor
17 have a copy of the Exhibit A?

18 THE COURT: I don't.

19 MS. ENGLAND: I have an extra copy of
20 that, too.

21 THE COURT: What I wrote down, the
22 disputes are are the CPA and the salary for
23 Mr. Santos. Were there other -- and I'd be happy --
24 if you can hand me a copy, that would be great.

1 MS. ENGLAND: Yes.

2 THE COURT: Are there other Exhibit A
3 disputes?

4 MS. ENGLAND: There is, Your Honor, a
5 line item for a consultant of \$3,000 per month. We
6 don't know who that consultant is, what they do, and
7 we're not going to agree to that.

8 THE COURT: Okay. So it's Mr. Santos.
9 And what is your position with respect to Mr. Santos'
10 \$25,000 a month salary?

11 MS. ENGLAND: Well, Your Honor, I
12 think that my clients are very nervous to continue to
13 pay Mr. Santos. No. 1, it's their position that they
14 validly removed him, but I understand that that's an
15 issue for a later date.

16 But, No. 2, looking at some of the
17 expenses that have been incurred over at least the
18 past three to six months, it seems that Mr. Santos is
19 taking a lot more than just the \$25,000 a month in
20 salary. For example -- and I'm looking actually, Your
21 Honor -- I'll let you know -- at Exhibit B to the
22 plaintiffs' reply, which is a profit and loss for this
23 company for the first quarter of 2017. There's a line
24 item for travel of \$50,000. We're not sure what that

1 relates to.

2 THE COURT: Right. But that wouldn't
3 be allowed under the standstill agreement; correct?

4 MS. ENGLAND: We would hope, yes.

5 THE COURT: All right.

6 MS. ENGLAND: There's a consulting
7 service fee in this P & L of about \$165,000 in the
8 first quarter. Combining Mr. Santos' \$25,000 a month
9 salary with the request in what would be paragraph 2
10 to be able to make \$150,000 of payments a month,
11 because that's the average of what was provided, my
12 clients are not willing to agree to that.

13 THE COURT: I understand. I got it.
14 And what was -- oh, the CPA, is that the other
15 dispute?

16 MS. ENGLAND: That's the other dispute
17 from Schedule A. The issue with the CPA is we
18 understand that they made a report in the last quarter
19 of 2016. There's been representations made that this
20 company is about to take off and give some type of
21 IPO. We don't -- No. 1, we don't think that that's
22 going to happen; but, No. 2, \$10,000 a quarter, just
23 to arbitrarily put that in a schedule, of things that
24 may be paid without invoices and things of that sort

1 is just unreasonable, in my clients' position.

2 THE COURT: All right.

3 MS. ENGLAND: If they can show us
4 invoices that come up in the ordinary course of
5 business and the members that we have on the board can
6 review them and say this was necessary, that's fine.
7 But just to give them a blanket ability to make
8 payments to the CPA company seems a little
9 unnecessary.

10 THE COURT: All right.

11 MS. ENGLAND: And then going back to
12 the first line item, the SMP Solutions, we are not
13 necessarily agreeing that we will agree to this
14 payment. We are saying we haven't seen the contract.
15 There's a lot of --

16 THE COURT: And where is this? I'm
17 sorry.

18 MS. ENGLAND: I'm sorry. We're still
19 on Exhibit A.

20 THE COURT: Oh, we're still on Exhibit
21 A, Schedule A.

22 MS. ENGLAND: Yes. Schedule A, yeah.

23 My understanding is that there's a lot
24 of interrelationships between Mr. Santos, his family,

1 and some of these businesses. We have not seen a
2 \$40,000 invoice. We're not going to just say that
3 we're going to pay this.

4 THE COURT: Got it.

5 MS. ENGLAND: We need some more
6 substantiation.

7 THE COURT: Got it.

8 MS. ENGLAND: I think I touched on the
9 issue with paying the expenses set forth in Schedule A
10 and the minor expenses that Mr. Santos would like to
11 be able to pay. Especially, the numbers seem to have
12 increased over what my initial thoughts were. It
13 seems like Mr. Santos is being given really a lot of
14 unfettered access to the funds.

15 If we're able to come up with a board
16 that is there to oversee what is going on, I think
17 that that will be a way that we can keep a check on
18 Mr. Santos. But basically telling him that within a
19 72-hour period he can write \$5,000 checks to everybody
20 in this courtroom and then turn around three days
21 later and write another check for \$5,000 to everybody
22 just seems like a lot of discretion.

23 THE COURT: It wouldn't be everybody,
24 would it? It would just be the named --

1 MS. ENGLAND: Well, it says -- no.
2 The way that this last sentence reads --

3 THE COURT: The last sentence of what
4 now?

5 MS. ENGLAND: I'm sorry. Of proposed
6 paragraph 2.

7 THE COURT: Oh, all right. "In
8 addition to paying the expenses set forth in Schedule
9 A, Santos may make minor expenditures from the Bank
10 Account necessary to continue operation of the Company
11 that do not exceed [5,000]" That's what you're
12 talking about.

13 MS. ENGLAND: Correct, 5,000 per
14 transaction per payee.

15 THE COURT: Got it, got it, got it.

16 MS. ENGLAND: So Mr. Santos could just
17 write \$5,000 checks to every --

18 THE COURT: I get it. I got it.

19 MS. ENGLAND: Yeah, yeah. I think
20 there needs to be some control over that.

21 THE COURT: Okay.

22 MS. ENGLAND: If Mr. Santos needs to
23 be able to make minor expenditures such as, I don't
24 know, for health insurance, for example, of course,

1 you know, we will allow those checks to be written.
2 But just to give him this blanket authority is a
3 little excessive, especially given the current
4 situation.

5 Going back to the composition of the
6 board, which is addressed in paragraph 1, we think
7 that there should be an even balance on the board. It
8 doesn't matter if we reduce the number to four or
9 increase the number to six. But, you know, at this
10 moment people are worried about deadlock. And I think
11 that deadlock is kind of in the situation that we're
12 in at this moment, even given the terms of the status
13 quo order. I'm not sure what transactions that people
14 could enter into anyway.

15 So whether there are an equal number
16 of people overseeing the managerial aspect of this
17 company or not at this stage really does not matter.
18 So that's why -- I think initially I said four people
19 total, two from mine, two from the plaintiffs' side.
20 We can probably come up with a third person that if
21 they would like to have six.

22 THE COURT: Okay.

23 MS. ENGLAND: But that's my clients'
24 position on that issue.

1 THE COURT: Okay. All right.
2 Anything else you want to tell me?

3 MS. ENGLAND: Not currently.

4 THE COURT: All right. Thank you.

5 Mr. Hanson, do you want to make any
6 response?

7 MR. HANSON: Very briefly, Your Honor.

8 THE COURT: Sure.

9 MR. HANSON: With regard to
10 paragraph 2 and the provision allowing for minor
11 expenditures of \$5,000, again, that would be capped.
12 We would agree to cap all expenses, including what's
13 on Schedule A at, you know, approximately \$150,000,
14 which has been the normal amount that the company has
15 spent in the first quarter per month. So it would not
16 be unlimited.

17 THE COURT: Okay.

18 MR. HANSON: The language also
19 indicates that the expenditures must be necessary for
20 the continued operation of the company.

21 THE COURT: All right.

22 MR. HANSON: And then the other point
23 is with respect to the board members, the one thing I
24 failed to indicate -- and I think Your Honor probably

1 saw in our papers -- the majority of the common
2 stockholders have issued written consents, signed
3 written consents appointing board members. So the
4 plaintiffs do have support not only of preferred
5 shares but also the majority of the common
6 stockholders.

7 THE COURT: All right.

8 MR. HANSON: Thank you, Your Honor.

9 THE COURT: This is how I'm going to
10 resolve these, I think. And there's a certain amount
11 of arbitrariness here that can't be avoided, I'm
12 afraid.

13 First of all, I would normally not put
14 in a board that I would fear would deadlock. However,
15 in this case this is basically a holding status quo
16 order just to get us through the trial, which it looks
17 to me will not -- I mean, a lot of these issues are
18 legal issues and I assume that the parties -- well,
19 let me just ask you, Mr. Hanson. How long do you
20 think it would take you to get this matter to trial?

21 MR. HANSON: Your Honor, we would
22 think 90 days, just only because of the summer.

23 THE COURT: All right. Well, then, I
24 think I am going to put in an even board because if

1 there's a deadlock, it really in this situation is not
2 particularly hurtful. If it does become unworkable,
3 all you need to do, Mr. Hanson, is let me know or the
4 same for you, Ms. England. If, from your clients'
5 point of view, there's a deadlock that is endangering
6 the company, let me know and I'm certainly willing to
7 modify that. But for now, I don't care whether it's
8 two and two or three and three. When you give me a
9 form of order, just give me one or the other. I'm
10 happy to do that.

11 No. 2, I think with the caveat that
12 the expenditures are not to exceed the 150,000 and the
13 fact that there will be three designated defendant
14 directors, I think that is acceptable. Otherwise, we
15 really get in a bind if someone has to be reviewing
16 minor expenditures. I've been there, and it tends to
17 become unpleasant for the parties and, what is far
18 worse, unpleasant for the Court. So I'm not going to
19 put that in.

20 Once again -- and I'm going to say
21 this for anything I'm doing here -- if for some reason
22 you find it's not workable or you find it's being
23 abused, you can always ask for a revision. So nothing
24 here is set in stone.

1 That leaves, I think, the Schedule A
2 conditions. I think the payments to SMP Solutions,
3 those should simply be reviewed by the board. And if
4 the board wants to approve them, I don't need to get
5 involved. Those should be submitted to the board.

6 The same with the CPA. The board can
7 make a determination whether it is, in this interim
8 situation, appropriate to have a CPA at a rate of
9 \$40,000 a year or whether it should await a decision
10 on the appropriate board and management.

11 I don't know what the consultant is
12 for. I haven't heard anything about it. Obviously,
13 if the board wishes for the company to hire a
14 consultant, they can so advise. But I'm not going to
15 permit that in the order.

16 I do think Mr. Santos has to be paid
17 for his services. I understand that there's a fear
18 that he has, at least as expressed by the defendants,
19 that he's been taking money out of the company; but I
20 think that's appropriately limited with this order.
21 And I don't think I can have him labor, even on a
22 quantum meruit basis, for nothing. I've not heard
23 anything that tells me that \$25,000 a month is
24 inappropriate for the chief executive officer of this

1 corporation. So I'm going to ask that that be in the
2 order as well.

3 Once again, all these things, if there
4 is abuse or deadlock or they're inappropriate, you can
5 always come to the Court on an expedited basis and I
6 will hear it.

7 Ms. England is what I've said here
8 comprehensible? Will you be able to put together an
9 order?

10 MS. ENGLAND: Yes, Your Honor.

11 THE COURT: All right. Mr. Hanson, is
12 what I've said here comprehensible?

13 MR. HANSON: Absolutely.

14 THE COURT: All right.

15 MR. HANSON: Thank you, Your Honor.

16 THE COURT: Which one of you is going
17 to get me -- obviously, both of you are going to have
18 to agree to it. Who's going to get me the form of
19 order?

20 MR. HANSON: Your Honor, I can submit
21 it.

22 THE COURT: All right. When can you
23 have that to me? It's at your discretion. I'm not
24 trying to rush you, but I'm happy to sign it as soon

1 as I get it in front of me. I just want to know when
2 to look for it.

3 MR. HANSON: I would say it would take
4 us maybe by Friday, I think.

5 MS. ENGLAND: I would think by Friday,
6 Your Honor.

7 THE COURT: All right. Why don't we
8 say this: If you can't get it in by Monday, let me
9 know. Otherwise, I'll look for it Friday, but I'll
10 expect it by the end of the day on Monday or some
11 explanation as to what the holdup is.

12 Is anything I've said here so
13 unacceptable that you feel you have to make a record
14 now? If there is, please tell me. I don't mean to be
15 flip about it.

16 MR. HANSON: No, Your Honor.

17 MS. ENGLAND: Not to me, Your Honor.

18 THE COURT: I appreciate you did the
19 bulk of the work here. And I appreciate your taking
20 an hour to try to figure this out because it made it
21 much easier for me, and it's also a good sign for the
22 parties working together through counsel going
23 forward. So I'm optimistic.

24 I thank you for your attention and I

1 hope you have a good drive back. As long as you've
2 got an air-conditioned automobile, it's not an
3 unpleasant day to take a trip, and I thank you for
4 coming all the way down.

5 Anything else?

6 MS. ENGLAND: Your Honor -- and I
7 don't want to overstep here.

8 THE COURT: I'll step away.

9 MS. ENGLAND: No, no, no. We were
10 talking about a 90-day period before trial is set.
11 How should we go about getting a trial date?

12 THE COURT: Oh, just contact my
13 assistant, Kim Roach. I assume this is going to be a
14 one-day trial that's going to be largely on a paper
15 record when you look at it. But if you think
16 something different, just tell her that. But I would
17 suggest that you do that sooner rather than later
18 because we're stacking up. That's just -- as a
19 practical matter, we're stacking up.

20 So does that answer your question?

21 MS. ENGLAND: That does.

22 THE COURT: Anything else?

23 MR. HANSON: No, Your Honor.

24 THE COURT: Thank you all. Appreciate

1 your time and your attention.

2 COUNSEL: Thank you, Your Honor.

3 (Court adjourned at 3:16 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Realtime Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 22 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 24th day of July 2017.

/s/ Neith D. Ecker

Chief Realtime Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public