

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BESSEMER TRUST COMPANY OF)
DELAWARE, N.A., as trustee of the)
two trusts created under agreement)
dated April 29, 1991,)

Plaintiff,)

v.)

C.A. No. 6148-MA

LILI M. WILSON and WILLIAM A.)
WILSON, JR., as Co-Personal)
Representatives of the Estate of)
Scott Patrick Wilson,)

Defendants,)

JOHN B. GOODMAN,)

Nominal Defendant.)

MASTER'S FINAL REPORT AND ORDER

Date Submitted: April 12, 2011

Draft Report: _____

Final Report: April 18, 2011

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AYVAZIAN, Master

On February 12, 2010, an automobile accident allegedly caused by John B. Goodman (“Mr. Goodman”) occurred in Palm Beach County, Florida, resulting in the death of Scott Patrick Wilson (the “Decedent”). Decedent’s parents, Lili M. Wilson and William A. Wilson, Jr., (the “Wilson”), in their capacity as co-personal representatives of their son’s estate, brought a wrongful death action (the “Florida Action”) against Mr. Goodman and others in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida (the “Florida Court”).¹ Mr. Goodman is a resident of Texas, and a trustor of two trusts created under an agreement dated April 29, 1991 known as the JBG Children’s 1991 Trust (the “1991 Trusts”).² Plaintiff Bessemer Trust Company of Delaware, N.A. (“Bessemer”) is the current successor trustee of the 1991 Trusts.³

On January 25, 2011, Bessemer filed this action (the “Delaware Action”) against the Wilsons and Mr. Goodman, seeking a declaratory judgment to the effect that the 1991 Trusts are irrevocable, that Mr. Goodman is not a beneficiary of the 1991 Trusts, and that the Wilsons are not entitled to discover confidential financial information from Bessemer concerning the 1991 Trusts. On March 12, 2011, Mr. Goodman filed a response to Bessemer’s complaint, admitting that he is not a beneficiary of the 1991 Trusts, that the 1991 Trusts are irrevocable, and that the Wilsons are not entitled to discover confidential financial information from Bessemer concerning the 1991 Trusts. The Wilsons have not filed any response to Bessemer’s complaint. Pending before me is Bessemer’s Motion for a Rule to Show Cause to be directed to the Wilsons for a default judgment. Rather

¹ *Lili Milian Wilson, et al. v. John B. Goodman, etc.*, Case No. 502010CA011771 “DIV.AA”, Florida Circuit Court, 15th Judicial Circuit in and for Palm Beach County, Florida.

² Isla Reckling Goodman (“Carroll Goodman”), Mr. Goodman’s ex-wife, is the other trustor of the 1991 Trusts. The current beneficiaries of the 1991 Trusts are the trustors’ two minor children, Harriet and John, Jr. (“Beneficiaries”). On November 24, 2008, Mr. Goodman and Carroll Goodman were divorced by decree of the Texas District Court for the 257th Judicial District.

³ Bessemer accepted its appointment as successor trustee on May 29, 2009.

than issue a Rule to Show Cause at this time, I have decided *sua sponte* to stay this proceeding in favor of the Florida Action, where there has been an ongoing discovery dispute between the parties for at least six months. The reasons for my decision will follow, but first I believe that it is necessary to recite the intertwined procedural history of the Florida Action, the Delaware Action, and another civil action involving Mr. Goodman and Bessemer that predates the Delaware Action.

The amended complaint in the Florida Action, which the Wilsons filed on July 30, 2010, seeks punitive damages from Mr. Goodman. In order to determine his net worth, the Wilsons have requested the production of confidential financial information from several non-parties, including Bessemer and the 1991 Trusts. Mr. Goodman objected to these production requests and, on November 2, 2010, the Florida Court heard arguments in the parties' discovery dispute. The Florida Court entered an Order dated November 12, 2010, which required Mr. Goodman to produce several documents, including the trust agreement for the 1991 Trusts, but allowed him to redact any financial information contained in the trust agreement.⁴

On October 12, 2010, Bessemer filed a petition for instructions in this Court (the "1991 Trusts Petition") captioned: *IMO Two Trusts Created Pursuant To The Agreement Dated April 29, 1991, Known As The JBG Children's 1991 Trust Agreement*, C.A. No. 5894-MA. In the 1991 Trusts Petition, Bessemer alleges that it accepted the appointment as successor trustee on the express condition that Mr. Goodman and Carroll Goodman agree to file a consent petition that would: (i) confirm the appointment of Bessemer as Trustee; (ii) have the Delaware Court of Chancery accept jurisdiction over the 1991

⁴ Exhibit D, Verified Complaint for Declaratory Judgment, C.A. No. 6148-MA, Docket Item No. 1.

Trusts, (iii) declare that Delaware law would thereafter govern the administration of the 1991 Trusts while they are administered in Delaware and Texas law would continue to govern the validity and construction of the 1991 Trusts, (iv) modify certain provisions of the 1991 Trusts relating to the resignation, removal and appointment of Trustees; and (v) modify the 1991 Trusts to provide for the creation of a “Special Holdings Direction Adviser” to direct Bessemer with respect to all decisions related to special holdings allowing Bessemer to fully manage assets of the 1991 Trusts other than the special holdings.⁵ Mr. Goodman and Carroll Goodman, however, could not agree on the members to be appointed to the Special Holdings Direction Adviser Committee. Specifically, Carroll Goodman objected to Mr. Goodman’s proposed members: himself, G. Andrew Toups III (“Mr. Toups”), and Nolan Lehmann (“Mr. Lehmann”). Because of this dispute, Bessemer appointed Mr. Lehmann as the Interim Special Holdings Direction Adviser until Mr. Goodman and Carroll Goodman could agree on -- or the Court could direct -- the appointment of a permanent Special Holdings Direction Adviser.

On November 10, 2010, Carroll Goodman responded to the 1991 Trust Petition, and alleged in a counterclaim that Mr. Goodman: “proposed the appointment of himself and his associates as a committee of Special Holdings Direction Advisers and seeks to put himself in the role of appointing and removing both the members of such committee and the trustee of the 1991 Trusts in order to control the assets of the 1991 Trusts.”⁶ On November 12, 2010, Mr. Goodman responded to the 1991 Trusts Petition, alleging that

⁵ Pursuant to a Standing Order of the Court dated June 2, 2010, a consent petition for trust matters may be filed with the Register in Chancery provided all interested parties consent to the relief sought in the petition. The relief sought is often modification of the terms of a non-Delaware trust so that the trust may be administered in Delaware.

⁶ Response of Carroll Goodman to Petition for Instruction, at ¶ 33, C. A. No. 5894-MA, Docket Item No.3.

Carroll Goodman “has no standing to object to the proposed management of the 1991 Trusts or to propose members of any such management committee in light of the Agreed Final Decree of Divorce, which grants [Mr. Goodman] the sole authority to manage the estates of the 1991 Trusts on behalf of Harriett and John Jr.”⁷ In his reply to the counterclaim, Mr. Goodman admitted that he had proposed a Special Holdings Direction Adviser Committee composed of three members, himself, Mr. Toups and Mr. Lehmann, and that he had “proposed himself and certain others to hold the power to remove and replace [trustees and advisers of the 1991 Trusts].”⁸ By way of further response, Mr. Goodman alleged that he sought the appointment of such Committee “to ensure the proper management of certain of the 1991 Trusts’ assets for the benefit of Harriett and John Jr. by requesting the composition of such Committee be of individuals who have experience with the management of such special assets.”⁹

On January 7, 2011, Bessemer filed a proposed stipulated order to confirm the appointment of Bessemer as successor trustee of the 1991 Trusts, and to have the Court accept jurisdiction over the 1991 Trusts.¹⁰ Concerned that the Beneficiaries lacked legal representation in the dispute over the Special Holdings Director Adviser Committee, I requested a teleconference with the parties that took place on January 31, 2011.

Following the teleconference, the parties agreed upon Jeffrey S. Goddess, Esquire (“Mr.

⁷ Response to Petition for Instruction and Confirmation of Appointment of Petitioner as Trustee, Acceptance of Jurisdiction over the Trusts, a Declaration that Delaware Law Governs the Administration of the Trusts, Modification of Certain Provisions of the Trust for Administrative Convenience, and Modification of the Trusts to Provide for the Creation of a Special Holdings Direction Adviser, at ¶ 23, C.A. No. 5894-MA, Docket Item No. 5.

⁸ Reply to Counterclaim of Carroll Goodman, at ¶ 33, C.A. No. 5894-MA, Docket Item No. 6.

⁹ *Id.*

¹⁰ Stipulation & (Proposed) Order, C.A. No. 5894-MA, Docket Item No. 8.

Goddess”), to serve as a guardian *ad litem*.¹¹ On February 8, 2011, I appointed Mr. Goddess as Guardian *Ad Litem* of the Beneficiaries.¹² On February 15, 2011, Bessemer filed a revised proposed stipulated order.¹³ I signed the Stipulated Order accepting jurisdiction of the 1991 Trusts and confirming the appointment of Bessemer as successor trustee on February 17, 2011.¹⁴

Meanwhile, in the Florida Action, the Wilsons had requested production of additional financial documents relating to the net worth and financial resources of Mr. Goodman. On January 10, 2011, the Florida Court conducted another hearing, and on February 3, 2011, the Florida Court issued its ruling. Outlining the parties’ positions in the ongoing dispute, Circuit Court Judge Glenn D. Kelley stated in relevant part:

The gravamen of the Plaintiffs’ position is that Mr. Goodman must be worth more than his personal financial records show and that he is part of a “Goodman family enterprise” that is adept at hiding assets. The Plaintiffs’ primary support for this assertion comes from: 1) Mr. Goodman’s spending habits over the past 6 years; 2) the reported sale of Goodman Global Holdings in 2004 for more than a billion dollars; and 3) the allegedly unexplained ownership of property by the trust established for the benefit of Mr. Goodman’s children.

Mr. Goodman’s response, through counsel, is that there is no mystery to his current financial status or to the distribution of his share of Goodman Global Holdings. He admits to spending more than he makes. Indeed, rather than support the Plaintiffs’ suspicions, Mr. Goodman points to his spending – together with a divorce and a bad economy – for his declining net worth.

* * * * *

Finally, as to the children’s trust, Mr. Goodman asserts that the trust’s assets are managed independently and that any transactions with the trust are arms-length. Mr. Goodman also maintains that the trust instrument itself is clear

¹¹ Letter dated February 7, 2011, C.A. No. 5894-MA, Docket Item No. 9.

¹² Order, C.A. No. 5894-MA, Docket Item No. 10

¹³ Stipulation & (Proposed) Order, C.A. No. 5894-MA, Docket Item No. 11.

¹⁴ Order, C.A. No. 5894-MA, Docket Item No. 12. Later that same day, the Guardian *Ad Litem* requested authorization to intervene in the Florida Action if necessary to protect the interests of the Beneficiaries. Motion Regarding Guardian *Ad Litem*’s Authorization, C.A. No. 5894-MA, Docket Item No. 13. I granted the Guardian *Ad Litem*’s motion on February 25, 2011. Order, C.A. No. 5894-MA, Docket Item No. 15. There have been no further filings in this action since the Court’s February 25, 2011 Order.

and does not grant him rights with respect to the trust's assets or with respect to the control of the trust.¹⁵

Judge Kelley subsequently addressed what he called the "JBG Children's 1981 Trust."¹⁶

The next major area of inquiry involves the assets and financial affairs of the "JBG Children's 1981 Trust." The Trust owns much of the property that Mr. Goodman uses, including apparently the Polo Club itself. Plaintiffs continue to assert that the financial records of the Trust are discoverable as a result of interrelated business transactions between the Trust and Mr. Goodman.

To begin, the Court has reviewed the JBG Children's 1981 Trust Agreement. Based on this review, it is unlikely that any of the Trust's assets can be considered by a jury in determining the net worth of Mr. Goodman. At least based on the clear wording of the Agreement, Mr. Goodman maintains no control over the Trust, and has no interest in the corpus or income of the Trust. The Trust is also clearly irrevocable.

While it is unlikely that the Trust assets can be considered at trial, the use of Trust assets by Mr. Goodman, together with the interrelated business transactions between the Trust and Mr. Goodman, are enough to invoke the lower standard applicable to discovery. The Court will, therefore, permit limited discovery with respect to the Trust.

Mr. Goodman will be required to produce tax returns for the 1981 Trust together, with balance sheets and income statements, going back seven years. The Court is not convinced at this time that broader discovery as to the Trust is required.¹⁷

On January 25, 2011, shortly before the Florida Court issued the above Order, Bessemer filed the Delaware Action against the Wilsons and Mr. Goodman. In addition to requesting an order barring the Wilsons from discovering private and confidential financial information from Bessemer regarding the assets of the 1991 Trusts, Bessemer also requested this Court to rule that alleged subpoenas issued to George W. Kern V ("Mr. Kern"), Principal and Senior Resident Officer of Bessemer, and David Dary ("Mr. Dary"), a former relationship manager of the Palm Beach Office of Bessemer Trust

¹⁵ Order on Pending Request for Additional Financial Discovery, at 2-3, Exhibit 2 attached to Guardian *ad Litem's* Motion Regarding Guardian's Authorization, C.A. No. 5894-MA, Docket Item No. 13.

¹⁶ I am unaware of any JBG Children's 1981 Trust, and assume that Judge Kelley was, in fact, referring to the 1991 Trusts in his decision.

¹⁷ Order on Pending Request for Additional Financial Discovery, *supra*, at 2-3, 5.

Company of Florida (“Bessemer Florida”) were defective and unenforceable. In the alternative, Bessemer sought to quash the alleged subpoenas and for entry of a protective order.¹⁸

In its Motion for a Rule to Show Cause, which was filed on April 12, 2011, Bessemer alleges that subsequent to the February 3, 2011 Order of the Florida Court, the Wilsons rescinded their notice of deposition *duces tecum* for Mr. Kern, although the deposition of Mr. Dary took place and Mr. Dary produced the requested documents that were consistent with the Florida Court’s February 3, 2011 Order. Bessemer also alleges that another employee of Bessemer Florida was re-noticed by the Wilsons to appear on March 3, 2011, for videotaped deposition and to produce additional documents related to the 1991 Trusts that include confidential information allegedly beyond the scope of the Florida Court’s Order. Although Bessemer does not specify which of the enumerated documents allegedly exceed(s) the scope of the Order, a review of the Amended Re-Notice of Taking Videotaped Deposition Subpoena *Duces Tecum* reveals that among other items, the re-notice directed the production of “all documents relating to the appointment of Nolan Lehman [sic] as interim Special Holdings Director Advisor” and “all documents relating to the appointment of any person(s), organization or committee to serve as permanent Special Holdings Director Advisor” for the 1991 Trusts.¹⁹

¹⁸ Bessemer’s Verified Complaint alleges that the Wilsons issued a Notice of Deposition *duces tecum* dated December 6, 2010, for George W. Kern, V, Principal and Senior Resident Officer of Bessemer, to appear on February 16, 2011 for a deposition at Bessemer’s offices in Wilmington, Delaware. A similar Notice was issued to a retired employee of Bessemer Florida to appear for a deposition on February 24, 2011 in Florida. The documents demanded to be produced by Mr. Kern and Mr. Dary include photocopies of the trust agreements and other documents relating to the 1991 Trusts, and the balance sheets for each minor beneficiary on February 12, 2010.

¹⁹ Exhibit C, Motion for Rule to Show Cause Directed to Defendants Lili M. Wilson and William A. Wilson, Jr., C.A. No. 6148-MA, Docket Item No. 11.

In view of these three proceedings, I have decided to stay the Delaware Action pending a determination by the Florida Court in the matter before it. This Court has the discretion to stay an action “when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues.” *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*, 263 A.2d 281, 283 (Del. 1970). *See also Citrin Holdings LLC v. Cullen*, 2008 WL 241615 (Del. Ch. Jan. 17, 2008); *In re Advanced Drivers Education Products and Training, Inc.*, 1996 WL 487940 (Del. Ch. Aug. 16, 1996). The record shows that the Florida Action was filed approximately six months before the Delaware Action was filed. Delaware is involved only because Bessemer is Successor Trustee of the 1991 Trusts and the Court recently accepted jurisdiction over the 1991 Trusts. There can be no question that the Florida Court is capable of providing prompt and complete justice. Already there have been at least two hearings in the Florida Court concerning the financial discovery dispute between the Wilsons and Mr. Goodman; each hearing was followed shortly thereafter by a written decision of the Florida Court. The Florida Court may soon provide a complete and final resolution of the question of what discovery can or cannot be taken regarding the 1991 Trusts.

Although Bessemer is not a party to the Florida Action, the parties in the Florida Action and the Delaware Action are substantially the same because Bessemer’s interests appear to be aligned with those of Mr. Goodman, the nominal defendant in the Delaware Action. Both Bessemer and Mr. Goodman seek to protect the confidential financial information of the 1991 Trusts from discovery by the Wilsons.²⁰ Finally, the issues

²⁰ The *Guardian Ad Litem* also has been authorized by this Court to intervene in the Florida Action if necessary to protect the interests of the Beneficiaries.

presented in the Delaware Action, i.e., whether the 1991 Trusts are irrevocable, whether Mr. Goodman is a beneficiary of the 1991 Trusts, and whether the Wilsons are entitled to discovery of confidential financial information concerning the 1991 Trusts from Bessemer, are identical to or substantially the same issues that have been presented to the Florida Court. A stay of proceedings in Delaware would avoid a “wasteful duplication of time, effort and expense” and “the possibility of inconsistent and conflicting rulings and judgments and an unseemly race by each party to trial and judgment in the forum of its choice.” *McWane*, 263 A.2d at 283. Accordingly, the Delaware Action will be stayed in favor of the Florida Action pending a decision by the Florida Court on the discovery issue before it.

IT IS SO ORDERED.²¹

²¹ Counsel for Bessemer shall notify the Florida Court of this Order and provide a copy of the Order to Judge Kelley. Counsel shall also keep the Court apprised of the proceedings in the Florida.