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and First Class Mail*

John F. Brady, Esquire
18388 Coastal Highway, Unit 9
Lewes, DE 19958

Ms. Elizabeth A. Little
435 Whitwell Delight Road
Frederica, DE 19946

Re: Grimm v. Beach Fries, Inc., et al.
C.A. No. 931-VCN
Date Submitted: April 21, 2010

Dear Ms. Little and Mr. Brady:

This post-trial letter opinion addresses the business consequences of a breakup that affected more than just a business relationship.

In 1999, Plaintiff Edward H. Grimm (“Grimm”) and Defendant Elizabeth A. Little (“Little”) became jointly involved in a mobile concession business that Grimm had started a few years earlier.¹ The business model depended upon

¹ After trial, Little filed for protection under the bankruptcy laws. A stay of this action was one consequence of her bankruptcy filing. The bankruptcy proceeding was dismissed, and, thus, the stay no longer precludes disposition of this action.

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trailers, fitted out with fryers and other cooking equipment, which could be pulled to special events, such as First Night and Riverwalk, where French fries and other foods would be sold to the attending public. Grimm and Little incorporated the business as Beach Fries, Inc., a Delaware corporation (“Beach Fries” or the “Company”)² in 2002, with each owning fifty percent of the stock. Although it appears that most of the equity for the venture came from Grimm, there was no shareholders’ agreement assuring him a priority return in the event of liquidation or providing any other protection if the venture did not work out. Little did much of the physical labor. A certain degree of financial success was achieved but their personal relationship collapsed and, eventually, so did the business, as they pursued competing ventures. In November 2004, Little had Grimm arrested on a charge not related to the business and, according to Grimm, while he was being held, Little went to the Company’s business location and took, more or less, everything.

Grimm brought this action for dissolution of the Company. Additionally, he sought the right to use the name of Beach Fries without interference from Little, as

² DX 1.

well as the name of the business that he formed after their falling out, The Original Beach Fries; the assignment of assets of the Company based upon the payments made into the Company as capital contributions; that the affairs of the Company be wound up; and that Little be required to account for income that she was able to generate from her use of the Company's assets.

This Court has jurisdiction over the dissolution and winding up of the affairs of Delaware joint venture corporations such as the Company.³

Little contests neither Grimm's request to be allowed to use the name and logo of Beach Fries nor his right to use the business name of The Original Beach Fries. Similarly, Grimm does not object to Little's use of the business name of Lil' Devil Beach Fries, (LLC). Thus, as between Little and Grimm, these requests are granted.

Both Grimm and Little agree that the Company should be dissolved. That request, accordingly, is granted.

Grimm's request that the assets of the Company be distributed in proportion to the capital contributions of its two owners is denied because, once the assets

³ 8 *Del. C.* § 273; 8 *Del. C.* § 279.

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were contributed to the Company, they became equally held by the Company and each shareholder owned fifty percent. Not only is there no agreement supporting the relief that Grimm seeks, but also the record demonstrates that much of the start-up “sweat labor” for the business was performed by Little.

The principal disagreement between the parties centers on which, if any, property currently in each other’s possession is corporate property and, thus, subject to division on dissolution. In particular, Grimm asserts that two concession trailers that were removed by Little and remain in her possession, a 20-foot 2001 Pace concession trailer (the “2001 trailer”) and a 20-foot 2002 Pace concession trailer (the “2002 trailer”), were purchased by the Company and, thus, are subject to division. Little suggests that each party be left with the property currently in his or her possession, or that, otherwise, that the property in Grimm’s possession, including a 16-foot 1999 Homestead concession trailer (the “1999 trailer”), a 28-foot 2003 Pace concession trailer (the “2003 trailer”), five pick-up trucks, as well as other food trailer equipment, be likewise considered Company property and subject to equal division. Evidence as to which assets constitute Company

property is sparse. Nevertheless, the contested assets will each be considered in turn, based upon what evidence has been made available.

A. The 2001 Trailer

The 2001 trailer was purchased in April 2001 by “Telmark LLC⁴ c/o Elizabeth A. Little.” The payment was made using Little’s credit card and the lease was issued in her name only. Grimm points to certain checks made out to Little for large amounts in the days following this purchase as evidence that Little was reimbursed by the Company; however, these payments were made from Grimm’s personal accounts, not the Company account, and there is no record that such payments were meant to secure the 2001 trailer as Beach Fries property.⁵

Grimm asserts that there is evidence that he helped make payments on the 2001 trailer and that the trailer was outfitted with Beach Fries signage and used by Beach Fries until the parties’ 2004 falling out, after which time Little evidently disposed of the signage and replaced it with Lil’ Devil Beach Fries signage. He contends that his actions and the use of the 2001 trailer by the Company functioned

⁴ Telmark LLC later became Wells Fargo Financial Leasing.

⁵ Moreover, there is no persuasive correlation between the sum of the checks paid to Little and the purchase price of the trailer.

to render it Company property. Nevertheless, as the lease was never in the Beach Fries name and all apparent payments made by Grimm came from his personal account, any disagreement between the parties as to the proper ownership of the 2001 trailer is a personal matter beyond this Court's jurisdiction in a corporate dissolution proceeding. It shall not be deemed Beach Fries property.⁶

B. *The 2002 Trailer*

The 2002 trailer was purchased in August 2002 by Beach Fries, Little, and Grimm, whose names all appeared on the title.⁷ As with the 2001 trailer, the 2002 trailer was used by Beach Fries until April 2005 when the title was conveyed to Little alone, Grimm apparently having signed it over to her. Grimm asserts that he never signed over the title and questions why he would have taken such a step in light of their deteriorated personal relationship, particularly where it provided him with absolutely no economic benefit. Grimm contends that his signature was

⁶ Likewise, the equipment, including six deep fryers, a freezer, and a Magic Chef refrigerator, which was leased in Little's name and apparently paid off by her, is her personal property.

⁷ The evidence suggests that Grimm personally paid at least \$2,397 to supply the equipment for the 2002 trailer shortly after its purchase. PX 15.

forged.⁸ There is evidence that this may have been the case. For one, the title was conveyed after the final falling out between Little and Grimm, in the thick of animosity between them, and after this suit had commenced. Little asserts that Grimm actually signed over the title in the spring of 2004, allegedly as a gesture of good faith to grant her some security for her hard work with Beach Fries and to assuage her suspicions that things were not quite right between them or in the business, and that she merely delayed having the title formally transferred to her until the following year, six months after their personal falling out.

However, Linda Shepherd, who worked at Beach Fries and with whom Little lived in November and December 2004 after Grimm and Little's separation, testified under subpoena that Little told her in late 2004 or early 2005 that "Grimm wasn't going to get a . . . thing, she was going to keep it all no matter what it took,"

⁸ Grimm attempted to bring criminal charges against Little for theft and forgery but the authorities declined to prosecute. The investigation was hindered by the fact that, under the DMV's document retention policy, the original document supposedly containing Grimm's now challenged signature had been destroyed with only a photocopy preserved, and the handwriting analyst required original documents. Although not dispositive, there appears to have been an inconsistency between the explanation Little provided to the police as to how the title was conveyed to her and the testimony she put forward in this Court, with the police investigator testifying that he was informed by Little that Grimm had signed over the title in her presence. Little testified that she had left the title on a desk in Grimm's residence to have it signed and that she found it there, signed, a few days later.

and that Little was dismissive of this Court's December 20, 2004, order enjoining the disposal of Beach Fries' assets and requiring a complete accounting of business conducted in the name of Beach Fries or with any of its operating assets.⁹ Shepherd also testified that she, herself, viewed the title for the 2002 trailer in December 2004—after the date it was allegedly signed over to Little—and that, at that time, the title had not yet been signed by Grimm. Additionally, Harry Robertson, who shared that house with Shepherd and is also a former employee of Beach Fries, testified under subpoena that he had seen Little practicing replicating Grimm's signature around this same time and, when queried as to her purpose in doing so, replied that Grimm was unaware of which documents he had and had not signed, and that she was “going to see to it that [Grimm] don't get these trailers.”¹⁰

⁹ Indeed, there is no evidence that Little has complied with this Court's December 20, 2004, order. The one accounting update in the record, from January 7, 2005, states that, because she did not advertise Beach Fries and because “I own the trailer on my own credit card,” despite the fact that the trailer used was an asset in contention in this litigation, “Beach Fries, Inc. proceeds were \$0 dollars.” PX 33.

¹⁰ Although Little sought to undermine the credibility of these witnesses at trial, she did not offer up any evidence suggesting a motive for why they might be biased in favor of Grimm, and both testified that they would have not appeared if not under subpoena. Indeed, Little suggested reasons why Shepherd and Robertson might actually be biased against Grimm, including minor disputes with him that had contributed to their departure from his employ, although Little also suggested that she had fired them from her restaurant because of theft. Nevertheless, the Court does not question the credibility of these witnesses.

Moreover, there is no record of a resolution by the board of Beach Fries, consisting of Little and Grimm, or other business agreement between them authorizing the conveyance of the 2002 trailer to Little. Where an enterprise seeks the protection of the corporate form, it is expected to adhere to the obligations and strictures of that form. Because there was never any formal conveyance to Little, the Court concludes that no transfer of ownership of the trailer properly occurred and that the 2002 trailer remains Beach Fries' property. Thus, the 2002 trailer and its equipment should be sold and the proceeds divided equally between Little and Grimm.

C. Items in Grimm's Possession

Little suggests that the two trailers currently in Grimm's possession, the 1999 trailer and 2003 trailer, likewise constitute corporate property and that they, too, should be sold and the proceeds divided between Little and Grimm upon dissolution of Beach Fries. Additionally, Little argues that the various pick-up trucks used by Grimm to haul the Beach Fries trailers, as well as certain equipment allegedly still in Grimm's possession, should also be considered corporate property subject to division.

With respect to the 1999 trailer, Grimm testified that he purchased the trailer before meeting Little or commencing Beach Fries, and that it was not in operation during most of Beach Fries's existence.¹¹ It is titled in his name and there is no reason to conclude that it was a corporate asset. Although the 2003 trailer, purchased in May 2002 and leased to Little with Grimm as guarantor, was perhaps a corporate asset at the time of its acquisition, after it was repossessed by Wells Fargo Financial Leasing in 2005 and repurchased by Grimm for his new enterprise, The Original Beach Fries, the Company and Little lost any claim to it. Thus, it is not subject to division upon the dissolution of Beach Fries. Finally, as to the various trucks that Grimm, at one time or another, used to tow the Beach Fries trailers to events, all evidence supports that these were Grimm's vehicles, principally used as personal transportation or in his other businesses, and were merely lent to Beach Fries by Grimm in order to assist the Company. The trucks are not Beach Fries property and are not affected by the dissolution.

¹¹ In addition, it was not listed as a corporate asset among the Company's records when it was incorporated in September 2002. DX 1.

D. Other Assets and Income Earned

Little and Grimm argue over whether certain equipment possessed by the parties ought to be considered corporate property, as well as whether money made at events by Little allegedly under the Beach Fries name or with Beach Fries property should additionally be divided up as corporate property. The Court has seen no good records as to this property or these proceeds, and sees no way to make any reasonable determinations as to which of these items or amounts should be considered Beach Fries property.¹² Consequently, except for the equipment affixed to the 2002 trailer, which has been determined to be Beach Fries property, all equipment currently in the possession of Grimm or Little shall be deemed personal property and not subject to division. Likewise, corporate assets will not be reduced by any previously paid bills by either party, and any unpaid bills currently directed to either Little or Grimm allegedly relating to Beach Fries shall remain their personal responsibility.

¹² Much of this deficiency stems from the parties' failure to separate personal and corporate expenses and assets or to keep proper records, although Little's failure to comply with the Court's previous order is also a cause. With respect to the impact of Little's use of the trailer on the Company, an alternative measure of damages might have been based on evidence of the fair price for rental of the trailer. No such proof was presented.

E. Defendant's Counterclaims

Little also raised counterclaims relating to interference with her mail delivery and interference with her ability to do business; specifically, that Grimm caused Beach Fries mail to be forwarded to his personal address, preventing Little from receiving information about upcoming events, and that Grimm caused Little to be excluded from various events in which he participated.¹³ Little asserts that Grimm engaged in fraud in asserting to the Postal Service that he was entitled to receive the Company mail under an order issued by this Court. Grimm denies these allegations. Because no material evidence was presented as to these matters at trial, the counterclaims are dismissed for lack of evidence.

* * *

In summary, Grimm's request for relief is granted in part; first, Beach Fries is dissolved as a corporate entity and, second, Grimm is entitled, without challenge from Little, to the use of the name Beach Fries, its logo, and the name The Original Beach Fries, as well as one-half of the proceeds of the sale of the 2002 trailer and

¹³ Little contends that, in some instances, Grimm registered for events with no intention of attending them simply to preclude her from participating.

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its equipment. Little may engage in a similar business under the name of Lil' Devil Beach Fries, (LLC) and is entitled to one-half of the proceeds of the sale of the 2002 trailer and its equipment.¹⁴ Any other assets of the Company shall be divided equally. Her counterclaim is dismissed. The parties shall bear their own costs.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K

¹⁴ The sale of the trailer and its equipment seems to be the most efficient way to accomplish the distribution of the assets of the dissolved corporation. The parties may agree on value; the parties may agree on the mode of sale; if not, the Court will appoint a receiver to perform the work. The cost of a receiver will be substantial when compared to the value of the assets to be sold, but such cost, in the absence of agreement between the parties, may be unavoidable. If Little no longer has the trailer and/or the equipment, she is liable to Grimm for one-half of the value of those assets as of the date of conversion, November 2004. If necessary, a hearing for that valuation will be convened.