COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: Nicholas Stavrou v. Spyro Contogouris,
C.A. No. 19615 NC

Dear Counsel:

Plaintiff Nicholas Stavrou brought this action under 8 *Del. C.* § *225.* He sought a determination that he was the duly elected director, president, secretary, and treasurer of Prestige Holdings, Inc. and that defendant Spyro C. Contogouris was validly removed as a director and officer of Prestige on April 5, 2002.

Stavrou filed this action in May 2002. The case was set down for an expedited trial, which Contogouris avoided by filing a notice of removal of

this case to federal court. Thereafter, the United States District Court for the District of Delaware determined that there was no basis for federal jurisidiction and remanded the case back to this court.

Stavrou promptly moved for judgment on the pleadings. In a conference call with counsel to the parties, the court advised them that it would treat Stavrou's motion as one for summary judgment and that Contougoris should submit evidence sufficient to avoid summary judgment or, in the alternative, submit a convincing Rule 56(f) affidavit.

On the eve of oral argument and after all briefing on the motion for summary judgment was completed, Contogouris's counsel withdrew his opposition to Stavrou's motion. This withdrawal came after Stavrou's counsel and the court had expended a great deal of time addressing the motion and well after Contogouris's counsel had been cautioned to present a genuine defense or consent to judgment. In his summary judgment submission, Stavrou presented unrebutted evidence that the sole stockholder of Prestige removed Contogouris from his positions at Prestige and elected Stavrou to replace him and to fill the other offices he then held. In response to Stavrou's production of evidence, defendant Contogouris simply advanced a bewildering array of theories as to why it was possible that

someone other than Stavrou controlled the corporate grandparent of Prestige. Contogouris did not claim to own any equity in Prestige, Prestige's corporate parent, or Prestige's corporate grandparent. Contogouris did not even claim to know who, other than Stavrou, did. Instead, he sought to have this court to engage in a treasure hunt to find a live dispute about the ownership of Prestige's grandparent. While that adventure went on, Contogouris sought to remain in his corporate offices.

Having consented to a judgment giving Stavrou the relief sought by the complaint, Contogouris left the court with only one issue to decide: whether to require him to pay Stavrou's attorneys' fees and expenses. In this opinion, I conclude that Contogouris's bad faith conduct of this litigation warrants fee shifting.

Stated bluntly, Contogouris advanced a frivolous defense in bad faith. He knowingly wasted the time and resources of Stavrou — and of this court. Therefore, I grant Stavrou's application for attorneys' fees and costs.

I.

The following factual recitation is based on the record evidence submitted by Stavrou and the substantial portions of the complaint that Contogouris either admitted or failed to deny.

Prestige is a Delaware corporation, which owns four operating subsidiaries, three in Texas and one in New York. Litigation is pending in each of these jurisdictions that, among other things, seeks to secure the removal of Contogouris from office at the subsidiaries.

This case, however, involves only Prestige, and, therefore, I concentrate solely on it. Prestige has only one stockholder, Changole International B.V., a Dutch corporation. In turn, Changole is owned entirely by Brock Corporation, N.V., a Netherlands Antilles Corporation.

Stavrou presented unrebutted evidence demonstrating that Brock is now owned entirely by Vassilios Manios ("Vassilios"). Vassilios emerged as the sole owner of Brock after resolving a dispute with his sister Evangelia Constantinou Manios Zachariou ("Zachariou") over ownership of the company. Both Vassilios and Zachariou were siblings of the late Dimitri Manios ("Dmitri"), who owned Brock before his death in 1995.

It was undisputed that on April 5, 2002 Changole adopted a resolution by written consent of its sole director, plaintiff Stavrou, removing Contogouris from all his corporate offices at Prestige and electing Stavrou in his place. Under Prestige's governing instruments, this action by its sole stockholder was sufficient to displace Contogouris and to elect Stavrou.

Despite receiving the resolution, Contogouris refused to step down. Instead, he clung to office at Prestige and its subsidiaries, forcing Stavrou to file numerous lawsuits to remove him and to restrain him from expending corporate funds.

II.

When this lawsuit was filed, the court held a conference with the parties. At that time, an unusual aspect to this case surfaced: Contogouris was refusing to leave office solely because he claimed that Brock — Prestige's grandparent — might not be solely owned by Vassilios. Contogouris did not claim to own equity in Prestige, Changole, or Brock himself but was uncertain about who did. As a result, Contogouris's counsel was admonished that his client should either raise a real defense — ***i.e.,*** show that there was an actual controversy — or consider consenting to his removal. When this case was returned from federal court, Contogouris's counsel was again reminded of this suggestion and instructed to present a genuine defense supported by reliable evidence.

Regrettably, briefing on the subsequent summary judgment motion showed that these cautions went unheeded. Stavrou's complaint was supported by affidavits and other evidence that supported his claim. That

evidence included an affidavit of Zachariou affirming that her brother Vassilios is the sole owner of Brock.

In response to this evidence, Contogouris submitted a brief that attached an unsworn and unsigned "affidavit" supposedly submitted by him in connection with one of the cases involving Prestige's subsidiaries.[1] In that document, Contogouris rambled on about his uncertainties about the ownership of Brock — even though he admitted in the same document that he was appointed to be an officer and director of one of Prestige's subsidiaries by Vassilios! In the affidavit, Contogouris's principal concern was that Vassilios's sister, Zachariou, had disputed Vassilios's claim to sole ownership. But, as noted, Zachariou had earlier submitted her own affidavit — signed and sworn — affirming that Vassilios is the sole owner of Brock.[2]

Recognizing the obvious problem that the Zachariou affidavit caused for him, Contogouris's brief took a different tack than the unsigned affidavit

[1] On the briefing on this motion for fees, Contogouris's counsel belatedly submitted (what is purportedly) a signed and sworn copy of this same document. This submission came well after Stavrou's counsel had replied to the answering brief containing the unsworn version.

[2] I am satisfied that the Contogouris affidavit was submitted in bad faith and that my fee shifting is also partially justified by Court of Chancery Rule 56(g). In this respect, it is worth noting that the affidavit was submitted to this court in September 2002, but is dated May 2, 2002. The affidavit therefore predates the May 8, 2002 complaint in this action and fails to respond to the precise allegations in the complaint, which were supported by evidence, including Ms. Zachariou's affidavit. See Comp. Ex. 3.

that supposedly buttressed it. In the brief, Contogouris argued that a trial was necessary because "[a] central issue to be decided is whether Prestige's direction to act comes from an undisclosed, non-appearing attorney in fact."[3] But nowhere did Contogouris produce evidence that an undisclosed owner of Brock existed, much less evidence of his, her, or its identity. Indeed, Contogouris never firmly embraced the view that he believed that such a person existed.

As Stavrou noted, in the absence of any evidence that the written consent of Prestige's sole stockholder, Changole, was not executed by its sole director, Stavrou, it was doubtful whether an ownership dispute involving Prestige's grandparent, Brock, was pertinent to the resolution of this $225 action. If owners of Brock believed that Stavrou breached his duties to Changole by executing the consent, they could have litigated that matter elsewhere. Likewise, if there was a dispute regarding who owns Brock, that could have been litigated separately.

But I need not have decided the question of whether an actual dispute about control of Brock between two parties to that dispute would be relevant to this matter. Why? Because I did not face that question.

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[3] Ans. Br. at 5.

Instead, I faced the question of whether a corporate officer may refuse to leave office until all the questions he could dream up about the ownership structure of the grandparent of his corporation are resolved to his satisfaction. The answer to that question was simple: no. Having failed to produce evidence creating a triable issue of fact that Changole's sole director took proper action to remove him, Contogouris would — without doubt — have had to suffer summary judgment.

This prediction is buttressed by a recent decision of the Supreme Court of the State of New York in a case involving Prestige's New York subsidiary. In a well-reasoned opinion, Judge Lowe granted judgment to Stavrou and Prestige in the New York equivalent of a $225 action to remove Contogouris from office at that subsidiary.[4] His decision painstakingly reviewed the abundant evidence supporting Stavrou's position that Vassilios is the sole owner of Brock and concluded that Contongouris's arguments were implausible and evidentially unsupported. Most critically, Judge Lowe noted that "[m]ere speculations that some competing claims

[4] See *Stavrou v. Contogouris*, No. 108965/02, slip op. at 9-10 (N.Y. Sup. Ct. filed Sept. 17, 2002).

could possibly exist is insufficient to raise an issue of fact as to Vassilios' ownership [of Brock]."[5]

Only after Judge Lowe's decision was entered and Contogouris was facing an imminent oral argument the next day did Contogouris's counsel contact this court on the eve of this court's hearing to request cancellation. The reason: Contogouris now wished to drop his objection to the relief Stavrou requested. This concession came, however, after Contogouris's counsel had been cautioned several times about the apparently frivolous basis for his defense, after Stavrou had expended considerable time on the dispositive motion filings, and after the court had spent many hours preparing for argument and the issuance of a decision. Stavrou understandably insisted that the hearing still be held to focus on his request for attorneys' fees and costs; instead, the court entered an order granting Stavrou the relief he sought in the complaint and set a further briefing schedule on Stavrou's application for attorneys' fees.

III.

The recitation of this case's procession in large measure foreshadows my resolution of Stavrou's claim for attorneys' fees. The readily apparent

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[5] *Id.* at 9.

basis for that claim was the clearly frivolous nature of Contogouris's defense, which evidences more than sufficient subjective bad faith to justify fee shifting.[6] Desperate to delay his departure from his corporate offices, Contogouris spewed out a meandering and incoherent torrent of words for the sole purpose of raising "questions" about who "might" own Brock. This is not to forget the delay he achieved by removing this case to federal court. In other words, Contogouris used the pretext of his concern for the interests of a possibly extant, but possibly non-existent, undisclosed owner of Brock to entrench himself (for apparently wholly selfish reasons) in corporate offices that have not belonged to him since April 5, 2002.

Having been warned to advance a real defense or drop his case, Contogouris is in no position to ask for sympathy. He purposely wasted the time and money of Stavrou, Changole, and Prestige in a baseless effort to delay his removal. He diverted the energy of this court from real disputes. It is only fair that he should bear Stavrou's litigation expenses. This court has recognized that it constitutes bad faith for a party to a corporate dispute to consciously advance frivolous defenses in order to exact a toll in time or

[6] *E.g.*, *Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 225, 231-32 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998).