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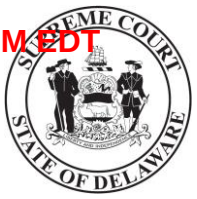

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SANDRA MANNO and MANNO ENTERPRISES LLC,	) From the Memorandum Opinion) and Final Order and) Judgment
Defendants and Counterclaim-Plaintiffs Below/Appellants,	) of the Chancery Court) of the State of Delaware) C.A. No. 6429-VCL
v.	)
CANCAN DEVELOPMENT, LLC, ROBERT A. GRANIERI, ROBERT J. GRANIERI and GEORGE TOTH,	))) No. 378,2015
Plaintiffs Below/Appellees.	)

REPLY BRIEF OF APPELLANT SANDRA MANNO

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Appellant Sandra Manno

Dated: October 20, 2015

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ARGUMENT

I. THE TRIAL COURT'S HOLDING THAT THE LEAD MANAGER OF CANCAN, JOSEPH PY, WAS NOT INDEPENDENT IS NOT SUPPORTED BY THE RECORD AND MUST BE REVERSED.

It is undisputed that Sandra Manno never had check signing authority for CanCan. (A371). Her only ability to spend money directly was with a debit card issued to her by CanCan's Lead Manager Joseph Py.[1] All consulting fees, salaries, and other expenses of CanCan were paid by Py, including those paid to Manno, and the balance of the expenditures making up the $970,123 judgment against Manno.

Because Manno had no spending authority, the Court of Chancery's judgment against Manno depends upon the following factual findings:

> "Py wrote whatever checks Manno asked for without any meaningful review or oversight"
>
> (Op. 9)
>
> "Py did not make a business judgment; he simply rubber stamped the larger checks. Plus, Py and Manno's relationship was sufficiently close that Py cannot be regarded as independent. Py's involvement did not insulate Manno's unilateral decision from the entire fairness review."
>
> (Op. 36-37).

[1] It is conceded that Ms. Manno withdrew $98,000.00 from ATMs using the debit card. She and other CanCan employees also used the debit card to pay certain expenses. However, Ms. Manno contends that Py ratified these withdrawals.

Neither of these findings is referenced to the record. Each is recited in Appellees' Brief as tautological support for their position.

It is Manno's contention on appeal that the record cannot support these crucial findings which are the lynchpin of the court's judgment.

It was the Plaintiffs' burden to prove that there was no independent review by Py and they have failed to do so. The fact that Py and Manno may have been friends and business partners does not prove that proposition and does not support the Court of Chancery's opinion or judgment.

We respectfully submit that without Py's testimony, it is entirely speculative to conclude that he performed no oversight or independent review.

The evidence that was introduced suggests that he was independent of Manno. He was the Granieris' lifelong friend. They installed him as lead manager of CanCan to handle the finances and control the money. RG Junior dealt only with Py regarding investments, issuance of membership interests, and other financial issues. Although the Court of Chancery held that Manno "paid herself" (Op. 9) and increased her consulting fee (Op 36), she did not have the authority or ability to do so. Only Py could pay the consulting fees.

Py told RG Junior in April 2010 that Manno was being paid $15,000 a month and Joseph Manno was being paid $30,000 a month, and RG Junior apparently had no issue with that. (A324). In September 2010, RG Junior learned

that Manno was being paid $35,000 a month by Py, and he did nothing to stop or change that. (A325). The $436,000 in salary cited in Manno's Opening Brief to Manno is based on this undisputed testimony.

The only spending that was not paid directly by Py was Manno's use of the CanCan debit card, which included $98,000 of cash withdrawals. As Plaintiffs point out, in direct contradiction to their argument that he exercised no oversight or independence, Py ordered Manno in November 2010 to stop using the debit card. (Appellee's Answering Brief "AAB" at 39) (B324-25). Furthermore, corporate expenses, including consulting fees, went through Traci Havelin who wrote checks to pay them and sent the checks to Py to sign. Havelin handled the CanCan payroll account. (A370-71).[2]

Whether or not the Court drew an adverse inference against Plaintiffs for not calling Py,[3] the absence of his testimony dooms their breach of fiduciary duty and waste claims against Manno.

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[2] Notably, Py transferred his CanCan membership interests to his trusted friend RG Junior in May 2011 never to be heard from again. LHI allowed Havelin to resign for improperly withholding payroll taxes from her own paycheck, with LHI paying the IRS what should have been withheld.

[3] Plaintiffs' self-serving reference to the alleged reason why they did not take Py's deposition is unsupported by the record, improper and irrelevant. It is also unconvincing. Plaintiffs sought a Commission to take Py's deposition, but never followed through. Further, they could have issued a Subpoena to Py pursuant to the Uniform Interstate Depositions and Discovery Act which has been adopted in Pennsylvania, where Py resides. PA C.S. §§5332 et. seq. As this Court is well

The bottom line is that irrespective of the personal or business relationship between Py and Manno, that relationship alone cannot rebut the business judgment rule. A plaintiff must provide a basis to find that the relationship would prevail over a director's business judgment. Friedman v. Dolan, 2015 Del. Ch. LEXIS 178 (Del. Ch. June 30, 2015) *25. In a corporation, the shareholders elect directors to run the company and make, inter alia, executive compensation decisions. Here, in the LLC context, the Granieris selected their trusted friend Py to oversee and spend their money. The trial court held, and Plaintiffs ask this Court to affirm, that in this context, a social or business relationship between a decision maker and executive – in and of itself – is enough to overcome the business Judgment Rule. It is not enough. As the Court held in MFW Shareholders Litigation, 67 A3d 496, 509 (Del. Ch. 2013) aff'd. sub nom., Kahn v. M & F Worldwide Corp., 88 A3d 365 (Del. 2014):

> To show that a director is not independent, a plaintiff must demonstrate that the director is "beholden" to the controlling party "or so under [the controller's] influence that [the director's] discretion would be sterilized." Our law is clear that mere allegations that directors are friendly with, travel in the same social circles, or have past business relationships with the proponent of a transaction or the person they are investigating, are not enough to rebut the presumption of independence. Rather, the Supreme Court has made clear that a plaintiff

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aware, sadly, the depositions of the infirm and dying are routinely conducted in toxic tort cases. In any event, whatever excuse they posit is not a substitute for missing evidence.

> seeking to show that a director was not independent must meet a materiality standard, under which the court must conclude that the director in question's material ties to the person whose proposal or actions she is evaluating are sufficiently substantial that she cannot objectively fulfill her fiduciary duties. (citations omitted).

In MFW, the court explored each of the challenged director's actual circumstances to determine whether her independence was compromised by factors material to her.

Here, by contrast, there is nothing in the record regarding Mr. Py's economic circumstances, and nothing to determine whether his independence might have been compromised by factors material to him. Plaintiffs argued, and the Court found, that Py and Manno's relationship was sufficiently close that Py cannot be regarded as independent. One could argue just as convincingly that because Py was the Granieris long-trusted friend, he made an independent review of all CanCan expenditures. However, the fact is that there was a void of evidence either way which precluded the Court of Chancery's ruling against Manno.

Plaintiffs do not even attempt to address Friedman or MFW which is relied upon by Friedman in their brief. Nor do they address Brehm v. Eisner, 746 A.2d 244 (Del. 2000) also cited by Manno and relied upon by Friedman. In short, Appellees cite no authority to support, let alone suggest that the presumption of independence can be rebutted solely by the nature of the relationship between the proponent of a transaction [Py] and the person they are investigating [Manno].

The best that Appellees can muster is that Py would respond to urgent requests promptly, and signed checks Havelin sent him as requested. AAB at 38. This may tend to prove he was efficient, but it does not prove that he did not make an independent judgment that the money should be spent in what he believed to be CanCan's best interest.

Contrary to the well-established requirement that a Plaintiff must show the materiality of a director's self-interest to her independence, the trial court's holding would establish a per se rule where the showing of a familial, social, or business relationship between the director or manager and the person whose actions she is evaluating would, in and of itself, overcome the presumption of independence provided by the business judgment rule. This ruling cannot stand.

CONCLUSION

For the foregoing reasons, and those set forth in Appellant Sandra Manno's Opening Brief, the judgment of the Court of Chancery against her and in favor of CanCan Development, LLC should be reversed.

Dated: October 20, 2015

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