



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL COLACO and APRIL BARRY,))
))
 Plaintiffs,))
))
 v.) C.A. No. 10925-VCL
))
 CAVOTEC INET US INC., a Delaware))
 Corporation,))
))
 Defendant.))

ORDER GRANTING SUMMARY JUDGMENT

THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. “Summary judgment is appropriate when there are no questions of material fact and the moving party is entitled to judgment as a matter of law.” *Senior Tour Players 207 Mgmt. Co., LLC v. Golftown 207 Hldg. Co., LLC*, 853 A.2d 124, 126 (Del. Ch. 2004). On a motion for summary judgment, the Court views the facts “in the light most favorable to the nonmoving party.” *Id.*
2. Plaintiff Michael Colaco was a director of Cavotec Inet US Inc. (“Cavotec Inet” or the “Company”) from August 16, 2011 to August 29, 2012. Colaco was also President of the Company from August 16, 2011 to September 15, 2012.
3. Plaintiff April Barry was Chief Financial Officer of Cavotec Inet from August 16, 2011 to August 29, 2012.
4. Article VI, §§ 6.1 and 6.2 of Company’s Bylaws grant Colaco and Barry mandatory indemnification and advancement rights and require the payment of amounts subject to advancement within twenty days of a demand.

5. Colaco and Inet Airport Systems LLC (“Inet LLC”) filed a lawsuit against Cavotec Inet, Cavotec S.A., and two individuals in California. The Company responded by filing counterclaims against Colaco and third party claims against Barry and other entities purportedly affiliated with Colaco. Under California procedure, the Company’s claims are called cross-claims.

6. The Company asserted nineteen separate cross-claims based on the same underlying conduct. The crux of the Company’s claims against Colaco and Barry is that

Once [they were] ensconced in th[eir] positions of trust and confidence, Colaco and Barry furtively engaged in a massive fraud scheme to steal millions of dollars from Cavotec Inet, and ultimately to seek to destroy Cavotec Inet in order for Colaco to take back 100% ownership and control of the company he had sold. Colaco and Barry carried out this scheme acting in concert, pursuant to a conspiracy with one another to breach their fiduciary duties owed to Cavotec Inet, for the benefit of themselves and Inet.

The alleged acts of misconduct include backdating invoices, disloyal diversions of funds, the use of Company funds for personal expenses, abuse of petty cash, and mismanagement. Other acts of misconduct include efforts to conceal the underlying wrongs by taking the Company’s server, bulk-deleting emails, and shredding documents.

7. Cross-Claim One frames the underlying wrongs as breaches of fiduciary duty. It is obviously subject to advancement.

8. Cross-Claims Two, Three, Four, Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, Sixteen, and Seventeen, though styled as different causes of action, are premised on the same underlying conduct as Cross-Claim One. All are intertwined

with and rest on the same alleged common core of wrongdoing. All arise “by reason of the fact” that Colaco and Barry were covered persons. All are subject to advancement.

9. The parties have disputed whether Cross-Claim Fifteen, which asserts a claim for fraudulent transfers, is subject to advancement. The language of Cross-Claim Fifteen contended that it rested on the same allegations that support the breaches of fiduciary duty. In its discovery responses, Cavotec asserted initially that the events underlying this cross-claim supported its claim for breach of fiduciary duty. Cavotec has concluded since then that Cross-Claim Fifteen did not arise by reason of Colaco’s actions as a covered person, but it was still necessary for Colaco to investigate that claim based on Cavotec’s original assertions. Plaintiffs only have sought advancement for amounts incurred investigating the claim. Implicit in this representation is the recognition that they will not seek amounts for this claim going forward. Plaintiffs are entitled to advancement for the expenses related to Cross-Claim Fifteen that they have sought to date.

10. Plaintiffs are entitled to advancement for expenses relating to attending and defending the depositions of CDFC and IMS’s witnesses, Charlotte Colaco and Vernon Colaco. The expenses related to these activities were part of the factual investigation and defense against the Company’s allegations of wrongful monetary transfers.

11. Plaintiffs are entitled to advancement for expenses related to the preparation and prosecution of a motion to compel Cavotec to respond to discovery related to Cavotec’s affirmative defenses to Plaintiffs’ complaint. According to Cavotec, the same alleged misconduct by Colaco in his official capacity that underlies Cross-Claim One supports Cavotec’s affirmative defenses.

12. Plaintiffs are entitled to advancement for expenses for Skorheim & Associates, as well as the related work performed by Stradling. Skorheim was hired as a rebuttal expert to rebut Cavotec's experts' theory and calculation of damages, which all flow from Plaintiffs' alleged mismanagement of Cavotec.

13. Plaintiffs are entitled to advancement for work performed in connection with a Motion to Disqualify Greenberg Gross LLP. The motion to disqualify was sufficiently related to the core subject matter of the case to be encompassed by the advancement right.

14. Plaintiffs have submitted demands for advancement supported by good faith estimates of counsel as to which expenses are appropriately subject to advancement. “[S]ome level of imprecision will be involved in the retrospective accomplishment of [making a good faith estimate of expenses].” *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 177 (Del. Ch. 2003) (Strine, V.C.). “When reviewing amounts submitted for advancement, the nature of the right involved [] counsels against granular review.” *Danenberg v. Fittracks, Inc.*, 58 A.3d 991, 997 (Del. Ch. 2012). “Unless some gross problem arises, a balance of fairness and efficiency concerns counsel[s] deferring fights about details until a final indemnification proceeding” *Fasciana*, 829 A.2d at 177. The Company has identified some quibbles and disagreements as to the allocations, but nothing that would rise to the level of a gross problem.

15. Plaintiffs have made a reasonable allocation of time entries that refer to Plaintiffs' Motion for Summary Judgment in the California Action. These amounts are subject to advancement.

16. Plaintiffs are entitled to expenses related to Ottonel Popesco. Plaintiffs have demonstrated that Popesco's testimony relates to the subject matter of the Cross-Claims. Plaintiffs have made a reasonable allocation of time entries that refer to his involvement and testimony.

17. Plaintiffs are entitled to advancement for entries pertaining to trial preparation. Plaintiffs have made a reasonable allocation of time entries in this area.

18. In total, Plaintiffs are entitled to advancement of the full \$4,112,128.90 they demanded. The Company may claim a credit against this amount for the payment of \$3,014,573.93 that was paid on May 26, 2015.

19. Plaintiffs are entitled to pre- and post-judgment interest on the full advancement amount. Interest shall run on the amounts covered by the so-called Second Demand beginning on the twentieth day after April 13, 2015. Interest shall run on the amounts covered by the so-called Third Demand beginning on the twentieth day after April 10, 2015. Interest shall stop running on the payment of \$3,014,573.93, as of May 26, 2015. Interest shall accrue at the legal rate, compounded quarterly, unless plaintiffs' counsel makes an election on or before June 3, 2015, to seek a higher rate.

20. Plaintiffs are entitled to an award of fees-on-fees for prevailing in this proceeding. Counsel shall submit a Rule 88 affidavit.

21. For any additional invoices for which Colaco and Barry seek advancement (each, an "Invoice"), including for services rendered before the date of this Order, Colaco and Barry shall provide the Invoice to the Company's Delaware counsel by email. The Invoice shall include, at a minimum, the identity of the professional providing the

service, a reasonable description of each service provided by the professional, the hourly rate of each professional, the total hours and billing amount each day and for the time period covered by the Invoice for each professional, and the nature and cost of all expenses. The Invoice shall be accompanied by a certification, signed by a knowledgeable senior attorney for Colaco and Barry, attesting that the work described in the Invoice: (i) is within the scope of coverage of the Company's advancement obligations; (ii) was reasonable and necessary to Colaco and Barry's representation; (iii) is redacted properly and reasonably to protect information that is protected by the attorney-client privilege, the attorney work-product doctrine, or any other identified and applicable privilege or law; (iv) was performed at billing rates and with expenses that are reasonable compared to those charged by other lawyers with similar experience and specialization in their geographic market; (v) was conducted by a reasonable number of attorneys (and non-attorney professionals) of appropriate levels of seniority and without unreasonable duplication of effort by Colaco and Barry's attorneys.

22. The Company shall respond to the Invoice within twenty calendar days after the date on which the Invoice was submitted (the "Response Date"). The response shall include a payment equal to the greater of 70% of the Invoice or the undisputed amount of the Invoice. As to any amount in dispute, Cavotec's Delaware counsel shall provide the following information: (i) specific written objections to the Invoice, and (ii) a certification from the Company's senior Delaware lawyer that (x) the objections are reasonable and made in good faith, and (y) based the expertise and experience of the Company's senior Delaware lawyer, the fees and expenses objected to are not reasonable

or otherwise are ineligible for advancement under Delaware law. Any objections to an Invoice that are not identified specifically and with particularity in writing are waived.

23. Within ten calendar days after the Response Date (the “Reply Date”), Colaco and Barry will provide to the Company’s Delaware counsel specific written responses to the Company’s objections.

24. Within ten calendar days after the Reply Date (the “Conference Date”), Delaware counsel for Colaco and Barry and Delaware counsel for the Company, including the most senior Delaware lawyer on each team, shall meet in person for a lunch or dinner meeting to confer regarding any outstanding objections. The purpose of requiring an in-person meeting over a meal is to create an environment that is less antagonistic and more conducive to the resolution of disputes. The location for the meeting shall alternate between the offices of Colaco and Barry’s Delaware counsel and the Company’s Delaware counsel. The firm hosting the meeting shall provide the meal at its own expense.

25. Within five calendar days after the Conference Date, the Company shall advance any amounts no longer in dispute.

26. Any amounts still in dispute after the Conference Date shall be submitted to a special master (the “Special Master”) for resolution. On the first occasion when a Special Master is required, which hopefully will never occur, the parties shall submit a proposed form of order to the Court appointing the Special Master or, if the parties cannot agree, submitting three names for the Court’s consideration.

27. Within ten calendar days after the Conference Date (the “Briefing Date”), the parties will submit simultaneous letter briefs to the Special Master regarding the matters that remain in dispute. The letter briefs shall not advance any arguments or cite any authorities not previously raised during the meet-and-confer process. On the Briefing Date, Colaco and Barry will provide *ex parte* to the Special Master an unredacted copy of the Invoice in dispute, marked so show any items that were redacted. On the Briefing Date, the Company shall provide the Special Master with a summary of the fees and expenses it incurred for the time period corresponding to the Invoice, including (i) the total amount of fees and expenses incurred for the time period corresponding to the Invoice; (ii) the identity of timekeepers (attorneys and non-attorney professionals) billing for that time period; (iii) the hourly rates billed by each timekeeper; and (iv) the total amount of hours billed by each timekeeper. At the Special Master’s discretion, oral argument may be held promptly after the Briefing Date at the time that will not delay the preparation of a final report.

28. The Special Master shall issue a final report within four weeks after the Briefing Date. The report shall address the extent to which Colaco and Barry prevailed so as to become entitled to fees-on-fees. Exceptions to the report may be taken as set forth in Chancery Court Rule 144(a).

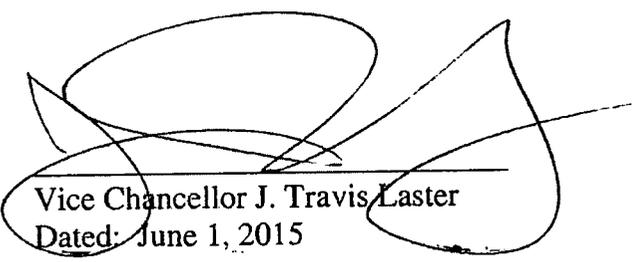
29. Any dispute over the amount of fees-on-fees shall be governed by the procedures set forth in this order as if the request for fees-on-fees was itself a request for advancement.

30. The parties shall bear the fees and expenses of the Special Master in a manner proportionate to Colaco and Barry's success in proceedings before the Special Master or any exception to the Special Master's Reports.

31. The submission of unredacted invoices by any party to the Special Master does not constitute a waiver of the attorney-client privilege or attorney work-product protections by that party or any other person. The Special Master is directed not to disclose any privileged or work-product information of any person in the Report or otherwise.

32. This Order, any Report awarding amounts from which no exceptions are taken pursuant to Rule 144(a), and any further Order issued by the Court following any exceptions to a Report pursuant to Rule 144(a) may be enforced by the issuance of writs of execution substantially in the form and with the same effect as those used in the Delaware Superior Court, as provided in Court of Chancery Rule 69(a).

33. This Order, any Report awarding amounts from which no exceptions are taken pursuant to Rule 144(a), and any further Order issued by the Court following any exceptions to a Report pursuant to Rule 144(a) may be entered by the Office of the Prothonotary of New Castle County in the same manner and form and in the same books and indexes as judgments entered in the Superior Court, as provided in 10 *Del. C.* § 4734.



Vice Chancellor J. Travis Laster
Dated: June 1, 2015