



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES RIVEST,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2019-0848-JTL
)	
HAUPPAUGE DIGITAL, INC.,)	
)	
Defendant.)	

ORDER GRANTING LIMITED STAY PENDING APPEAL

1. The Final Order and Judgment dated November 21, 2022, directed defendant Hauppauge Digital, Inc. (the “Company”) to produce to plaintiff James Rivest its quarterly and annual financial statements and reports for 2016 through 2022. *See* Dkt. 107. The Company has moved for a stay pending appeal. The court grants a stay as to the quarterly and annual financial statements and reports for 2021 and 2022. The stay is conditioned on the Company posting security to cover the award of costs.

2. “Stays pending appeal . . . shall be governed by article IV, § 24 of the Constitution of the State of Delaware and by the Rules of the Supreme Court.” Ct. Ch. R. 62(d). The applicable Supreme Court rule is Rule 32(a), which provides that “[a] stay or an injunction pending appeal may be granted or denied in the discretion of the trial court.” Supr. Ct. R. 32(a).

3. The Supreme Court has identified four factors to guide the trial court in exercising its discretion: (1) “a preliminary assessment of likelihood of success on the merits of the appeal,” (2) “whether the [party seeking a stay] will suffer irreparable injury if the stay is not granted,” (3) “whether any other interested party will suffer substantial

harm if the stay is granted,” and (4) “whether the public interest will be harmed if the stay is granted.” *Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm’n*, 741 A.2d 356, 357 (Del. 1998). The factors are not to be considered in isolation, but as part of a balancing of “all of the equities involved in the case together.” *Id.* at 358.

4. In *Kirpat*, the Supreme Court reversed the denial of a stay pending appeal because the trial court focused too narrowly on the first factor, “a preliminary assessment of likelihood of success on the merits of the appeal.” *Id.* at 357. As *Kirpat* explained, this element “cannot be interpreted literally or in a vacuum when analyzing a motion for stay pending appeal.” *Id.* at 358. In an appeal from a final judgment, the trial court has already issued a decision in the case, so a literal reading “would lead most probably to consistent denials of stay motions . . . because the trial court would be required first to confess error in its ruling before it could issue a stay.” *Id.* (internal quotation marks omitted). Instead, “[i]f the other three factors strongly favor interim relief, then a court may exercise its discretion to reach an equitable resolution by granting a stay if the petitioner has presented a serious legal question that raises a fair ground for litigation and thus for more deliberative investigation.” *Id.* (internal quotation marks omitted).

5. Informed by *Kirpat*, this decision analyzes the second, third, and fourth factors, then returns to the first. Notably, under *Kirpat*, a stay only should be granted if the second, third, and fourth factors “strongly favor interim relief.” *Id.*

A. Whether The Company Will Suffer Irreparable Injury Without A Stay

6. The second *Kirpat* factor is whether the party seeking a stay “will suffer irreparable injury if the stay is not granted.” *Id.* at 357. Once documents have been ordered

and produced, the production cannot be reversed, so in that sense, the Company will suffer irreparable injury. See *Wynnefield P'rs Small Cap Value L.P. v. Niagara Corp.*, 2006 WL 2521434, at *2 (Del. Ch. Aug. 9, 2006). The logic of that position, however, would lead to automatic stays in books and records actions, which is not the law. See, e.g., *Jagodzinski v. Silicon Valley Innovation Co., LLC*, 2011 WL 4823569, at *4 (Del. Ch. Aug. 16, 2011) (denying stay); *Wynnefield*, 2006 WL 2521434, at *3 (denying stay); see also *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 1999 WL 669358, at *8 (Del. Ch. Aug. 16, 1999) (“[A] movant pursuant to Rule 62(c) must point to some injury other than compliance with this Court’s Order and motness of its appeal in order for this factor to weigh in the movant’s favor.”). Moreover, similar harm exists whenever a court orders the production of discovery material, yet parallel reasoning has not resulted in a regime of automatic interlocutory appeals from discovery rulings and concomitant stays pending appeal.

7. During the original trial before the Master, the Company contested whether Rivest had a proper purpose for seeking financial statements. The Company also contended that any production should be governed by a confidentiality restriction. The Company originally sought an indefinite confidentiality restriction, but before trial, acknowledged that in the context of potential acquisitions, the Company asked for five years. Dkt. 47 ¶ 30; *Rivest v. Hauppauge Digit., Inc.*, 2022 WL 3973101, at *14 (Del. Ch. Sept. 1, 2022).

8. After trial, the Master recommended that the court find that Rivest had a proper purpose and impose confidentiality restriction with a duration of two years. The Company did not file any objection to the Master’s ruling. Rivest took exception to the

recommendation regarding the confidentiality restriction. *See Rivest*, 2022 WL 3973101, at *15.

9. Delaware Supreme Court precedent requires that this court conduct a *de novo* review of the Master's determinations, both as to findings of fact and rulings of law. *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999). A *de novo* review does not require a new trial; it is equally possible "to conduct a review *de novo* on the record." *Id.* The *DiGiacobbe* decision nevertheless observed that where credibility determinations are at issue, a new evidentiary hearing may be inevitable. *Id.*

10. Recognizing the burdens that new evidentiary hearings entail, the Court of Chancery has taken steps to streamline the processes for *de novo* review. Court of Chancery Rule 144(e) provides that "[p]roceedings before the Court on any exceptions shall be *on the record* before the Master, unless the Court determines otherwise for good cause shown." Ct. Ch. R. 144(e) (emphasis added). To facilitate *de novo* review on the record and avoid the need for new evidentiary hearings, the Court of Chancery follows a practice of recording trials before the Masters on video. *See McCloskey v. McCloskey*, 2014 WL 4364469, at *9 & n.87 (Del. Ch. Sept. 3, 2014) (conducting *de novo* review of videotape; noting that *DiGiacobbe* "did not consider the availability of videotape to permit the court to make credibility determinations," when stating that a new hearing would be inevitable), *aff'd*, 113 A.3d 1081 (Del. 2015). In this case, the trial before the Master was recorded on video to facilitate a *de novo* review by a constitutional judge, including *de novo* credibility determinations. *Rivest*, 2022 WL 3973101, at *2.

11. After conducting a *de novo* review, the court found that the Company had not carried its burden of proof to impose a confidentiality restriction. *Rivest*, 2022 WL 3973101, at *16. The court has entered a final order directing the Company to produce to Rivest its quarterly and annual financial statements and reports, including cash flow statements, balance sheets, and income statements, for the years 2016 through 2022. Dkt 107 ¶¶ 2–3.

12. For purposes of the stay pending appeal, there is no dispute about the financial statements from 2016 through 2020. The Company has represented that it “can tolerate” the two-year restriction recommended by the Master, which has expired for those years. *Hauppauge Digit., Inc. v. Rivest*, Del. Supr., No. 442, 2022, Dkt. 8 at 37 (Jan. 17, 2023). The Company has raised arguments about the financial statements and reports for 2021 and 2022, both as to the need for a confidentiality restriction and as to the lack of a proper purpose. *Id.* at 39–42.

13. Because the Company agreed at trial that no confidentiality restriction was needed for information older than five years, there is no reason to stay the production of financial statements and reports for the years 2016 and 2017. Because the Company did not object to the Master’s recommendation regarding a two-year restriction, there is no reason to stay the production of financial statements and reports for the years 2018, 2019, and 2020. Because of the Company’s position on appeal, there is no reason to stay the production of financial statements and reports for any years predating 2021 (*i.e.*, 2016 through 2020).

14. The Company is advancing arguments regarding financial statements and reports for closed periods for the years 2021 and 2022. If those financial statements were produced without a confidentiality restriction, then the Company's appeal could be rendered moot. This factor supports a stay as to financial statements and reports for 2021 and 2022. This factor does not support a stay as to financial statements and reports from earlier years.

B. Whether Any Other Interested Party Will Suffer Substantial Harm If The Stay Is Granted

15. The third *Kirpat* factor is “whether any other interested party will suffer substantial harm if the stay is granted.” 741 A.2d at 357. This is a books and records dispute between a corporation and a stockholder seeking to ascertain the value of his shares. Other parties do not have a substantial interest in the case.

C. Whether The Public Interest Will Be Harmed If The Stay Is Granted

16. The fourth *Kirpat* factor is “whether the public interest will be harmed if the stay is granted.” *Id.* at 357. Rivest argues that the public will suffer irreparable harm because stockholders have not received any information about the Company since 2014. Rivest first requested financial statements and reports on January 29, 2019, more than three-and-a-half years ago. Throughout that time, the Company has delayed production. An appeal will delay the production further.

17. The approach that the Company has taken is troubling. For nine months, the Company simply ignored Rivest's requests, resulting in the entry of a default judgment. The Company then moved to vacate the default judgment, and the case unfolded.

18. The Company has also disregarded other obligations. Since going dark in 2014, the Company has not provided any information to stockholders. Nor has it held an annual meeting.

19. Company counsel has now represented to the court that he “believes it incredible that the Company will abide by any future Order from this Court or our Supreme Court” and has further represented that the Company is actively seeking to hide itself and its assets from the jurisdiction of the court. Dkt. 110 ¶ 12 & n.13. The Company has made no effort as of yet to comply with the final judgment in this case.

20. The public has an interest in receiving basic information about the Company. As to the financial statements for 2021 and 2022, some delay in production is necessary to permit the Company to litigate its appeal over the confidentiality restriction. That consideration does not apply to financial statements and reports for earlier years.

21. This factor supports a stay as to the financial statements and reports from 2021 and 2022, but not for earlier statements and reports.

D. Whether The Appeal Presents Serious Legal Questions

22. Taken together, the second, third, and fourth factors support a stay moderately. They do not support a stay “strongly,” as *Kirpat* contemplates. Nevertheless, this decision returns to the first *Kirpat* factor to evaluate whether the Company has presented serious legal questions that raise fair ground for appeal. *See* 741 A.2d at 358.

23. The Company’s appeal presents a serious legal question. There are fair grounds for disagreement over the implications of the decision in *Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019). That decision abrogated a number of decisions by this court

and appeared, at least to this judge, to call for a new approach. Although the court has tried to follow *Tiger* faithfully, there are litigable questions to be presented on appeal.

E. The Balancing

24. Based on the foregoing factors, the balancing of interests favors a stay of the Company's obligation to produce financial statements and reports from 2021 and 2022. It does not support a stay as to earlier financial statements and reports.

25. The Delaware Supreme Court could see the issue differently. A stay is a litigation management device, and a stay could be appropriate if balanced against other factors that are beyond this court's purview, such as the schedule for the appeal. It would be presumptuous of this court to enter an order that would contemplate the Delaware Supreme Court proceeding in a particular fashion.

26. Recognizing the possibility that the senior tribunal could have a different view regarding a stay, this court previously has taken the precaution of granting a brief stay pending appeal to enable the parties to seek a longer stay from the Delaware Supreme Court. *See Jagodzinski*, 2011 WL 4823569, at *4 (granting a stay "for ten days . . . to facilitate the orderly presentation of any motion [the defendant] may make to the Supreme Court for a stay pending appeal"). This order follows the same course.

27. Enforcement of this court's Final Order and Judgment is stayed in its entirety until January 30, 2023, to facilitate any motion the Company may wish to make to the Delaware Supreme Court for a stay pending appeal. If the Company moves for a stay within the period allowed by this order, then the full stay will remain in effect pending a ruling by the Delaware Supreme Court on the Company's motion. If the Company fails to move for

a stay within that period, then the stay will lift as to the Company's obligation to produce financial statements and reports from the years 2016 through 2020. At that point, the stay will apply only to the portion of the Final Order and Judgment requiring the production of financial statements and reports for the years 2021 and 2022, and the stay as to those matters will remain in effect until the final disposition of the case or further order of this court.

F. Security

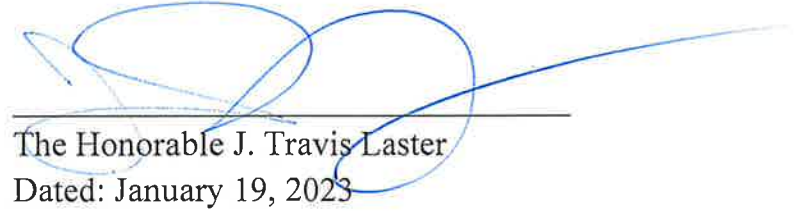
28. Article IV, § 24 of the Constitution of the State of Delaware requires adequate security for a stay pending appeal. Rivest has requested security for the award of costs in the amount of \$3,875, plus post-judgment interest.

29. As noted, Company counsel has represented to the court that he "believes it incredible that the Company will abide by any future Order from this Court or our Supreme Court" and has further represented that the Company is actively seeking to hide itself and its assets from the jurisdiction of this Court. Dkt. 110 ¶ 12 & n.13. The Company has claimed that it is in financial distress.

30. Under these circumstances, a defendant generally must post security at least equal to the full amount of the judgment. *Zimmerman v. Crothall*, 2014 WL 257461, at *1 (Del. Ch. Jan. 23, 2014). The Final Order and Judgment also awarded post-judgment interest on any amounts not paid by December 2, 2022, calculated at the legal rate specified in 6 *Del. C.* § 2301(a), compounded quarterly, with the applicable rate fluctuating with changes in the underlying reference rate at the legal rate.

31. The legal rate is currently 9.5%. Assuming the appeal takes one year to conclude, post-judgment interest will be due in the amount of \$381.45.

32. The stay is conditioned on the Company posting security in the amount of \$4,256.45, on or before January 30, 2023. If the Company fails to post the security, then the stay contemplated by this order will lift in its entirety.



The Honorable J. Travis Laster
Dated: January 19, 2023