



IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAUPPAUGE DIGITAL INC., §
 §
Defendant Below, § No. 442, 2022
Appellant, §
 § Court Below—Court of Chancery
v. § of the State of Delaware
 §
JAMES RIVEST, § C.A. No. 2019-0848
 §
Plaintiff Below, §
Appellee. §

Submitted: February 13, 2023
Decided: February 27, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

ORDER

Having considered the Motion for Stay of Execution of Judgment in the Entirety (“Motion for Full Stay”), the opposition, and the reply, it appears to the Court that:

(1) This appeal arises from a books and records action under 8 *Del. C.* § 220. In a post-trial report dated January 24, 2022, the Master recommended that the Court of Chancery enter judgment in favor of plaintiff below-appellee James Rivest and order inspection of defendant below-appellant Hauppauge Digital Inc.’s (“the Company”) annual and quarterly financial statements from 2016 through 2020. The Master also recommended imposition of a confidentiality restriction protecting financial information less than two years old. The Company did not file any

exceptions to the report, but Rivest filed an exception to the imposition of a confidentiality restriction.

(2) After briefing and oral argument, the Court of Chancery issued its opinion on September 1, 2022. The court held “that the Company did not make a persuasive showing of harm that is sufficient to outweigh Rivest’s interests or support imposing a two-year confidentiality restriction on financial statements for closed periods.”¹ The parties subsequently stipulated to amendment of Rivest’s complaint to include a demand for financial statements from 2021 and 2022. On November 21, 2022, the Court of Chancery entered a final order requiring the Company to produce its quarterly and annual financial statements and reports for the years 2016 through 2022. The court also awarded Rivest costs of \$3,875.00. This appeal followed.

(3) On December 8, 2022, the Company’s counsel filed a Motion, in Full or in Part, of Execution of Judgment and for Permission to Withdraw as Counsel in the Court of Chancery. The Company sought a stay of the November 21, 2022 order in its entirety or, in the alternative, production of any documents. Rivest opposed the motion.

(4) In an order docketed on January 19, 2023, the Court of Chancery concluded that no stay was warranted as to the financial statements and reports

¹ *Rivest v. Hauppauge Digital, Inc.*, 2022 WL 3973101, at *27 (Del. Ch. Sept. 1, 2022).

predating 2021, but granted a stay of the Company’s obligation to produce financial statements and reports from 2021 and 2022. The partial stay was conditioned on the Company posting security in the amount of \$4,256.45 (the awarded costs plus post-judgment interest) by January 30, 2023. The court also stayed enforcement of the final order in its entirety to allow the Company to seek a stay in this Court. If the Company moved for a stay in this Court, the full stay would remain in effect pending our resolution of the Company’s motion. In a separate order, the court granted Company’s counsel’s request to withdraw.²

(5) On January 27, 2023, the Company filed the Motion for Full Stay in this Court. In the motion, the Company argues that the Court of Chancery did not appreciate the serious issues presented on appeal and the likelihood of reversal. The Company also contends that the partial, conditional stay is overly complicated and interferes with this Court’s own determination of the appropriate confidentiality restrictions.

(6) Rivest opposes the Motion for Full Stay, arguing that the Court of Chancery properly applied the four-factor test established by *Kirpat, Inc. v. Del.*

² Counsel continues to represent the Company in this Court. “[T]his Court may not entertain an appeal by a corporation where the corporation is not represented by counsel.” *Evergreen Waste Servs. v. Unemployment Ins. Appeal Bd.*, 2011 WL 2601600, at *1 (Del. June 30, 2011).

*Alcoholic Beverage Control Comm'n.*³ Rivest also emphasizes that the Company failed to post the security required by the Court of Chancery's partial stay order.

(7) We review the trial court's stay decision under the abuse of discretion standard.⁴ In considering whether to grant a stay, a trial court: (i) makes a preliminary assessment of the movant's likelihood of success on appeal; (ii) assesses whether the movant will suffer irreparable harm if the stay is not granted; (iii) assesses whether any other interested party will suffer substantial harm if the stay is granted; and (iv) considers whether the public interest will be harmed if the stay is granted.⁵ These factors are not considered in isolation, but as part of a balancing of "all of the equities involved in the case together."⁶

(8) The Court of Chancery considered the second, third, and fourth factors before addressing the first factor. As to whether the Company would suffer irreparable harm absent a stay, the court found that this factor weighed against a stay for the financial statements from 2016 through 2020. There was no reason to stay the production of financial information from 2016 and 2017 because the Company agreed at trial that no confidentiality restriction was needed for information older than five years. There was no reason to stay the production of financial information

³ 741 A.2d 356 (Del. 1998).

⁴ *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 504 (Del. 2005).

⁵ *Kirpat*, 741 A.2d at 358-59.

⁶ *Id.* at 358.

from 2018 through 2020 because the Company did not file exceptions to the Master’s recommendation of a two-year confidentiality restriction and represented to this Court that it could “tolerate” a two-year restriction.⁷ The court concluded that this factor weighed in favor of a stay for the financial statements from 2021 and 2022 because the production of those documents without a confidentiality restriction could render the Company’s appeal moot.

(9) As to whether any other interested party would suffer harm if a stay was granted, the court found that the only the parties that had a substantial interest in this case. Given the Company’s failure to provide any information to stockholders since 2014 and delayed response to Rivest’s first request for financial information in January 2019, the court found that the public had an interest in receiving basic information about the Company, but that some delay in production of the 2021 and 2022 financial statements was necessary so that the Company could litigate this appeal. This factor only supported a stay of the Company’s obligation to produce financial statements from 2021 and 2022.

(10) The court concluded that, taken together, the second, third, and fourth factors weighed moderately in favor of a stay. Returning to the first factor, the court found that the appeal presented a serious legal question as to the implications of this

⁷ Amended Opening Brief at 9 n.5, 37, and 39 n.31 (Del. Jan. 17, 2023).

Court's decision in *Tiger v. Boast Apparel, Inc.*⁸ The court held that the balancing of interests favored a stay of the Company's obligation to produce financial statements from 2021 and 2022, but did not support a stay of earlier financial statements and reports.

(11) Generally, "an abuse of discretion can occur in 'three principal ways: when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment.'"⁹ Here, the record reflects that the Court of Chancery did not fail to consider a relevant factor that should have been given significant weight, did not consider any irrelevant or improper factors, and did not commit a clear error of judgment in weighing the *Kirpat* factors. We conclude that the Court of Chancery properly exercised its discretion in granting a stay limited to the financial statements and reports for 2021 and 2022 that was conditioned on the posting of security in the amount of \$4,256.45.

(12) Finally, we address the Company's failure to post the security required by the Court of Chancery's stay order. As the Court of Chancery found in its February 6, 2023 order regarding deficient security, the Company filed an unsecured

⁸ 214 A.3d 933 (Del. 2019).

⁹ *Homestore*, 886 A.2d at 506 (quoting *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir.1984)).

undertaking to repay that was not the security required by the partial stay order, the Court of Chancery Rules, or this Court's Rules. The court ordered the Company to pay \$4,256.45 to the Register in Chancery to be held as security or to obtain and deliver a supersedeas bond from a surety in that amount. The Court of Chancery docket reflects that there is a receipt, dated February 16, 2023, for the Company's payment of \$4,256.45. It therefore appears that the Company has posted, albeit belatedly, security for the limited stay.

NOW, THEREFORE, IT IS ORDERED that the Motion for Full Stay is DENIED. The partial stay granted by the Court of Chancery shall remain in effect pending resolution of this appeal.

BY THE COURT:

/s/ Karen L. Valihura
Justice