EFiled: Feb 07 2022 08:05AM EST
Filing ID 67294442
Case Number 25,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARREN HAVENS,	§	
	§	
Petitioner Below,	§	No. 25, 2022
Appellant,	§	
	§	Court Below—Court of Chancery
v.	§	of the State of Delaware
	§	
ARNOLD LEONG,	§	C.A. No. 2021-0033
	§	
Defendant Below,	§	
Appellee,	§	
	§	
and	§	
	§	
SKYBRIDGE SPECTRUM FOUNDATION,	§	
	§	
Nominal Defendant Below,	§	
Appellee.	§	

Submitted: January 21, 2022
Decided: February 7, 2022

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

ORDER

After consideration of the notice of appeal from an interlocutory order, the documents attached thereto, and the Court of Chancery docket, it appears to the Court that:

(1) The appellant, Warren Havens, has petitioned this Court to accept an interlocutory appeal from two orders of the Court of Chancery: (i) an order dated December 3, 2021, which stayed the action until litigation pending in another

jurisdiction is concluded, and (ii) an order dated December 23, 2021, which denied Havens's motion for reargument. On January 13, 2021, Havens filed in the Court of Chancery a petition for judicial dissolution of Skybridge Spectrum Foundation, a Delaware nonprofit, nonstock corporation. In 1999, Havens and the appellee Arnold Leong established a business in which they transferred valuable radio spectrum licenses that they acquired from the Federal Communications Commission, in part through the use of Skybridge and seven Delaware limited liability companies that are affiliated with Skybridge. In 2002, Leong sued Havens in the Superior Court of California in Alameda County (the "California Court") regarding the operation of the business; in 2003, Havens compelled Leong to arbitrate the dispute under arbitration clauses in some of the entities' LLC agreements. Havens, Leong, and the entities have been involved in litigation in various jurisdictions over the ensuing two decades.

(2) On November 16, 2015, the California Court appointed a receiver to take control and possession of Skybridge and the LLCs. The court also enjoined Havens from interfering with the receiver's management of the entities and from acting on behalf of the entities. In an August 2019 decision that became part of a final arbitration award issued on June 12, 2020, an arbitrator in the arbitration proceeding awarded Leong more than $18 million in damages and more than $15 million in attorneys' fees against Havens and the entities. The arbitrator also

determined that the LLCs should be dissolved and their proceeds sold and distributed to Havens and Leong in accordance with their respective 50.1% and 49.9% equity interests in the LLCs. The California Court confirmed the arbitration award on June 4, 2021, and ordered the receiver to begin to administer the dissolution of the entities. The court also permanently enjoined Havens from interfering with the discharge of the receiver's duties and from starting, continuing, or enforcing any suit or proceeding in the name of any or all of the entities.

(3) Havens then filed the petition for dissolution of Skybridge in the Court of Chancery. The petition sought dissolution under Section 273 of the Delaware General Corporation Law, which governs dissolution of a Delaware corporation that has "only 2 stockholders each of which own 50% of the stock therein."[1] Skybridge and Leong moved to dismiss or, alternatively, to stay the action in favor of the action in the California Court. After carefully applying the *McWane* doctrine[2] and the three-factor *McWane* test,[3] the Court of Chancery stayed the action pending the conclusion of the litigation in the California Court, which has been ongoing for

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[1] 8 *Del. C.* § 273(a).

[2] *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281 (Del. 1970).

[3] *See LG Electronics, Inc. v. InterDigital Commc'ns, Inc.*, 114 A.3d 1246, 1252 (Del. 2015) ("Delaware courts considering a motion to stay or dismiss in favor of a previously filed action have applied *McWane*'s three-factor test: (1) is there a prior action pending elsewhere; (2) in a court capable of doing prompt and complete justice; (3) involving the same parties and the same issues? If all three criteria are met, *McWane* and its progeny establish a strong preference for the litigation of a dispute in the forum in which the first action was filed." (internal quotations omitted)).

years—in part because of conduct by Havens that other courts have found to be vexatious—and is nearing its end. Havens moved for reargument, which the Court of Chancery denied.

(4) Havens then filed an application for certification of an interlocutory appeal. The application asserted that the Court of Chancery's orders decided a substantial issue of material importance[4] and that the stay would cause delay and exhaust party and judicial resources. Aside from a conclusory assertion that interlocutory review would "serve the considerations of justice,"[5] the application did not address which of the criteria set forth in Rule 42(b)(iii) would warrant the certification of an interlocutory appeal. Nevertheless, the Court of Chancery carefully reviewed each of the Rule 42(b)(iii) criteria and determined that interlocutory review was not warranted. As to whether interlocutory review would serve considerations of justice, the court recognized that denial of interlocutory review would effectively preclude any further judicial review of the stay, but concluded that considerations of justice nevertheless weighed against interlocutory review. Among other things, the court observed that trial courts have broad discretion to manage their dockets, including by staying litigation on the basis of

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[4] *See* DEL. SUPR. CT. R. 42(b)(i) ("No interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court decides a substantial issue of material importance that merits appellate review before a final judgment.").

[5] *Id.* R. 42(b)(iii)(H).

comity or efficiency, and emphasized the lengthy litigation history between the parties and Havens's previous attempts to thwart those proceedings through legal maneuvering. The court concluded that the likely benefits of interlocutory review do not outweigh the probable costs and the most efficient and just means of resolving the parties' dispute would be to respect the orders entered in the California litigation allow that litigation to conclude before proceeding.

(5) We agree that interlocutory review is not warranted in this case. Applications for interlocutory review are addressed to the sound discretion of this Court.[6] In the exercise of its discretion and giving great weight to the trial court's view, this Court has concluded that the application for interlocutory review does not meet the strict standards for certification under Supreme Court Rule 42(b). Exceptional circumstances that would merit interlocutory review of the Superior Court's decision do not exist in this case,[7] and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.[8] Moreover, Havens has not set forth a good-faith argument that interlocutory review is warranted by any of the criteria set forth in Rule 42(b)(iii). Allowing the litigation to conclude in the California Court will serve considerations of justice by most efficiently bringing the parties' lengthy litigation

[6] *Id.* R. 42(d)(v).
[7] *Id.* R. 42(b)(ii).
[8] *Id.* R. 42(b)(iii).

to an end. To the extent that any issues remain for the Court of Chancery's determination following the conclusion of the California litigation, the Court of Chancery's order allows for a prompt and fair resolution of those remaining issues.

NOW, THEREFORE, IT IS ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

[12-23-2021]

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WARREN HAVENS	)	
	)	
Petitioner,	)	
	)	
v.	)	C.A. No. 2021-0033-PAF
	)	
ARNOLD LEONG,	)	
	)	
Defendant,	)	
and	)	
	)	
SKYBRIDGE SPECTRUM FOUNDATION,	)	
	)	
Nominal Defendant.	)	

ORDER DENYING MOTION FOR REARGUMENT

WHEREAS:

A. On January 13, 2021, Petitioner Warren Havens petitioned this court to dissolve Nominal Defendant Skybridge Spectrum Foundation ("Skybridge" and together with Defendant Arnold Leong "Defendants") under 8 *Del. C.* § 273.

B. On December 3, 2021, the court issued an order staying this proceeding (the "Stay Order"). Dkt. 74.

C. On December 6, 2021, Petitioner filed a motion seeking an extension to file a motion for reargument of the Stay Order (the "First Request for Extension"). Dkt. 75.[1]

D. On December 7, 2021, the court issued a letter order extending the time for Petitioner to file a motion for reargument of the Stay Order until December 21, 2021 (the "Extension Order"). Dkt. 76. The Extension Order expressly stated: "Any motion for reargument or opposition thereto shall comply with the Court of Chancery Rules, including the word limits of Rule 171(f)(1)(B)." *Id.*

E. On December 20, 2021, Petitioner filed another motion seeking to extend the deadline to file a motion for reargument (the "Second Request for Extension"). Dkt. 83. The court denied the Second Request for Extension. Dkt. 84.

F. On December 21, 2021, Petitioner filed a motion for reargument of the Stay Order (the "Motion"). Dkt. 85. The Motion states that it consists of 5660 words. *Id.* at 21.

G. The Motion violated the Extension Order and Court of Chancery Rule 171(f)(1)(B), which provides that motions filed for non-merits issues "shall not exceed 3,000 words." Ct. Ch. R. 171(f)(1)(B).

[1] Petitioner filed a prior motion for an extension in this action to respond to the motion to dismiss. *See* Dkt. 60. The court granted that motion, too. *See* Dkt. 63.

NOW, THEREFORE, it is hereby ORDERED, this 23rd day of December, 2021, as follows:

1. Time and word limits in the Court of Chancery Rules exist to promote judicial efficiency and effective management of cases.

2. Where appropriate, the court has discretion, upon request, to extend the time and word limits contained in the Court of Chancery Rules in the interest of justice. Although Petitioner (twice) sought leave to extend the deadline to file his Motion, Petitioner did not seek a word limit extension.

3. In its discretion, the court may hold *pro se* litigants to a "somewhat less stringent technical standard than formal pleadings drafted by lawyers." *Vick v. Haller*, 522 A.2d 865 (Del. 1985) (TABLE). Nevertheless, "self-representation is not a blank check for defect." *Quereguan v. New Castle Cty.*, 2006 WL 2925411, at *4 (Del. Ch. Sept. 20, 2006). There are limits to the level of informality that the court will tolerate: "proceeding *pro se* will not relieve . . . Plaintiffs of their responsibility to present and support cogent arguments warranting the relief sought." *Thornton v. Bernard Techs., Inc.*, 2009 WL 426179, at *1 (Del. Ch. Feb. 20, 2009). The leeway that the court may be inclined to grant to a *pro se* litigant, however, does not extend to compliance with the rules of this court. "The fact that [the Petitioner] is prosecuting this action pro se does not excuse him from complying with the procedural rules of this Court." *Pitts v. City of Wilmington*, 2009 WL 1515580, at

*1 (Del. Ch. May 29, 2009); *accord Kelly v. Fuqi Int'l, Inc.*, 2013 WL 1150257, at *6 (Del. Ch. Jan. 2, 2013). In short, "[t]here is no different set of rules for *pro se* plaintiffs, and the trial court should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented plaintiff." *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001).

4. The Petitioner here, although proceeding *pro se*, is not a stranger to this court or the state and federal courts in other jurisdictions.[2] Indeed, Petitioner requested, and the court approved, an order permitting Petitioner to utilize the

[2] Petitioner was involved in litigation in this court more than two decades ago. In that litigation, he was represented by counsel. *See, e.g.*, *Havens v. Attar*, 1997 WL 55957 (Del. Ch. Jan. 30, 1997); *Havens v. Attar*, 1997 WL 770670 (Del. Ch. Sept. 22, 1997), *reargument denied*, 1997 WL 695579 (Del. Ch. Nov. 5, 1997). The litigation related to the present action arises from litigation initiated in the Alameda County Superior Court in 2002. *See* Stay Order ¶ 8. Petitioner filed a bankruptcy petition in the U.S. Bankruptcy Court for the District of Delaware on March 11, 2016, after the Alameda County Superior Court appointed the Receiver and ordered Havens to refrain from pursuing or commencing new litigation on behalf of the Receivership Entities. *See In re Skybridge Spectrum Foundation*, Case No. 16-10626, Bankr. D. Del., ECF No. 1; Dkt. 54, Ex. 4 at 5. On July 11, 2016, the Delaware bankruptcy court held that the Alameda County Superior Court's order enjoined Havens from filing that bankruptcy petition. Dkt. 54, Ex. 5 at 48:13–16. Barely one month after the Delaware bankruptcy court's holding, Havens filed another bankruptcy petition on August 22, 2016, this time in the U.S. Bankruptcy Court for the Northern District of California. *See In re Leong P'ship*, Case No. 16-42363, Bankr. N.D. Cal., ECF No. 1. The California bankruptcy court dismissed that petition as well. *See* Dkt. 54, Ex. 7. Havens then filed a third bankruptcy petition before the U.S. Bankruptcy Court for the District of Columbia on January 5, 2021, two days before a hearing was scheduled in front of the Alameda County Superior Court to confirm the Final Award. *See In re Skybridge Spectrum Foundation*, Case No. 21-00005, Bankr. D. D.C., ECF No. 1. Most recently, Petitioner has extended this litigation into another court in Clark County, Nevada. *See* Dkt. 83, Ex. 2 (complaint filed by Petitioner on October 20, 2021). That case is currently pending. *See id.*, Ex. 1 (motions filed by Petitioner on December 20, 2021).

File&ServExpress electronical filing system because of his stated familiarity with e-filing:

> For years . . . I have been granted by and successfully used the electronic CM/ECF filing and service arrangements in the United States Courts of Appeals for the District of Columbia Circuit, the Ninth Circuit, and the Fifth Circuit; and the electronic TrueFiling system used in the California Court of Appeal; and the FCC's electronic filing systems: "ULS" for licensing actions, and "ECFS" for docketed proceedings. This has involved hundreds of successful electronic filings by me.[3]

5. Petitioner's Motion directly violated not only Court of Chancery Rule 171(f)(1)(B), but also this court's Extension Order. The filing of a 5,660-word motion in violation of a court rule and court order limiting motions to 3,000 words is not a *de minimis* violation that is easily overlooked.

6. The court further declines to strike the Motion with leave to refile. Doing so in this instance would not be in the interest of justice. Granting leave to refile would effectively permit the Petitioner to do an end run around the court's denial of Petitioner's Second Request for Extension.

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[3] Dkt. 25 at 1; *see also* Dkt 32 (letter order granting Petitioner's request to use File & ServeXpress to electronically file documents). As noted in the Stay Order, The U.S. District Court for the Northern District of California has declared Havens a "vexatious litigant," requiring that any of his future filings of complaints or notices of removal be reviewed by a judge before being docketed. The Alameda County Superior Court similarly declared Havens to be a "vexatious litigant," also requiring him to obtain leave of the presiding judge or justice before filing any further litigation. Stay Order ¶ 9 (citing Dkt. 54, Exs. 14 and 17).

7. Accordingly, the Motion is DENIED.[4]

/s/ Paul A. Fioravanti, Jr.
Vice Chancellor

[4] *See, e.g.*, *Shahin v. City of Dover*, 2019 WL 162571, at *2 (Del. Super. Ct. Jan. 9, 2019) ("Assuming arguendo that the Plaintiffs' motion for reargument was filed timely, it would still exceed the six page limitation imposed by [the Superior] Court . . . and, thus, be denied on that basis as well." (citations omitted)).

EFiled: Dec 03 2021 10:02AM EST
Transaction ID 67140282
Case No. 2021-0033-PAF

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WARREN HAVENS	)	
	)	
Petitioner,	)	
	)	
v.	)	C.A. No. 2021-0033-PAF
	)	
ARNOLD LEONG,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
SKYBRIDGE SPECTRUM FOUNDATION,	)	
	)	
Nominal Defendant.	)	

ORDER ADDRESSING MOTION TO DISMISS

WHEREAS:[1]

A. On January 13, 2021, Petitioner Warren Havens petitioned this court to dissolve Nominal Defendant Skybridge Spectrum Foundation ("Skybridge" and together with Defendant Arnold Leong "Defendants") under 8 *Del. C.* § 273.

[1] The facts are drawn from the petition, documents integral thereto, or otherwise subject to judicial notice. In that regard, the court takes judicial notice of opinions filed by courts outside of this jurisdiction that are "inextricably intertwined" and related to this litigation. *See Yucaipa Am. All. Fund I, LP v. SBDRE LLC*, 2014 WL 5509787, at *8 & n.33 (Del. Ch. Oct. 31, 2014); Del. R. Evid. 201(b), 202(a)(1); *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 & n.28 (Del. 2004) (citing *Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 891–92 (D. Del. 1991) (court could judicially notice contents of court records from another jurisdiction and SEC filings)).

Skybridge is a non-profit, non-stock corporation. Havens, Leong, Skybridge and seven Delaware Limited Liability Companies affiliated with Skybridge[2] (the "LLCs" and with Skybridge the "Receivership Entities") have been mired in litigation spanning various jurisdictions over the course of two decades. Accordingly, I will only summarize the prior litigation that is relevant to resolving the pending motions.[3]

B. In 1999, Havens and Leong established a business in which they transferred valuable radio spectrum licenses that they acquired from the Federal Communications Commission (the "FCC"), in part through the use of the Receivership Entities.[4] In 2002, Leong sued Havens in the Superior Court of California in Alameda County ("Alameda County Superior Court") regarding the operation of their business; in October 2003, Havens compelled Leong to arbitrate their dispute pursuant to arbitration clauses in some of the Receivership Entities'

[2] The LLCs are Verde Systems LLC, Telesaurus Holdings GB LLC, Environmentel LLC, Environmentel-2 LLC, Intelligent Transportation & Monitoring Wireless LLC, V2G LLC, and ATLIS Wireless LLC. Dkt. 1 at 2.

[3] The Petition implies that Havens may also be seeking judicial dissolution of the LLCs as well. *See* Dkt. 1 at 12–15. Havens, though, has not served the LLCs and they are not included in the Petition's caption. I need not decide whether the Petition seeks dissolution of the LLCs for purposes of resolving the motion.

[4] For a more thorough account of the history behind this dispute see generally Dkt. 54, Ex. 1.

LLC Agreements.[5] The hearing in the arbitration (the "Arbitration Proceeding"), though, only commenced in September 2015.[6]

C. On April 22, 2015, in an FCC administrative proceeding, an Administrative Law Judge issued an order finding that Havens and some of the Receivership Entities engaged in disruptive and contemptuous conduct.[7] Therefore, the Administrative Law Judge certified that conduct to the FCC for review to determine if a hearing was warranted to assess whether Havens and the Receivership Entities were qualified to continue to hold their radio spectrum licenses.[8] Consequently, in May 2015, Leong filed an ex parte application to appoint a receiver for the Receivership Entities in Alameda County Superior Court, arguing that this was necessary to protect his interests in the Receivership Entities.[9] On November 16, 2015, the Alameda County Superior Court granted Leong's application and appointed a receiver, Susan L. Uecker (the "Receiver"), to take control and

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[5] *See* Dkt. 54, Ex. 1 at 2.

[6] *Id.* at 2 n.4.

[7] *See* Dkt. 54, Ex. 2 ¶ 22. Notably, that order found that Havens carried out a pattern of harassment against the presiding judge and his advisory staff, used "vituperative rhetoric to diminish the Presiding Judge's authority," engaged in "theatrical intimidations," and overall showed "crude contempt for the Presiding Judge, Bureau counsel, the Commission, and the Commission's Rules and processes." *Id.* ¶¶ 14–17.

[8] *See id.* ¶ 25.

[9] Dkt. 54, Ex. 1 at 3–4.

possession of the Receivership Entities.[10] In appointing the Receiver, the Alameda County Superior Court also enjoined Havens from "[i]nterfering in any way with the substitution of the Receiver as the individual responsible for the management of the . . . Receivership Entities" and from "[c]ommencing, prosecuting, continuing to enforce, or enforcing any suit of proceeding in the name of the Receivership Entities . . . or otherwise acting on behalf of the Receivership Entities."[11]

D. On August 28, 2019, an arbitrator in the Arbitration Proceeding issued a Memorandum of Decision (the "Arbitration Decision").[12] The arbitrator awarded Leong $18,058,312 in damages, plus over $15 million in attorneys' fees against Havens, Skybridge, and the LLCs.[13] As part of that ruling, the arbitrator determined that the LLCs should be dissolved and their proceeds sold and distributed to Havens and Leong in accordance with their respective 50.1% and 49.9% equity interests in the LLCs.[14] On June 12, 2020, the arbitrator issued an arbitration award (the "Final Award"), which included the Arbitration Decision.[15]

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[10] *See* Dkt. 54, Ex. 4.

[11] *Id.* at 5.

[12] *See* Dkt. 54, Ex. 20 at Ex. B.

[13] *Id.*

[14] *Id.*

[15] Dkt. 54, Ex. 20 at 2.

E. On June 4, 2021, the Alameda County Superior Court confirmed the Final Award and ordered the Receiver to begin to administer the dissolution of the Receivership Entities.[16] The Alameda County Superior Court also permanently enjoined Havens from "[i]nterfering in any manner with the discharge of the Receiver's duties" or "[c]ommencing, prosecuting, continuing to enforce, or enforcing any suit or proceeding in the name of any or all of the [Receivership Entities]."[17]

F. Following Havens's Petition in this court, Skybridge filed a motion to dismiss on February 16, 2021 for failure to state a claim under Court of Chancery Rule 12(b)(6), or alternatively to stay.[18] Leong joined in Skybridge's motion on February 19, 2021.[19] Briefing on the motion began on August 26, 2021 and concluded on November 17, 2021.[20]

NOW, THEREFORE, the court having carefully considered Defendants' motions to dismiss, IT IS HEREBY ORDERED, this 3rd day of December, 2021, as follows:

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[16] *Id.* at 2; Dkt. 54, Ex. 21 ¶ 16. Notably, the Final Award ruled that only the LLCs should be dissolved. Dkt. 54, Ex. 20, Ex. B at 33–34.

[17] Dkt. 54, Ex. 21 at 6–8.

[18] *See* Dkt. 11.

[19] *See* Dkt. 13.

[20] *See* Dkt. 53, 70.

1. The court will deny a motion to dismiss under Court of Chancery Rule 12(b)(6) "unless the [petitioner] could not recover under any reasonably conceivable set of circumstances susceptible to proof." *In re Carlisle Etcetera LLC*, 114 A.3d 592, 597 (Del. Ch. 2015) (internal quotations omitted). At this stage of litigation, the court will "accept all well-pleaded factual allegations in the [petition] as true, accept even vague allegations in the [petition] as 'well-pleaded' if they provide the defendant notice . . . , [and] draw all reasonable inferences in favor of the [petitioner]." *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011). "[T]he trial court is not required to accept every strained interpretation of the allegations proposed by the [petitioner], but the [petitioner] is entitled to all reasonable inferences that logically flow from the face of the [petition]. Moreover, a [petition] may be dismissed if allegations in the [petition] or in the exhibits incorporated into the [petition] effectively negate the claim as a matter of law." *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

2. Judicial dissolution of a joint venture is governed by 8 *Del. C.* § 273(a), which provides:

> If the stockholders of a corporation of this State, having only 2 stockholders each of which own 50% of the stock therein, shall be engaged in the prosecution of a joint venture and if such stockholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either stockholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the stockholders, file with the Court of Chancery a petition stating that it

> desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon by both stockholders, the corporation be dissolved.

8 *Del. C.* § 273(a). Thus, in order to obtain a dissolution under Section 273, three requirements must be satisfied: "1) the corporation must have two 50% stockholders, 2) those stockholders must be engaged in a joint venture, and 3) they must be unable to agree upon whether to discontinue the business or how to dispose of its assets." *Haley v. Talcott*, 864 A.2d 86, 94 (Del. Ch. 2004). Even if the statutory requirements are satisfied, the court has the ultimate discretion to decide whether dissolution is appropriate. *In re Food Ingredients Int'l, Inc.*, 2010 WL 4812967, at *4 (Del. Ch. Nov. 18, 2010).

3. Section 273 is "concerned with the administration of corporate assets." *In re Arthur Treacher's Fish & Chips of Ft. Lauderdale, Inc.*, 386 A.2d 1162, 1165 (Del. Ch. 1978). Section 273 is a narrow statutory proceeding. *In re Data Processing Consultants, Ltd.*, 1987 WL 25360, at *5 (Del. Ch. Nov. 25, 1987). This narrow proceeding is designed to promote "expedited and, in some cases, summary adjudication when it may be detrimental to the orderly and proper governance of the corporation to delay adjudication." *Id.* Therefore, in Section 273 proceedings, the court should refrain from addressing collateral matters; "only issues immediately relevant to the dissolution will be heard." *Id.*

4. Under the *McWane* doctrine, "as a general rule, litigation should be confined to the forum in which it is first commenced." *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970). Courts applying *McWane* look to three factors: "(1) is there a prior action pending elsewhere; (2) in a court capable of doing prompt and complete justice; (3) involving the same parties and the same issues?" *LG Elecs., Inc. v. InterDigital Commc'ns, Inc.*, 114 A.3d 1246, 1252 (Del. 2015). If these three factors are satisfied, there is a strong preference for a stay or dismissal so as to permit the first-filed action to proceed unencumbered. *Id.* An arbitration proceeding can constitute a first-filed action for the purposes of *McWane*. *Id.* at 1252–53.

5. Proceedings seeking dissolution involve the internal affairs of a Delaware entity. *Terramar Retail Centers, LLC v. Marion #2-Seaport Tr. U/A/D/ June 21, 2002*, 2017 WL 3575712, at *11 (Del. Ch. Aug. 18, 2017), *aff'd*, 184 A.3d 1290 (Del. 2018). Delaware has a strong interest in determining disputes that strike at the corporate existence of a Delaware entity. *See id.* Nevertheless, this court has exercised its discretion to stay proceedings under Section 273 in favor of related litigation in another jurisdiction.

6. For example, in *Xpress Management, Inc. v. Hot Wings International, Inc.*, 2007 WL 1660741, at *1 (Del. Ch. May 30, 2007), the court chose to stay a Section 273 dissolution while the company at issue was embroiled in ongoing

litigation in Canada, which concerned the ownership of its intellectual property. There, the court reasoned that in order for the company "to be dissolved and for its assets to be distributed in an orderly and final manner" it was first necessary for a court to determine which assets the company owned. 2007 WL 1660741, at *5. The court thus held that the facts weighed in favor of a stay because the court risked issuing a conflicting ruling with that of the Canadian court considering the pending litigation in Canada on a contract to which the Canadian government was a party. *Id.* The *Hot Wings* Court was also influenced by the petitioner's bad faith conduct in issuing multiple bankruptcy petitions to stall the Canadian litigation, noting that Section 273's

> saliency as a dispute resolution mechanism [] is somewhat lessened when the party invoking it has, on numerous occasions, initiated (and lost) litigation in another jurisdiction where the main goal was to accomplish substantially the same relief as a Delaware court could provide if a dissolution action had been brought here in the first place. Certainly, a court should be wary when section 273 is invoked as a statutory panacea by a purported joint venturer who, having failed before in its effort to break up the company and having eschewed the power of this court for so long, suddenly maintains that a rapid and summary dissolution is the appropriate method through which the corporation's best interests will be served.

Id. at *6–7.

7. *McElroy v. Schomstein*, 2012 WL 2428343, at *1 (Del. Ch. June 20, 2012), is also illustrative. There, the parties were engaged in litigation in New Jersey regarding their Delaware corporation, which marketed products to test automotive

fluids and oils, before one of the parties filed a Section 273 dissolution action in the Court of Chancery. In dismissing the action under *McWane*, "most relevant" to the *McElroy* Court's analysis was the fact that the New Jersey court ordered the parties to keep one another "in the loop" regarding their company, through providing one another with bank statements, prohibiting the transfer of certain copyrights, and the New Jersey court's appointment of a "'Fiscal Agent' to monitor and review the financial operations of [the company]." 2012 WL 2428343, at *1. The court was thus concerned that the New Jersey court's order would be frustrated if the dissolution was allowed to proceed.

8. In this case, there is a prior action pending elsewhere. Leong initially filed suit in the Alameda County Superior Court in 2002, arbitration concluded in 2020, and the Final Award was confirmed earlier this year. The extensive record produced by and adjacent to the Alameda County Superior Court indicates that it has been adept at handling the complexities of this matter and is "capable of doing prompt and complete justice." *See LG Elecs.*, 114 A.3d at 1252. All of the parties to this action were also parties to the Alameda County Superior Court's June 4, 2021 order, which, in part, ordered the Receiver to dissolve and wind up Skybridge's business—the relief Havens now seeks in this forum.[21] And permitting Havens's

[21] Dkt. 54, Ex. 21 ¶ 16.

dissolution action to advance at this late hour risks creating a conflict with the Alameda County Superior Court's order. *See Xpress Management*, 2007 WL 1660741, at *5. Dissolution would very likely frustrate the Receiver's responsibilities as well. *See McElroy*, 2012 WL 2428343, at *1. Indeed, once the Receiver concludes winding up Skybridge's business, it is almost inevitable that she will petition this court for its dissolution when she deems that the timing is appropriate. Therefore, *McWane* counsels that there is a strong preference to stay the present action and to permit the action before the Alameda County Superior Court to proceed undisturbed.

9. My decision is also influenced somewhat by Havens's well-documented litigation history in several jurisdictions involving Leong, Skybridge, and the LLCs. *See Xpress Management*, 2007 WL 1660741, at *6–7.[22] He filed serial actions to remove the state court proceedings in California to federal court, only to be repeatedly remanded and admonished for his tactics.[23] The U.S. District

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[22] *Cf. In re Arthur Treacher's Fish & Chips*, 1980 WL 268070, at *3 (Del. Ch. July 1, 1980) ("the dissolution here sought should not be judicially interfered with in the absence of a showing of bad faith or compensable injury to the other shareholder").

[23] Dkt. 54, Ex. 13 at 10–11. The court stating:

> Mr. Havens, I hope you can hear me clearly. If you thought my original remand order was legally wrong or you think this one is legally wrong, you can ask the Ninth Circuit to reverse it or set it aside. What you cannot do is keep filing notices of removal until one sticks. I think it is a reasonable inference, and I think that a reasonable person aware of the facts would conclude that these successive notices were filed for the purpose of

Court for the Northern District of California eventually declared Havens a "vexatious litigant," requiring that any of his future filings of complaints or notices of removal be reviewed by a judge before being docketed.[24] The Alameda County Superior Court similarly declared Havens to be a "vexatious litigant," also requiring him to obtain leave of the presiding judge or justice before filing any further litigation.[25] The Final Award observed that Havens's practice of presenting evidence in a "disorganized, rambling and repetitive" fashion and unnecessarily overcomplicated his briefing by "adding multiple appendices, exhibits and footnotes" made his evidence and arguments "unusually difficult to comprehend."[26] The arbitrator eventually awarded Leong attorneys' fees to be paid by Havens, acknowledging that Leong "unquestionably suffered damage from the misconduct and mismanagement of" Havens.[27] Havens filed bankruptcy petitions in the Northern District of California, District of Delaware, and the District of Columbia,

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> frustrating other parties' rights to obtain relief in the state courts. And it needs to stop.

[24] Dkt. 54, Ex. 17.

[25] Dkt. 54, Ex. 14.

[26] Dkt. 54, Ex. 20, Ex. B at 11.

[27] Dkt. 54, Ex. 20, Ex. C at 14. In that decision, the arbitrator summed up Havens's behavior by noting his "lack of cooperation . . . in discovery, his failure to abide by the arbitrator's instructions . . . , his chronic tardiness," among other characterizations that have been captured above. Dkt. 54, Ex. 20, Ex. C at 20.

repeatedly attempting to evade the Alameda County Superior Court's authority.[28] Respondents make powerful arguments that Havens's motivations in this action are to seek an end run around the decisions of the California courts and the Final Award. I need not wade into that thicket at this stage, however.

10. Leong first pursued this litigation in California 20 years ago. That litigation is now nearing its end. For the above reasons, Petitioner's action is stayed until the litigation in the Alameda County Superior Court is concluded. The parties are directed to provide this court with semiannual status reports in the interim.

11. Nothing in this Order shall preclude Respondents from renewing their motion to dismiss in the event they obtain an anti-suit injunction from the Alameda County Superior Court. In the meantime, this action is STAYED until further order of the court.

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[28] Havens filed a bankruptcy petition in the U.S. Bankruptcy Court for the District of Delaware on March 11, 2016, after the Alameda County Superior Court appointed the Receiver and ordered Havens to refrain from pursuing or commencing new litigation on behalf of the Receivership Entities. *See In re Skybridge Spectrum Foundation*, Case No. 16-10626, Bankr. D. Del., ECF No. 1; Dkt. 54, Ex. 4 at 5. On July 11, 2016, the Delaware bankruptcy court held that the Alameda County Superior Court's order enjoined Havens from filing that bankruptcy petition. Dkt. 54, Ex. 5 at 48:13–16. Barely one month after the Delaware bankruptcy court's holding, Havens filed another bankruptcy petition on August 22, 2016, this time in the U.S. Bankruptcy Court for the Northern District of California. *See In re Leong P'ship*, Case No. 16-42363, Bankr. N.D. Cal., ECF No. 1. The California bankruptcy court dismissed that petition as well. *See* Dkt. 54, Ex. 7. Havens then filed a third bankruptcy petition before the U.S. Bankruptcy Court for the District of Columbia on January 5, 2021, two days before a hearing was scheduled in front of the Alameda County Superior Court to confirm the Final Award. *See In re Skybridge Spectrum Foundation*, Case No. 21-00005, Bankr. D. D.C., ECF No. 1. That petition was dismissed by the court on June 3, 2021. *See* Dkt. 54, Ex. 19.

/s/ Paul A. Fioravanti, Jr.
Vice Chancellor