

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-CV-18-49

KEVIN B. DEAN,

Plaintiff

v.

**ORDER ON PROPOSALS RE SPECIAL
MASTER'S REPORT AND REQUEST FOR
STAY**

EMILE CLAVET,

Defendant

Before the Court are the parties' post-hearing proposals regarding the Report of Special Master Eric Purvis, the last of which was received by the Court on March 11, 2020. Plaintiff Kevin Dean is represented by Attorneys George Marcus and John H. Doyle, and Defendant Emile Clavet is represented by Attorney Clifford Ruprecht. Defendant is also alternatively asking the Court to stay final decision on this matter until the Law Court rules on Plaintiff's pending appeal of the parties' so-called Marinas case, *Clavet v. Dean*, BCD-CV-18-04.

The Court has considered the parties written and oral arguments, and has once again reviewed the report of Mr. Purvis. The parties agree that Mr. Purvis is highly qualified, and has done a fair and thorough Report. They also agree that if he stays involved in helping them manage their various enterprises while this matter and the companion case are resolved, that he will competently assist them in making decisions, or be the tie-breaker, if they are not able to come to an agreement on any particular issue. For his part, Mr. Purvis has agreed to remain

involved with the parties and is awaiting guidance and instructions from the Court as to what his role should be.

The Court has concluded that final disposition of this case should be stayed for the following reasons. Whether this Court's decision in BCD-CV-18-04 is affirmed or reversed, the outcome of that matter will have a significant impact on the ability of both parties to accomplish the objectives stated in their competing proposals, and the Court is not willing to speculate as to what the Law Court's decision will be. While the Court generally agrees with the Defendant that the factual determinations made in the Court's under-appeal Order in the companion case have collateral estoppel effect, the Court is concerned that unintended consequences could flow from the Court simply adopting those findings and inserting them here.

As for the latest revised proposal from Mr. Dean, the Court agrees that it does address some of Mr. Clavet's articulated concerns, but it fails to address the overriding concern of the Court. Those concerns are the financial and personal impacts on Mr. Dean if he loses his appeal, and is compelled to pay a multi-million dollar judgment that continues to accrue significant interest, and could result in his inability to achieve what seems to be his overriding objective, namely attaining full ownership of Health Affiliates Maine, LLC ("HAM"). Under any proposal made by Mr. Dean, if he loses the appeal he would obviously be required to pay the judgment, but his ability to pay the significant funds for his acquisition of Mr. Clavet's interest, or obtain credit to do so, would be impaired.

Therefore, the Court has concluded that this matter should be stayed until the final decision from the Law Court in BCD-CV-18-04. The Court will further enlarge the powers of the Special Master as proposed by Mr. Clavet, and his attorney is ordered to provide the Court, within 48 hours of receipt of this decision, a proposed Order conveying such authority to Mr.

Purvis as Special Master. The Order shall also provide for compensation by the parties for his services.

The entry will be: The Report of Special Master Eric Purvis is accepted by the Court. The above-captioned matter is stayed with respect to final disposition of the parties' business assets and debts until the Mandate is received by the Business and Consumer Court from the Law Court in BCD-CV-18-04. Mr. Purvis shall continue to serve as Special Master, and his authority and obligations shall be set forth in a separate Order to be issued by this Court after a proposed Order is prepared by counsel for Defendant.

This Order shall be noted on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

3/27/2020

DATE

_____/S_____

M. Michaela Murphy

Justice, Business and Consumer Court