

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

BRENDAN LINEHAN SHANNON  
JUDGE



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WILMINGTON, DELAWARE  
(302) 252-2915

May 23, 2024

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Re: *In re VJGJ, Inc., et al.*, Case No. 21-11332 (BLS)  
*Giuliano v. Grenfell-Gardner, et al.*  
Adv. Proc. No. 23-50421 (BLS)

Dear Counsel:

This letter follows upon this Court's *Letter Ruling Regarding Motion to Remand the Delaware Law Claims to the Court of Chancery of the State of Delaware* ("Letter Ruling") granting Defendants' Remand Motion.<sup>1</sup> The Court issued its Order granting the Motion to Remand in accordance with the Letter Ruling on March 25, 2024.<sup>2</sup> The Court's Order adopted Defendants' Proposed Order accompanying their Remand Motion which included the term, "consolidated proceedings."<sup>3</sup> In a nutshell, the Plan Administrator and Defendants disagree between the two potential mechanisms to enact this Court's Order.

The Plan Administrator in this adversary proceeding has filed a *Motion for Reconsideration and Clarification* (the "Motion").<sup>4</sup> By the Motion, the Plan Administrator asks

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<sup>1</sup> See Adv. D.I. 35. For the reasons stated in the Letter Ruling, the Court granted Defendants' request to sever and remand the Delaware breach of fiduciary duty claims (the "Delaware Law Claims") in the Plan Administrator's Amended Complaint pursuant to 28 U.S.C. §§ 1334 and 1452 while staying the remaining claims brought under the Bankruptcy Code ("Bankruptcy Law Claims") until the Delaware Law Claims are resolved in Chancery Court. See Adv. D.I. 9.

<sup>2</sup> See Adv. D.I. 36.

<sup>3</sup> See Adv. D.I. 17-1, 36.

<sup>4</sup> Adv. D.I. 37. Plan Administrator concedes that it "is not seeking to re-litigate the Court's remand decision" and that "the Court exercised its discretion under 28 U.S.C. § 1334(c)(1) to permissively abstain." *Id.* at 5.

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the Court to clarify whether the Court *sua sponte* consolidated the above captioned adversary proceeding, No. 23-50421 (the “Chancery Action”), with the separate adversary proceeding, No. 23-50449 (the “SDNY Action”), and sent all fiduciary duty claims in both Derivative Actions to the Chancery Court.<sup>5</sup> In sum, the Plan Administrator seeks two orders: one stating that the Order has no effect on the SDNY Action, and another staying the SDNY Action pending the resolution of Chancery Action’s fiduciary duty claims.<sup>6</sup> The Defendants have timely responded to the Motion,<sup>7</sup> and significantly, Defendants do not object an order clarifying this Court’s prior order remanding the breach of fiduciary duty claims to the Delaware Court of Chancery. In terms of the mechanics of the remand, however, Defendants argue that the Court should consolidate the SDNY Action into the Chancery Action, and remand Chancery Action back to the Delaware Court of Chancery.<sup>8</sup>

The Plan Administrator disputes the propriety of Defendants’ suggested alternative, and stresses that without filing a motion, Defendants ask this Court to go beyond its earlier ruling and consolidate the Derivative Actions.<sup>9</sup> In doing so, the Plan Administrator argues that Defendants ignore basic procedure since the Court has already remanded certain claims back to the Chancery Court. With those claims out of its hands, he alleges that the Court cannot now consolidate the Derivative Actions.

Importantly, both parties agree that Chancery Action’s fiduciary duty claims will be resolved by the Delaware Court of Chancery. Therefore, the Court will (1) grant Plan Administrator’s Motion, (2) enter the Proposed Order attached as Exhibit A (“Proposed Order A”) in the Chancery Action stating that the Order does not affect the SDNY Action, and (3) enter

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<sup>5</sup> When VJGJ, Inc. (f/k/a Teligent, Inc.) filed for bankruptcy on October 14, 2021, there were two shareholder derivative actions pending, styled *Giuliano v. Grenfell Gardner et al. al.*, No. 1-20-cv-5448 (S.D.N.Y.) (the “SDNY Action”) and *Giuliano v. Grenfell Gardner et al. al.*, No. 2021-0452 (Del. Ch.) (the “Chancery Action”) (collectively, the “Derivative Actions”).

<sup>6</sup> In the alternative, if the Order does have an effect on the SDNY Action, Plaintiff requests that the Court reconsider its Order in light of controlling Third Circuit and United States Supreme Court precedent.

<sup>7</sup> Adv. D.I. 38.

<sup>8</sup> Defendants acknowledge that staying the SDNY Action pending the resolution of SDNY Action’s fiduciary duty claims is one way (although perhaps not the most efficient or appropriate) to address the issue and have previously suggested it as one alternative approach. See Reply Memorandum of Law in Support of Defendants’ Motion to Remand the Delaware Law Claims to the Court of Chancery of the State of Delaware, Adv. Proc. No. 23-50421, D.I. 26 (October 30, 2023), at 3.

<sup>9</sup> See Adv. D.I. 38 at 1. Defendants did not file a remand motion in the SDNY Action and acknowledged in their Remand Reply and at oral argument that there were no consolidated proceedings. See *e.g.*, Adv. D.I. 26 at 1 (“Defendants incorrectly believed [the actions] had been consolidated”).

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the Proposed Order attached as Exhibit B (“Proposed Order B”) in the SDNY Action staying the SDNY Action pending a resolution of Chancery Action’s fiduciary duty claims in the Delaware Chancery Court.

Appropriate orders will issue. To the extent uncertainty remains regarding the path forward after issuance of these orders, the parties are welcome to contact the Court for a status conference.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brendan Linehan Shannon". The signature is fluid and cursive, with a large initial "B" and "S".

BRENDAN LINEHAN SHANNON  
UNITED STATES BANKRUPTCY JUDGE

BLS/jmw

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

VJGJ, Inc., *et al.*,<sup>1</sup>

Post-Effective Date Debtors.

ALFRED T. GIULIANO,  
as Plan Administrator for VJGJ, Inc. (f/k/a  
Teligent, Inc.),

Plaintiff,

v.

JASON GRENFELL-GARDNER, STEVEN  
KOEHLER, BHASKAR CHAUDHURI, JAMES  
C. GALE, STEPHEN RICHARDSON, and  
DAMIAN FINIO,

Defendants.

Chapter 11

Case No. 21-11332 (BLS)

Jointly Administered

Adv. Proc. No. 23-50421 (BLS)

**Re: Adv. Proc. D.I. 35, 36, 37, 38**

**ORDER GRANTING PLAINTIFF ALFRED T. GIULIANO'S  
MOTION FOR RECONSIDERATION AND CLARIFICATION**

Upon consideration of *Plaintiff Alfred T. Giuliano's Motion for Reconsideration and Clarification* ("Motion"), any objection thereto and any reply; and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157, 1334, the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012, and its *Order Granting Defendants' Motion to Remand the Delaware Law Claims to the Court of Chancery of the State of Delaware*, Adversary Proceeding D.I. 36; and good and sufficient cause appearing therefore;

<sup>1</sup> The Post-Effective Date Debtors (the "Debtors") in these Ch. 11 cases and the last four digits of each Debtor's federal tax identification number, are: VJGJ, Inc. (5758); WRCC, Inc. (7443); OSL, Inc. (1639) and TNova, LLC (8395).

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Court states that its *Order Granting Defendants' Motion to Remand the Delaware Law Claims to the Court of Chancery of the State of Delaware*, Adversary Proceeding D.I. 36, has no effect on the separate adversary proceeding captioned, *Giuliano v. Grenfell-Gardner et al.*, Adv. Proc. No. 23-50449 (Bankr. D. Del.) (BLS).
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

FOR THE COURT:

  
BRENDAN LINEHAN SHANNON  
UNITED STATES BANKRUPTCY JUDGE

Dated: May 23, 2024  
Wilmington, DE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

VJGJ, Inc., *et al.*,

Post-Effective Date Debtors.

ALFRED T. GIULIANO,  
As Plan Administrator for VJGJ, Inc., (f/k/a  
Teligent, Inc.),

Plaintiff,

v.

JASON GRENFELL-GARDNER, STEVEN  
KOEHLER, BHASKAR CHAUDHURI, JAMES  
C. GALE, STEPHEN RICHARDSON, and  
DAMIAN FINIO,

Defendants.

Chapter 11

Case No. 21-11332 (BLS)

Jointly Administered

Adv. Proc. No. 23-50449 (BLS)

**Re: Adv. Proc. D.I. 35, 36, 37, 38**

**ORDER STAYING THIS ADVERSARY PROCEEDING**

Upon consideration of *Plaintiff Alfred T. Giuliano's Motion for Reconsideration and Clarification* ("Motion") filed in the separate adversary proceeding, *Giuliano v. Grenfell-Gardner et al.*, Adversary Proceeding No. 23-50421 (Bankr. D. Del.) (BLS) ("23-50421"), any objection thereto and any reply; and the Court having jurisdiction to consider that Motion pursuant to 28 U.S.C. §§ 157, 1334, the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012, and its *Order Granting Defendants' Motion to Remand the Delaware Law Claims to the Court of Chancery of the State of Delaware*, see 23-50421, Adversary Proceeding D.I. 36 ("Remand Order"); and the Court having authority

to stay this proceeding pursuant to 11 U.S.C. § 105; and good and sufficient cause appearing therefore;

**IT IS HEREBY ORDERED THAT:**

1. The above-captioned adversary proceeding is hereby stayed until the fiduciary duty claims that the Court severed from the *Amended Complaint* in the separate adversary proceeding, 23-50421, and remanded to the Delaware Court of Chancery pursuant to the Court's Remand Order are resolved.

2. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

FOR THE COURT:

  
BRENDAN LINEHAN SHANNON  
UNITED STATES BANKRUPTCY JUDGE

Dated: May 23, 2024  
Wilmington, DE.