

Corporate & Financial Weekly Digest

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Non-Party Granted Right to Seek to Unseal Court Documents

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Jepsco, Ltd., a shareholder of Rich Realty Inc. (RRI) requested that all papers filed under seal in an action brought by B.F. Rich Co., Inc. against RRI in the Delaware Chancery Court be opened for review pursuant to Court of Chancery Rule 5(g)(6). Jepsco, which was not a party to the action against RRI, asserted a concern that the sealed documents would reveal that RRI sold assets without providing notice to shareholders, or distributing the proceeds of the transaction. RRI objected to Jepsco's request on the basis that Jepsco was not a party to the action and that the text of Rule 5(g)(6) limited this right to parties.

The Court of Chancery did not determine whether Jepsco had standing under Rule 5(g)(6). Instead, it found a clear basis for Jepsco to intervene in the action under Court of Chancery Rule 24, which delineates the circumstances under which a nonparty may intervene in a pending case either as of right or as permitted by the Court. Under Rule 24, a party has standing either where the party can claim an interest in the subject of the litigation or where the applicant's claim and the main action have a common question of fact or law.

The Chancery Court found that Jepsco's motion met both of the standards. Thus, it granted intervention in the underlying litigation for the limited purpose of obtaining access to documents filed under seal. (*B.F. Rich Co., Inc. v. Richard E. Gray, Sr. and Rich Realty, Inc.*, C.A. No. 1896-VCP (Del. Ch. Apr. 8, 2011))

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