

**JAMS ARBITRATION
Reference No. 1425006537**

IN THE MATTER OF

**FORTRESS VRF 1 LLC and FORTRESS
VALUE RECOVERY FUND 1 LLC,
Claimants**

v.

**JEEPERS, INC.,
Respondent**

and

**FINANCIAL TRUST COMPANY, INC. and
JEEPERS, INC.,
Counter-Claimants and Third-Party Claimants**

v.

**D.B. ZWIRN SPECIAL OPPORTUNITIES
FUND, L.P. k/n/a/ FORTRESS VALUE
RECOVERY FUND 1 LLC,
Counter-Respondent**

and

**D.B. ZWIRN PARTNERS, LLC,
D.B. ZWIRN & Co., L.P.,
DBZ GP, LLC,
ZWIRN HOLDINGS, LLC, and
DANIEL ZWIRN,
Third –Party Respondents**

**REPORT OF PRELIMINARY HEARING AND
SCHEDULING ORDER NO. 1**

A preliminary conference was conducted on July 23, 2010; the following order is made respecting the conduct of this arbitration.

1. Parties and Counsel. The parties to this arbitration are identified in the caption and are represented as follows:

Allan J. Arffa, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
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212/373-3000
[REDACTED]
Counsel for Claimants

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Counsel for Respondent and Counter-Claimants

William O'Brien, Esq.
Cooley LLP
1114 Avenue of the Americas
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212/479-6000
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Counsel for Third Party Respondents
D.B. Zwirn Partners, LLC
D.B. Zwirn & Co., L.P.
DBZ GP, LLC, and
Zwirn Holdings, LLC

John S. Siffert, Esq.
Lankler Siffert & Wohl, LLP

500 Fifth Avenue, 33rd Floor
New York, New York 10110-3398
212/921-8399
[REDACTED]

Counsel for Third Party Respondent, Daniel Zwirn

2. Arbitrator. The parties have appointed as sole Arbitrator:

Hon. Anthony J. Carpinello (Ret.)
JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018
212/751-2700
[REDACTED]

3. Case Manager:

Michael Gonzalez, Esq.
Case Manager
JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018
212/751-2700
[REDACTED]

4. Agreement to Arbitrate.

Claimants rely on a Limited Liability Company Agreement dated June 1, 2009 as requiring this dispute to be arbitrated. Respondents and Third-Party Respondents do not contest the arbitrability of the dispute.

5. Applicable Law and Rules.

The Arbitrator shall apply New York CPLR Article 75. The applicable substantive law is the law of the state of Delaware. The JAMS Comprehensive Arbitration Rules and Procedures (“Rules”) shall apply to this proceeding.

6. Claims of the Parties.

Claimants’ Statement of Claim was filed on May 5, 2010. Respondents and Third-Party Claimants filed their response and Third-Party Claim on May 21, 2010. Third-Party Respondents filed their response on June 25, 2010.

7. Dispositive Motions.

The parties do not contemplate any motions addressed to the pleadings.

8. Discovery.

(a) The parties shall exchange written requests for documents not later than August 10, 2010. Written responses to the requests shall be exchanged not later than August 30, 2010. Documents responsive to the requests shall be exchanged not later than September 30, 2010.

(b) The parties shall meet and confer for the purpose of establishing a schedule for depositions promptly after September 15, 2010.

(c) A discovery conference call will be conducted by the Arbitrator on October 4, 2010 at 2:30 P.M. for the purpose of reviewing the status of discovery,

(d) The Arbitrator shall supervise discovery and resolve discovery disputes in accordance with the CPLR. (It is not intended that procedural discovery rules contained in the CPLR be followed but rather that the Rules shall provide a guide for the adequacy of production of documents and matters of privilege.)

9. Stipulated Protective Order. Counsel are invited to enter into a stipulated protective order concerning the confidentiality of documents produced in this proceeding. The Arbitrator will provide assistance if required.

10. Exchange of Information. The parties shall exchange all documentary evidence they intend to offer at the Hearing, including the identity of all fact witnesses and experts expected to testify at the Hearing, and copies of reports of experts if they are intended to be offered in evidence, and excepting only documents to be offered solely for impeachment, not later than January 25, 2011.

11. Hearing Procedure.

(a) The Hearing shall commence on February 7, 2011 and continue so long as necessary through and including February 8, 9, and 10, 2011. The hearing shall be conducted at the New York City offices of JAMS. Hearings shall commence each day at 9:00 A.M. The parties are encouraged to stipulate to agreed or uncontested facts and shall provide any stipulation to the Arbitrator at the commencement of the Hearing.

(b) Prehearing briefs and motions *in limine*, if any, may be filed not later than January 25, 2011.

(c) Hearing exhibits shall be pre-marked and a Joint Exhibit List shall be prepared not later than the first day of the Hearing. The parties shall indicate on the Joint Exhibit List any objection to the introduction of any exhibit. The Joint Exhibit List and

objections shall be furnished to the Arbitrator at the commencement of the Hearing. Exhibits not objected to shall be deemed admitted at the commencement of the Hearing. One set of exhibits shall be prepared for the Arbitrator and one for the witnesses in addition to copies for counsel. All exhibits will be discarded 30 days after the issuance of the Final Award unless a party requests, in writing, that the exhibits be retained or returned.

(d) If a party intends to utilize the services of a court reporter at the Hearing, notice of that intention shall be given to the other side not later than January 25, 2011. The parties shall also advise the Arbitrator whether or not the cost of the court reporter and the transcript shall be treated as a cost to be allocated in the Award.

(e) Award. The award shall be prepared in accordance with the JAMS Rules and the Limited Liability Company Agreement dated June 1, 2009 and may be served by regular mail unless any party requests, in writing, service by certified mail.

(f) All deadlines herein shall be strictly enforced. The Order shall continue in effect unless and until amended by subsequent order of the arbitrator.

DATED: July 23, 2010

S/_____
Hon. Anthony J. Carpinello (Ret.)
Arbitrator