

LANKLER SIFFERT & WOHL LLP

ATTORNEYS AT LAW

NEW YORK, N. Y. 10110-3398

April 8, 2011

BY EMAIL

The Honorable Anthony J. Carpinello
JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018

Re: Fortress VRF I LLC and Fortress Value Recovery Fund 1 LLC v. Jeepers, Inc.
JAMS Ref. No. 1425006537

Dear Judge Carpinello:

Third-Party Respondents and Counter-Respondents submit this letter regarding the deposition of Glenn Dubin. Third-Party Claimants Financial Trust Company, Inc. and Jeepers, Inc. (collectively, "Jeepers") solicited and received an affidavit from Mr. Dubin, which they attached to their Third-Party Claim. All parties have agreed that Mr. Dubin needs to be deposed for this arbitration.

Nonetheless, Jeepers has refused to produce Mr. Dubin for his deposition, claiming that it does not control him and suggesting that we contact his counsel. Mr. [REDACTED] counsel has yet to confirm that Mr. Dubin will appear for his deposition, and has suggested that if he were to appear voluntarily, there would be certain conditions, including the presence of Your Honor.

We submit that Mr. Dubin is not a mere third-party witness here, whose deposition testimony would serve as his trial testimony. Surely Mr. Dubin knew the affidavit was to be used in this case, especially since Jeffrey Epstein, Jeepers' principal, sent Mr. Dubin a draft affidavit the day before Mr. Dubin signed it (attached as Exhibit A). Having prevailed upon Mr. Dubin to provide an affidavit critical to its claims, Jeepers should not now be permitted to assert that he is beyond its control for purposes of testifying at a deposition. Simply put, if Jeepers could obtain an affidavit from Mr. Dubin as part of its pleading, it can (and should) produce him for a deposition before calling him as a witness at trial.

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We therefore respectfully request that Your Honor issue an Order compelling Jeepers to produce Mr. Dubin for a deposition on May 17, 2011, and directing that, if it fails to do so, Mr. Dubin will be precluded from testifying at the hearing and his affidavit will be stricken.

Respectfully,

A handwritten signature in black ink, appearing to read 'JSiffert', with a long horizontal flourish extending to the right.

John S. Siffert

cc: All counsel of record (by email)

EXHIBIT A

Jeffrey Epstein
358 El Brillo Way
Palm Beach, FL 33480

To: Glen Dubin

From: Jeffrey Epstein

Date: February 2, 2010

Jeffrey requested I send you the attached.

[REDACTED]

Assistant to Jeffrey Epstein

[REDACTED]

Dictated but not read.

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EFTA01082215

AFFIDAVIT OF GLENN DUBIN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Glenn Dubin, being duly sworn, deposes and says:

1. I am over twenty-one years of age and am competent to testify to the matters stated in this affidavit. I have personal knowledge of the facts and statements herein. Each of the facts and statements herein is true and correct.
2. Starting in 2002, an entity that I both owned and controlled, currently known as Dubin & Swieca Asset Management, LLC ("DSAM"), owned interests in the general partner and in the investment manager of [REDACTED] Zwirn Special Opportunities Fund, [REDACTED] (the "Zwirn Fund"). The Zwirn Fund was named after Daniel Zwirn ("Zwirn"). While Zwirn was responsible for the day-to-day management and operations of the Zwirn Fund, after Zwirn spun off his business from DSAM (then known as Highbridge Capital Management, LLC), I helped introduce investors to Zwirn, invested my personal and family foundation assets with Zwirn, and my firm allocated assets of Highbridge Capital Corporation ("HCC") to an account managed by Zwirn's company which was also the investment manager of the Zwirn Fund.
3. One of the early investors that I introduced to Zwirn was Jeffrey Epstein ("Epstein"). Epstein was both a personal friend of mine and a long-time investor in HCC. My understanding is that beginning in 2002 Epstein invested assets in the Zwirn Fund through an entity called Financial Trust Company, Inc.

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4. In the fall of 2006, Zwirn called me and told me that he was firing the Zwirn Fund's Chief Financial Officer. Zwirn told me that there had been various irregularities at the Zwirn Fund, including that investors' money was used to pay for an airplane that would be owned by Zwirn's company.
5. During October 2006, Zwirn told me that he was making attempts to contact each investor in the Zwirn Fund, including Epstein, to explain the irregularities to them.
6. After speaking with Zwirn, Epstein called me very upset. Epstein said that Zwirn had initially described the irregularities as "nonmaterial", but on a subsequent call, Zwirn's description of the issues made it clear to Epstein that the problems were in fact very material. Epstein told me that when he confronted Zwirn about the earlier description of the irregularities, Zwirn said that his counsel had told Zwirn to use the word "non-material". Epstein felt that Zwirn had lied to him. Epstein told me that he wanted to redeem Financial Trust Company, Inc.'s entire capital account in the Zwirn Fund immediately and that Epstein had made that demand to Zwirn.
7. I subsequently spoke to Zwirn about Epstein's demand. Zwirn was concerned that a complete redemption could cause a "run-on-the-bank." Zwirn asked me to discuss with Epstein reducing his demand to one-half of Financial Trust Company, Inc.'s total capital account in the Zwirn Fund at the time, and I agreed I would discuss it with Epstein.
8. Subsequently, I participated in a three-way call with both Zwirn and Epstein. During this call, Epstein demanded from Zwirn the withdrawal of all of Financial Trust

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Company, Inc.'s capital account in the Zwirn Fund. Epstein said he wanted to redeem all of Financial Trust Company, Inc.'s 140 plus million dollars in that capital account immediately. Zwirn responded that such a redemption could cause a "run-on-the-bank" and asked Epstein to reduce his redemption demand to half of that amount. Zwirn said that if Epstein made only a partial redemption request, Zwirn would honor the request quickly. During this discussion with Epstein, Epstein agreed to redeem slightly more than half of Financial Trust Company, Inc.'s total capital account and said that Financial Trust Company, Inc. would redeem 80 million dollars, and Zwirn agreed to honor that request. Zwirn did not dispute that Epstein had the right to the total redemption of Financial Trust Company, Inc.'s capital account in the Zwirn Fund. It is my understanding, based on subsequent conversations with Epstein, that after this conversation, Epstein made a written request for that partial redemption of Financial Trust Company, Inc.'s capital account in the Zwirn Fund and that Zwirn refused to honor this request.

Glenn Dubin

Sworn to before me this ___ day of February, 2010.

(Seal) _____
Notary Public

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