

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

R. JUDSON SCAGGS, JR.
(302) 351-9340
(302) 425-4684 FAX
rscaggs@mna.com

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PUBLIC VERSION
filed May 17, 2019

The Honorable Sam Glasscock III
Vice Chancellor
Court of Chancery
34 The Circle
Georgetown, DE 19947

Re: *Preston Hollow Capital LLC v. Nuveen LLC et al.*,
C.A. No. 2019-0169-SG

Dear Vice Chancellor Glasscock:

We represent Preston Hollow Capital LLC (“PHC”). On Wednesday, May 8, non-party [REDACTED] in response to a PHC subpoena, produced recordings of calls with Nuveen demonstrating that Nuveen was organizing an industry-wide boycott of PHC in terms of both underwriting *and financing* 100% placements – through both threats and specific defamatory statements about PHC’s business practices – designed not to *compete* with PHC but to stamp out PHC’s

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business model.¹ PHC sought [REDACTED] recordings prior to filing this lawsuit, but was unsuccessful due, at least in part, to Nuveen's decision not to cooperate. PHC continues to believe that its claims are well pleaded and that Nuveen's arguments for dismissal are without merit. However, should Your Honor be inclined to dismiss any of Plaintiff's claims, dismissal should be without prejudice so Plaintiff can amend to incorporate the new, and previously unavailable, evidence in the [REDACTED] recordings.

Leave to amend is liberally granted under Court of Chancery Rule 15. *See In re TransAmerica Airlines, Inc.*, 2006 WL 587846, at *2 (Del. Ch. Feb. 28, 2006). Although Rule 15(aaa) qualifies this standard somewhat, even where a party files an answering brief to a motion to dismiss, the Court retains discretion to dismiss without prejudice "for good cause shown" if dismissal with prejudice "would not be just under all of the circumstances." This Court has found good cause to permit the amendment where, as here, new evidence comes to light which states a claim for relief. *See In re Fuqua Indus., Inc.*, 2004 WL 5323246, at *2-4 (Del. Ch. Dec. 14, 2004).

¹ See Ex. A at 24 ([REDACTED])

PHC asserts four claims: (1) tortious interference with contract, (2) tortious interference with prospective business relations; (3) defamation; and (4) violations of New York's Donnelly Act. Nuveen argued that PHC's claims lack specific or adequate factual allegations. Although PHC maintains that its allegations are more than sufficient, the [REDACTED] recordings eliminate any arguable lack of specific factual support and constitute good cause to allow PHC to amend the Complaint.

With respect to the Donnelly Act, the recordings show that Nuveen was using its market power to organize an industry-wide boycott of PHC.² [REDACTED]

[REDACTED] These were not one off vertical agreements. The recordings describe a systematic effort to organize the entire industry against PHC.⁴ [REDACTED]

² Ex. A at 12-13 [REDACTED]

Ex. B at 4-8. [REDACTED]

Id. at 2.

Ex. A at 12-13, 26; Ex. B at 4-8, 30-31.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The recordings also belie Nuveen's argument that it was acting within a so-called "privilege to compete" that defeats PHC's claim for tortious interference with prospective business relations. Among other things, the recordings demonstrate that Nuveen was not just pressuring broker dealers to supply Nuveen with bonds rather than PHC. Nuveen was trying to choke off PHC's liquidity from [REDACTED] and any other sources of liquidity that Nuveen could identify.⁸ There is no privilege to "compete" by sabotaging a competitor. The recordings also show Nuveen's actions have caused real harm;

⁵ Ex. B at 30-31

⁶ Ex. B at 4-8.

⁷ Ex. A at 15-16.

⁸ Ex. A at 11, 15-16, 20-21, 24; Ex. B at 12-13, 22-23

[REDACTED]

[REDACTED]

The [REDACTED] recordings also debunk Nuveen's theory that its alleged defamatory statements are mere statements of non-actionable opinion

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁹ Ex. B at 2-3.

¹⁰ Ex. A at 5-6; Ex. B at 3-4, 18-19; Ex. C at 7; 9; 10.

¹¹ See <https://www.fdicog.gov/publications/reports06/06-011-508.shtml>

¹² Ex. D at 13; Ex. C at 7.

¹³ Ex. D at 2-3; 8; 14-15.

¹⁴ *Id.* at 9.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If Your Honor has any questions, counsel is available at the Court's convenience.

Respectfully,

/s/ R. Judson Scaggs, Jr.

R. Judson Scaggs, Jr. (#2676)

Words: 998

RS/bg

cc: Peter J. Walsh, Jr. (via e-filing)
Jennifer C. Wasson (via e-filing)
David A. Seal (via e-filing)
Robert J. Kumor (via e-filing)

¹⁵ Ex. D at 7.

¹⁶ *Id.* at 8-9.

¹⁷ *See, e.g.*, Ex. B at 9, 13, 26.