



MARC B. HEATH
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January 20, 2011

VIA HAND DELIVERY

Christine Brock, Clerk
Vermont Superior Court
Chittenden Civil Division
175 Main Street
PO Box 187
Burlington, VT 05402-0187

Re: Fred Osier, et al. v. City of Burlington, et al.
Docket No. S1588-09 CnC

Dear Ms. Brock:

Enclosed for filing with the Court in the above-referenced matter please find The City of Burlington's Request for Status Conference and Extension of Time To Reply to Opposition to the City's Motion for Protective Order. If you should have any questions, please feel free to contact me.

Sincerely,

Marc Heath

MBH/ibw
Enclosure

cc: Norman Williams Esq.
Kenneth Schatz, Esq.
Gregory A. Weimer, Esq.
Amber Thibeault, Esq.
Robert B. Luce, Esq.
Matthew S. Borick, Esq.
Jennifer E. McDonald, Esq.

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. S1588-09 CnC

FRED OSIER and
EUGENE H. SHAVER,
Plaintiffs,

v.

BURLINGTON TELECOM, an enterprise
of the City of Burlington, THE CITY OF
BURLINGTON, and JONATHAN
LEOPOLE, in his Individual Capacity,
Defendants.

**THE CITY OF BURLINGTON'S REQUEST FOR STATUS
CONFERENCE AND EXTENSION OF TIME TO REPLY TO
OPPOSITION TO THE CITY'S MOTION FOR PROTECTIVE ORDER**

Pursuant to V.R.C.P. 16 and 6(b) of the Vermont Rules of Civil Procedure, Defendant The City of Burlington ("The City"), by its attorneys Downs Rachlin Martin PLLC, hereby respectfully requests: (1) a status conference in the above-captioned matter concerning the Interim Stipulated Order entered on February 12, 2010 and (2) a one week extension to Reply to Plaintiffs' Opposition to The City's Motion for Protective Order.

With respect to the requested status conference, the Court entered an Interim Stipulated Order on February 12, 2010, which provided, among other stipulations, that The City "shall not utilize its pooled cash management system nor any other City monies to make any payment in violation of Condition 60..." Interim Stip. Order ¶ 2. Since that time The City has complied in good faith with the Interim Stipulated Order.

As recently reported in the Burlington Free Press, The City has used its General Fund to retain the consulting firm of Dorman & Fawcett to assist it in securing alternative financing

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arrangements of Burlington Telecom, as recommended by the Blue Ribbon Committee and approved by the City Council. This work is directly related to protecting the interests of The City, and its taxpayers, and is not related to the operations of Burlington Telecom. Furthermore, where Dorman & Fawcett has provided operational oversight of Burlington Telecom, the services are separately billed and paid out of Burlington Telecom's operating revenues.

Plaintiffs' response to the report that The City is using its General Fund, albeit for permissible purposes, is to threaten to file a Motion for Contempt. As an alternative, The City suggested that the parties and the Court could resolve this dispute more efficiently and with less hostility at a status conference with the Judge. Plaintiffs rejected the suggestion that the parties address the appropriateness of The City's expenditures on consulting fees at a Status Conference and plan to proceed with a Motion for Contempt. See Exhibit A.

Since a status conference will quickly resolve this dispute and vastly simplify the resolution of this issue, The City requests that the Court schedule a status conference at its earliest convenience.

Finally, The City requests a one week extension to Reply to Plaintiffs' Opposition¹ since its replacement counsel just received the file yesterday (January 19, 2011) in the above-captioned matter from The City's former counsel.²

¹ The deadline for The City's Reply is today, January 20, 2011.

² The retention agreement formally retaining Downs Rachlin Martin PLLC as replacement counsel was signed and finalized on Thursday, January 13, 2011.

WHEREFORE, The City of Burlington respectfully requests that the Court schedule a status conference at its earliest convenience and Grant its Request for an Extension of Time to Reply to Plaintiffs' Opposition to The City's Motion for Protective Order.

Burlington, Vermont.

January 20, 2011

THE CITY OF BURLINGTON

By: 

Robert Luce

Marc Heath

DOWNS RACHLIN MARTIN PLLC

Attorneys for Defendant

199 Main Street

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DOWNS
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From: Norman C. Williams [mailto:nwilliams@gravelshea.com]
Sent: Wednesday, January 19, 2011 6:05 PM
To: Marc Heath
Cc: Bob Luce; 'kschatz@ci.burlington.vt.us'; 'GWeimer@lynnlawvt.com'
Subject: RE: Fred Osier, et al. v. City of Burlington, et al.

Marc,

Thank you for your letter concerning the City's expenditures on behalf of BT. We disagree that funds spent on a lease negotiation, for example, should come from the general fund as opposed to BT itself. We do not believe the proper test can be whether it benefits the city. Frankly, that is the same kind of reasoning that led to the cash pool expenditures which have led the City into its current difficulties. We appreciate your request that we raise our concerns by way of a status conference, but we believe a motion for contempt puts the question directly to the Court for decision.

I will get back to you tomorrow concerning your request for an extension of time, after I have a chance to discuss it with Bob Hemley.

From: Rena Weisburgh [mailto:iweisburgh@drm.com]
Sent: Tuesday, January 18, 2011 4:43 PM
To: Norman C. Williams
Cc: Bob Luce; 'kschatz@ci.burlington.vt.us'; 'GWeimer@lynnlawvt.com'
Subject: Fred Osier, et al. v. City of Burlington, et al.

Attached please find a letter from Attorney Heath to you in the above-referenced matter. If you should have any questions or problems opening the attachment, please do not hesitate to contact me.



Irene Weisburgh | Downs Rachlin Martin PLLC
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January 18, 2011

Norman Williams, Esq.
Gravel and Shea
76 St. Paul Street
P.O. Box 369
Burlington, VT 05402-0369

Re: Fred Osier, et al. v. City of Burlington, et al.

Dear Norman:

I am responding to your letter of January 14, 2011. Attached please find a copy of Mr. Schrader's memorandum dated December 21, 2010, pursuant to your request.

The City of Burlington has retained the consulting firm of Dorman & Fawcett to assist it in securing alternative financing arrangements for Burlington Telecom, as recommended by the Blue Ribbon Committee and approved by the City Council. This consulting firm has been involved in negotiations with City Capital in an effort to restructure Burlington Telecom's lease agreement, negotiations with potential strategic and financial partners, and the possible development of an alternative organizational structure for Burlington Telecom. They are also involved in evaluating a possible new ownership and governance structure and the creation of a new legal entity.

This work is directly related to protecting the interests of the City, and its taxpayers, and is not related to the operations of Burlington Telecom. Therefore, in our view, this expense does not violate Condition 60 of the C.P.G., and therefore, complies with the Stipulated Interim Order.

As you are well aware, a key component of all of these negotiations is an attempt to secure repayment of the outstanding debit to the City's cash management fund. Interfering with this effort would certainly not be in the best interest of the taxpayers of Burlington.

Norman Williams Esq.
January 18, 2011
Page 2

I would point out that Dorman & Fawcett has also been retained to provide operational oversight of Burlington Telecom. These services have been separately billed and paid out of Burlington Telecom's operating revenues, as the attachment shows.

In the event we disagree on the appropriateness of the payment to the consultants, I would respectfully suggest that the appropriate method of resolving that dispute would be to request a status conference with the judge. I look forward to discussing this matter with you further.

Sincerely,

Marc B. Heath
MBH

Marc B. Heath

Enclosure

cc: Kenneth Schatz, Esq.
Robert B. Luce, Esq.
Gregory A. Weimer, Esq.

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OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

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December 21, 2010

To: Councilor Paul
Councilor Decelles

From: Scott Schrader, Assistant Chief Administrative Officer

Re: Request for Information on Legal/Consultant Services for Burlington Telecom

The following tables are provided in response to your requests for information on expenses paid beginning July 1, 2009 to date for Legal Services and Consultant Services, respectively related to the challenges faced by Burlington Telecom.

Legal/Regulatory Services:

Firm Name	Purpose	Amount	Fund
McNeil, Leddy & Sheahan	Regulatory and Permit representation.	\$165,465	BT
Burak, Anderson & Melloni	City Capital and BT Financing	\$ 3,227	BT
Langrock, Sperry & Wool	Defense	\$ 2,960	GF
Miller Van Eaton	Regulatory representation	\$ 9,197	BT
Public Service Department	Larkin Review	\$ 64,667	BT
	Total	\$245,516	

Consultant Services:

Firm Name	Purpose	Amount	Fund
Dorman & Fawcett	CitiCapital Negotiations	\$227,795	GF
	Sub-Total	\$227,795	
Northpoint Consulting	Report to Blue Ribbon	\$ 5,000	BT
Stratum Broadband	Business Plan Analysis to Blue Ribbon	\$ 10,000	BT
Stratum Broadband	Business Plan Analysis to Blue Ribbon	\$ 5,740	GF
HBC (Gary Evans)	Report to Blue Ribbon	\$ 27,485	BT
	Sub-Total	\$ 48,225	
Dorman & Fawcett	BT operational oversight	\$ 76,007	BT
HBC (Gary Evans)	Marketing and Administrative	\$ 27,520	BT
	Sub-Total	\$103,527	
	Total	\$379,547	

If you have any questions regarding this information, please contact this office.

C: Mayor Kiss
City Council

The City of Burlington does not discriminate on the basis of political or religious affiliation, race, color, national origin, age, sex, sexual orientation, marital status, veteran status or disability. Persons with disabilities who require assistance or special arrangements to participate in programs and activities of the Clerk Treasurer's Office are encouraged to contact us at 865-7000 or 865-7142 (TTY) at least 72 hours in advance so that proper arrangements can be made.



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* Admitted only in New York

January 14, 2011

VIA E-MAIL AND MAIL

Robert B. Luce, Esq.
Marc B. Heath, Esq.
Downs Rachlin Martin PLLC
P.O. Box 190
Burlington, VT 05402-0190

Re: Fred Osier and Eugene H. Shaver v. Burlington Telecom
Docket No. S1588-09 CnC

Dear Bob and Marc:

Based on my understanding that Downs Rachlin Martin PLLC is now representing the City of Burlington and Burlington Telecom in this matter, I am writing to express my concern that the City is in violation of the Court's Interim Stipulated Order dated February 12, 2010. The Interim Order prohibits the City from using the General Fund to pay BT expenses unless such amounts are reimbursed to the City's pooled cash management system within 60 days.

As reported in the *Burlington Free Press* on January 7, 2011, the General Fund has been used to pay BT expenses in the amount of approximately \$236,000 incurred between July 1, 2009 through December 21, 2010. The report is based on an expense sheet prepared by Assistant Administrative Officer Scott Schrader. Expenses paid from the General Fund include \$227,795 paid to the consulting firm of Dorman and Fawcett for negotiating BT's lease with CitiCapital, as well as legal fees and consulting services. There is no indication that BT reimbursed the pooled cash management system within 60 days.

In order to avoid troubling the Court unnecessarily, I would ask that you inform me no later than next Tuesday, January 18, 2011, whether BT will agree to reimburse the General Fund for these expenses immediately. Please also provide a copy of the expense sheet prepared by Mr. Schrader by that date. If BT declines to reimburse the cash pool, I will bring the matter to the Court's attention by means of a motion for contempt.

GRAVEL AND SHEA

Robert B. Luce, Esq.
Marc B. Heath, Esq.

January 14, 2011
Page 2

Thank you for your consideration. I look forward to hearing from you.

Very truly yours,

GRAVEL AND SHEA
A PROFESSIONAL CORPORATION

A handwritten signature in cursive script, appearing to read "Norman Williams".

Norman Williams

NW:kah

cc: Gregory Weimer, Esq.