

STATE OF VERMONT  
RUTLAND COUNTY

CASELLA WASTE SYSTEMS, INC., )  
FCR, LLC, GREEN MOUNTAIN GLASS, )  
LLC, and CULCHROME, LLC )  
v. )  
GR TECHNOLOGY, INC., )  
ANTHONY C. LAME, )  
and ROBERT CAMERON BILLMYER )

Rutland Superior Court  
Docket No. 409-6-07 Rdcv

CONFORMED COPY  
RUTLAND SUPERIOR COURT

FEB 13 2009

**DECISION**

**Defendants' Motion to Realign Complaint (MPR # 1), filed July 3, 2008**

Defendants have requested that the court realign the complaint so that Green Mountain Glass LLC and CulChrome LLC are aligned as defendants, rather than plaintiffs. Defendants have also requested that the court remove current counsel for the LLCs due to perceived conflicts of interest and appoint defendants' counsel in their place. The court will not grant these requests for the following reasons.

First, the procedural vehicle chosen (a motion to realign the complaint) is more often used to deal with the proper alignment of parties for the purposes of determining whether federal diversity jurisdiction exists. See *City of Indianapolis v. Chase Nat. Bank of City of New York*, 314 U.S. 63 (1941) (explaining that realigning the complaint serves the purpose of protecting the integrity of federal diversity jurisdiction). The court is not persuaded at this juncture that it is necessary to realign the complaint in order to ensure that all of the claims in this case will be litigated fully.

Second, the request to have defense counsel appointed to represent the limited liability companies is inconsistent with the terms of the operating agreements. The operating agreements appear to show that it was proper for the majority managing members to initiate the present lawsuit in the name of the company, and to appoint counsel to represent the company.

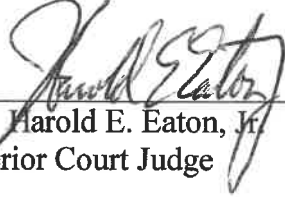
Third, the court is not persuaded that there is clear and convincing evidence showing that representation of the LLCs by current counsel will prejudice the fairness of the proceedings. *In re Appeal of Infotechnology, Inc.*, 582 A.2d 215 (Del. 1990). Even if independent counsel were appointed to represent the LLCs, it appears that the managing members holding the majority interest (Plaintiffs) would be entitled to direct independent counsel. Under these circumstances, there is little utility in replacing current counsel.

Finally, there is a strong preference under the Rules of Civil Procedure for deciding the substantive merits of cases according to the normal procedures—discovery, summary judgment, and jury trial. The court does not find the motion to realign the complaint to be a helpful vehicle for sorting through the various claims related to fiduciary duties, etc.

**ORDER**

For the foregoing reasons, Defendants' Motion to Realign the Complaint (MPR #1) is *denied*.

Dated at Woodstock, Vermont this 10<sup>th</sup> day of February, 2009.

  
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Hon. Harold E. Eaton, Jr.  
Superior Court Judge