



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NORFOLK COUNTY RETIREMENT SYSTEM, )  
)  
Plaintiff, ) C.A. No. 3443-VCP  
v. )  
)  
JOS. A. BANK CLOTHIERS, INC., )  
)  
Defendant. )

**DEFENDANT'S ANSWER TO PLAINTIFF'S VERIFIED  
COMPLAINT PURSUANT TO 8 DEL. C. § 220  
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Defendant Jos. A. Bank Clothiers, Inc., a Delaware corporation (“Jos. A. Bank”), by and through its counsel, hereby answers and asserts affirmative defenses to Plaintiff’s Verified Complaint Pursuant to 8 *Del. C.* §220 to Compel Inspection of Books and Records (the “Complaint”) as follows.

1. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 1 of the Complaint.
2. Defendant admits the allegations of paragraph 2 of the Complaint.
3. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 3 of the Complaint.
4. Defendant admits the allegations of the first two sentences of paragraph 4 of the Complaint. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of the third sentence of paragraph 4 of the Complaint.
5. Defendant admits the allegations of the first and third sentences of paragraph 5 of the Complaint. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of the second sentence of paragraph 5 of the Complaint.

6. Defendant admits the allegations of paragraph 6 of the Complaint except that it denies that the Demand Letter satisfied the requirements of Section 220.

7. Defendant denies the allegations of paragraph 7 of the Complaint and refers to the Demand Letter for the contents thereof.

8. Defendant denies the allegations of paragraph 8 of the Complaint.

9. Defendant admits the allegations of the first and second sentences of paragraph 9 of the Complaint. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of the third sentence of paragraph 9 of the Complaint.

10. Defendant denies the allegations of paragraph 10 of the Complaint and refers to Exhibit C of the Complaint for the contents thereof.

11. Defendant denies the allegations of paragraph 11 of the Complaint and refers to Exhibit D of the Complaint for the contents thereof.

12. Defendant denies the allegations of paragraph 12 of the Complaint.

13. Defendant denies the allegations of paragraph 13 of the Complaint except that it admits that Jos. A. Bank is a named defendant in a securities class action lawsuit regarding the same allegations of “wrongdoing” captioned *Lefkoe v. Jos. A. Bank Clothiers, Inc. et al.*, C.A. No. WMN-06-1892, pending in the United States District Court for the District of Maryland (the “Securities Class Action”).

14. Defendant admits the allegations of paragraph 14 of the Complaint except that Jos. A. Bank has moved for judgment on the pleadings in the Securities Class Action and that motion is pending.

15. Defendant denies the allegations of paragraph 15 of the Complaint and refers to the Securities Class Action Complaint for the contents thereof.

16. Defendant denies the allegations of paragraph 16 of the Complaint and refers to the Securities Class Action Complaint for the contents thereof.

17. Defendant denies the allegations of paragraph 17 of the Complaint and refers to the Securities Class Action Complaint for the contents thereof.

18. Defendant denies the allegations of paragraph 18 of the Complaint and refers to the Securities Class Action Complaint for the contents thereof.

19. Defendant denies the allegations of paragraph 19 of the Complaint and refers to the Securities Class Action Complaint for the contents thereof.

20. Defendant denies the allegations of paragraph 20 of the Complaint and refers to the Form 10-Q filed with the United States Securities and Exchange Commission on June 7, 2006 for the contents thereof.

21. Defendant denies the allegations of paragraph 21 of the Complaint and refers to the June 8, 2006 press release for the contents thereof.

22. Defendant denies the characterizations in paragraph 22 of the Complaint and refers to the transcript, if any exists, of Mr. Ullman's June 15, 2006 presentation for the contents thereof.

23. Defendant denies the characterization of Judge Nickerson's opinion contained in paragraph 23 of the Complaint and refers to Exhibit E of the Complaint for the contents thereof.

24. Defendant denies the characterization of Judge Nickerson's opinion in paragraph 24 of the Complaint and refers to Exhibit E of the Complaint for the contents thereof.

25. Defendant denies the allegations of the first sentence of paragraph 25 of the Complaint. Defendant denies the characterization of Judge Nickerson's opinion in the second sentence of paragraph 25 of the Complaint and refers to Exhibit E of the Complaint for the contents thereof.

26. Defendant is not required to answer the legal conclusions set forth in paragraph 26 of the Complaint. To the extent those assertions of legal conclusions are intended to assert facts, they are denied.

27. Defendant is not required to answer the legal conclusions set forth in paragraph 27 of the Complaint. To the extent those assertions of legal conclusions are intended to assert facts, they are denied.

28. Defendant denies the allegations of paragraph 28 of the Complaint.

29. Defendant is not required to answer the legal conclusions set forth in paragraph 29 of the Complaint. To the extent those assertions of legal conclusions are intended to assert facts, they are denied.

30. Defendant denies the allegations of paragraph 30 of the Complaint and the prayers for relief contained in lettered paragraphs following that paragraph.

**FIRST AFFIRMATIVE DEFENSE**

31. Plaintiff has failed to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

32. Plaintiff's purported demands fail to comply with the requirements of 8 *Del. C.* §220.

**THIRD AFFIRMATIVE DEFENSE**

34. Plaintiff's purported claims are barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

35. Plaintiff's purported claims are barred by the doctrines of res judicata and issue preclusion.

**FIFTH AFFIRMATIVE DEFENSE**

36. Plaintiff's purported claims are barred because the subject matter of Plaintiff's inspection is currently being investigated by a Special Litigation Committee.

**WHEREFORE**, Jos. A. Bank respectfully requests the Court to enter an order:

A. Denying Plaintiff's request to inspect and copy the books and records of Jos. A. Bank described in paragraph 6 of the Complaint and in Exhibit A to the Complaint;

B. Awarding Jos. A. Bank its attorneys' fees, expenses, and costs incurred in defense of this action; and

C. Awarding such other relief as the Court deems appropriate under the circumstances.

/s/ Joel Friedlander  
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