COURT OF CHANCERY OF DELAWARE, NEW CASTLE COUNTY

Turner v. Bernstein

776 A.2d 530 (Del. Ch. 2000) · No. Civ.A. No. 16190 · Decided June 6, 2000

SUMMARY

The Delaware Court of Chancery addresses plaintiffs' motion for partial summary judgment alleging that GenDerm Corporation's former directors breached their fiduciary duty of disclosure in connection with the company's merger into a Medicis Pharmaceutical subsidiary. The court concludes that the directors provided materially inadequate information to GenDerm stockholders regarding the merger and their alternatives, including appraisal. It also rejects the defendants' arguments that the plaintiffs waived their disclosure claims by accepting the merger consideration or signing letters of transmittal.

CASE DETAILS

COURT	Court of Chancery of Delaware, New Castle County
WRITING FOR THE COURT	Vice Chancellor Leo E. Strine
JURISDICTION	Delaware
DECIDED	June 6, 2000
DOCKET	Civ.A. No. 16190
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for partial summary judgment on liability for their disclosure-based fiduciary-duty claims against former GenDerm directors. The court considered whether the directors had failed to disclose material information concerning the Medicis merger and whether plaintiffs waived their equitable claims by accepting the merger consideration and signing letters of transmittal.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court views facts and reasonable inferences in favor of the nonmoving party, but the opposing party must present record evidence sufficient to create a triable issue.
PRECEDENTIAL VALUE	Published Delaware Court of Chancery opinion; persuasive and potentially precedential within Delaware trial-level corporate jurisprudence, subject to controlling Delaware Supreme Court authority.

PARTIES	Stuart Turner, Richard A. Bernstein v. Joel E. Bernstein, M.D., James L. Currie, Frank A. Ehmann, Neal S. Penneys, M.D., Jeremy Silverman, Laura Pearl

TOPICS

corporate governance · fiduciary duty · duty of care corporate · mergers and acquisitions · commercial litigation

PRACTICE AREAS

corporate law · fiduciary duty · commercial litigation · mergers and acquisitions · remedies

QUESTIONS PRESENTED

1. Whether the GenDerm directors breached their fiduciary duty of disclosure by failing to provide stockholders with material information needed to decide whether to accept the merger consideration or seek appraisal.
2. Whether plaintiffs knowingly waived their equitable disclosure claims by accepting the merger consideration after allegedly receiving information from other sources.
3. Whether the appraisal waiver in the letters of transmittal extended beyond 8 Del. C. § 262 to bar equitable fiduciary-duty claims.
4. Whether statutory appraisal is the exclusive remedy for stockholders asserting disclosure-based fiduciary-duty claims in connection with a cash-out merger.

HOLDINGS

1. The GenDerm directors breached their fiduciary duty by failing to disclose the material facts within their control that stockholders needed to make an informed decision whether to accept the merger consideration or seek appraisal.
2. Plaintiffs did not waive their equitable fiduciary-duty claims because the directors failed to show that plaintiffs accepted the merger consideration on a fully informed basis.
3. The letters of transmittal waived only the plaintiffs' statutory appraisal rights under 8 Del. C. § 262 and did not waive equitable actions for breach of fiduciary duty.
4. Section 262 does not implicitly make statutory appraisal the exclusive remedy for a disclosure-based equitable fiduciary-duty claim.

KEY QUOTATIONS

> *"Directors must disclose all material facts within their control that a reasonable stockholder would consider important in deciding how to respond to the pending transaction."* (542)

> *"The defendants' argument turns an affirmative duty of the directors to disclose material information into a duty on the part of the stockholders to call the company and seek the information the stockholders believe is*

> *material."* (544)

> *"What it does mean is that a corporate board wishing to argue that a stockholder's acceptance of the merger consideration bars any further relief must also be willing to show that it provided the stockholder with all the information she needed to make a knowing and informed decision."* (548)

FACTUAL BACKGROUND

GenDerm, a nonpublic corporation, merged into a wholly owned subsidiary of Medicis in December 1997. The GenDerm board provided stockholders with only cursory merger materials and did not provide current financial information, projections, or an explanation of why the merger consideration was preferable to continuing the company's business plan, despite having provided Medicis extensive financial and prospective information. Plaintiffs accepted the merger consideration and signed letters of transmittal waiving appraisal rights, then pursued equitable fiduciary-duty claims against the former directors.

PROCEDURAL HISTORY

Plaintiffs challenged the adequacy of disclosures made in connection with GenDerm's December 1997 merger into a wholly owned subsidiary of Medicis. In an earlier decision, the court denied summary judgment because the record did not establish whether plaintiffs had been fully informed when they accepted the merger consideration. After further discovery, the court granted plaintiffs partial summary judgment on liability for the disclosure claim and directed the parties to submit an implementing order and schedule proceedings on remedies.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The parties were directed to submit within seven days an implementing order agreed as to form and schedule a conference for prompt resolution of the remedy phase.

CASES CITED

- Skeen v. Jo-Ann Stores, Inc., 750 A.2d 1170 (Del. 2000)
- Bershad v. Curtiss-Wright Corp., 535 A.2d 840 (Del. 1987)
- Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1156 (Del. 1995)
- Zirn v. VLI Corp., 621 A.2d 773 (Del. 1993)
- Zirn v. VLI Corp., 681 A.2d 1050 (Del. 1996)
- Sealy Mattress Co. of New Jersey, Inc. v. Sealy, Inc., 532 A.2d 1324 (Del. Ch. 1987)
- Malone v. Brincat, 722 A.2d 5 (Del. 1998)
- O'Malley v. Boris, 742 A.2d 845 (Del. 1999)
- Arnold v. Society for Savings Bancorp, Inc., 650 A.2d 1270 (Del. 1994)

- Rabkin v. Philip A. Hunt Chemical Corp., 498 A.2d 1099 (Del. 1985)
- Cede & Co. v. Technicolor, Inc., 684 A.2d 289 (Del. 1996)
- Cede & Co. v. Technicolor, Inc., 634 A.2d 345 (Del. 1993)
- Williams v. Geier, 671 A.2d 1368 (Del. 1996)
- In re Liquidation of National Heritage Life Insurance Co., 728 A.2d 52 (Del. Ch. 1998), aff'd, 723 A.2d 397 (Del. 1998)
- In re Gaylord Container Corp. Shareholders Litigation, 753 A.2d 462 (Del. Ch. 2000)
- Hills Stores Company v. Bozic, 769 A.2d 88 (Del. Ch. 2000)
- Andra v. Blount, 772 A.2d 183 (Del. Ch. 2000)
- Wood v. Best, Inc., 1999 WL 504779 (Del. Ch. July 9, 1999)
- Wacht v. Continental Hosts, Ltd., 1986 WL 4492 (Del. Ch. Apr. 11, 1986)
- Merritt v. Colonial Foods, Inc., 505 A.2d 757 (Del. Ch. 1986)
- Fitzgerald v. Cantor, 1999 WL 64480 (Del. Ch. Jan. 28, 1999)
- Hoechst Celanese Corp. v. National Union Fire Insurance Co., 623 A.2d 1118 (Del. Super. 1992)

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