SUPREME COURT OF NEVADA

American Ethanol, Inc. v. Cordillera Fund, L.P., 127 Nev. 147

252 P.3d 663 (2011) · No. No. 54779 · Decided May 5, 2011

SUMMARY

The Supreme Court of Nevada addresses the meaning of fair value under Nevada's dissenters' rights statutes in a shareholder appraisal proceeding arising from a merger. The court adopts a flexible valuation approach, holds that both the dissenting shareholder and corporation must prove their respective valuation positions by a preponderance of the evidence, and affirms the district court's $3-per-share valuation.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cherry, J.; Gibbons, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	May 5, 2011
DOCKET	No. 54779
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment in a dissenters' rights appraisal action determining that the fair value of Cordillera's shares was $3 per share, plus prejudgment interest.
STANDARD OF REVIEW	Abuse of discretion for the district court's determination of fair value under NRS 92A.490.
PRECEDENTIAL VALUE	Published and precedential Supreme Court of Nevada opinion.
PARTIES	American Ethanol, Inc., AE Biofuels, Inc. v. Cordillera Fund, L.P.

TOPICS

corporate law · commercial litigation · standard of review · appellate procedure · statutory interpretation

PRACTICE AREAS

corporate law · commercial litigation · appellate procedure · statutory interpretation

QUESTIONS PRESENTED

1. What methodology and factors may a district court consider when determining the fair value of shares in a Nevada dissenters' rights appraisal proceeding?
2. Which party bears the burden of proving fair value in a Nevada stockholder dissenters' rights appraisal action?
3. Whether the district court abused its discretion by determining that the fair value of Cordillera's shares was $3 per share.

HOLDINGS

1. A district court determining fair value may rely on any valuation technique generally accepted in the relevant financial community, must consider all relevant factors presented by the parties and any independent examiner, and must reach a value that is fair and equitable to all parties.
2. Both the dissenting stockholder and the corporation bear the burden of proving their respective valuation conclusions by a preponderance of the evidence.
3. The district court did not abuse its discretion by determining that Cordillera's shares had a fair value of $3 per share.

KEY QUOTATIONS

> *"Accordingly, we adopt Delaware's approach in determining fair value of a dissenting stockholder's shares of stock. As such, in a stockholder's right-to-dissent appraisal action, both the dissenting stockholder and the corporation have the burden of proving their respective valuation conclusions by a preponderance of the evidence in the district court."* (252 P.3d at 667)

> *"Final responsibility for determining fair value, however, lies with the court, which must make its own independent value determination."* (252 P.3d at 667)

> *"Like other Model Business Corporation Act states, we conclude that, in determining "fair value, the trial court may rely on proof of value by any technique that is generally accepted in the relevant financial community and should consider all relevant factors, but the value must be fair and equitable to all parties.""* (252 P.3d at 666-67)

FACTUAL BACKGROUND

Cordillera purchased 583,334 shares of American Ethanol Series B convertible preferred stock for $3 per share. American Ethanol later merged with AE Biofuels, and Cordillera exercised its statutory dissenters' rights. The corporation offered $0.15 per share based on book value, while Cordillera sought $3 per share based principally on SEC documents and the original offering price. After a trial, the district court found that the preponderance of the evidence supported a $3-per-share fair-value determination.

PROCEDURAL HISTORY

Cordillera notified American Ethanol of its intent to dissent from a merger and demanded payment for its shares. After a jury found that Cordillera's demand was timely, the district court conducted a trial on fair value, rejected the corporation's book-value theory, and entered judgment for Cordillera based on a $3-per-share valuation.

American Ethanol and AE Biofuels appealed, arguing that the district court abused its discretion because Cordillera failed to meet its burden of proof.

DISPOSITION

affirmed

CASES CITED

- Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 62 P.3d 720 (2003)
- Steiner Corp. v. Benninghoff, 5 F. Supp. 2d 1117 (D. Nev. 1998)
- Southdown, Inc. v. McGinnis, 89 Nev. 184, 510 P.2d 636 (1973)
- Advanced Communication Design v. Follett, 615 N.W.2d 285 (Minn. 2000)
- Torres v. Schripps, Inc., 342 N.J. Super. 419, 776 A.2d 915 (N.J. Super. Ct. App. Div. 2001)
- Pueblo Bancorporation v. Lindoe, Inc., 63 P.3d 353 (Colo. 2003)
- Matter of Cohen, 168 Misc. 2d 91, 636 N.Y.S.2d 994 (Sup. Ct. 1995)
- Montgomery Cellular Holding Co. v. Dobler, 880 A.2d 206 (Del. 2005)
- M.G. Bancorporation, Inc. v. Le Beau, 737 A.2d 513 (Del. 1999)
- In re Appraisal of Metromedia International Group, 971 A.2d 893 (Del. Ch. 2009)
- Highfields Capital, Ltd. v. AXA Financial, 939 A.2d 34 (Del. Ch. 2007)
- Gonsalves v. Straight Arrow Publishers, 701 A.2d 357 (Del. 1997)
- Chrome Data Systems, Inc. v. Stringer, 109 Or. App. 513, 820 P.2d 831 (1991)
- In re 75,629 Shares of Common Stock, 169 Vt. 82, 725 A.2d 927 (1999)
- Dodd v. Potomac Riverside Farm, Inc., 222 W. Va. 299, 664 S.E.2d 184 (2008)
- United Ins. Co. v. Chapman Industries, 120 Nev. 745, 100 P.3d 664 (2004)
- Bendalin v. Delgado, 406 S.W.2d 897 (Tex. 1966)
- Chadwick v. Cross, Abbott & Co., 124 Vt. 325, 205 A.2d 416 (1964)