SUPREME COURT OF OKLAHOMA

International Brotherhood of Teamsters General Fund v. Fleming Companies, Inc.

975 P.2d 907 (Okla. 1999) · No. No. 90,185 · Decided January 26, 1999

SUMMARY

The Oklahoma Supreme Court answered a certified question concerning whether Oklahoma law grants boards of directors exclusive authority to create and implement shareholder rights plans. The court held that shareholders may propose bylaws restricting the board's implementation of such plans, assuming the certificate of incorporation does not provide otherwise.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Simms, J.; Summers, C.J.; Hargrave, V.C.J.; Lavender, J.; Opala, J.; Wilson, J.; Kauger, J.; Watt, J.; Hodges, J.
JURISDICTION	Oklahoma
DECIDED	January 26, 1999
DOCKET	No. 90,185
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Tenth Circuit certified a question of Oklahoma law to the Supreme Court of Oklahoma under 20 O.S. 1991, § 1601.
STANDARD OF REVIEW	Certified question of state law; no appellate standard of review was stated.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion answering a certified question of Oklahoma law; precedential.
PARTIES	Fleming Companies, Inc. v. International Brotherhood of Teamsters General Fund

TOPICS

corporate governance · corporate law · statutory interpretation · commercial litigation

PRACTICE AREAS

corporate law | corporate governance | commercial litigation | statutory interpretation

QUESTIONS PRESENTED

1. Whether Oklahoma law gives the board of directors exclusive authority to create and implement shareholder rights plans.
2. Whether shareholders may propose resolutions or bylaw amendments requiring a shareholder vote on a shareholder rights plan at a succeeding annual meeting, assuming the certificate of incorporation does not provide otherwise.

HOLDINGS

1. Oklahoma law does not grant the board of directors exclusive authority to create and implement shareholder rights plans when shareholder objection is brought through official channels of corporate governance.
2. Shareholders may propose bylaws restricting the board's implementation of shareholder rights plans, including a requirement that such plans be submitted to shareholders for approval, assuming the certificate of incorporation does not provide otherwise.

KEY QUOTATIONS

> *"We hold under Oklahoma law there is no exclusive authority granted boards of directors to create and implement shareholder rights plans, where shareholder objection is brought and passed through official channels of corporate governance."* (975 P.2d at 907)

> *"We hold shareholders may propose bylaws which restrict board implementation of shareholder rights plans, assuming the certificate of incorporation does not provide otherwise."* (975 P.2d at 907)

> *"Instead, we find shareholders may, through the proper channels of corporate governance, restrict the board of directors authority to implement shareholder rights plans."* (975 P.2d at 913)

FACTUAL BACKGROUND

Fleming had implemented a shareholder rights plan, commonly known as a poison pill, in 1986. Teamsters, a Fleming shareholder, opposed continuation of the plan and obtained a majority vote in favor of a 1996 nonbinding resolution requesting redemption of the plan. In 1997, Teamsters proposed a bylaw amendment requiring shareholder approval of any rights plan adopted by Fleming's board, but Fleming refused to include the proposal in its proxy materials.

PROCEDURAL HISTORY

Teamsters proposed a bylaw amendment requiring shareholder approval of any shareholder rights plan adopted by Fleming's board. Fleming refused to include the proposal in its proxy materials, and Teamsters sued in the United States District Court for the Western District of Oklahoma. The district court ruled for Teamsters, the Tenth Circuit accepted the appeal, and the Tenth Circuit certified the governing Oklahoma-law question to the

Oklahoma Supreme Court. The certified question was answered, and the opinion did not itself affirm or reverse a lower-court judgment.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Employment Security Commission v. First National Bank of Texhoma, 197 Okla. 652, 174 P.2d 259 (1946)
- State ex rel. Oklahoma Employment Security Commission v. Tulsa Flower Exchange, 192 Okla. 293, 135 P.2d 46 (1943)
- Sumner Coal-Mining Co. v. Pleasant, 127 Okla. 174, 259 P. 1055 (1927)
- Oberly v. Kirby, 592 A.2d 445, 458 (Del. 1991)
- Michelson v. Duncan, 407 A.2d 211, 218-20 (Del. 1979)
- Robert A. Wachsler, Inc. v. Florafax International, Inc., 778 F.2d 547 (10th Cir. 1985)