SUPREME COURT OF DELAWARE

BVF Partners L.P. v. New Orleans Employees' Retirement System

59 A.3d 418 (Del. 2012) · Decided December 27, 2012

SUMMARY

The Delaware Supreme Court reviewed the certification of a shareholder class and approval of a non-opt-out settlement arising from Quest Diagnostics' acquisition of Celera Corporation. The court held that New Orleans Employees' Retirement System had standing to represent the class despite selling its shares before the merger closed, and that the Court of Chancery did not abuse its discretion in certifying the class. However, the court held that BVF Partners should have been permitted to opt out under the circumstances, affirming in part and reversing in part.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Ridgely, Justice; Berger; Holland; Jacobs; Ridgely; Vaughn
JURISDICTION	Delaware
DECIDED	December 27, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	BVF, an objector to a shareholder class-action settlement, appealed the Court of Chancery's certification of New Orleans Employees' Retirement System as class representative, certification of a non-opt-out class under Court of Chancery Rule 23(b)(1) and (b)(2), and approval of the settlement.
STANDARD OF REVIEW	Class-certification determinations under Rule 23 are reviewed for abuse of discretion; alleged erroneous legal precepts and due-process claims are reviewed de novo; factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	BVF Partners L.P. v. New Orleans Employees' Retirement System, Richard H. Ayers, Jean-Luc Belingard, William G. Green, Peter Barton Hutt, Gail M. Naughton, Kathy Ordóñez, Wayne I. Roe, Bennett M. Shapiro, Celera Corporation, Quest Diagnostics Incorporated, Spark Acquisition Corporation

TOPICS

class actions · fiduciary duty · mergers and acquisitions · appellate procedure · civil procedure

PRACTICE AREAS

Delaware corporate law · class actions · fiduciary duty · mergers and acquisitions · civil procedure

QUESTIONS PRESENTED

1. Whether NOERS retained standing to represent the shareholder class after selling its Celera shares before the merger closed.
2. Whether NOERS was an inadequate or atypical class representative because of potential equitable defenses, its prior litigation activity, lack of support from BVF, or alleged abdication of control to counsel.
3. Whether the Court of Chancery properly certified the settlement class under Court of Chancery Rule 23(b)(1) and (b)(2).
4. Whether the Court of Chancery abused its discretion or violated due process by denying BVF a discretionary right to opt out of the non-opt-out class.
5. Whether the settlement was unfair because it released BVF's potential monetary claims for inadequate consideration; the court did not reach this issue after ruling that BVF should have been allowed to opt out.

HOLDINGS

1. A shareholder class representative in a breach-of-fiduciary-duty action is not required to own stock continuously through final class certification or merger consummation. NOERS had standing because it owned Celera stock when the merger was approved and fell within the settlement class definition.
2. The Court of Chancery did not abuse its discretion in finding NOERS an adequate and typical class representative despite its sale of shares, alleged susceptibility to equitable defenses, status as a repeat class representative, lack of BVF's support, and alleged lack of control over litigation.
3. A shareholder class challenging director conduct in a corporate transaction may be certified under Rule 23(b)(1) and (b)(2), even when monetary damages are also sought, so long as equitable relief predominates and the class members' rights and interests are homogeneous.
4. The Court of Chancery abused its discretion by denying BVF a discretionary opt-out right under the particular facts of this settlement.

KEY QUOTATIONS

> *"We decline to adopt a rule of law that a shareholder class representative in a breach of fiduciary duty action must own stock in the corporation continuously through the final class certification."* (418)

> *"Necessarily, the Court of Chancery has the discretionary power to grant opt-out rights to members of a 23(b)(2) class when fairness and equity demand it."* (435)

> *"Under these particular facts and circumstances, the Court of Chancery had to provide an opt-out right."* (436)

FACTUAL BACKGROUND

Celera's board approved an $8.00-per-share acquisition by Quest Diagnostics after negotiations and a fairness analysis by Credit Suisse. Credit Suisse had incorrectly interpreted a Tufts University study, potentially undervaluing Celera's drug assets, including odanacatib. NOERS filed a fiduciary-duty class action, later sold its Celera shares four days before the merger closed, and remained the named class representative under a settlement class broadly covering persons who held Celera shares during the relevant period. BVF, which had become Celera's largest shareholder and claimed substantial monetary damages, objected to the settlement and sought permission to opt out.

PROCEDURAL HISTORY

NOERS filed a class action in the Court of Chancery challenging the acquisition of Celera Corporation by Quest Diagnostics and alleging breaches of fiduciary duty and aiding and abetting. After expedited discovery, NOERS and the defendants reached a memorandum of understanding and later a settlement providing therapeutic, rather than monetary, benefits and a broad release. The Court of Chancery certified the class without opt-out rights, approved the settlement, and awarded attorneys' fees. The Supreme Court of Delaware affirmed the class certification rulings in part but reversed the denial of BVF's request for a discretionary opt-out right and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion, including provision of an opt-out right to BVF.

CASES CITED

- Dover Historical Soc'y v. City of Dover Planning Commission, 838 A.2d 1103 (Del. 2003)
- In re Philadelphia Stock Exchange, Inc., 945 A.2d 1123 (Del. 2008)
- In re Beatrice Cos., Inc. Litig., 522 A.2d 865 (TABLE), 1987 WL 36708 (Del. 1987)
- Schultz v. Ginsburg, 965 A.2d 661 (Del. 2009)
- Gesoff v. IIC Industries, Inc.
- Dieter v. Prime Computer, Inc., 681 A.2d 1068 (Del. Ch. 1996)
- Bershad v. Curtiss-Wright Corp., 535 A.2d 840 (Del. 1987)
- In re Best Lock Corp. S'holder Litig., 845 A.2d 1057 (Del. Ch. 2004)
- Nottingham Partners v. Dana, 564 A.2d 1089 (Del. 1989)
- Leon N. Weiner Assocs., Inc. v. Krapf, 584 A.2d 1220 (Del. 1991)
- Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011)

- Prezant v. De Angelis, 636 A.2d 915 (Del. 1994)
- In re Countrywide Corp. S'holders Litig., 2009 WL 846019 (Del. Ch. Mar. 31, 2009)
- Rome v. Archer, 197 A.2d 49 (Del. 1964)
- Barkan v. Amsted Indus., Inc., 567 A.2d 1279 (Del. 1989)
- Parker v. Time Warner Entm't Co., 331 F.3d 13 (2d Cir. 2003)
- Robinson v. Metro-North, 267 F.3d 147 (2d Cir. 2001)
- Frazer v. Worldwide Energy Corp., 1990 WL 61192, 16 Del. J. Corp. L. 732 (Del. Ch. May 3, 1990)

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