UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Priddy v. Edelman

679 F. Supp. 1425 (E.D. Mich. 1988) · No. Civ. No. 86-73941 · Decided February 23, 1988

SUMMARY

The court denied the plaintiff's request to amend the complaint and granted defendants' motions for summary judgment in litigation arising from competing efforts to acquire Fruehauf Corporation. The court rejected claims involving alleged fiduciary duties, preferential treatment of the Edelman group, violations of federal tender-offer rules, and disclosure violations. It concluded that the undisputed facts did not establish actionable breaches or securities-law violations.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	Anna Diggs Taylor
JURISDICTION	Michigan
DECIDED	February 23, 1988
DOCKET	Civ. No. 86-73941
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought individual and purported representative claims concerning Fruehauf Corporation's leveraged buyout and related tender offers. After discovery, defendants moved for summary judgment. Plaintiff opposed and sought leave to amend the complaint and summary judgment on proposed new claims.
STANDARD OF REVIEW	Summary judgment is appropriate where the material facts are undisputed and the moving party is entitled to judgment as a matter of law. Leave to amend may be denied when the request is untimely and amendment would be futile.
PRECEDENTIAL VALUE	Published federal district court memorandum opinion; persuasive authority within the Sixth Circuit and not binding precedent on the circuit or other courts.

TOPICS

corporate law · fiduciary duty · business judgment rule · summary judgment · motion to amend

PRACTICE AREAS

corporate law · securities law · commercial litigation · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether plaintiff should be granted leave to amend the complaint after the close of discovery and expiration of the motion deadline.
2. Whether the Edelman group owed fiduciary duties to all Fruehauf shareholders by filing takeover litigation and, if so, breached those duties by settling on terms unavailable to other shareholders.
3. Whether the purchase of the Edelman group's shares and payment of settlement expenses violated Williams Act and SEC tender-offer rules.
4. Whether plaintiff had standing to challenge purchases allegedly made outside a tender offer under SEC Rule 10b-13.
5. Whether the August 28 tender-offer circular contained material misrepresentations or omissions violating Section 14(e) of the Securities Exchange Act.
6. Whether Fruehauf's directors breached their fiduciary duties or violated the prior injunction by approving Merrill Lynch's August 22 offer rather than the Edelman group's August 18 offer.

HOLDINGS

1. Leave to amend was properly denied because the request was untimely and the proposed claims were futile.
2. The Edelman group did not become a fiduciary of all Fruehauf shareholders merely by filing takeover litigation and did not owe fiduciary duties arising from control or board representation because it neither represented a shareholder class nor controlled Fruehauf.
3. Even assuming the Edelman group owed some fiduciary duty, the undisputed evidence did not show a breach because the payment was for claimed expenses, was made by a third-party bidder rather than Fruehauf, and did not reduce the value available to Fruehauf shareholders.
4. Rule 14(d)(10) applies by its terms to a bidder, not a selling shareholder, and the undisputed record showed that the Edelman shares were not purchased during or pursuant to a tender offer and that no premium was paid for them.
5. The Rule 10b-13 claim failed because the first tender offer was terminated before the Edelman shares were purchased, the August 28 offer had not yet commenced, and plaintiff had not alleged that he tendered shares into any offer; therefore, he lacked standing to challenge the purchase.
6. The proposed Section 14(e) disclosure claims were futile because the challenged tender-offer statements were either supported by undisputed evidence, immaterial, or not misleading.
7. Fruehauf's directors did not breach their fiduciary duties or violate the prior injunction by approving Merrill Lynch's August 22 offer rather than the Edelman offer because the undisputed evidence showed

that the Merrill Lynch proposal provided the highest shareholder value and was approved after careful consideration and financial advice.

KEY QUOTATIONS

> *“Once it becomes apparent that a takeover target will be acquired by new owners, whether by an alleged "raider" or by a team consisting of management and a "white knight", it becomes the duty of the target's directors to see that the shareholders obtain the best price possible for their stock....”* (798 F.2d at 886)

> *“The "business judgment rule" creates a presumption that directors have acted in accordance with their fiduciary obligations "on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the company."”* (1434)

> *“This court may not substitute its judgment as to which bargain may have been best.”* (1434)

FACTUAL BACKGROUND

Fruehauf Corporation was the target of competing acquisition efforts by the Edelman group and a Merrill Lynch-led management group. After the Sixth Circuit directed the parties to maintain an open bidding process, Fruehauf's special committee evaluated final offers and concluded, on advice from Kidder Peabody and Salomon Brothers, that Merrill Lynch's August 22 proposal provided the highest shareholder value. Merrill Lynch purchased the Edelman group's shares and paid approximately $21 million for claimed expenses in connection with settling the takeover contest, after which Merrill Lynch commenced a tender offer at $49.50 per share and completed a second-step merger. Plaintiff owned Fruehauf stock but did not claim to have tendered shares into any offer, and no class-certification motion was filed.

PROCEDURAL HISTORY

Priddy filed the action on September 17, 1986, claiming that Fruehauf directors, the Edelman group, and other defendants violated fiduciary duties, a prior injunction, federal tender-offer rules, and disclosure requirements. After full discovery, defendants moved for summary judgment on the undisputed record. Plaintiff responded with new theories, sought leave to amend, and requested summary judgment in his favor. The court denied leave to amend and plaintiff's summary-judgment motion and granted summary judgment to all defendants.

DISPOSITION

other

CASES CITED

- Plaza Securities Co. v. Fruehauf Corp.; Fruehauf Corp. v. Edelman, 643 F. Supp. 1535 (E.D. Mich. 1986)
- Edelman v. Fruehauf Corp., 798 F.2d 882 (6th Cir. 1986)
- Moore v. Paducah, 790 F.2d 557 (6th Cir. 1986)
- Addington v. Farmer's Elevator Mutual Ins. Co., 650 F.2d 663 (5th Cir. 1981), cert. denied, 454 U.S. 1098 (1981)
- Roberts v. Arizona Bd. of Regents, 661 F.2d 796, 798 (9th Cir. 1981)

- Russ v. Federal Mogul Corp., 112 Mich. App. 449, 316 N.W.2d 454 (1982)
- In re Sea-Land Corp. Shareholders Litigation, No. 8453, slip op. at 9-10 (Del. Ch. May 22, 1987), 1987 WL 11283
- Gilbert v. El Paso Co., 490 A.2d 1050, 1055 (Del. Ch. 1984)
- Aronson v. Lewis, 473 A.2d 805, 815 (Del. 1984)
- Kaplan v. Goldsamt, 380 A.2d 556 (Del. Ch. 1977)
- Hanson Trust P.L.C. v. SCM Corp., 774 F.2d 47, 58-59 (2d Cir. 1985)
- Beaumont v. American Can Co., 797 F.2d 79, 84 (2d Cir. 1986)
- Field v. Trump, 661 F. Supp. 529 (S.D.N.Y. 1987)
- TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)
- Barrows v. J.N. Fauver Co., 280 Mich. 553, 558-559, 274 N.W. 325, 328 (1937)
- In re Butterfield Estate, 418 Mich. 241, 255, 341 N.W.2d 453, 459 (1983)
