SUPREME COURT OF COLORADO

Curtis v. Nevens

31 P.3d 146 (Colo. 2001) · No. No. 00SA314 · Decided September 10, 2001

SUMMARY

The Colorado Supreme Court addresses the trial court's authority to review a special litigation committee before the committee begins its investigation in a shareholder derivative action. The court holds that pre-investigation review is limited to determining whether the committee is independent and disinterested, and that the reasonableness of its procedures generally may not be reviewed until the investigation is complete. The court also directs the trial court to approve the committee and stay the derivative action for a limited, reasonable period.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Bender
JURISDICTION	Colorado
DECIDED	September 10, 2001
DOCKET	No. 00SA314
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding under C.A.R. 21 challenging the trial court's refusal to approve the appointment of a special litigation committee and refusal to stay a shareholder derivative action pending the committee's investigation and report.
STANDARD OF REVIEW	Original-proceeding review under C.A.R. 21; the trial court's pre-investigation review of a special litigation committee is limited to independence and disinterestedness.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado, decided en banc.
PARTIES	Charles G. Curtis, Charles Curtis & Patricia Morse Curtis Foundation, Chaffee Corporation v. Thomas D. Nevens, William Culbertson, Arthur Krill, Richard Sullivan

TOPICS

shareholder derivative suits · corporate governance · business judgment rule · writ of certiorari · appellate procedure

PRACTICE AREAS

corporate law · civil procedure · appellate procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether a trial court may review the reasonableness of a special litigation committee's proposed investigative procedures before the committee begins its investigation.
2. Whether the trial court erred by refusing to approve an independent and disinterested special litigation committee based on the court's concerns about the committee's proposed use of the business judgment standard and the expense of the investigation.
3. Whether a trial court should stay a shareholder derivative action for a limited and reasonable period after approving a special litigation committee, absent extraordinary circumstances requiring continued plaintiff discovery.

HOLDINGS

1. When a special litigation committee has not yet begun its investigation, the trial court's review is limited to determining whether the committee is independent and disinterested. The court may not review the reasonableness of the committee's proposed procedures before the investigation is completed, absent exceptional or extraordinary circumstances.
2. A special litigation committee may appropriately use the business judgment standard to guide its analysis, and a trial court may not reject the committee's appointment based on the court's own assumptions about the factors the committee will consider or the cost of the committee's investigation.
3. Once an independent and disinterested special litigation committee is approved, the trial court should stay the derivative action for a limited and reasonable period to allow the committee to investigate and report, unless extraordinary circumstances justify permitting plaintiff discovery to continue.

KEY QUOTATIONS

> *"In a pre-investigation context, the trial court may determine the independence of the SLC but may not, absent extraordinary circumstances not argued here, review the reasonableness of the SLC's proposed procedures."* (31 P.3d at 153)

> *"Therefore, we hold that upon approval of the SLC, a stay should be granted for a limited, reasonable time for that committee to complete its investigation."* (31 P.3d at 155)

FACTUAL BACKGROUND

Charles G. Curtis, a Chaffee Corporation board member, and related entities brought a derivative action against majority members of the Chaffee Board, alleging breaches of fiduciary duty and negligence in controlling toxic chemical seepage into soil and groundwater. After Chaffee sold its business and most assets to Tetra

Technologies, Curtis alleged that the misconduct reduced the sale price and caused Tetra to refuse to purchase the affected plant facility and real estate. Before discovery began, the Chaffee Board appointed independent counsel, David Palmer, as a proposed special litigation committee to investigate the claims and determine whether continuing the litigation was in the corporation's best interests.

PROCEDURAL HISTORY

Curtis brought a shareholder derivative suit alleging that members of the Chaffee Corporation board breached fiduciary duties and acted negligently in connection with toxic chemical seepage. Before discovery began, the Chaffee Board proposed appointing David Palmer as an independent special litigation committee. The trial court found Palmer independent and disinterested but denied approval because it considered the committee's proposed investigative procedures unreasonable, and it refused to stay the derivative action. The Colorado Supreme Court granted relief, directed approval of the committee, and ordered a limited stay.

DISPOSITION

```
writ_granted
```

REMAND INSTRUCTIONS

The trial court must approve the special litigation committee proposed by the Chaffee Board and grant a stay of the shareholder derivative proceedings for a limited and reasonable time to permit David Palmer to complete the investigation and submit a report.

CASES CITED

- Hirsch v. Jones Intercable, Inc., 984 P.2d 629, 633-38 (Colo. 1999)
- Zapata Corp. v. Maldonado, 430 A.2d 779, 788 (Del. 1981)
- Auerbach v. Bennett, 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 994, 1000-03 (1979)
- Hasan v. Clevetrust Realty Investors, 729 F.2d 372, 376-79 (6th Cir. 1984)
- Grafman v. Century Broad. Corp., 762 F. Supp. 215, 220 (N.D. Ill. 1991)
- Kaplan v. Wyatt, 484 A.2d 501, 511-12, 519-20 (Del. Ch. 1984)
- Miller v. Bargaheiser, 70 Ohio App. 3d 702, 591 N.E.2d 1339, 1343 (1990)
- Drilling v. Berman, 589 N.W.2d 503, 509 (Minn. Ct. App. 1999)
- Lewis v. Boyd, 838 S.W.2d 215, 224 (Tenn. Ct. App. 1992)
- Abbey v. Computer & Communications Technology Corp., 457 A.2d 368, 375-76 (Del. Ch. 1983)
- Strougo ex rel. Brazil Fund, Inc. v. Padegs, 986 F. Supp. 812, 815 (S.D.N.Y. 1997)
- Lewis v. Anderson, 615 F.2d 778, 782-83 (9th Cir. 1979)
- Miller v. Register & Tribune Syndicate, Inc., 336 N.W.2d 709, 718 (Iowa 1983)
- Houle v. Low, 407 Mass. 810, 556 N.E.2d 51, 54-55 (1990)
- Bernklau v. Stevens, 150 Colo. 187, 197, 371 P.2d 765, 770 (1962)

INSTRUCTIONS FOR AN AI ASSISTANT