UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Trinity Wall Street v. Wal-Mart Stores, Inc.

792 F.3d 323 (3d Cir. 2015) · No. No. 14-4764 · Decided July 6, 2015

SUMMARY

The United States Court of Appeals for the Third Circuit held that Trinity Wall Street’s shareholder proposal concerning Wal-Mart’s sale of certain firearms and product-sale policies was excludable from Wal-Mart’s proxy materials under SEC Rule 14a-8(i)(7), the ordinary-business exclusion. The court concluded that, despite the proposal’s focus on board oversight and public safety, it principally related to Wal-Mart’s ordinary business operations and did not focus on a significant social policy issue transcending those operations. The court reversed the District Court’s ruling in favor of Trinity.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Ambro, Circuit Judge; Ambro; Vanaskie; Shwartz
JURISDICTION	Federal
DECIDED	July 6, 2015
DOCKET	No. 14-4764
DISPOSITION	reversed
PROCEDURAL POSTURE	Wal-Mart appealed from the District of Delaware's summary judgment ruling that Trinity's shareholder proposal was not excludable from Wal-Mart's proxy materials under SEC Rule 14a-8(i)(7), and from the court's related merits rulings.
STANDARD OF REVIEW	De novo review of the District Court's order granting summary judgment; Wal-Mart bore the burden of establishing as a matter of law that exclusion was proper.
PRECEDENTIAL VALUE	precedential
PARTIES	Wal-Mart Stores, Inc. v. Trinity Wall Street

TOPICS

corporate governance · securities fraud · administrative law · judicial review of agency action · appellate procedure

PRACTICE AREAS

securities regulation · corporate governance · administrative law · appellate procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether Trinity's shareholder proposal was excludable under SEC Rule 14a-8(i)(7) because it related to Wal-Mart's ordinary business operations.
2. Whether the proposal's focus on public safety, reputation, and corporate values constituted a significant social or corporate policy issue transcending Wal-Mart's ordinary business operations.
3. Whether the proposal was also excludable as vague under SEC Rule 14a-8(i)(3).

HOLDINGS

1. The proposal was excludable under Rule 14a-8(i)(7) because its substance concerned how Wal-Mart makes merchandising and product-selection decisions, which are ordinary business operations.
2. Even assuming that the proposal raised sufficiently significant social or corporate policy issues, those issues did not transcend Wal-Mart's ordinary business operations because they were enmeshed with the retailer's core decision about which products to sell.
3. A majority of the panel concluded that the proposal was independently excludable as vague under Rule 14a-8(i)(3), because terms such as 'many' and 'family and community values' did not provide sufficiently clear guidance.

KEY QUOTATIONS

> *"Stripped to its essence, Trinity's proposal—although styled as promoting improved governance—goes to the heart of Wal-Mart's business: what it sells on its shelves."* (792 F.3d at 338)

> *"A proposal need only relate to a company's ordinary business to be excludable. It need not dictate any particular outcome."* (792 F.3d at 346)

> *"We thus hold that, even if Trinity's proposal raises sufficiently significant social and corporate policy issues, those policies do not transcend the ordinary business operations of Wal-Mart."* (792 F.3d at 351)

FACTUAL BACKGROUND

Trinity Wall Street, a Wal-Mart shareholder, sought to address Wal-Mart's continued sale of certain firearms, including Bushmaster AR-15 rifles and firearms equipped with high-capacity magazines. Trinity submitted a shareholder proposal asking Wal-Mart's Board to oversee the formulation and implementation of standards for deciding whether to sell products that especially endanger public safety, could impair Wal-Mart's reputation, or could offend family and community values associated with its brand. Wal-Mart sought to exclude the proposal under SEC Rule 14a-8(i)(7), and the SEC staff issued a no-action letter supporting exclusion.

PROCEDURAL HISTORY

Trinity submitted a shareholder proposal concerning Wal-Mart's policies for deciding whether to sell products that could endanger public safety or harm the company's reputation and brand. Wal-Mart obtained an SEC staff no-action letter permitting exclusion of the proposal and excluded it from its 2014 proxy materials. Trinity sued in the District of Delaware. After initially denying preliminary injunctive relief on the ordinary-business issue, the District Court granted Trinity summary judgment concerning the 2015 proxy materials, holding that the proposal focused on corporate governance and significant social-policy concerns rather than ordinary business operations. The Third Circuit reversed.

DISPOSITION

reversed

CASES CITED

- Apache Corp. v. Chevedden, 696 F. Supp. 2d 723 (S.D. Tex. 2010)
- AFSCME v. American International Group, Inc., 462 F.3d 121 (2d Cir. 2006)
- Amalgamated Clothing & Textile Workers Union v. Wal-Mart Stores, Inc., 821 F. Supp. 877 (S.D.N.Y. 1993)
- Stroud v. Grace, 606 A.2d 75 (Del. 1992)
- J.I. Case Co. v. Borak, 377 U.S. 426 (1964)
- Roosevelt v. E.I. Du Pont de Nemours & Co., 958 F.2d 416 (D.C. Cir. 1992)
- New York City Employees' Retirement System v. SEC, 45 F.3d 7 (2d Cir. 1995)
- Apache Corp. v. New York City Employees' Retirement System, 621 F. Supp. 2d 444 (S.D. Tex. 2008)
- Donaghue v. Accenture Ltd., 2004 WL 1823448 (S.D.N.Y. Aug. 16, 2004)
- Levy v. Sterling Holding Co., LLC, 544 F.3d 493 (3d Cir. 2008)
- National Cable & Telecommunications Association v. Brand X Internet Services, 545 U.S. 967 (2005)
- Dyer v. SEC, 287 F.2d 773 (8th Cir. 1961)
- N.Y.C. Employees' Retirement System v. Brunswick, 789 F. Supp. 144 (S.D.N.Y. 1992)