

METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, Plaintiff, vs. **ARAMARK CORPORATION**, a Delaware corporation, et al., Defendants. **MICHAEL P. RECHT**, as trustee for **THE MICHAEL P. RECHT REVOCABLE TRUST**, et al., Plaintiffs, vs. **ARAMARK CORPORATION**, a Delaware corporation, et al., Defendants. **CLAY M. WEBB, III**, et al., Plaintiffs, vs. **ARAMARK CORPORATION**, a Delaware corporation, et al., Defendants.

Civil Action No. 16142, Civil Action No. 16170, Civil Action No. 16171

COURT OF CHANCERY OF DELAWARE, NEW CASTLE

1998 Del. Ch. LEXIS 70

February 5, 1998, Decided

NOTICE: [*1] THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

DISPOSITION: Injunction granted.

OPINION: RULING OF THE COURT ON PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

THE COURT: First, I will state the obvious. We are at a preliminary stage of the case, and all findings are necessarily tentative, as well as the rulings. Because of the timing on transactions, we have deadlines to meet, and we simply do the best we can in the available time.

This case potentially involves several issues that have not yet been decided. I don't believe this is the time to attempt to decide them. And I will try to touch on the essential issues at this point in time, and yet because of the nature of the case, the importance to the parties, the significance of the issues and the understandable desire of the parties, we not only want to have a decision before the absolute deadline but we like to leave time for an appeal if that is a party's desire.

At a hearing on an application for a preliminary injunction the first issue is the probability of success. That implicates the standard of review. As we know, whether the business judgment presumption applies or whether [*2] the directors have the burden of showing the entire fairness of a proposed transaction can be important; indeed, determinative. On the other hand, plaintiffs can overcome the business judgment presumption and defendants can satisfy their burden of showing entire fairness.

In this case the plaintiffs argue several theories why the defendants are required to meet the entire fairness burden. There is a certain logic and appeal and simplicity to a rule that whenever a corporation cashes out minority stockholders by means of a reclassification, they should have the burden of showing the entire fairness of what they have done. There is a certain logic to a rule that whenever directors treat holders of the same stock differently, they should have the burden of showing the entire fairness of what they have done. I have some doubts, however, that that is the rule that is drawn from the precedents.

Counsel have argued the case of *Nixon v. Blackwell*, which is an analogous case in the sense that holders of the same stock were treated differently. In that case the entire fairness requirement was imposed based on personal interest of the directors in the transaction and not based solely on the [*3] fact that holders of the same stock were being treated differently. The Court in that case did circumstances to treat stockholders equally but may, when justified by a proper corporate purpose, treat them differently, provided that there is always a fiduciary

duty to treat all stockholders fairly.

One can distinguish what was done in that case -- namely, providing certain benefits to employee stockholders but not providing them to nonemployee stockholders -- is significantly different from what is being done here; namely, cashing out certain holders of Class A stock.

One may argue, as I believe I suggested earlier, that there is some logic to simply applying the entire fairness requirement. One can compare the substance of what is being done here in some ways to a merger, in which the entire fairness requirement always applies. But I think the prudent course is to assume that the business judgment presumption does apply so long as the requirements for that presumption are satisfied.

The first requirement is that the board be disinterested. I find the arguments on this issue interesting, if I can use that term. It might turn out on fuller development that there is a disabling interest, [*4] but I am not satisfied that that is the case as a probability at this point in time. I say that for the following reasons.

I believe a valid point was made when it was stated that the directors have duties to the holders of both classes of stock. As I understand the standard in cases like that, the duty is to treat the stockholders fairly, not necessarily equally, so long as the directors act for the benefit of the corporation. Of course, the existence of a material financial interest would be disqualifying.

I am not satisfied at this stage that there is a material financial interest here because of the nature of the stock that the directors hold and the amounts. Of course, I am referring to the ten who own the lesser amounts. Their holdings are not insignificant, except perhaps for two of them. But I am not satisfied at this point in time that they constitute a material personal financial interest that would necessarily disable them from acting in what they in good faith perceive is the interest of the corporation as a whole.

The next requirement for the business judgment presumption is having a rational corporate purpose. And at this point in time I am satisfied that the directors [*5] did have a rational corporate purpose in pursuing a longstanding policy of increasing employee ownership and increasing incentives by that means and also by aligning some of the employees' stock ownership with the particular line of work they do.

The next requirement is that the directors exercise due care. I don't have any concern about that in the sense of carefully evaluating this business plan and deciding on its merits, but I view the directors as having a duty to comply with Delaware law. I realize that the question of whether a private company discount is permissible has not been directly decided, and in a sense one could not fault the directors for making a mistake or a poor prediction on what the courts will rule. But I do not think it follows that they are not bound to apply Delaware law, however careful they are and however much advice they get from various kinds of experts.

This brings me to what I view as the core issue in the case, and that is whether the private company discount is permitted. The Supreme Court said in *Nixon vs. Blackwell* that directors have a fiduciary duty to treat all stockholders fairly. What does that mean where minority stockholders are being [*6] cashed out by some means other than merger, where the statutes provide appraisal rights? I think it is agreed that under the doctrine of independent legal significance other methods of accomplishing the same result are permitted. But I believe that the fiduciary duty in this situation was to pay stockholders who are cashed out the fair value of their stock as that term is defined in the appraisal cases and in the breach of fiduciary duty cases in merger transactions. I cannot accept an argument that so long as directors are careful and try to get it right, the fact that they make a mistake on a matter of Delaware law will defeat a claim that a fair price was not paid to stockholders who are cashed out by some means other than a merger.

In my opinion, the private company discount applied in this case is inconsistent with Delaware law. I recognize that it is not absolutely free from doubt, but I think it is reasonably clear from the cases we have in Delaware

from the theory and purpose of a fair value standard. The purpose is to give cashed-out stockholders the substantial equivalent of their share of the value of the company as a going concern. That is inconsistent not only with a [*7] minority discount but also with a marketability discount. I believe it is also inconsistent with a marketability discount that is applied to all the stock in the company. There may be situations where a discount is proper when it affects the value of the assets of the company, but I do not believe it is proper when it affects the stock of the company.

So based on that understanding of the law, I conclude that the plaintiffs have made a strong showing that the price they would be receiving is not fair. I believe that that showing overcomes the business judgment presumption, and I can now turn to an analysis under the entire fairness doctrine of fair process and fair price, but it really seems pointless to me, because if a private company discount, which was very substantial in this case, is illegal, the price wasn't fair, and if the price wasn't fair, it doesn't matter whether the process was fair.

I will say, to the extent that someone might think that thoroughness requires it, that the plaintiffs made a couple of valid points on the process, in my opinion. It seems to me -- and I say this tentatively on the present record -- that the insiders were perhaps too much involved. It does [*8] not seem to me that negotiations with Goldman Sachs was adequate, in part because that was infected with the basic mistake in the sense that that was an attempt to negotiate a fair price between a willing buyer and a willing seller and not to determine what the fair value is under the law in appraisal proceedings.

I recognize this is not an appraisal proceeding, but what happened is the functional equivalent, and in my opinion, as I stated earlier, payment of the fair value of the cashed-out stockholders' stock is required by Delaware law.

The other process issue involves disclosure. The disclosure points came up late in the proceedings and weren't as thoroughly briefed as one would like. I will simply state that my tentative view at this stage is that somewhat more detail about the method by which the investment banker arrived at the conclusion would be appropriate in a case like this, where that is so important to those who have to quickly decide whether to accept the price or whether it is worthwhile to seek judicial relief.

So in summary, because there was a clear error in the methodology for determining the fair price, I conclude that the plaintiffs have rebutted the business [*9] judgment presumption and that the defendants are not likely to satisfy their burden of establishing the entire fairness of the transaction.

Turning to the question of irreparable harm, in a circumstance where there was a substantial error of law which had a serious effect on the fairness of the price, I do not believe that the plaintiffs will have an adequate remedy by allowing the transaction to go forward and putting them to the expensive, arduous and long task of trying to establish what the fair value of their stock would be. I believe, on the contrary, that the board has the obligation to offer what appears, after such testing as is permitted in expedited proceedings on an application for a preliminary injunction, to be a fair price. Failing that, I conclude that the appropriate remedy is the issuance of an injunction. Of course, to the extent that the disclosure of the methodology was inadequate, an injunction would be required.

Finally, I do not find that the harm in the way of disappointed expectations and so on to the corporation outweighs the harm to the plaintiffs, who, after all, are losing their property by what has been called a private power of condemnation; and therefore, [*10] I will grant the injunction.

Now, it has been a full day and it is late. What I propose to do is see if you can agree on a form of order tomorrow and on a bond, and if not, then I will hear you then.

We recess.

(Court adjourned at 4:45 p.m.)
