

“Not Inquisitors”: Delaware Court of Chancery Shuts Down Sprawling Stockholder Inspection Demand Seeking to Investigate Corporation’s Global Regulatory Woes



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In a recent decision, *Roberta Ann K.W. Wong Leung Revocable Trust v. Amazon.com, Inc.*, No. 2023-1251-BWD (Del. Ch. Oct. 24, 2024), the Delaware Court of Chancery answered that question in the affirmative, shutting down a sprawling request for books and records regarding alleged anticompetitive conduct at Amazon.com, Inc. The decision shows that no matter what legal travails a Delaware corporation faces, a stockholder must pick and choose its target in any Section 220 inspection demand.

Roberta Ann arose from a recent wave of regulatory scrutiny into alleged anticompetitive practices at Amazon. In 2019, the European Commission launched a formal investigation into agreements between Amazon and marketplace sellers and how it uses third-party seller data. In 2020, the House Judiciary Committee questioned Amazon on a range of topics relating to its competitive practices. In 2021, the Italian Competition Authority fined Amazon \$1.3 billion for violating European Union competition rules. And over the last several years, the Federal Trade Commission and states attorneys general have launched multiple actions against Amazon alleging violations of consumer protection and antitrust laws, including a September 2023 suit in the Western District of Washington drawing evidence from a four-year investigation and dozens of witnesses.

The latter action spurred a Section 220 demand from the Roberta Ann K.W. Wong Leung Revocable Trust, an Amazon stockholder, seeking to investigate whether “Amazon’s fiduciaries have authorized or allowed the Company [to] take unlawful advantage of [its] dominant position to engage in anticompetitive practices, leading to U.S. and international regulatory scrutiny, lawsuits, and fines.” After the parties failed to agree on a confidentiality stipulation as a precursor to the production of certain information, the trust brought suit in Delaware’s Court of Chancery to enforce its demand. The matter went to trial before Magistrate Bonnie David, who issued a final report recommending judgment for Amazon. In the Magistrate’s view, the trust’s recitation of “ongoing inquiries and litigation,” without more, did not establish a “credible basis” to suspect wrongdoing, and so the demand lacked a proper purpose. The trust took exception to the report, placing the matter before Vice Chancellor Lori W. Will of the Chancery Court.

Reviewing the matter *de novo*, Vice Chancellor Will agreed with the Magistrate that the trust lacked a proper purpose for its demand, but declined to address whether the litigation and investigations faced by Amazon sufficed to meet the “credible basis” bar. The demand, the Vice Chancellor observed, suffered from a “more fundamental problem”: its stated purpose, to investigate wrongdoing by Amazon fiduciaries regarding anticompetitive conduct, was “facially improper.” That “astoundingly broad” purpose, the Vice Chancellor explained, could open the door to an investigation into “any possible anticompetitive conduct by a global conglomerate at any time anywhere in the world”—an unacceptable result. The “boundlessness” of the trust’s demand was further evident in its “scattershot” allegations, ranging from Amazon’s sales of a “car trunk organizer” and “discount diapers,” to the design of its website, to its “market share” and alleged use of an algorithm to raise prices. Section 220, the Vice Chancellor cautioned, does not permit stockholders to “act as inquisitors, seeking a corporation’s documents for any hint of transgression.” The Vice Chancellor thus adopted the Magistrate’s recommendation, entering judgment for Amazon.

Takeaways: Although not fundamentally altering Section 220 standards, *Roberta Ann* offers an important new nuance: a court will not even reach the question of a “credible basis” unless the demand states a “lucid” purpose that allows a court to “discern” the “specific” wrongdoing to be investigated. Even if a corporation faces an onslaught of investigations and litigation around the globe, that does not give an individual stockholder *carte blanche* to scour books and records relating to each and every allegation. A stockholder must pick and choose its target, regardless of how many potential targets may be available.

Roberta Ann will serve as an important precedent for large, multinational Delaware corporations like Amazon that, by the very nature of their business and extent of their operations, regularly face scrutiny and litigation on a range of matters around the globe. The decision may also prove useful for smaller and mid-sized corporations seeking to avoid the burden and expense of producing documents in response to overzealous, “fishing expedition”-style demands. At minimum, the decision should encourage stockholders to be a bit more circumspect, and articulate more narrowly tailored investigative purposes, in their Section 220 demands moving forward. Whether *Roberta Ann* reflects a new, more searching approach to evaluating Section 220 demands in Delaware—or stands alone as an unusually egregious case of stockholder overreach—remains to be seen.