

In re Oracle Corporation Derivative Litigation: Delaware Supreme Court Affirms Chancery Court Decision Not to Impose Fiduciary Duties on an Influential Minority Stockholder



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On January 21, 2025, the Delaware Supreme Court affirmed the Court of Chancery's decision in *In re Oracle Corp. Derivative Lit.*, finding that a less than 50% stockholder does not owe fiduciary duties absent evidence of either general control over the corporation or transaction-specific control within the context of a particular deal.

The *Oracle* case arose out of Oracle's \$9.3 billion acquisition of NetSuite in 2016. NetSuite, a provider of cloud-based enterprise software, was originally presented to Oracle management as an acquisition candidate by Larry Ellison, Oracle's founder, former CEO and current director and 28% stockholder. As noted in the Delaware Supreme Court opinion, Mr. Ellison was also a co-founder of NetSuite, served as a director and owned a "substantial" equity position in NetSuite. When first introduced by Ellison, he recommended that Oracle wait for better timing to pursue an acquisition. A year later, Ellison made his views known to Oracle's management that he felt "the time is now" for an acquisition of NetSuite. Shortly thereafter, Oracle management put forward several potential acquisition targets for the Oracle board of directors to consider, including NetSuite, during which time Ellison recused himself from discussions. The board directed Oracle management to reach out and gauge NetSuite's interest in a transaction. Following these initial discussions, the Oracle board formed a special committee to review and negotiate a transaction with NetSuite, which excluded Ellison and retained independent financial and legal advisors. Oracle ultimately approached NetSuite with a proposed acquisition price, and after substantial negotiation agreed to acquire the company for \$109 per share, \$1 less than Oracle's internally discussed maximum of \$110 per share. The transaction was consummated through a tender offer conditioned on approval by a majority of NetSuite stockholders, exclusive of Ellison and NetSuite's officers and other directors.

Following the closing of the NetSuite acquisition, Oracle stockholders filed a derivative lawsuit against Ellison and members of the Oracle special committee accusing them of overpaying for NetSuite and claiming Ellison influenced the acquisition and caused Oracle to pay an inflated price, resulting in a gain of almost \$3.9 billion to Ellison in respect of his NetSuite holdings. After Oracle's initial motion to dismiss was denied by the Delaware Court of Chancery, a special litigation committee (SLC) was formed consisting of certain independent Oracle directors, to investigate and try to settle the suit, during which time the case was stayed by the Court of Chancery. Although the SLC engaged in numerous interviews and an extensive investigation, it was unable to make an informed determination, and returned the case to the Court of Chancery. At trial, and following the production of certain SLC materials, as ordered by the Court of Chancery, the court determined that although "Ellison had clout...[he] did not exercise general control" and did not influence the transaction with NetSuite.

On appeal, plaintiffs' principal argument was that Ellison was a controlling stockholder, standing on both sides of the transaction and therefore the Court of Chancery erred by applying the business judgment rule instead of the heightened entire fairness standard. Reviewing the stockholder claims *de novo*, the Delaware

Supreme Court affirmed the Court of Chancery decision, guided by the general rule that “stockholders do not owe fiduciary duties to the corporation or its stockholders and are free to act in their self-interest.” The Delaware Supreme Court noted that in certain circumstances, a “controlling” stockholder assumes fiduciary duties but that such stockholder must either (i) own or control over 50% for “hard control” or (ii) be deemed to possess significant control despite holding only a minority of the corporation’s equity, a determination the court found would require “a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock.”

Because Ellison did not hold a majority of Oracle’s stock, the Delaware Supreme Court undertook an “intensely factual” analysis, pointing to several uncontested assertions to demonstrate Ellison did not exert control, including that he “scrupulously avoided” discussing the transaction with the special committee, that he did not propose or engage in the merger negotiations, that he did not interfere with the transaction and that he did not control day-to-day operations at Oracle.

The Court of Chancery had previously applied a five part test to assess what the court called the plaintiff stockholders’ “fraud on the board” theory (that Ellison was an interested director and breached his duty of loyalty by manipulating the board to his will through deception). However, the Delaware Supreme Court instead adopted a more streamlined analysis and assessed whether Ellison acted in good faith, which the Court noted requires candor, and disclosed any information about his role that was “relevant and of a magnitude to be important to directors in carrying out their fiduciary duty of care in decision making.” To this point, the suing stockholders alleged that Ellison failed to disclose his views on post-closing integration and the future operating plans of the companies. However, the Delaware Supreme Court was unmoved (i) noting that these plans were not material to the approval of the transaction and (ii) stating “with skepticism” that if Ellison had disclosed his views to the special committee, the suing stockholders “likely would have quickly pivoted and claimed that he breached his fiduciary duty by improperly exerting his influence over the Special Committee’s work.”

Delaware courts have recently opined on several alleged controlling stockholder transactions. The decision in *Oracle* further reinforces the standard that absent concrete factual support, an influential minority stockholder does not owe fiduciary duties to the corporation and its stockholders, even where the stockholder may have outsized power or the unused potential to influence decisions as the entity’s “visionary co-founder,” or where he or she stands to gain on both sides of a transaction. It also highlights the importance of establishing good fact patterns in such deals, which Oracle was able to do in its NetSuite deal through a carefully planned special committee process. Ultimately, parties should not shy away from transactions where there could be allegations of impropriety emerging from an influential stockholders’ role in the transaction, as proper planning and good governance processes can help mitigate the risk that after-the-fact stockholder allegations will turn into material liabilities.