

Delaware Chancery Court Dismisses Claims Subject to Entire Fairness



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On May 9, 2025, in *Roofers Local 149 Pension Fund v. Fidelity National Financial, Inc. et al.*, the Delaware Court of Chancery granted a pre-trial motion to dismiss, even though the claims alleged a conflicted controller transaction subject to entire fairness review. The Court noted that although application of the entire fairness standard will often preclude a court from granting a motion to dismiss, entire fairness is not “a free pass to trial.”

The fact that the case involved a controlling stockholder transaction was not in dispute. A controlling stockholder of a publicly traded company made a \$250 million capital contribution after the company’s special committee and independent advisors determined that the investment was in the company’s best interest and on terms at least equal to those available in the public markets. A non-controlling stockholder of the company filed a derivative lawsuit on the company’s behalf asserting breach of fiduciary duty against the company’s controlling stockholder, including a claim that the controlling stockholder used his fiduciary position, as a controller and director of the company, to cause the company to enter into an unfair transaction.

The Court noted the plaintiff-friendly lens in which Delaware courts evaluate a motion to dismiss, stating that a motion to dismiss under Court of Chancery Rule 12(b)(6) for failure to state a claim “is governed by the reasonable conceivability standard: (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are ‘well-pleaded’ if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and [(iv)] dismissal is inappropriate unless the ‘plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances of susceptible proof.’”

Assessing the motion under this framework, the Court noted that the special committee had considered alternatives and had thoroughly negotiated the transaction with the controlling stockholder, with the help of independent advisors, including receipt of an opinion as to the financial terms of the transaction and that plaintiffs had not presented any facts that demonstrate a lack of fairness. “To meet that pleading burden, it is not enough to say that a transaction is a conflicted one between a company and its controlling stockholder.” The Court added that a conflict of interest “is not in itself a crime or a tort or necessarily injurious to others” and that conflicted controller transactions “are perfectly acceptable if they are entirely fair, and so a plaintiff must allege facts that demonstrate a lack of fairness.”

Of note, the facts of this case arose before the recent amendments to the Delaware General Corporation Law (DGCL). Therefore, because the company did not obtain the consent of a majority of the minority stockholders (which was required by Delaware case law under MFW, before the recent amendments), the controller transaction safe harbor was not available at the time, and the claims were subject to entire fairness review. Although the newly codified amendments to the DGCL embrace the central holdings of MFW, SB 21 differs from the court’s opinion in MFW and no longer requires approval by both a majority of

disinterested directors and disinterested stockholders. Under the recent amendments, *Roofers* may not have automatically been subject to entire fairness without majority of the minority approval and may instead have been reviewed under the more deferential business judgment rule. See previous discussions on the amendments in Cadwalader Quorum [here](#) and [here](#).

Nevertheless, *Roofers* remains as a helpful reminder in all conflicted controller transactions that entire fairness review is not a death knell. In Delaware, plaintiffs must continue to meet their procedural pleading stage burden of alleging facts that demonstrate unfairness. Under the entire fairness standard, the defendant has the burden to prove that the transaction was entirely fair, specifically proving fair dealing and fair price, but *Roofers* shows that even under Delaware's plaintiff-friendly entire fairness standard, in order to progress to any evaluation on the merits, the court will require plaintiffs to meet procedural pleading requirements. A pre-trial dismissal in a conflicted controller transaction under the entire fairness standard is uncommon and it remains to be seen whether the recent amendments to the DGCL providing broader safe harbors in controller transactions will lead to increased success for defendants in pre-trial motions to dismiss.