

Delaware Court of Chancery Confirms That Asset Sales Can Trigger Revlon Review

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In *In re Dura Medic Holdings, Inc. Consolidated Litigation*,^[1] the Delaware Court of Chancery held that *Revlon* review (i.e., the obligation of the board of directors of a Delaware corporation to seek the best price reasonably available), would apply in a final-stage transaction involving an asset sale, where there were no allegations that defendants stood on both sides of the transaction, received a non-ratable benefit, or avoided a unique detriment.

Background

This action was initially filed by a medical device company and its private equity-sponsored parent, which had acquired the company, against the company's original sellers for breach of a merger agreement. The original sellers asserted counterclaims, in addition to various third-party claims, including by the company's co-founder (Newton). Newton filed a derivative action for breach of fiduciary duty against the private equity firm and the company's CEO and directors, who were also partners at the private equity firm (Comvest parties). The actions were consolidated.

Newton challenged the asset sale by the Comvest parties and alleged that those defendants breached their fiduciary duties when searching for financing and when negotiating and approving the sale.

Analysis

Newton and the Comvest parties disagreed with the proper standard of review related to the sale. Newton sought for the court to apply entire fairness, while the Comvest parties sought the most deferential business judgment rule. The court applied neither. Instead, the court evaluated the sale under the enhanced scrutiny standard of review, whereby the court found that the sale fell within a range of reasonableness. The Comvest parties therefore did not breach their fiduciary duties because the sale was a final-stage transaction that effectively ended the stockholders' ongoing investment in the company, which implicated *Revlon*.^[2]

The court rejected Newton's argument that pursuing a sale instead of securing additional financing to enable the company to continue as a standalone entity was a breach of fiduciary duty. The record showed that the Comvest parties previously provided the company with more financing than the company likely warranted. The Comvest parties did not use their control of financing to force the company into a vulnerable position and had no obligation to provide additional funding.

The court also held that the Comvest parties' search for a transactional partner fell within the range of

reasonableness. Although the court found that the process that led to the sale was not ideal, with board meeting minutes not reflecting meaningful board involvement, and no outside financial or legal advisors being involved, likely due to the cost. Nonetheless, the sales interactions represented arm's length negotiations, with no prior relationship or conflict.

Finally, the court held that the sale price fell within a range of reasonableness because there was only one other actionable proposal to buy the company, but those terms were worse than those of the sale. The court found that the offers provided contemporaneous evidence that the consideration in the sale fell within a range of reasonableness.

Takeaways

The court's decision reinforces the nuanced application of Delaware's standards of review in fiduciary duty cases. In particular, the case demonstrates that the court will apply *Revlon* in the case of any end-stage transaction, not just those involving mergers.

[1] 331 A.3d 796 (Del. Ch. 2025).

[2] Delaware decisions have acknowledged that "a final-stage transaction for all shareholders" is one that warrants application of enhanced scrutiny. *McMullin v. Beran*, 765 A.2d 910, 918 (Del. 2000); see *In re Mindbody, Inc. S'holder Litig.*, 2020 WL 5870084, at *13 (Del. Ch. Oct. 2, 2020) (The cash-for-stock Merger was a final-stage transaction presumptively subject to enhanced scrutiny under *Revlon*.); *Huff Energy Fund, L.P. v. Gershen*, 2016 WL 5462958, at *13–14 (Del. Ch. Sept. 29, 2016).

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