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# Delaware Court of Chancery Holds That the Exercise of a Midstream-Adopted Call Right Was Invalid


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In *Ban v. Manheim*, the Delaware Court of Chancery held that the exercise of a call right against a stockholder of a Delaware corporation was invalid under Section 202 of the Delaware General Corporation Law (DGCL) because the call right had been imposed after the stockholder's shares had already been issued. The court's holding aligns with the plain language of Section 202 of the DGCL but serves as a helpful reminder to practitioners and Delaware corporations alike when structuring transfer restrictions, including call rights.

In 2012, Young Min Ban (Ban) acquired an indirect ownership interest in Delaware Valley Regional Center, LLC (DVRC), which was managed by Joseph Manheim (Manheim) through West 36th, Inc. (WestCo). Ban owned 15% of WestCo and 33% of Penfold, L.P. (Penfold), which, in turn, owned 90% of DVRC, with the balance of DVRC owned by WestCo. In 2018, Manheim, anticipating disputes, unilaterally amended DVRC's limited liability company agreement to add a redemption right, which allowed WestCo to redeem a member's interest if it determined that the member's involvement could cause a material adverse effect, at the lesser of appraised value or the applicable capital account balance. In 2022, Manheim unilaterally adopted a new bylaw for WestCo (the WestCo call right), allowing Manheim as WestCo's controlling stockholder to force minority shareholders to sell their shares at a "fair value" determined by Manheim. Shortly thereafter, Manheim exercised both rights to eliminate Ban's interests (both indirectly through his ownership in Penfold and directly through his ownership in WestCo), and, according to the court, set prices arbitrarily low and without independent valuation or negotiation. Ban then filed actions to challenge the forced purchase of his ownership interests.

The court held that Manheim's forced purchase of Ban's indirect interest held through Penfold was a self-interested transaction and not entirely fair. The court also held that the WestCo call right was invalid under Section 202(b) of the DGCL because transfer restrictions (including forced sale rights and call rights) cannot be imposed on already-issued shares unless the affected stockholder has consented to the restriction. The court found that Ban had never agreed to or voted for the WestCo call right. Therefore, Manheim's attempt to force Ban to sell his shares was statutorily invalid.

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