King & Spalding

Client Alert

Business Litigation Practice Group

October 14, 2016

Delaware Court of Chancery Dismisses Litigation Arising from Controller Buyout of Books-A-Million Under "*MFW*" Framework

On October 10, 2016, the Delaware Court of Chancery issued its decision in *In re Books-A-Million, Inc. Stockholders Litigation*.[1] The decision, authored by Vice Chancellor J. Travis Laster, is important because it applies the framework set forth in *In re MFW Shareholders Litigation*[2] and *Kahn v. M & F Worldwide Corporation*[3] ("*MFW*") for structuring controller buyouts so as to obtain business judgment review rather than entire fairness review, adding several important developments to the fledgling body of *MFW* case law. Applying the *MFW* framework to the 2015 controller buyout of Books-A-Million, Inc. ("BAM" or the "Company"), Vice Chancellor Laster concluded that the *MFW* criteria had been satisfied, that business judgment review was thus appropriate, and that all of the plaintiff stockholders' claims failed under that standard of review.

King & Spalding served as counsel to the special committee of directors utilized by BAM in connection with the controller buyout, both during the transaction and the subsequent litigation in the Court of Chancery. Herein, we provide a primer on the *MFW* framework and discuss the key lessons from the *Books-A-Million* decision that will be helpful to companies, directors, and their counsel interested in evoking *MFW* protection, from both a transactional and litigation perspective. After discussing these lessons, we address the background of the transaction, the resulting stockholder litigation, and provide an overview of the Court of Chancery's decision.

The *MFW* Framework

When a controlling stockholder purchases the remaining minority equity in a company—a so-called "squeeze-out" merger—the default operative standard of review under Delaware law is the entire fairness test, which requires the court to analyze the transaction's price and process to ultimately determine whether, as a whole, the transaction is fair to the company's minority stockholders. In 2013, however, the Chancery Court held in *In re MFW Shareholders Litigation* that, where a company effectively utilizes both the procedural protections of a special committee of directors and a majority-of-the-minority vote, a squeeze-out merger will

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be entitled to the more deferential business judgment rule, under which the court will refuse to consider the substance of the transaction unless its terms are so one-sided that no rational person could have believed the transaction was in the interest of the minority stockholders. The Delaware Supreme Court affirmed that decision in *Kahn v. M & W Worldwide Corp.* and specifically set forth a framework of six elements that must be met in order for a squeeze-out merger to obtain business judgment review:

> (i) the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholder vote; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority.[4]

Prior to the Court of Chancery's October 10, 2016 published decision in *Books-A-Million*, the Court of Chancery had granted only one pleading-stage dismissal of claims stemming from a controller buyout under the *MFW* framework, in a bench ruling in *Swomley v. Schlect*.[5]

Lessons from the Court of Chancery's Decision

The *Books-A-Million* decision provides guidance as to how Delaware companies—both public and private—and their directors should handle a controller buyout process such that the Delaware courts will afford deferential business judgment review.

In the transactional context, companies, directors, and their counsel interested in evoking *MFW* protection should be mindful of the following lessons from the *Books-A-Million* decision:

- A controlling stockholder interested in purchasing the company's remaining minority equity should ensure that its initial indication of interest includes certain self-disabling conditions: (i) before any negotiations begin, the target's board must establish a special committee of independent directors with its own financial and legal advisors, and fully empower the committee to negotiate and recommend the transaction with the controlling stockholder; (ii) the controlling stockholder will not move forward with the proposed transaction unless it was approved by the special committee; and (iii) any definitive acquisition agreement must include a non-waivable majority-of-the-minority vote condition;

- After obtaining independent counsel, and before taking any other action, including engaging in any negotiation, the special committee should disclose to its counsel any relationships between the committee members and any party interested in the transaction that may be perceived as presenting a material conflict, such that appropriate action can be considered and taken, if necessary;

- If any board members must vote on the transaction who are not members of the special committee, the committee's financial advisor should give its fairness presentation twice: first to the special committee members only, and then, if the committee recommends the transaction, a second time to any other members of the board who must vote to approve the transaction;

- Even where the controlling stockholder has announced that it does not intend to sell any of its shares, the special committee should conduct some form of market check and adequately consider any third-party offer received, including its viability and as a metric against the controller offer; and

- In addition to ensuring that the proxy materials distributed to stockholders are sufficiently detailed to satisfy the directors' duty of candor and the securities laws, if applicable, the company should ensure that those proxy materials also provide enough information for a court to evaluate whether the *MFW* criteria have been satisfied.

In the litigation context, companies, directors, and their counsel facing claims stemming from a transaction that was structured to take advantage of *MFW* protections should be mindful of the following lessons from the *Books-A-Million* decision:

- *MFW* may be evoked in a motion to dismiss, provided that the *MFW* elements are described in sufficient detail in documents subject to judicial notice, such as board resolutions or proxy materials, so that the court can properly consider them at the pleading stage;

- Although not explicitly stated in the Delaware Supreme Court's articulation of the six *MFW* factors, sufficient allegations that a facially disinterested and independent special committee acted in bad faith can theoretically defeat application of *MFW*;

- In practice, however, it will be extremely difficult for plaintiffs to allege sufficiently that facially disinterested and independent committee members acted in bad faith, and, absent extraordinary circumstances, the court will refuse to find bad faith where facially disinterested and independent committee members recommended a premium transaction that was later approved in a fully informed and uncoerced vote of the minority stockholders;

- A market check, even one made in "vain" due to the controlling stockholder's refusal to sell its shares, will provide strong support that the special committee acted in good faith and satisfied its duty of care;

- In evaluating the special committee's good faith and due care, the court will refuse to compare a buyout offer from a controlling stockholder to a buyout offer from a minority stockholder or third party on a dollar-to-dollar basis, but the court may still compare the competing offers to determine whether the minority discount accepted by the committee in the controller buyout was so extreme as to be irrational;

- The fact no disclosure claims were raised against the transaction before it closed will provide strong support that the vote of the minority stockholders was informed; and

- A determination that business judgment review applies under *MFW* is very likely to be outcome determinative of the litigation, as the informed and uncoerced approval of the transaction by the minority stockholders will very likely preclude any argument that no rational person could have believed the transaction was not in the minority stockholders' best interest.

The Squeeze-Out Merger of BAM

In 2015, BAM's controlling stockholder—a consortium of various members of the Anderson family (the "Andersons")—set out to purchase BAM's publicly owned minority shares and, specifically, to do so in a way that would trigger *MFW* protection. On January 29, 2015, the Andersons sent BAM's Board of Directors (the "Board") an unsolicited proposal to acquire the outstanding shares of BAM common stock that they did not already own for $2.75 per share in a negotiated transaction. That proposal expressly stated that the Andersons expected the Board to establish a special committee of independent directors with its own financial and legal advisors, that the Andersons would not move forward with any transaction unless it was approved by that special committee, and that any

definitive acquisition agreement had to include a non-waivable majority-of-the-minority vote condition. The proposal also stated that the Andersons were only interested in purchasing BAM's minority shares and would not sell their shares to a third party.

The Board reacted to the Andersons proposal by immediately forming a special committee (the "Special Committee") consisting of the three BAM directors not affiliated with the Andersons, Ronald G. Bruno, Ronald J. Domanico, and Edward W. Wilhelm, and authorizing the Special Committee to retain legal and financial advisors. In early February 2015, the Special Committee retained King & Spalding LLP to serve as its legal counsel. Shortly thereafter, Bruno disclosed to King & Spalding that, though he qualified as an independent director under the rules of the NASDAQ, he had certain social and civic ties to the Andersons. The Special Committee, without Bruno in attendance, met later that same day with King & Spalding to discuss those ties and decided it would be preferable if Bruno did not serve on the Special Committee to avoid any potential concerns regarding the Special Committee's independence. Bruno agreed and resigned that day. Following Bruno's resignation, the Special Committee retained Delaware counsel as well as a financial advisor, Houlihan Lokey ("Houlihan").

In March 2015, the Special Committee met with its advisors and developed a strategy for evaluating the Andersons' proposal. On behalf of the Special Committee, Houlihan evaluated potential alternative transaction structures. Also, despite the Andersons' statement that they did not intend to sell any shares, the Special Committee instructed Houlihan to solicit offers for BAM from various third parties in order to help the Special Committee better assess the value of BAM and the attractiveness of the Andersons' offer. Houlihan reached out to three entities that had previously expressed an interest in pursuing a strategic transaction with the Company, all of which initially expressed interest, and King & Spalding notified the Andersons about the existence of potential competition.

Ultimately, only one of the three potential alternative bidders contacted by Houlihan—"Party Y"—submitted an indication of interest. In it, Party Y proposed to acquire all of the shares of BAM for $4.21 per share. After learning of Party Y's proposal, a representative of the Andersons contacted Houlihan and reiterated that the Andersons were only interested in purchasing BAM's minority shares and were not interested in selling their shares. The Special Committee instructed Houlihan to contact Party Y to determine whether Party Y would consider making a minority investment in the Company, which Houlihan did, but Party Y indicated that it was only interested in acquiring a controlling stake in BAM.

Unable to identify a viable transaction with Party Y, the Special Committee determined that its best course was to negotiate with the Andersons. In late April 2015, the Special Committee rejected the Andersons' initial proposal and countered at $3.36 per share. After several rounds of negotiations, the Special Committee and the Andersons agreed on a price of $3.25 per share. Through the remainder of May and June the Special Committee, assisted by its advisors, worked to prepare the proposed transaction, including drafting the merger agreement and obtaining a solvency opinion.

On July 13, 2015, the Special Committee met with its advisors to consider the squeeze-out merger proposed by the Andersons. As a matter of efficiency, the Special Committee invited Bruno—the only other member of the Board who would need to vote on the transaction were it to proceed to a Board vote—to hear the presentations by the Special Committee's advisors. King & Spalding reviewed the principal terms of the proposed transaction with the Special Committee and Bruno. The Special Committee also considered Party Y's proposal and concluded, based on a number of reasons, chief among them the Andersons' unwillingness to sell their shares, that it was not viable. Houlihan then presented its fairness analysis of the merger consideration contemplated by the Andersons' offer, concluding that $3.25 per share was fair to BAM's minority stockholders from a financial point of view. Following that presentation, the Special Committee excused Bruno and the Houlihan representatives, deliberated on the information it had received, and voted to recommend the Andersons' squeeze-out merger to the Board. The full

Board met later on July 13, 2015, at which point the BAM directors not affiliated with the Andersons (i.e., Bruno, Domanico, and Wilhelm) voted in favor of the transaction, approved the merger agreement, and resolved to recommend the transaction to the Company's stockholders.

On October 22, 2015, BAM filed its definitive proxy statement, followed by a revised version the following day (the "Proxy"). The proposed buyout was submitted to BAM's stockholders at a meeting held on December 8, 2015, where it was approved by a vote of the holders of approximately 66.3% of the Company's minority shares. The transaction closed on December 10, 2015.

The Stockholder Litigation

Following the announcement of the Andersons' proposed buyout of BAM, a stockholder lawsuit challenging the transaction was filed in July 2015 and another in October 2015. Following consolidation of the actions, the plaintiffs ("Plaintiffs") filed an amended complaint asserting claims for breaches of fiduciary duties and aiding and abetting those breaches against Bruno, Domanico, Wilhelm, representatives of the Andersons, certain of BAM's officers that joined in the purchaser group, and the merger entities (collectively, "Defendants").

Defendants moved to dismiss the consolidated amended complaint pursuant to the *MFW* framework, arguing that Plaintiffs' allegations and the undisputed facts in the Proxy demonstrated the Andersons' and the Company's adherence to each of the six *MFW* elements. In opposition, the plaintiffs contended that the transaction is not entitled to business judgment review, but rather must proceed to entire fairness review, because it lacked three of the *MFW* elements.

First, Plaintiffs contended that the deal was not conditioned *ab initio* on the dual procedural protections of a special committee and majority-of-the-minority vote. Plaintiffs' sole argument in this regard was that the Andersons' 2015 proposal to take BAM private was actually a continuation of an earlier proposal by the Andersons to take BAM private in 2012 that did not include the twin disabling conditions.

Next, Plaintiffs contended that the Special Committee lacked independence, in two ways. First, Plaintiffs argued that Bruno lacked independence, as evidenced by the fact that he resigned from the Special Committee due to concerns about his social and civic ties to the Andersons, and that, notwithstanding his early resignation, he tainted the Special Committee's independence by sitting in on Houlihan's fairness presentation at the July 13, 2015 Special Committee meeting. Second, Plaintiffs argued that even though the actual members of the Special Committee—Domanico and Wilhelm—were facially disinterested and independent, these directors' alleged bad faith actions in negotiating and recommending the squeeze-out merger demonstrate a lack of independence in fact. Specifically, as indications of the Special Committee's purported bad faith, Plaintiffs relied on the Special Committee's willingness to pursue the proposed transaction with the Andersons despite not obtaining a price as high as that proposed by Party Y, as well as certain purported "red flags" with Houlihan's valuation methodologies that Plaintiffs alleged should have alerted the Special Committee to the fact that Houlihan's fairness opinion was unreliable.

Finally, Plaintiffs contended that the Special Committee failed to satisfy its duty of care in negotiating and recommending the transaction. Plaintiffs' arguments under this prong of *MFW* were substantially the same as their arguments in support of the Special Committee's alleged bad faith, namely that the Special Committee failed to adequately inform itself of, and bargain for, the full value of the Company as evidenced by the higher-priced proposal submitted by Party Y.

The Court of Chancery's Decision

The court began its analysis by reiterating its bench ruling in the earlier *Swomley* case that "[c]ompliance with the *M&F Worldwide* structure can be tested on a motion to dismiss," and indeed the framework was designed with that very purpose in mind.[6] Accordingly, "[i]f defendants have described their adherence to the elements identified in *M&F Worldwide* 'in a public way suitable for judicial notice, such as board resolutions and a proxy statement,' then the court will apply the business judgment rule at the motion to dismiss stage unless the plaintiff has 'pled facts sufficient to call into question the existence of those elements.'"[7]

The court then turned to the specific allegations pled by Plaintiffs in relation to the Andersons' squeeze-out merger of BAM and held that they "do not support a reasonably conceivable inference that any of the *M&F Worldwide* conditions were not met."[8] Taking each of the six *MFW* elements in turn, the court reasoned as follows:

1. The Transaction Was Conditioned *Ab Initio* on the Dual Procedural Protections of a Special Committee and a Majority-of-the-Minority Stockholder Vote.

The court rejected Plaintiffs' argument that the Andersons' 2015 going private proposal, which the court found included the requisite disabling conditions, was actually a continuation of the Andersons' 2012 going private proposal. In particular, the court reasoned that the Company, through a prior special committee, had expressly rejected the 2012 proposal when it was made, and that the 2015 proposal came nearly three years later and included a different price and different terms.

2. The Special Committee Was Independent.

The court also rejected Plaintiffs' dual attack on the Special Committee's independence. Regarding the allegations targeting Bruno's purported lack of independence, the court noted that Bruno's disclosure of his relationships with the Andersons, and his voluntary resignation based on feedback from his fellow Special Committee members that it would preferable if he did not serve, was not evidence of a flaw in the Special Committee's process but rather was "a commendable step for Bruno and the Committee to take."[9] In fact, precisely because Bruno stepped down from the Special Committee at an early stage and thereafter did not participate in the negotiation of the transaction, the court found it unnecessary to even consider whether Bruno actually lacked independence as Plaintiffs alleged. This was true notwithstanding Bruno's presence during Houlihan's presentation of its fairness presentation at the Special Committee's July 13, 2015 meeting. The court theorized that "[u]nder different circumstances, the participation of a director whose independence was compromised might be problematic," but determined that having Bruno present solely for Houlihan's fairness presentation so as to avoid a repeat performance of that presentation does not raise a reasonably conceivable inference that the Special Committee's independence was tainted.[10] The court did counsel in *dicta*, though, that "[t]o create a truly pristine process, Houlihan Lokey could have given its presentation twice: once to Wilhelm and Domanico as members of the Committee, then, if they recommended the transaction, a second time to Wilhelm, Domanico, and Bruno as members of the Board."[11]

As to Plaintiffs' allegations that the Special Committee members, Wilhelm and Domanico, acted in bad faith, the court considered first whether a good faith requirement even exists within the *MFW* framework, which, as previously articulated by the Delaware Supreme Court, requires only that "the Special Committee is *independent*."[12] Citing a reference by the Court of Chancery in *MFW* to the special committee members' "good faith" in its discussion of their independence, and observing that under Delaware law "pleading facts sufficient to support an inference of subjective bad faith is one of the traditional ways that a plaintiff can establish disloyalty sufficient to rebut the business judgment rule," the court held that "pleading subjective bad faith is theoretically viable means of attacking the *M&F Worldwide* framework."[13] However, the court warned that this would be a "difficult route" for

prospective plaintiff stockholders seeking to avoid the application of *MFW*, one that requires allegations raising a reasonable inference "of 'an intent to harm' or an 'intentional dereliction of duty.'"[14]

In a demonstration of that high pleading bar, the court then proceeded to reject Plaintiffs' allegations of bad faith against the Special Committee, focusing in particular on Plaintiffs' reliance on the higher, but nonviable, offer the Special Committee received from Party Y. Drawing heavily on the Court of Chancery's decision in *Mendel v. Carroll*,[15] the court reasoned that the Special Committee's inability to bring Party Y's offer to fruition or failure to obtain from the Andersons the same price offered by Party Y did not serve as evidence of the Special Committee's bad faith because (i) a controlling stockholder has no obligation to sell its shares and (ii) a buyout offer from a controlling stockholder is "fundamentally different" than a buyout offer from a non-controller entity in that the latter includes a control premium not present in the former.[16] The court also rejected Plaintiffs' argument that, at the pleading stage, the court could not assume Party Y's offer included a control premium, citing a long list of Delaware decisions and legal scholarship illustrating that both Delaware law and legal scholars "recognize[] that third party offers typically include a control premium" and that conversely minority shares do in fact "trade at a discount when a dominant or controlling stockholder is present."[17]

Although the court found that the offers from the Andersons and Party Y were "not fairly comparable" on a dollar-to-dollar basis, it explained that Party Y's offer could be used as a metric to gauge the adequacy of the consideration received by the minority in the Andersons' squeeze-out merger, and thus also potentially a metric from which the court could infer that the otherwise facially disinterested and independent Special Committee members acted in bad faith. Specifically, the court recognized a "rational range of discounts and premiums"—as identified in Delaware case law and financial literature—of between roughly 20% and 50% and reasoned that, "[i]f the amount of the minority discount was extreme" so as to fall beyond the upward bounds of that rational range, "then one might infer that the independent directors sought to serve the interests of the controller, confident that stockholders focused on short-term gains would approve any transaction at a premium to market."[18] Here, however, the court found that the approximately 30% premium offered by Party Y's as compared to the Andersons' offer (or conversely the approximately 23% discount contemplated by the Andersons' offer as compared to Party Y's offer) was well within that rational range.

3. <u>The Special Committee Was Properly Empowered.</u>

The court acknowledged that Plaintiffs had failed to challenge this element of the *MFW* framework but proceeded to analyze it, holding that it had been met because the Board resolutions "granted the Committee the power to hire its own legal and financial advisors," which authority the Special Committee exercised, and "committed [the Board] not to proceed with a transaction without a favorable recommendation from the Committee."[19]

4. <u>The Special Committee Satisfied Its Duty of Care.</u>

The court began its analysis by reiterating that the standard of conduct for the duty of care under *MFW* is no different than for the duty of care under Delaware fiduciary duty law generally—it is a gross negligence standard. Reasoning by comparison to the court's decision in *MFW*, where it found that M & F Worldwide's special committee had satisfied its duty of care by meeting a total of eight times, selecting a financial advisor from multiple prospects interviewed, obtaining up-to-date projections from company management, receiving detailed financial analyses from its financial advisor, considering (but did not actually seeking out) third-party offers, and negotiating an increase in price from $24 per share to $25 per share, the court held that BAM's Special Committee certainly acted in good faith by meeting a total of thirty-three times, selecting a financial advisor from multiple prospects interviewed, obtaining up-to-date projections from company management, receiving detailed financial analyses from its financial advisor, considering and actually seeking out third-party offers, negotiating with the Andersons

for over five months, and obtaining an increase in price from $2.75 per share to $3.25 per share. The court also praised the Special Committee's arguably "vain act" of actually canvassing the market in order to obtain additional information on the value of BAM's minority shares and "test the Anderson Family's conviction about not being a seller," concluding that "the Committee's decision to do so definitively undercuts any possible inference of gross negligence."[20] For the same reasons discussed above, the court rejected Plaintiffs' argument that the Special Committee's failure to bargain "harder" to obtain the same price offered by Party Y evinced a lack of care.

5. The Vote of the Minority Was Informed.

The court found this element of the *MFW* framework to have been met because "[t]he plaintiffs have never asserted any disclosure claims."[21]

6. The Vote of the Minority Was Uncoerced.

The court likewise found this element of the *MFW* framework to have been met because Plaintiffs failed to allege that there was any coercion of BAM's minority stockholders.

7. Court Dismisses Claims Under Business Judgment Review.

Having determined that the six elements in the *MFW* framework were present in the Andersons' squeeze-out merger of BAM, the court concluded that it was obligated by *MFW* to dismiss the Plaintiffs' action challenging that merger "unless the merger's terms were so disparate that no rational person acting in good faith could have thought the merger was fair to the minority"—essentially, the court clarified, the standard for waste.[22] The problem with this requirement, the court explained, is that Delaware law provides that "[i]t is logically difficult to conceptualize how a plaintiff can ultimately prove a waste or gift claim in the face of a decision by fully informed, uncoerced, independent stockholders to ratify the transaction."[23] Indeed, "[b]y definition, at that point, rational people who were members of the minority thought the merger was fair."[24] Thus, the court concluded that "[i]t is not possible to infer that no rational person acting in good faith could have thought [this] Merger was fair to [BAM]'s minority" seeing as "the Merger provided the minority stockholders with a 90% premium, Houlihan Lokey opined that it was fair, and after disclosure of the material facts, 66.3% of the minority stockholders approved it."[25]

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[1] C.A. No. 11343-VCL, slip op. (Del. Ch. Oct. 10, 2016), *available at* http://courts.delaware.gov/Opinions/Download.aspx?id=247090.
[2] 67 A.3d 496 (Del. Ch. 2013).
[3] 88 A.3d 635 (Del. 2014)
[4] *Id.* at 645.
[5] *Swomley v. Schlect*, C.A. No. 9355-VCL, 2014 WL 4470947 (Del. Ch. Aug. 27, 2014) (TRANSCRIPT), *aff'd*, 128 A.3d 992 (Del. 2015) (TABLE); *see also* Warren Pope & Jerrod Lukacs, *Delaware Supreme Court Affirms Pleading-Stage Dismissal under "MFW" Framework*, KING & SPALDING: DIRECTORS GOVERNANCE CENTER (Dec. 7, 2015), http://www.directorscenter.com/delaware-supreme-court-affirms-pleading-stage-dismissal-mfw-framework/.

[6] *Books-A-Million*, C.A. No. 11343-VCL, slip op. at 17 & n.2 (citing *Swomley*, 2014 4470947, at *20).
[7] *Id.* at 17 (quoting *Swomley*, 2014 WL 4470947, at *20).
[8] *Id.*
[9] *Id.* at 21.
[10] *Id.* at 22-23.
[11] *Id.* at 22.
[12] *M & F Worldwide*, 88 A.3d at 645 (emphasis added); *see also MFW*, 67 A.3d at 535.
[13] *Books-A-Million*, C.A. No. 11343-VCL, slip op. at 23-24.
[14] *Id.* at 24 (quoting *Lyondell Chem. Co. v. Ryan*, 970 A.2d 235, 240 (Del. 2009)).
[15] 651 A.3d 297 (Del. Ch. 1994).
[16] *See Books-A-Million*, C.A. No. 11343-VCL, slip op. at 26-32 (quoting *Mendel*, 651 A.3d at 304-06).
[17] *See id.* at 32-33 & nn.12-15.
[18] *Id.* at 35; *see also id.* at 35 n.16 (listing cases and financial literature describing 23.4% as a "'conservative' control premium and noting that "[a] number of studies have found that control premia in mergers and acquisitions typically range between 30% and 50%").
[19] *Id.* at 37-38.
[20] *Id.* at 39-40.
[21] *Id.* at 41.
[22] *Id.* at 41 (quoting *MFW*, 67 A.3d at 500).
[23] *Id.* at 41 (quoting *Harbor Fin. Partners v. Huizenga*, 751 A.2d 879, 901 (Del. Ch. 1999)).
[24] *Id.*
[25] *Id.* at 41-42.