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Delaware Supreme Court Reverses Court of Chancery's Dell Appraisal Decision; Suggests that Deal Price Was the Best Evidence of the Company's Fair Value

In *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd., et al.*,¹ the Delaware Supreme Court reversed and remanded the Court of Chancery's valuation of Dell in an appraisal case arising from the 2013 management buyout of Dell by Michael Dell and Silver Lake Partners. The Supreme Court unanimously held that the Court of Chancery abused its discretion by failing to give any weight to market-based measures of Dell's fair value, including the company's stock price and the deal price. Together with the Supreme Court's prior decision *DFC Global Corp. v. Muirfield Value Partners*,² the *Dell* opinion further underscores the Court's willingness to give significant weight to the deal price as the best measure of fair value when the record establishes that the transaction resulted from a robust and competitive sale process.

This litigation ensued after Mr. Dell and Silver Lake took Dell private in a transaction that paid stockholders \$13.75 per share, a nearly 40 percent premium on the unaffected stock price. A number of dissenting stockholders sought appraisal. Following trial, the Court of Chancery held that the deal price was not an appropriate measure of fair value, even though the sale process would have "easily . . . sail[ed] through if reviewed under enhanced scrutiny."³ Instead, the Court conducted its own DCF analysis, concluding that the fair value of Dell was \$17.62 per share, a nearly four-dollar increase over the transaction price. The parties cross-appealed, with Dell arguing principally that the Court of Chancery erred by failing to defer to the deal price in determining fair value, and with both sides disputing aspects of the trial court's DCF analysis.

By statute, the Court of Chancery must consider "all relevant factors" in determining fair value in an appraisal proceeding. Nevertheless, the Delaware Supreme Court reaffirmed that when—as here—the Court of Chancery concludes that a transaction was the product of a robust and untainted sale process, the court should be reluctant to ignore market-based measures of fair value. Indeed, as the Supreme Court explained, when a robust sale process has occurred, it is especially difficult to justify a valuation substantially above the deal price, as "[w]hen an asset has few, or no, buyers at the price selected, that is not a sign that the asset is stronger than believed—it is a sign that it is weaker."⁴ Accordingly, the Court of Chancery's decision to give no weight to the deal price was unsupported in light of its findings that the sale process was robust and competitive.

Furthermore, the Delaware Supreme Court specifically rejected the trial court's arguments as to why it would have been inappropriate to give weight to the deal price.

- First, the Supreme Court rejected the Court of Chancery's conclusion that there was a "valuation gap" between Dell's market price and the company's intrinsic value. The Supreme Court observed that the record evidence simply did not suggest there was an inefficient market for Dell. Although Dell's management and the market clearly disagreed as to the company's value and future prospects, that was not attributable to market ignorance or inefficiency. Rather, as the Supreme Court explained, the market was fully informed but

¹ *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd. (Dell II)*, 2017 WL 6375829 (Del. Dec. 14, 2017).

² *DFC Global Corp. v. Muirfield Value Partners*, 2017 WL 3261190 (Del. Aug. 1, 2017).

³ *In re Appraisal of Dell Inc. (Dell I)*, 2016 WL 3186538 at *29 (Del. Ch. May 31, 2016).

⁴ *Dell II*, 2017 WL 6375829 at *27 (slip op.).

simply remained skeptical of management's optimistic forecasts. Moreover, the Court observed that the market had good reason to be skeptical, in light of management's historic track record of missing its own forecasts.

- Second, the Supreme Court rejected the Court of Chancery's conclusion that the deal price was an unreliable measure of fair value because the principal participants in the company's market check process were financial sponsors that were supposedly driven by a desired IRR and therefore less likely to produce a deal price that appropriately measures fair value. As in its earlier decision in *DFC Global*, the Delaware Supreme Court dismissed this concern, explaining that whether a potential buyer is a financial sponsor or strategic bidder bears "no rational connection" to "whether the deal price is a fair price."⁵ Moreover, although Dell was ultimately sold to a financial bidder, a wide range of potential bidders were contacted during the go-shop period—including 20 potential strategic bidders—and the most likely strategic buyer declined to bid. As the Supreme Court explained, the fact that no strategic bidders were willing to submit a topping bid, should, if anything, have given the Court of Chancery considerable pause in determining that the deal price undervalued Dell.
- Third, the Supreme Court critiqued the Court of Chancery's rejection of the deal price because the transaction was an MBO. The trial court identified a number of characteristics of MBOs that made, in its view, the deal price a poor proxy for fair value. For example, the Court of Chancery posited that fear of a "winner's curse" deterred potential acquirers from submitting topping bids. While the Supreme Court acknowledged that a winner's curse (or other structural elements of an MBO) could potentially deter topping bids in some transactions, there was no evidence that this occurred in the Dell transaction. As the Supreme Court explained, the potential effect of a winner's curse in this case was mitigated by the fact that the other would-be acquirers conducted extensive due diligence and had access to significant amounts of confidential information. In addition, Mr. Dell had pledged to cooperate with other bidders and the record evidence showed that not all bidders particularly valued the participation of Mr. Dell and other incumbent officers in the post-closing entity.

The Supreme Court left little doubt as to its belief that the transaction price offered sufficient evidence of Dell's fair value, stating that—on remand—the Vice Chancellor was free to simply enter judgment at the deal price, without any need for further proceedings.⁶ And while the Supreme Court was very skeptical that reliance on an above-market, DCF-based valuation would be justified (i.e., given the robust and competitive sale process that had occurred), it allowed that on remand the Court of Chancery might nonetheless conduct a revised DCF analysis in determining fair value. Accordingly, the Supreme Court also addressed certain aspects of the Court of Chancery's DCF analysis.

Ultimately, the Delaware Supreme Court's Dell decision—much like the *DFC Global* ruling before it—indicates that although the Court of Chancery retains wide flexibility in determining fair value in an appraisal proceeding, there is good reason to place exclusive weight on the deal price as the most reliable evidence of fair value where it results from a robust sales process.

⁵ *Id.* at *20 (quoting *DFC Global*, 2017 WL 3261190 at *2, 22).

⁶ *See id.* at *34 (“[W]e give the Vice Chancellor the discretion on remand to enter judgment at the deal price if he so chooses, with no further proceedings.”).