

Corporate Finance/M&A - USA

Prior parent corporation's settlement agreement does not apply to spun-off entity

Contributed by [Ropes & Gray LLP](#)

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In *Miramar Police Officers' Retirement Plan v Murdoch*⁽¹⁾ Chancellor Bouchard rejected a stockholder's challenge to the validity of a stockholder rights plan adopted by News Corporation, finding that a settlement agreement entered into by its former parent entity was not binding on News Corporation.

Facts

This case originated with a 2006 settlement agreement between News Corporation ('old News Corp') and its stockholders, in which old News Corp agreed that, for the 20-year period following the date of the settlement agreement, it would not maintain a stockholder rights plan for longer than one year without obtaining stockholder approval.

In 2013 old News Corp transferred its newspaper and publishing business to a wholly owned subsidiary ('new News Corp') and then spun off new News Corp to its stockholders, pursuant to the terms of a separation and distribution agreement. Later in 2013, the new News Corp board adopted a one-year stockholder rights plan and subsequently extended that plan for an additional year without obtaining stockholder approval of the plan. The plaintiff, a new News Corp stockholder, brought an action against new News Corp, arguing that new News Corp – as a transferee or assignee of old News Corp – was bound by the terms of the settlement agreement and was thus prohibited from extending the term of the rights plan without stockholder consent.

Decision

The ruling included a detailed review of both the settlement agreement and the separation agreement. The settlement agreement provided that the terms of the agreement would be binding on the "transferees, successors and assigns" of old News Corp and on "any corporation, partnership, or other entity into or with which any party or person may merge or consolidate". The court noted that this language identified several types of corporate transaction that would result in a non-party entity being bound by the settlement agreement. However, a spin-off was not one of those identified transactions, suggesting that the parties did not intend to include a spin-off within the scope of that provision.

The court also rejected a claim that the assignment of old News Corp assets to new News Corp made new News Corp a transferee or assignee for purposes of the settlement agreement. The court noted that such a broad interpretation would lead to absurd results by making any party that acquired assets from old News Corp subject to the settlement agreement. Instead, the court found that new News Corp would be subject to the settlement agreement only if old News Corp specifically assigned its rights and obligations under the settlement agreement to new News Corp.

Next, the court reviewed the terms of the separation agreement to determine whether the settlement agreement was assigned to new News Corp as part of the spin-off transaction and determined that it was not so assigned.

Based on that analysis, the court found that new News Corp was not bound by the terms of the settlement agreement and dismissed the plaintiff's claims.

Comment

This opinion clarifies that the Delaware courts are reluctant to apply contractual obligations to spun-off entities when there is no clear contractual basis in the spin-off documents for doing so.

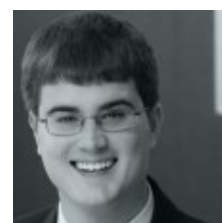
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Endnotes

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