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Stockholder plaintiffs must allege "extreme" facts to sustain *Revlon* process claims

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Introduction

A recent Delaware Court of Chancery decision(1) dismissing a stockholder plaintiffs' claims concerning an allegedly defective sales process illustrates the high bar that the court will apply to *Revlon* process claims against a disinterested board. In *Houseman*, the court rejected the plaintiffs' claims that the directors of Universata Inc had breached their fiduciary duties by administering an inadequate sale process in connection with the sale of Universata to HealthPort Technologies, LLC, during which the Universata board did not obtain a fairness opinion in support of the transaction.

Facts

In 2010 HealthPort and at least one other potential acquirer approached Universata regarding a potential transaction. The Universata board retained KeyBanc Capital Markets, Inc to advise the board in connection with the deal. Concerned with costs, Universata's board limited the scope of KeyBanc's engagement and did not request a fairness opinion from KeyBanc. Nevertheless, Universata's board approved the transaction, in which HealthPort acquired all of Universata's outstanding stock.

Decision

Vice Chancellor Glasscock rejected the plaintiff's claims of a defective sales process, stating that while the board "did not conduct a perfect sales process", it did not "utterly fail to undertake any action to obtain the best price for stockholders". The court held that the board had fulfilled its duty of loyalty by consulting with legal and financial advisers, considering offers from various bidders and negotiating with HealthPort. This deferential standard shows that stockholder plaintiffs must allege sufficiently "extreme" facts in order to discredit a sale process conducted by a board consisting of a majority of independent directors.

The plaintiffs also brought aiding and abetting claims against KeyBanc, asserting that KeyBanc was liable for the defective sale process because it failed to issue a fairness opinion or otherwise administer an appropriate process. In evaluating this claim, the court confirmed Vice Chancellor Laster's holding from *In re Rural Metro Corp* that a corporation's exculpation provision will not immunise financial advisers or acquirers from aiding and abetting liability. However, the court concluded that the plaintiffs had failed to allege that KeyBanc had "knowingly participated" in any wrongdoing by the Universata board, rejecting the claim that KeyBanc's limited engagement was improper or constituted knowing participation in any purported breach of fiduciary duties by the Universata board.

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Endnote

(1) *Houseman v Sagerman*, CA 8897- VCG (Delaware Court of Chancery April 16 2014).

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