DELAWARE CORPORATE LAW UPDATE — June 2024

YOUNG CONAWAY

FEATURED:

Justin Green v. Colin McClive

Trifecta Multimedia Holdings Inc. v. WCG Clinical Services LLC

Stansell v. Rosensweig

Vivint Solar, Inc. v. Jim Lundberg

In re TransPerfect Global, Inc.

***Justin Green v. Colin McClive,* 2024 WL 2815794 (Del. Ch. June 3, 2024)**

Among other things, denying LLC manager's motion for judgment on the pleadings that he was not liable for allegedly misappropriating corporate opportunities by attempting to establish a competing business. Both parties agreed that the LLC agreement preserved fiduciary duties and that any waiver of fiduciary duties "must be clear, plain, and unambiguous." But defendant argued that the agreement stated that he could "engage in or possess a significant interest in other business ventures of any nature and description, independently or with others." The Court held that, while the phrase "'of any nature and description'" permitted defendant to "engage in other business activities, it 'says nothing about the right to compete'" and so "offers no clear waiver of the duty of loyalty to permit the usurpation of corporate opportunities."

***Trifecta Multimedia Holdings Inc. v. WCG Clinical Services LLC,* 2024 WL 2890980 (Del. Ch. June 10, 2024)**

Denying in part and granting in part motion to dismiss in M&A dispute. Notably, the Court denied dismissal of the fraudulent inducement claim despite an integration clause that "supersede[d] all prior and contemporaneous understandings and agreements, both written and oral." Seller claimed that the private equity buyer fraudulently induced it into an acquisition by promising large post-closing earn-out payments tied to revenue milestones that the buyer never intended to pay. The Court held that an integration clause, "standing alone, is not sufficient to bar a fraud claim; the agreement must also contain explicit anti-reliance language." The Court declined to follow two prior decisions that dismissed fraudulent inducement claims under comparable integration clauses. The Court reasoned that the two decisions potentially misapplied *Abry Partners V, L.P. v. F & W Acquisition LLC*, which stated that Delaware courts "have not given effect to so-called merger or integration clauses that do not clearly state that the parties disclaim reliance upon extra-contractual statements." 891 A.2d 1032, 1058 (Del. Ch. 2006).

***Stansell v. Rosensweig,* 2024 WL 2958465 (Del. Ch. June 12, 2024)**

Granting defendants' motion to dismiss breach of fiduciary duty and aiding and abetting claims based on allegedly misleading disclosures. The company provided online educational resources that students then used to cheat on exams and assignments. Plaintiff alleged that the company failed to disclose that the company's business was allegedly to help students cheat. A companion federal securities fraud case brought under Exchange Act Section 10(b) and SEC Rule 10b-5 survived a motion to dismiss in the Northern District of California. Three derivative cases filed in federal courts and the Court of Chancery based on the same allegations were stayed pending resolution of the securities fraud action. In a footnote, the Court noted that the federal securities "action has no bearing on the court's decision in this action." The Court rejected plaintiff's argument that the company's business model was to facilitate cheating, and separately emphasized that "in making disclosures a board is not required to engage in self-flagellation."

***Vivint Solar, Inc. v. Jim Lundberg,* 2024 WL 2755380 (Del. Ch. June 18, 2024)**

Post-trial ruling for former employee over company's cancellation of the employee's equity incentive awards, though certain of the employee's claims were time-barred. The company delegated administration of incentive awards to the board's compensation committee, which determinations and decisions would be deemed "final and binding." The Court declined to decide whether the plan's "conclusive and binding" effect meant that the Court must defer to the compensation committee's decision. Instead, the Court found that the compensation committee never actually made a determination as to whether the employee's awards should be cancelled, and that the cancellation therefore was invalid. The Court did, however, state in a footnote that the Supreme Court's decision in *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 623 (Del. 2023), "could be read to suggest that a committee's decision on a pure question of law, such as interpreting an equity incentive plan, is entitled to no deference."

***In re TransPerfect Global, Inc.,* 2024 WL 3069279 (Del. Ch. June 20, 2024)**

Denying company's objections to custodian's fee petitions. The Court rejected all of the company's objections and held that the custodian's fee requests were reasonable. The Court also rejected a motion brought pursuant to Court of Chancery Rule 54(b) that sought, among other things, entry of final judgment on previous fee awards, a cap on the custodian's fees for opposing an appeal, and a requirement that the custodian seek fees relating to a federal securities action in federal court.