

Delaware Law Update: Arm's-Length Bidders Can Enjoy "Sweet" Deals Alongside Controllers without Abiding or Abetting Breaches of Fiduciary Duty – Jacobs v. Meghji, et al.

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The Court of Chancery dismissed claims of aiding and abetting breach of fiduciary duty and unjust enrichment against an investor that participated in an equity investment transaction alongside the company's controlling stockholder. Concentrating on the investor's status as an arm's-length "bidder," the Court of Chancery's decision reflects that Delaware law does not impede a bidder's right to negotiate and secure deal terms in its own interests as long as the bidder does not knowingly participate in extracting terms that require the opposite party to breach its fiduciary duties.

The minority shareholder-plaintiff's claims arose from an equity investment in Infrastructure & Energy Alternatives Inc. (Company) by Ares Management Corporation (Ares) and alongside Oaktree Power Opportunities Fund III Delaware, L.P. (Oaktree), the Company's controlling stockholder. Ares and Oaktree agreed to invest \$50 million in exchange for newly created Series B preferred stock and warrants valued at approximately \$134 million. A competing and allegedly superior equity investment transaction was also on the table (and also involved Oaktree), and the Company created a special committee to negotiate and consider both bids. Ultimately, the special committee negotiated and approved the Ares transaction, and a majority of the Company's stockholders approved a stock conversion and warrant issuance to facilitate the Ares transaction. Based on allegations that the equity investment transaction was too "sweet" to Ares and Oaktree and detrimental to the Company and its minority stockholders, the plaintiff claimed that Ares aided and abetted breaches of fiduciary duties by the individual members of the Company's special committee and that Ares was unjustly enriched by sharing in the benefits Oaktree received from its alleged breach of fiduciary duty.

Delaware law mandates that a defendant knowingly participate in an underlying breach of fiduciary duty in order for a plaintiff to sustain a claim for aiding and abetting. The requisite "knowing" scienter requires allegations that amount to an aider and abettor conspiring with the fiduciary defendant or that the fiduciary's breach was so "inherently wrongful" that knowledge of the breach

can reasonably be inferred. Delaware's standard creates a high burden when the alleged aider and abettor is a transactional counterparty.

The court quickly disposed of the plaintiff's assertions that Ares had actual knowledge of wrongdoing by the Company's special committee members by noting that Ares's negotiations were arm's-length and pointing to the lack of allegations that Ares was aware of or involved in any flawed decision making by the board or the special committee or its advisors.

The court then rejected the plaintiff's theory that Ares's supposed actual knowledge of Oaktree's alleged wrongdoing could transitively support a finding of constructive knowledge for alleged wrongdoing by the Company's special committee members. The court found that the plaintiff's allegations confirmed that Ares's arm's-length participation in the transaction was inconsistent with knowing participation in alleged breaches of fiduciary duty. More specifically, Ares did not select the special committee's lead negotiator, who was alleged to have conflicts of interest, and the plaintiff did not allege facts to support that Ares exploited the negotiator's conflicts of interest for its benefit. The plaintiff also failed to plead facts to support that Oaktree's participation in the transaction was inherently wrongful or that Ares knew of the allegedly superior alternative offer or of Oaktree's alleged wrongful influence over the deal to obtain more lucrative terms. For these same reasons, the court rejected the plaintiff's claim for unjust enrichment.

The *Jacobs v. Meghji* decision is instructive for practitioners on multiple levels. For transactional counterparties, the court's analysis is a helpful guide to understanding the bounds of conduct that constitutes knowing participation under Delaware law to support aiding and abetting liability. Importantly, the court reaffirmed that arm's-length bidders have the right to negotiate and secure contract terms for their own benefit and that participation in a transaction by a bidder alongside a controller, without more, does not give rise to the aiding and abetting liability. On the company side, the *Jacobs* decision reinforces the need for a well-functioning, independent, and appropriately authorized special committee, particularly where a controller participates in a transaction. For litigants, the court's deconstruction of the plaintiff's complaint to explain why certain inferences were unreasonable or unsupported and what allegations were missing to support an aiding and abetting claim is a reminder of the attention and scrutiny that the Court of Chancery brings to each case on its docket.