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Directors' Bonuses Tied to Sale Rendered Them Interested

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The Delaware Court of Chancery sustained in part the claims of a plaintiff investor challenging a company's sale of its primary asset based upon allegations that the vote of the individual director defendants approving the sale was tainted by bonuses they received tied to that sale.

In December 2005, individual director defendants of nominal defendant Winmill & Co., Inc., a 22% shareholder in Bexil Corporation, a holding company, voted in favor of a transaction by which Bexil would sell its interest in a third company, its primary asset. In April 2006, Bexil's shareholders approved the sale, resulting in pre-tax proceeds to Bexil of approximately $38.5 million. Two of the individual director defendants who had approved the transaction received bonus compensation directly tied to the sale totaling $2.5 million.

Plaintiff, The Ravenswood Investment Company, L.P. owned or had authority over 7% of Winmill's non-voting shares. It brought direct and derivative claims based on the sale of Bexil's primary asset, claiming that compensation received by the individual director defendants tainted their decision to vote in favor of the sale. Defendants moved to dismiss the complaint pursuant to Court of Chancery Rule 12(b)(6) for failure to state a claim, and Rule 23.1, for failure to adequately allege that demand upon the Winmill board was excused with respect to the derivative claims.

In sustaining the derivative claims challenging the sale, the court reasoned that the $2.5 million received by the individual director defendants, which was substantially contingent upon the deal closing, supported an inference that they voted to approve the sale, at least in part, because of that expected payment. As a result, the court denied the defendants' motion to dismiss Ravenswood's derivative claims of breach of fiduciary duty with respect to the approval of the sale by Bexil. Similarly, the court held that demand on the board was excused because the complaint satisfactorily alleged that two of Winmill's three directors had a material, disqualifying self-interest when they voted in favor of the sale. Finally, the court held that even if Winmill profited from the sale, the transaction could still be found to be unfair to the company because the bonus paid to the directors improperly reduced the benefit the company received. (*The Ravenswood Investment Company, L.P., v. Winmill*, 2011 WL 2176478 (Del. Ch. May 31, 2011))

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