



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

MIDLAND GRANGE NO. 27  
PATRONS OF HUSBANDRY,

Petitioner,

v.

ROSALIE WALLS, LAURA BROWN,  
DELAWARE BRIDGES, INC., a  
Delaware corporation, and DELAWARE  
STATE GRANGE, INC.,

Respondents.

C.A. No. 2155-VCN

**MEMORANDUM OPINION**

Date Submitted: October 17, 2007

Date Decided: February 28, 2008

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Petitioner.

Craig T. Eliassen, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware,  
Attorney for Respondents Rosalie Walls, Laura Brown, and Delaware State  
Grange, Inc.

Steven Schwartz, Esquire of Schwartz & Schwartz, Dover, Delaware, Attorney for  
Respondent Delaware Bridges, Inc.

NOBLE, Vice Chancellor

## I. INTRODUCTION

This is an action for breach of fiduciary duty and rescission of a real estate sale. Petitioner Midland Grange No. 27 Patrons of Husbandry, Inc. (“Midland Grange” or the “Grange”), a Delaware corporation, alleges that two of its former officers, Respondents Laura Brown and Rosalie Walls (the “Officer Respondents”), sold its historic meeting hall at 106 North Race Street in Georgetown, Delaware (the “Grange Hall” or, generally, the “Property”) to Respondent Delaware Bridges, Inc. (“Delaware Bridges”) for a price below fair market value and in violation of the organizational by-laws prescribing the procedure for selling its real property. Midland Grange also alleges that the Officer Respondents failed to secure certain conditions on the sale imposed by Respondent Delaware State Grange, Inc. (the “State Grange”) (collectively with the Officer Respondents, the “Grange Respondents”) in approving the sale of the Property. In addition to its claims against the Officer Respondents, Midland Grange asserts an aiding and abetting claim against the State Grange because it knew that the Officer Respondents violated the by-laws in selling the Property. Midland Grange therefore seeks rescission of the sale or, in the alternative, money damages from the Grange Respondents for actual damages suffered by Midland Grange as a result of the improper sale to Delaware Bridges. This is the Court’s post-trial memorandum opinion.

## II. FACTUAL BACKGROUND

Midland Grange is a local chapter of the National Grange of the Order of the Patrons of Husbandry. The Grange is a fraternal organization that offers its members fellowship and service opportunities in their local communities. Midland Grange is subordinate to the National Grange and the State Grange, the state chapter of the national organization. As a Subordinate Grange, Midland Grange is required to abide by certain by-laws imposed by the National Grange.

Midland Grange acquired the Property in 1929. The Grange Hall was built in the early 1930s by Mrs. Walls' father and is considered by many local residents to be an historic building in Georgetown. Over the years, however, the popularity of Midland Grange has waned substantially—by 2003, Midland Grange had only about thirty dues-paying members, many of whom were aging and no longer participating in Grange activities. The Grange held very few meetings and social events; those that it did hold were generally poorly attended.<sup>1</sup> The members of Midland Grange are required to pay annual membership dues of \$15 (part of which goes to the State Grange), but members who have belonged to the Grange for more than fifty years (the “Golden Sheep”) are not required to pay dues; Midland Grange has several Golden Sheep on its membership rolls.<sup>2</sup>

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<sup>1</sup> Transcript of Trial, Day 1 (Oct. 16, 2007) (“Tr1. \_\_\_”) 46.

<sup>2</sup> Tr1. 109.

As a result of its less than enthusiastic membership and paltry income from membership dues, Midland Grange was in a perpetual state of financial distress. The Grange held fund raising events from time to time, but, for most months, the Grange did not have sufficient funds to cover even its basic operating expenses, such as the telephone bill, the electric bill or the heating bill.<sup>3</sup> Indeed, Midland Grange's financial condition was so dire that Peter Brown, the Master of Midland Grange in 2003 and the father of Respondent Laura Brown, resorted to collecting bottles and aluminum cans to raise additional money to help cover operating expenses each month.<sup>4</sup> The Browns also personally contributed money to the Grange to help meet expenses.<sup>5</sup>

In early 2003, a local developer approached the Grange and offered to purchase the Property. The developer planned to raze the Grange Hall in connection with his development plan for the surrounding area. Midland Grange opposed the sale to the developer because its historic Grange Hall would be destroyed, but it nevertheless sought an appraisal from Eleanor Brown, the wife of Peter Brown and a licensed real estate appraiser, in order to fully assess its options. Mrs. Brown valued the Property at \$81,700, including the Grange Hall, or \$36,500

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<sup>3</sup> Tr1. 83-84; 107-10.

<sup>4</sup> *Id.*

<sup>5</sup> Tr1. 84; 107-10.

for just the lot.<sup>6</sup> The Grange consulted house movers to estimate the cost of moving the Grange Hall to a different location, but that plan proved infeasible. The officers of Midland Grange therefore rejected the developer's offer and abandoned their thoughts of selling the Property because it could not be accomplished in a manner that would preserve the Grange's historic building.

In November 2003, a problem with the furnace in the Grange Hall resulted in damage to the building (the "Furnace Event"). The acrid odor of oil permeated the Grange Hall and soot and other debris were strewn throughout. The Grange Hall thus was rendered unusable. Given its ongoing financial problems, Midland Grange did not have the funds to restore the Grange Hall to working order.

Shortly after the Furnace Event, Peter Brown stepped down as the Master of Midland Grange and assumed a position on the executive board of the State Grange. Laura Brown was elected Master of Midland Grange. Rosalie Walls continued to serve as Midland Grange's Secretary and Treasurer. Josephine "JoAnne" Kruger, the current Master of Midland Grange, assumed the office of Lecturer of Midland Grange.

Many Grange members, including Mrs. Kruger, complained about meeting in the Grange Hall because of its decrepit condition following the Furnace Event.

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<sup>6</sup> Petitioner's Exhibit ("PX") 15. For reasons that are unclear, Midland Grange sought a second appraisal of the Property in February 2004 from a local real estate agent who is not a licensed appraiser. That "appraisal" valued the Property (without the Grange Hall) at \$65,000. PX 16.

The Grange abandoned the Property (at least insofar as it was using the Grange Hall for meetings). Without a proper meeting hall, however, Midland Grange was unable to hold regular meetings where it could conduct its formal business.<sup>7</sup> The Grange did host a few social gatherings at various locations around Georgetown, but, as usual, those were poorly attended.<sup>8</sup> Midland Grange continued to rely on Mr. Brown's bottle and can collections to maintain its operations.

In the summer of 2004, Reverend Janet Trout, the pastor of First United Pentecostal Church Truth & Life Center ("First United") in Georgetown, approached Mrs. Walls and the Grange to seek permission to use the abandoned Grange Hall for a series of "yard sales" that she and her congregation were hosting. The Grange consented to First United's request, and Rev. Trout and her congregation occupied the Grange Hall for several weekends in the summer of 2004. During that time, Rev. Trout and her congregation made numerous improvements to the Grange Hall—they cleaned the hall by removing a substantial amount of junk and debris that had accumulated and they attempted to repair some of the damage from the Furnace Event.

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<sup>7</sup> A "regular" meeting requires the Grange officers to wear certain regalia and to perform certain rituals. The alternative meeting locations used by Midland Grange in 2004 were not conducive to such activities.

<sup>8</sup> Social meetings do not require the use of regalia.

Rev. Trout is also the President of Respondent Delaware Bridges, a Delaware not-for-profit corporation, founded by Rev. Trout and other members of First United for the purpose of providing ministry and numerous other services to the local community. Through her use of the Grange Hall to stage First United's yard sales in the summer of 2004, Rev. Trout came upon the idea of acquiring and refurbishing the Grange Hall for use as Delaware Bridges' community outreach center. The building was conveniently located near the local community that Delaware Bridges was attempting to reach, and Rev. Trout believed her idea would be a practical way to assist the struggling Grange and to preserve an historic building in Georgetown. Accordingly, Rev. Trout contacted Midland Grange and invited its members to attend a meeting at First United in early September 2004 to discuss her idea.

Several Midland Grange members, including Peter Brown, Laura Brown, Mrs. Walls, and Mrs. Kruger, attended the September meeting at First United. At that meeting, Rev. Trout described Delaware Bridges' community outreach programs, and she shared her vision for refurbishing the Grange Hall to serve as a community center and base of operations for Delaware Bridges. To that end, she offered to purchase the Grange Hall for \$50,000.<sup>9</sup> The purchase price would be

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<sup>9</sup> Rev. Trout based her offer price upon what she believed Delaware Bridges could reasonably afford to spend, particularly given the extensive renovations that the Grange Hall would require.

paid with a \$15,000 down payment and a three-year mortgage note for \$35,000 at 5% annual interest to be held by Midland Grange. In addition, Rev. Trout offered that the Grange would have the right to continue to use the Grange Hall for its meetings and events at no charge (the “Trout Proposal”).

The Grange Members present at the September meeting generally approved of the Trout Proposal, but Laura Brown expressed some dissatisfaction with the proposed purchase price. Ms. Brown did not press her concerns over the \$50,000 offer, however, because, ultimately, the Trout Proposal presented a reasonable solution to the Grange’s ongoing financial problems and an end to the need for her eighty-year-old father to collect bottles and cans to support the Grange’s operations.<sup>10</sup> The Officer Respondents determined that the Trout Proposal was an attractive offer and should be put to a vote of the Grange members.

The by-laws which prescribe the procedure for selling the Grange’s real property, in pertinent part, provide:

**4.11.1 Sale of Real Property by Subordinate or Pomona Granges –**  
No Subordinate or Pomona Grange may sell any real property owned by said Subordinate or Pomona Granges except upon the following conditions:

- (A) A written notice shall be sent to the Executive Committee of the State Grange having jurisdiction advising of the intent to invoke the procedure included in Article XI of these By-Laws to sell real property. Such notice shall

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<sup>10</sup> Transcript of Trial, Day 2 (Oct. 17, 2007) (“Tr2. \_\_\_”) 218-19.

contain a summary of the reasons for the proposed sale and includ[e], if available, an appraisal of the value and a report as to the current use and condition of the said real estate.

- (B) Any resolution adopted by a Subordinate or Pomona Grange for the sale of real property is inoperative unless approved by written consent of the Master and Executive Committee of the State Grange having jurisdiction over the said Subordinate or Pomona Grange, provided specifically such consent shall not precede the adoption of a resolution to sell as provided for in Sections 4.11.1(C), (D), and (E) of these By-Laws.
- (C) A written notice shall be sent to all members of the said Subordinate or Pomona Grange at their last known address notifying them of the date of a meeting to consider a resolution for sale of real property and the contents of the proposed resolution of sale.
- (D) A resolution shall be adopted at a regular meeting by majority vote of the members of the said Subordinate or Pomona Grange present and voting as to:
  - (1) The intent to sell real property owned by the Grange;
  - (2) The terms of such sale; and
  - (3) The date on which a regular meeting of the members will be held to vote on a resolution of sale, provided that such date shall not be less than fifteen (15) days nor more than ninety (90) days after adoption of the notification resolution.
- (E) Adoption of a resolution, by a two thirds vote of the members of said Subordinate or Pomona Grange present and voting approving the sale of said real property.<sup>11</sup>

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<sup>11</sup> PX 1.

At the State Grange's suggestion, and despite the unequivocal and unambiguous requirements of the by-laws, the Officer Respondents decided to bypass the by-laws' meeting requirements and, instead, conducted a secret ballot vote on the Trout Proposal by mail; given Midland Grange's aging membership and the fact that most meetings were poorly attended, this procedure was deemed to be the most efficient, timely, and fair means of polling the members' views on the Trout Proposal. Accordingly, Mrs. Walls prepared a letter to the Grange membership detailing the Trout Proposal (the "Walls Letter").<sup>12</sup> The Walls Letter attempted to describe the terms of the Trout Proposal, but it incorrectly noted that the interest rate would be 7% (instead of 5% as proposed by Rev. Trout) and that the mortgage note would be repaid in twenty-four months (instead of thirty-six months as proposed by Rev. Trout). The letter also exhorted the Grange members to vote in favor of the Trout Proposal because it would solve the Grange's ongoing financial problems and preserve their historic Grange Hall.

The Walls Letter was mailed to all current "dues-paid" Grange members (approximately thirty or so) on or about September 23, 2004.<sup>13</sup> Enclosed with the Walls Letter was a "secret" ballot.<sup>14</sup> The ballot presented the Grange members

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<sup>12</sup> PX 2.

<sup>13</sup> There is some suggestion in the record that the mailing list was not entirely accurate. Tr1. 54-55. Nonetheless, the Court finds that the most accurate information was used, and the consequences of any inaccuracy were immaterial.

<sup>14</sup> PX 2.

with a very straightforward proposition: “Proposal per enclosed letter either *to sell*, or *not to sell* Midland Grange Hall & Lot”<sup>15</sup>—the members could check a box marked “YES” if they wished to approve the Trout Proposal and sale of the Property, or they could check a box marked “NO” if they wished to reject the Trout Proposal. The Walls Letter also enclosed a copy of the Grange by-laws describing the procedure for selling the Property.

The secret ballots were counted on or about October 15, 2004 (the return deadline) and the vote overwhelmingly (18-3) favored selling the Property under the terms of the Trout Proposal.<sup>16</sup> Indeed, Mrs. Kruger was one of the Grange members who supported the sale—she voted “YES” not only for herself, but also on behalf of her husband, her daughter, and one of her daughter’s friends, all of whom also are members of Midland Grange.<sup>17</sup> Despite having received a copy of the by-laws stating that Midland Grange was required to hold several meetings to consider and vote on the proposed sale of the Property, no Grange member complained about the alternative process employed by the Officer Respondents.

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<sup>15</sup> *Id.* (emphasis added). Although one could argue that the Grange members who received the Walls Letter and the enclosed by-laws might reasonably have mistaken the letter for a solicitation of their approval of the terms of a sale proposal to be considered at a later meeting (see Grange by-laws § 4.11.1(C)), the language of the ballot is clear—the choice presented was whether to sell the Property, not whether to approve the language for a sale proposal.

<sup>16</sup> Officer Respondents’ Exhibits (“Walls”) 2. The original ballots were not in evidence. There is some suggestion, based on notes on the photocopies of the ballots, that the vote may have been 22-3 in favor of selling the Property. The difference is immaterial, however, because the discrepancy only reinforces the Respondents’ position.

<sup>17</sup> Tr2. 140

Thus, with the membership on board, and believing that they had adequately complied with the membership approval requirements of the by-laws, Mrs. Walls and Peter Brown scheduled a meeting with the State Grange executive committee for October 21, 2004 to seek the State Grange's approval of the sale as required by the by-laws.

Rev. Trout submitted a formal written offer specifying the terms of the Trout Proposal on or about October 10, 2004 (the "Agreement of Sale").<sup>18</sup> As planned, Mrs. Walls and Mr. Brown appeared before the State Grange executive committee on October 21, 2004 to seek approval of the sale; at that meeting, Mrs. Walls and Mr. Brown reported the terms of the Trout Proposal<sup>19</sup> and the vote of the Grange membership.<sup>20</sup> The State Grange then considered and approved the sale of the Grange Hall to Delaware Bridges:

After much discussion[,] a motion was made . . . and seconded . . . to accept [the Trout Proposal] with the following stipulations. Midland Grange No. 27 may use the building for 15 years from date of settlement. They will also be allowed to purchase the building back for \$50,000.00 if Delaware Bridges, Inc. should choose to sell. Motion passed.<sup>21</sup>

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<sup>18</sup> PX 8.

<sup>19</sup> PX 6.

<sup>20</sup> PX 5. Another minor and immaterial discrepancy appears in Mrs. Walls' letter to the State Grange. It suggests that the Midland Grange members' vote on the Trout Proposal was 19-2 in favor.

<sup>21</sup> PX 6.

The Master of the State Grange, Lynwood Davenport, then prepared a letter authorizing Midland Grange to sell the Grange Hall (the “Davenport Letter”). The Davenport Letter attempted to memorialize the State Grange’s approval of the sale and the “stipulations” discussed by the executive committee; it states:

Midland Grange No. 27 has permission from the Delaware State Grange Executive Committee to sell their Grange Hall at 106 N. Race Street, Georgetown, Delaware.

The Delaware State Grange Executive [sic] *wants* a stipulation in the Deed that Midland Grange No. 27 may use the building for 15 years from date of settlement. They will also be allowed to purchase the building back for \$50,000.00 if Delaware Bridges, Inc. should choose to sell.<sup>22</sup>

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<sup>22</sup> PX 4 (emphasis added). The “stipulations” detailed in the executive committee meeting minutes and in the Davenport Letter are imprecisely drafted. The parties have engaged in considerable debate over the meaning and import of the \$50,000 buyback language. Midland Grange contends that the stipulations required the Officer Respondents to secure a right of first refusal allowing Midland Grange to repurchase the Property for \$50,000 if Delaware Bridges ever decided to sell the Property. The Respondents contend that such an interpretation is ludicrous in light of the fact that Delaware Bridges’ invested over \$100,000 to renovate the Grange Hall; instead, they suggest that the \$50,000 “buyback” language was simply emphasizing that, consistent with the Grange by-laws, Midland Grange would be able to use its proceeds from the sale of the Grange Hall to put toward the price of repurchasing the Property if Delaware Bridges ever decided to sell. One could argue, however, that the Respondents’ reading of the buyback language is equally implausible because it accomplishes nothing in terms of being a “stipulation” on the sale of the Property.

Unfortunately, the parties did not offer any testimony from Mr. Davenport, the author of the Davenport Letter and Master of the State Grange at the time it approved the sale, to clarify the meaning of the “stipulations.” The conflicting and inconsistent witness testimony at trial shed no light whatsoever on this dispute; indeed, many of the witnesses contradicted themselves several times in testifying about their understanding of the meaning of the buyback language. Although one could view the trial testimony as being generally more supportive of Midland Grange’s theory of the meaning of the buyback language, it was apparent that the parties and witnesses really did not understand what the buyback language was intended to accomplish.

With the State Grange authorization in hand, Mrs. Walls and Mr. Brown reported to Midland Grange and Rev. Trout that the sale had been approved. For reasons the parties could not clearly recall at trial, Rev. Trout then prepared a Memorandum of Understanding on November 13, 2004, which reiterated the terms of the Trout Proposal (the “MOU”);<sup>23</sup> the MOU, however, makes no mention of the State Grange “stipulations.” Laura Brown executed the Agreement of Sale on behalf of Midland Grange on November 16, 2004. In addition, the parties prepared two addenda to the Agreement of Sale.<sup>24</sup> “Addendum A” specified the terms of the mortgage the Grange would carry back on the property.<sup>25</sup> “Addendum B” attempted to incorporate the State Grange “stipulations;” it states:

Delaware Bridges, Inc. agrees to permit Midland Grange #27 to hold one monthly meeting, and an occasional special meeting, in the building for a period of fifteen (15) years. The Grange members agree to coordinate the meeting dates and times with the Delaware Bridges calendar to avoid conflict.

Should Delaware Bridges, Inc. place the property on the market for sale, Delaware Bridges, Inc. agrees to the following:

- (1) Provide a meeting place for Midland Grange #27, whether at 106 Race Street or their (Delaware Bridges, Inc.) future location, for a period of 15 years from this date.
- (2) In the event the property is placed on the market for sale, Midland Grange #27 will be given the first right of refusal. The

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<sup>23</sup> PX 8.

<sup>24</sup> The parties drafted all of the documents concerning the sale of the Property and conducted this entire transaction (except the closing) without the advice of an attorney.

<sup>25</sup> PX 8.

price for the property, if sold to Midland Grange #27, will be established based on an average of three (3) qualified opinions of market value at that time.<sup>26</sup>

The addenda to the Agreement of Sale, as well as the MOU, were executed by Laura Brown and Rev. Trout on December 5, 2004, with the intent that they would be incorporated into the Agreement of Sale. Mrs. Kruger witnessed the parties' signatures on both the addenda and the MOU.<sup>27</sup>

Midland Grange and Delaware Bridges proceeded to settlement on January 26, 2005. At settlement, the Officer Respondents produced a corporate resolution authorizing the sale of the Property.<sup>28</sup> Following settlement, Rev. Trout and her colleagues took possession of the Grange Hall. Mrs. Walls mailed a letter to the Grange membership on February 5, 2005 informing the members that the sale had been completed.<sup>29</sup> Once again, no Grange member voiced any objection to the sale of the Property. Mrs. Kruger testified, however, that she was “surprised” to learn that the sale had actually occurred.<sup>30</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> The MOU, though dated November 13, 2004, does not appear to have been presented to the Grange until on or about December 5, 2004 when the addenda to the Agreement of Sale were executed—at the very least, if the MOU was presented before December 5, 2004, the parties determined that they would sign the MOU and specifically incorporate it into the Agreement of Sale along with the addenda on that date.

<sup>28</sup> PX 9.

<sup>29</sup> Walls 3.

<sup>30</sup> Tr2. 147-48. Mrs. Kruger, evidently, was surprised to learn about the sale despite having cast not one, but four ballots in favor of selling the Property and having witnessed signatures on several documents relating to the sale of the Property.

Throughout 2005, Delaware Bridges (through the efforts of Rev. Trout and the First United congregation) invested a substantial amount of treasure and time into refurbishing the Grange Hall—in excess of \$100,000 and 2,000 hours of volunteer labor (in addition to the work performed by professional contractors). In the fall of 2005, after renovations had been substantially completed, Rev. Trout invited Midland Grange to return to the Grange Hall for its meetings. Although the Grange Hall was in a much-improved condition, some Grange members, including Mrs. Kruger, were dissatisfied with the “church-like” décor; in fact, Mrs. Kruger sent a letter to the National Grange complaining about the appearance of the Grange Hall after Delaware Bridges’ renovations.<sup>31</sup>

Midland Grange convened its first official meeting in the refurbished Grange Hall on November 12, 2005. That meeting quickly descended into chaos. The Grange members first engaged in a dispute over whether certain members had in fact paid dues and were entitled to participate in the Grange. The group essentially divided into two factions over the contested membership issue: the Brown/Walls faction and the Kruger faction. The two factions then argued over the slate of delegates who would attend the two-day annual State Grange convention in early December. Once those issues were resolved, the Kruger faction confronted the Brown/Walls faction over the sale of the Grange Hall; in the “heated discussion”

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<sup>31</sup> Tr2. 152.

that ensued, the Kruger faction interrogated the Officer Respondents about the vote on the Trout Proposal, the sale procedure prescribed by the by-laws, the “church-like” appearance of the Grange Hall, and various other “legal” and financial issues. The meeting eventually broke up when several Grange members walked out of the meeting.

Following the November 2005 kerfuffle, the members of Midland Grange convened again in December at which time they held officer elections. The Kruger faction was able to wrest control of the Grange away from the Brown/Walls faction in the December elections. Mrs. Kruger was elected Master of Midland Grange and her supporters filled the various other Grange offices. Following Mrs. Kruger’s installation as Master in January 2006, she immediately completed an audit of the books and records of Midland Grange. Through that audit, Mrs. Kruger and other Grange members claim to have discovered the Davenport Letter and realized, for the first time, that the Officer Respondents mishandled the sale of the Grange Hall. The Kruger Administration then resolved to rectify the Officer Respondents’ mismanagement of the Grange. This action followed.

### **III. THE PARTIES’ CONTENTIONS**

#### **A. *Midland Grange***

The contours of Midland Grange’s claims have not been precisely framed. The Grange’s chief complaint appears to be that the Officer Respondents breached

their fiduciary duties in connection with the sale of the Property.<sup>32</sup> Specifically, the Grange contends that the Officer Respondents breached their duty of care because they failed to adhere to the by-laws' sale procedure and because they failed to secure the stipulations imposed by the State Grange, in particular, the \$50,000 buyback provision. Midland Grange also appears to suggest that the Officer Respondents breached their duty of loyalty because they acted in "bad faith" by ignoring the requirements of the by-laws.<sup>33</sup> The Grange therefore argues

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<sup>32</sup> Although this case is not specifically styled as a corporate fiduciary duty case, our fiduciary duty law affords the most apt construct in which to analyze Midland Grange's claims. Fiduciary duties are context specific, however. *See, e.g., Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998) ("Although the fiduciary duty of a Delaware director is unremitting, the exact course of conduct that must be charted to properly discharge that responsibility will change in the specific context of the action the director is taking with regard to either the corporation or its shareholders."); *accord N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007) (quoting *id.*). Thus, whether the Officer Respondents properly discharged their fiduciary duties will necessarily be informed by the fact that the Grange is a relatively unsophisticated fraternal organization, and not, for example, a public company.

The governance structure of Midland Grange is not clear. The evidence does show, however, that the Officer Respondents were the individuals at Midland Grange who were responsible for making the initial decision to sell the Property and then carrying out the technical aspects of the sale. Thus, regardless of whether the Officer Respondents are properly characterized as "officers" of the Grange or "directors" of the Grange, "[t]he fiduciary duties an officer owes to the corporation 'have been assumed to be identical to those of directors.'" *Ryan v. Gifford*, 935 A.2d 258, 269 (Del. Ch. 2007) (quoting *In re Walt Disney Co.*, 2004 WL 2050138, at \*3 (Del. Ch. Sept. 10, 2004)).

<sup>33</sup> There is no suggestion by Midland Grange that Officer Respondents otherwise breached their fiduciary duty of loyalty. The Grange may establish a violation of the duty of loyalty by showing how that Ms. Brown and Mrs. Walls "either (1) 'stood on both sides of the transaction and dictated its terms in a self-dealing way,' or (2) 'received in the transaction a personal benefit that was not enjoyed by the shareholders generally.'" *In re Coca-Cola Enters., Inc. S'holders Litig.*, 2007 WL 3122370, at \*4 (Del. Ch. Oct. 17, 2007) (citations omitted). There are no facts in the record to support such a claim, even if it had been made. To the extent Midland Grange may argue that the Officer Respondents violated the good faith component of the duty of loyalty, the Court discusses that issue in Part IV(B)(4), *infra*.

that the sale of the Property is either void or voidable, and, thus, it seeks rescission of the sale to Delaware Bridges.

As an alternative ground for finding a breach of the duty of care, Midland Grange contends that the Officer Respondents sold the Property for less than fair market value. It points to the 2003 and 2004 appraisals of the Property, both of which suggest that the Property may have been worth more than \$50,000. Thus, if rescission is not an available remedy, Midland Grange seeks money damages from the Officer Respondents for the difference between the sale price and the alleged fair market value of the Grange Hall.

Midland Grange next alleges that the State Grange aided and abetted the Officer Respondents' breach of their fiduciary duties because the State Grange knew that the Officer Respondents were acting in violation of the Grange's by-laws and assisted with the sale of the Property for less than fair market value. Midland Grange thus seeks money damages from the State Grange.

Finally, Delaware Bridges is a party to this action primarily because it is necessary for the remedy of rescission. According to Midland Grange, Delaware Bridges either knew or should have known that the Officer Respondents had violated the sale procedure prescribed by the Grange's by-laws and that the Officer Respondents had not secured the conditions on the sale required by the State Grange. Therefore, Delaware Bridges should have known that the corporate

resolution authorizing the sale of the Property was invalid, and that the Officer Respondents had no authority to sell. The Grange, thus, contends that rescission is appropriate and Delaware Bridges will not be prejudiced by the imposition of such a remedy.

B. *The Grange Respondents*

The Officer Respondents argue that, although technically they may have violated the by-laws, they in fact tried their best to implement a voting process that would be fair to the Grange members and afford the greatest degree of membership participation under the circumstances—indeed, given the Grange’s track record of poorly attended meetings (both regular and social), strict adherence to the by-laws’ multiple-meeting requirements could have produced a less-democratic result than the one achieved by the mailing and secret ballot. Moreover, the Officer Respondents consulted with the State Grange in developing the balloting process for the Trout Proposal, and the process implemented was in fact suggested by the State Grange.

In addition, the Officer Respondents contend that the State Grange’s “stipulations” were precatory. They note that the Davenport Letter employs the word “wants” as a preface to the stated stipulations on the sale of the Property. Thus, the Officer Respondents argue that the language of the Davenport Letter suggests that the “stipulations” were merely additional terms that they should seek

to improve Midland Grange's bargain, but not terms that they were required to secure in the Agreement of Sale. Accordingly, their failure to satisfy the State Grange "stipulations," specifically the \$50,000 buyback provision, caused no harm to Midland Grange.

Finally, the Officer Respondents argue that the notion of a \$50,000 buyback is nonsensical in this context because all of the parties knew that Delaware Bridges intended to invest a substantial amount of money to refurbish the Grange Hall; thus, no rational person would have agreed to such a provision. Furthermore, the Officer Respondents contend that even if they had garnered the purported \$50,000 buyback right, that provision would have been invalid under the rule against perpetuities because it was unlimited in duration; thus, Midland Grange suffered no harm as a result of the Officer Respondents' failure to secure the right of first refusal suggested by the State Grange.

C. *Delaware Bridges*

Delaware Bridges contends that it dealt with Midland Grange at arm's-length in purchasing the Property and that it relied upon what appeared to be a valid corporate resolution authorizing the sale. Moreover, Delaware Bridges was not responsible for securing the Officer Respondents' compliance with the Grange's by-laws. The Grange members knew that the Officer Respondents had failed to comply with the by-laws' sale requirements in the fall of 2004. Midland

Grange took no action on that claim for nearly sixteen months after the parties closed on the sale of the Property; meanwhile, Delaware Bridges had sunk over \$100,000 and countless volunteer hours into refurbishing the Grange Hall. Delaware Bridges therefore argues that Midland Grange's claim for rescission is impracticable, untimely, and barred by the equitable doctrine of laches.

#### IV. ANALYSIS

##### A. *Rescission as a Remedy Fails Because it Would be Impracticable*

Midland Grange seeks a return of the Property. Rescission is a remedy designed to restore the parties to the status quo ante. The decision to award rescission is committed to the Court's discretion.<sup>34</sup> "Moreover, it is well established that rescission generally is appropriate only when the plaintiff offers and is capable of restoring the defendant's former status quo."<sup>35</sup> After its acquisition of the Property, Delaware Bridges expended substantial sums (in excess of \$100,000 in addition to substantial volunteer effort) in restoring and improving the Grange Hall. Midland Grange has not demonstrated that, if the conveyance were rescinded, it would be able to restore Delaware Bridges to its

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<sup>34</sup> DONALD J. WOLFE, JR. AND MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY, § 12-4[a], at 12-67 (2007) [hereinafter WOLFE & PITTENGER]; see also *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 173-75 (Del. 2002).

<sup>35</sup> WOLFE & PITTENGER, § 12-4[a], at 12-65.

status quo ante by reimbursing it for the improvements which it made.<sup>36</sup>

Accordingly, it is not entitled to rescission.

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<sup>36</sup> Indeed, the evidence of Midland Grange's financial woes strongly suggests that it would, in fact, not be able to restore Delaware Bridges to its former position. At trial, Mrs. Kruger testified that although the Grange has more money now than it did before the sale of the Property to Delaware Bridges, the Grange's new found "wealth" results primarily from the fact that it no longer has any expenses from operating the Grange Hall. Tr2. 189-90. Nevertheless, the Grange does not have nearly sufficient funds to reimburse Delaware Bridges for the improvements to the Property. *Id.* at 188-89. Although Mrs. Kruger hypothesized that Midland Grange might be able to raise the money from its members, *id.* at 189, such unfounded speculation does not suffice to carry Midland Grange's burden of demonstrating its entitlement to the remedy of rescission.

The delay between closing (January 26, 2005) and the filing of this action (May 16, 2006) also supports this outcome. Two overlapping notions are in play. First, a plaintiff seeking rescission must demonstrate that it acted promptly; prejudice to the defendant is not essential. *See Gotham Partners, L.P.*, 817 A.2d at 174. Second, the affirmative defense of laches focuses on unreasonable delay in bringing suit after learning of the claim and whether the delay resulted in harm to the adverse party. *See, e.g., WOLFE & PITTINGER*, § 11-5[b], at 11-55. Midland Grange's claims based on the voting process clearly fail under either rubric. Mrs. Kruger and the other Grange members, even though they were not "in power," had received a copy of the by-laws and are charged with knowledge of the official voting procedures. Nevertheless, no one did anything to challenge the transaction based on the voting processes until almost nineteen months after the vote; in that time, the sale of the Property occurred and Delaware Bridges expended substantial sums to improve the Property. Thus, timing considerations preclude any equitable remedy of rescission on these grounds against Delaware Bridges.

The other claim asserted by Midland Grange depends upon the difference between the terms one can find in the State Grange's authorization of the sale and the final terms of the agreement with Delaware Bridges. Mrs. Kruger testified that she (and those aligned with her) did not learn of the differences until after she became the Master in January 2006. Accordingly, the question of timeliness of assertion of the claim tied to the State Grange's terms depends upon whether one looks to the date of closing (or the date when the agreement was finally struck) or to the date when Mrs. Kruger, as a newly elected officer of Midland Grange, first recognized the discrepancies. It is not necessary to resolve this question, but it may be worth noting that Delaware Bridges engaged in arm's-length negotiations and cannot fairly be viewed as a wrongdoer or as an entity that knowingly profited from improper conduct by others. Delaware Bridges, because of Addendum B, must have been aware that the State Grange had sought additional terms to benefit Midland Grange, but there is no credible evidence that it acted in any untoward manner with respect to the State Grange's authorization, or even that representatives of Delaware Bridges were fully aware of the terms.

In any event, in light of the conclusion that impracticability bars the remedy of rescission, it is unnecessary to decide whether there is any suitable basis that would have supported imposition of that remedy otherwise.

B. *The Officer Respondents Did Not Breach Their Fiduciary Duties in Connection with the Sale of the Property to Delaware Bridges*

1. The Balloting Process Employed by the Officer Respondents was Reasonable Under the Circumstances

The Court now turns to the question of whether Midland Grange has established a breach of the Officer Respondents' fiduciary duties. There is no doubt that the Officer Respondents' did not comply with the black-letter requirements of the by-laws for seeking the Grange members' approval for the sale of the Property. It is well-settled, however, that an actionable violation of the fiduciary duty of care is "predicated upon concepts of gross negligence."<sup>37</sup> "Gross negligence has a stringent meaning under Delaware [corporate law] . . . [and] 'has been defined as a reckless indifference to or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason.'"<sup>38</sup> Moreover, a corporate fiduciary's duties are context specific<sup>39</sup>—in other words, a failure to comply with the Grange by-laws does not necessarily amount to gross negligence in this case.

Midland Grange has not established that the Officer Respondents' conduct rose to the level of gross negligence. The by-laws are prescribed by the National Grange and are intended to ensure that the Grange members are adequately

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<sup>37</sup> See, e.g., *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984).

<sup>38</sup> *Albert v. Alex Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at \*4 (Del. Ch. Aug. 26, 2005) (quoting *In re Walt Disney Co.*, 907 A.2d 693, 750 (Del. Ch. 2005)).

<sup>39</sup> See authorities cited *supra* note 32.

informed when a Subordinate Grange undertakes a sale of its real property. A “one size fits all” set of by-laws, however, may not suit the needs of every individual Grange. The record clearly demonstrates that at the time Midland Grange was presented with the Trout Proposal, member participation in the Grange was minimal. Under those circumstances, it was reasonable for the Officer Respondents to conclude that an alternative means of voting on the Trout Proposal was required for Midland Grange to have a fair process for approving the sale of the Property.

The decision to disregard the by-laws was not driven by a “reckless indifference” or a “deliberate disregard” for the rights of the Midland Grange members. On the contrary, the decision was motivated by a genuine concern that strict adherence to the by-laws would in fact limit the participation of the Grange membership in the sale decision. The Officer Respondents attempted to implement a substitute voting procedure that would work for Midland Grange, while at the same time adhering to the spirit of the by-laws, which seek primarily to secure an informed vote of the Grange membership.<sup>40</sup>

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<sup>40</sup> The fact that the Walls Letter inaccurately stated the interest rate (7% instead of 5%) and the term of the mortgage note (twenty-four instead of thirty-six months) does not change the Court’s analysis or conclusion. It is unfortunate that those terms were inaccurately reported to the Grange membership, but those details are relatively minor in the grand scheme of this transaction. The important questions, as far as the Grange members were concerned, were (1) whether to sell the Grange Hall; and (2) whether \$50,000 was an adequate price. The variances in the interest rate and the term of the loan amount only to a very minor difference in the overall value of this transaction, if one bothered to do the calculations. Thus, the Court concludes that

The alternative method chosen by the Officer Respondents has its drawbacks; for example, the Grange members did not have an opportunity to gather as a collective, deliberative body to debate the merits of the Trout Proposal—perhaps an opportunity for members to learn that others also were dissenting would have changed the outcome; perhaps not. It is implausible that the Grange members could not (and did not) otherwise contact each other to discuss the proposed sale, however. Midland Grange is a small organization; the members certainly all know each other (indeed, several are related). Thus, any concern that the failure to hold a meeting may have denied the Grange members an opportunity to discuss the Trout Proposal is mitigated by the fact that they are a small and familiar community that easily could have communicated (and probably did) outside the confines of a formal meeting. Thus, the decision to implement a secret ballot in lieu of the sale procedure specified by the by-laws was reasonable in this case and not grossly negligent so as to trigger a breach of the duty of care.<sup>41</sup>

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the Grange members were presented with the material terms of the transaction and the vote was not invalid simply because the actual terms of the transaction were marginally different from those submitted for the Grange members' approval.

<sup>41</sup> Even if the Court could conclude that the Officer Respondents violated their duty of care by failing to comply with the by-laws, their actions were ratified by the Midland Grange members. The Walls Letter included a copy of the by-laws. The language of the by-laws plainly spells out the procedure for selling the Grange Hall. Thus, it should have been evident to all the Grange members who received the Walls Letter that the by-laws were being violated by the balloting method employed by the Officer Respondents. The Grange members nevertheless voted in favor of the proposed sale. Accordingly, they ratified the Officer Respondents' improper actions.

2. The Officer Respondents did not Violate Their Duty of Care by Failing to Obtain the \$50,000 Right of First Refusal Provision

The Officer Respondents did not violate their duty of care by failing to secure a right of first refusal allowing Midland Grange to reacquire the Property for \$50,000 because the State Grange “stipulations” were precatory. Although the minutes from the October 21, 2004 State Grange meeting could be read to suggest that the stipulations were mandatory conditions of the State Grange’s approval of the sale to Delaware Bridges, the Davenport Letter, which was prepared immediately following the executive committee meeting, is the best evidence of the meaning of the “conditions” recorded in the minutes.<sup>42</sup> Indeed, the Davenport Letter’s use of the word “wants” strongly suggests the precatory nature of the State Grange conditions.

More importantly, however, the Court’s conclusion that the State Grange’s conditions were not mandatory is further supported by the fact that no rational person in Delaware Bridges’ position would ever have agreed to a \$50,000 buyback when it planned to invest over \$100,000 into renovating the Grange Hall. Delaware Bridges surely would have abandoned the transaction if Midland Grange had insisted upon such a provision in the Agreement of Sale. The minutes of the October 21, 2004 executive committee meeting clearly show that the State Grange

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<sup>42</sup> The Court does not credit any of the witness testimony on this point. The witnesses were all over the spectrum in their “understanding” of the reacquisition language, usually depending upon which direction the lawyers’ questions led them.

approved of the sale of the Property to Delaware Bridges. That approval is also reflected in the Davenport Letter. It therefore would make no logical sense for the State Grange to have approved the sale to Delaware Bridges on the one hand, but at the same time to have insisted upon a buyback provision to which Delaware Bridges never would have agreed (thus making the sale impossible) on the other.

Even if the Court concluded that the buyback provision was a mandatory condition of the State Grange's approval of the sale of the Property, the Officer Respondents' failure to secure that right does not result in a compensable injury to Midland Grange because the right of first refusal would have been unenforceable under Delaware law. Rights of first refusal in real property are subject to the rule against perpetuities, and one of unlimited duration necessarily violates the rule.<sup>43</sup>

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<sup>43</sup> See, e.g., *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1384-85 (Del. 1991) (right of first refusal with unlimited duration violates the rule against perpetuities); accord *Pathmark Stores, Inc. v. 3821 Assocs., L.P.*, 663 A.2d 1189, 1192 (Del. Ch. 1995) (“*Stuart Kingston* quite precisely and narrowly held a purported right of first refusal which could be exercised indefinitely violated the rule against perpetuities.”).

Charitable trusts and other gifts and vested interests that are intended to benefit a charitable organization are generally exempt from the rule against perpetuities; contingent interests which are subject to conditions precedent, however, generally are not. See, e.g., *Girard Trust Co. v. Rector, Wardens and Vestrymen of St. Anne's Protestant Episcopal Church*, 52 A.2d 591, 596-97 (Del. Ch. 1947). The right of first refusal provision at issue in this case is contingent upon Delaware Bridges' decision to sell. Thus, even if Midland Grange qualified as a charitable organization for purposes of the exception to the rule against perpetuities, the right of first refusal provision is nevertheless a contingent interest that remains subject to the rule and is invalid because its duration is unlimited.

The Court also notes that this is a case arising from a business transaction that just so happens to involve two corporations that might qualify as “charitable organizations;” this is not, however, a case involving a gift or bequest to a charity. The “charitable gift” or “charitable purpose” exception to the rule against perpetuities is generally limited to just that—gifts and interests that are intended to further an organization's charitable purposes. It is not intended that charitable organizations be able to avoid the rule against perpetuities in their ordinary business affairs.

The provision suggested by the State Grange would have been unlimited in duration and otherwise would have rested in a corporation, an entity with a perpetual existence. Thus, it would have violated the rule against perpetuities and would not have been enforceable even if it had been included in the parties' agreement. Accordingly, Midland Grange suffered no loss from its absence.

3. The Officer Respondents Did Not Violate Their Duty of Care by Agreeing to Sell the Property for \$50,000

Midland Grange did not sustain its burden of proving that the Property was worth more than \$50,000 at the time the Officer Respondents agreed to sell to Delaware Bridges. The Grange offered a February 2003 appraisal that valued the Property (with the Grange Hall) at \$81,700, but that appraisal predated the Furnace Event which damaged the Grange Hall later that year. Midland Grange also offered a second appraisal from February 2004, but that "appraisal" was prepared by a real estate agent who is not a licensed real estate appraiser.<sup>44</sup> It suggests that the Property was worth \$65,000 without the Grange Hall. The Court does not accord the 2004 appraisal any weight, however, because it was not prepared by a licensed appraiser.<sup>45</sup>

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<sup>44</sup> 24 *Del. C.* § 4007(a) requires real estate appraisers in Delaware to be licensed. Although 24 *Del. C.* § 4019 provides an exception for real estate agents who prepare a "competitive market analysis" for use in the course of developing a listing price for a property, the 2004 "appraisal" does not fit within the Section 4019 exception—indeed, there is no suggestion in the record that the 2004 appraisal was prepared in anticipation of listing the Property for sale.

<sup>45</sup> Even if the Court considered the 2004 "appraisal," it is of little value because it is conclusory and contains no details supporting the appraiser's opinion of value (*e.g.* an analysis of sales of

The Court has no way of knowing, based on this evidence, what the “fair market value” of the Property was at the time Delaware Bridges offered to buy it for \$50,000. The 2003 appraisal did not consider the damage to the Grange Hall from the Furnace Event; Mrs. Brown conceded that the damage from that event would have depressed her valuation of the Property.<sup>46</sup> In addition, the 2003 appraisal does not account for the Grange’s right to use the Grange Hall for fifteen-years or the right of first refusal—encumbrances which Mrs. Brown conceded also would have decreased her 2003 valuation.<sup>47</sup> Thus, in light of Mrs. Brown’s testimony undercutting her appraisal of \$81,700 in the winter of 2003, the Court has no basis to conclude that the \$50,000 sale price was not within the range of reasonable prices for the Property in the fall of 2004; therefore, Midland Grange failed to prove damages on its claim that the Property was sold for less than fair market value.

#### 4. The Officer Respondents Acted in Good Faith

The duty of loyalty entails a subsidiary duty to act in good faith.<sup>48</sup> Thus, a corporate fiduciary’s failure to act in good faith may result in a breach of the duty

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comparable properties). The 2004 appraisal is also dubious because it values the lot alone at \$65,000, while the 2003 appraisal from a licensed real estate appraiser valued the lot alone at \$36,500. Although professional opinions of value may vary, a \$30,000 improvement in a property’s value (an approximately 82% increase) in one-year’s time seems unlikely, particularly where the valuation is unsupported by market evidence.

<sup>46</sup> Tr1. 30.

<sup>47</sup> Tr1. 31-32. The 2004 “appraisal” is similarly deficient.

<sup>48</sup> *Stone v. Ritter*, 911 A.2d 362, 369-70 (Del. 2006).

of loyalty if the fiduciary does not “act[] in the good faith belief that her actions are in the best interest of the corporation.”<sup>49</sup>

The Court concludes that the Officer Respondents acted with a good faith belief that their secret ballot method was the most efficient and democratic means of polling the Grange membership on the proposed sale of the Property. The Officer Respondents are not directors in a for-profit entity or sophisticated corporate executives—they gave their best effort to selling the Property given the circumstances confronting the Grange and their rudimentary understanding of by-laws. The Grange members were apprised of all material facts, and they made an informed decision to sell the Grange Hall. The Officer Respondents did not personally benefit from the sale of the Grange Hall, and the Grange membership overwhelmingly supported the proposed sale. The decision to implement another means of ascertaining the will of the membership was reasonable under these circumstances and was not made in an effort to avoid scrutiny of the proposed transaction or to permit the Officer Respondents to filch corporate assets. Thus, the Court has no basis to conclude that the Officer Respondents breached their duty of loyalty by failing to act in good faith.

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<sup>49</sup> *Id.* at 370 (citation omitted).

C. *Midland Grange's Aiding and Abetting Claims against the State Grange Fail as a Matter of Law*

Finally, the Court turns to Midland Grange's aiding and abetting claims alleged against the State Grange. The standard for stating a claim of aiding and abetting in a breach of fiduciary duty is well-settled. Delaware law requires the petitioner to establish: "(1) the existence of a fiduciary relationship; (2) the fiduciary breached its duty; (3) a defendant, who is not a fiduciary, knowingly participated in a breach; and (4) damages to the plaintiff resulted from the concerted action of the fiduciary and non-fiduciary."<sup>50</sup> Because the Court has concluded that the Officer Respondents did not breach their fiduciary duties, Midland Grange cannot, as a matter of law, prevail on its aiding and abetting claim against the State Grange.

## V. CONCLUSION

For the foregoing reasons, judgment will be entered in favor of the Respondents and against the Petitioner on all claims. Costs will be assessed against the Petitioner in accordance with Court of Chancery Rule 54(d).

An implementing order will follow.

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<sup>50</sup> *Globis Partners, L.P. v. Plumtree Software, Inc.*, 2007 WL 4292024, at \*15 (Del. Ch. Nov. 30, 2007).