Katten
Katten Muchin Rosenman LLP
CORPORATE & FINANCIAL
WEEKLY DIGEST

Corporate & Financial Weekly Digest

July 15, 2011 by Steven Shiffman

Alleged Financial Distress Insufficient to Support Grant of Preliminary Injunction

Co-authored by Dean N. Razavi

The Delaware Court of Chancery denied a request for a preliminary injunction, finding that allegations of "financial distress" failed to demonstrate the imminent, irreparable harm required to obtain immediate injunctive relief.

Defendant Cementos Portland Valderrivas held a majority stake in both Uniland S.A. and Giant Cement Holding, Inc. In December 2010, Cementos sold Giant to Uniland. Plaintiff Sagarra Inversiones, S.L., a minority shareholder of Uniland, alleged that the acquisition price was improperly inflated as a result of Cementos's self-dealing and position on both sides of the transaction. Under the stock purchase agreement governing the acquisition, the merger consideration was to be paid in installments. Sagarra moved for interim injunctive relief to prevent the payment of any additional funds under the agreement.

In an attempt to demonstrate that it would be irreparably harmed if the injunction was not granted, Sagarra alleged that Cementos was in financial distress and having difficulty in satisfying its financial covenants and, as a result, would be unable to satisfy a money judgment if Sagarra were to prevail on its claims. The Court of Chancery denied the request for a preliminary injunction. The court ruled that even if the threat of defendant's insolvency could satisfy the irreparable harm standard, Sagarra's failure to demonstrate "any specific or imminent threat that Cementos will be rendered insolvent" was fatal to its application for injunctive relief. (*Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas S.A.*, No. 6179-VCN (Del. Ch. July 7, 2011))

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC