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TransImperfect? Stand Up for Court

Lawrence A. Hamermesh

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DELAWARE VOICE
LAWRENCE A. HAMERMESH

A recent op-ed from paid campaign organizer Chris Coffey, of Citizens for a Pro-Business Delaware, asks again that the General Assembly reverse the rulings of the Delaware Court of Chancery and the Delaware Supreme Court in the TransPerfect case.

He wants legislation that would forbid our courts from implementing their order that the company be sold. Again, the message is that “essential revenues are in jeopardy due to a troubling incident of judicial overreach.” Mr. Coffey calls the courts’ rulings “unprecedented” and “a massive injustice.”

That’s how this campaign started, well over a year ago, with a noted New York politician describing our Chancellor’s ruling as “un-American.”

No such attacks on our judges should go unanswered, and no one is paying me a penny to say this: if there’s any overreaching going on here, it’s Mr. Coffey’s treatment of the law and the facts.

The courts’ rulings are neither “unprecedented” nor unjust. They’re not unprecedented because the governing statute clearly provides that if the stockholders of a company are dead-locked, the court can appoint a custodian to “liquidate its affairs and distribute its assets” to the stockholders. And ordering the sale of a solvent company isn’t unprecedented because our courts have done it before, as both the chancellor and the Supreme Court noted.

And it’s not unjust, “massively” or otherwise. Courts don’t approve that sort of sale lightly, and they didn’t do it lightly here. They did it based on the following facts developed in a long trial:

», All other efforts (including media) to resolve the war between the stockholders (Phil Shawe and Liz Elting) had been tried and failed.

», Mr. Shawe “concocted a scheme to falsify records” in order to circumvent Ms. Elting’s objections; “interfered with the Company’s payroll processes;” put out a false press release in the company’s name and then lied to the court by claiming that he thought it was accurate; directed company employees to “intercept Elting’s regular mail ... and to monitor her phone calls;” engaged in “surreptitious monitoring” of “her private emails;” broke into her office at night, took her computer’s hard drive and had it copied; and falsely testified under oath in order to conceal the effort on his behalf to extract those emails.

», TransPerfect’s chief tech officer testified that the stockholders’ conflict “hurts company morale” and “is detrimental to the company;” the chief operating officer said that conflict created a “mass exodus” in the accounting and finance departments; and major clients expressed concerns about those disputes, creating a risk that they would do business with the company’s competitors instead.

After all this, our courts found that directing the sale of the company, although a “last resort,” was necessary because the warring stockholders “need to be separated from each other” and “their dysfunction must be excised to safeguard the company.” As the Supreme Court found, if that dysfunction were “allowed to persist, the company was likely to continue on the path of plummeting employee morale, key employee departures, customer uncertainty, damage to the company’s public reputation and goodwill, and a fundamental inability to grow the Company through acquisitions.”

What makes Delaware’s corporate law system so valuable to our state is the sophistication and sensitivity of our courts in matters of corporate law. The legislation that Mr. Coffey is paid to promote would tie the courts’ hands and force them to wait three years while warring stockholders undermine the foundation of a successful company.

That’s a bad rule, and I wouldn’t recommend it even if it were proposed by a disinterested citizen with no other agenda. The revenues from our corporate franchise aren’t in jeopardy now, as Mr. Coffey claims, but they would be much more at risk if disappointed but wealthy litigants like Mr. Shawe could routinely unleash an expensive public relations campaign to attack our courts and bully the General Assembly into reversing the courts’ rulings.

I urge our representatives in Dover to turn their back on Mr. Coffey’s threats of political reprisal and hostile PACs, and I’m proud to see legislators on both sides of the aisle already standing up for our courts and the integrity of our corporate law system.

Lawrence A. Hamermesh is a professor at the Ruby R. Vale School of Corporate and Business Law, at Widener University Delaware Law School.