In re Darden Restaurants, Inc. Shareholder Litigation

COURT: Ninth Judicial Circuit Court of Florida, Orange County
CASE NUMBER: 2014-03712-O
CASE LEADERS: Jeroen van Kwawegen

This case arises from numerous actions that the former directors of Darden Restaurants, Inc. ("Darden" or the "Company") took, in attempts to maintain their seats on Darden's board of directors (the "Board"), that infringed on the core franchise and voting rights of Darden's shareholders.

Beginning in June 2013, Barington Capital Group L.P. ("Barington") presented proposals to the Board to improve Darden's lagging performance relative to its peers. In December 2013, Barington publicly issued a detailed, 85-page report, including financial analysis by its financial advisor, detailing Barington's proposal to, among other things, place Darden's real estate holdings in a separate Real Estate Investment Trust (a "REIT"), reduce operating expenses, and create two companies (one with Darden's mature Olive Garden and Red Lobster brands, and another with newer, higher-growth brands).

The Board rejected Barington's proposal and announced that it would instead sell or separate Red Lobster before the Company's annual shareholder meeting, in a transaction that would not be subject to a shareholder vote. In response, Starboard Value, L.P. ("Starboard"), a significant Darden shareholder, requested that the Board delay the Red Lobster sale to allow shareholders to state their views. The Board refused.

On February 10, 2014, Starboard commenced a consent solicitation, seeking support from other Darden shareholders to hold a special meeting concerning the proposed Red Lobster separation. Starboard stated that it was "prepared to take all steps necessary to hold the Board accountable for its actions, including nominating a majority slate of director candidates . . . to replace a majority of the Board at the 2014 Annual Meeting." Shortly thereafter, on March 19, 2014, the Board unilaterally adopted certain amendments to Darden's bylaws (the "Bylaw Amendments"), empowering the Board to unilaterally:

- Adjourn any shareholder meeting without any notice other than by announcement at the meeting;
- Declare that no action would be taken on shareholder proposals if such proposals were (in the Board Chairman's determination) not made in compliance with certain new requirements; and
- Declare that no action would be taken on shareholder nominations for the Board if such nominations were not made in compliance with new information requirements that applied only to directors who were nominated by shareholders.

The Bylaw Amendments also empowered the Board to indefinitely postpone Darden's annual meeting of shareholders to elect directors, absent a shareholder lawsuit.

A majority of Darden's outstanding shares, as well as prominent proxy advisors ISS and Glass Lewis, supported Starboard's request for a special meeting of shareholders. However, the Board refused to schedule a meeting and, on May 16, 2014, the Company announced that it would sell Red Lobster to Golden Gate Capital for $2.1 billion in a transaction that was not conditioned upon shareholder approval (the "Red Lobster Transaction"). On May 21, 2014, Starboard nominated a new slate of directors to replace the entire Board at the next annual meeting of shareholders.

On July 24, 2014, the Board adopted a resolution formally nominating, but not endorsing, the Starboard nominees, in order to avoid triggering the draconian consequences of default and repayment acceleration provisions in Darden's debt agreements (the "Dead Hand Proxy Put"), thereby enabling shareholders to replace the Board with Starboard's nominees without causing the acceleration of Darden's debt obligations. On July 28, 2014, the Red Lobster Transaction closed, without any related shareholder vote.

On behalf of Lead Plaintiff Teamsters Local 443 Health Services & Insurance Plan, BLB&G aggressively pursued litigation on behalf of Darden and its public shareholders in order to fully restore shareholders' core voting and franchise rights. That litigation was ultimately successful, as the Company and its directors have agreed to implement reforms that will restore and, indeed, strengthen shareholders' voting rights. Following intense settlement negotiations, on November 11, 2014, counsel for the parties executed a Memorandum of Understanding (the "MOU") setting forth the material terms of the settlement that was reached (the "Settlement"), subject to additional due-diligence discovery and Court approval.

The Settlement includes numerous provisions that restore and enhance shareholders' voting rights, including repealing the Bylaw Amendments, making Board proposals that limit shareholder voting rights subject to shareholder approval for a period of two years, and including proposals to amend Darden's charter to eliminate supermajority requirements for holding special meetings and removing Darden's directors from the Board. In addition, the present litigation was a reason that Darden's former directors nominated (without endorsing) Starboard's director nominees, which allowed shareholders to vote for directors of their choice without triggering the severe consequences of the Dead Hand Proxy Put. As part of the Settlement, Defendants also agreed to terminate Darden's existing shareholder rights plan, or "poison pill," which restored the power to Darden's shareholders to determine whether to sell their shares in a hostile bid for the Company.

On March 27, 2015, the Court entered an order preliminary approving the Settlement, and instructing that notice of the Settlement and the scheduled hearing regarding final approval of the Settlement be sent to Darden's shareholders. On June 12, 2015, BLB&G filed its brief and supporting documents in support of final approval of the Settlement. On July 8, 2015, the Court granted final approval of the Settlement.

Case Documents

- July 8, 2015 - Final Order and Judgment Approving Derivative Action Settlement
- July 8, 2015 - Final Order and Judgment Approving Class Action Settlement