

Robert Tera v. HC2 Holdings, Inc.

COURT: Delaware Court of Chancery
CASE NUMBER: 2020-0275-JRS
CASE LEADERS: Mark Lebovitch, Gregory V. Varallo

This case involves the vindication of stockholder voting rights, in the face of a board that threatened financial calamity if the stockholders chose to elect new directors. In 2015, Philip Falcone, a former hedge fund manager barred from the securities industry as a result of a securities fraud settlement with regulatory authorities, made a large investment in HC2 Holdings, Inc. (“HC2” or the “Company”). Falcone brought his allies onto the Company’s board of directors (the “Board”), and the Board issued two classes of preferred stock that contained a provision that would permit accelerated redemption of \$27 million upon a majority change in the composition of the board, unless the incumbent directors approved the nominations of those candidates (“Approvable Proxy Puts”). The Company’s financial performance between 2015 and 2020 was inadequate, to put it mildly. In early 2020, in order to change the Company’s path, activist investors Percy Rockdale LLC and MG Capital Management Ltd. launched a consent solicitation to replace a majority of the board of directors of the Company. Seeking to entrench themselves in office, the incumbent HC2 directors informed shareholders that in the event the dissident slate was elected to the Board, the Company would face a calamitous repayment of millions of dollars, which the company lacked the cash or financing to satisfy. The Company’s disclosures ignored that the board had the ability to approve the nominations of the dissidents without actually endorsing their election, and thereby avoid any risk of a forced redemption of the preferred stock. On April 10, 2020, BLB&G filed suit in the Delaware Court of Chancery, challenging the Board’s misleading disclosures and bad faith refusal to “de-fuse” the Approvable Proxy Puts. Following the filing of BLB&G’s initial complaint, the Board approved certain proxy puts but claimed there was still uncertainty about whether a risk of forced redemption remained. No rational investor could vote for the dissident directors in the face of this risk of financial calamity. Following successful motion practice that secured expedited proceedings, BLB&G successfully vindicated the rights of HC2 stockholders when Defendants disclosed that they had obtained waivers of the redemption provisions from their preferred stockholders. These waivers guaranteed that the Proxy Puts would not be triggered on a change of control, and vindicated stockholders’ right to freely vote their shares.

Case Documents

- April 19, 2020 - Complaint
- May 28, 2020 - Order Granting Dismissal