

## Tractor Supply Gets Lift from Court with Diversity Suit Dismissal

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Earlier this spring, yet another lawsuit alleging a company failed to adequately promote diversity was dismissed for a failure to properly allege demand futility.

In [City of Pontiac Police & Fire Ret. Sys. v. Jamison](#), the plaintiff, a shareholder of Tractor Supply Company, had alleged that the company and members of its Board falsely stated in securities filings that they were committed to promoting diversity. The plaintiff alleged that diversity maximizes shareholder wealth and that the lack of racial diversity at Tractor Supply contributed to economic disparities at the company. Because, according to the plaintiff, the defendants had failed to sufficiently promote diversity within the company while, at the same time, made statements in Tractor Supply's 2020 proxy statement that the Board was "committed to the principles of diversity and inclusion," they had violated Section 14(a) of the Exchange Act.

Similar to several other opinions dealing with this issue, the United States District Court for the Middle District of Tennessee dismissed the case, finding that the plaintiff had failed to comply with Federal Rule of Civil Procedure 23.1. Unlike some other cases alleging this type of fact pattern, while Tractor Supply is incorporated in Delaware, the defendants did not seek to dismiss the case based on a forum-selection clause in its charter or bylaws. Instead, the company defended the action in Tennessee –where it is headquartered – and argued that under Delaware law, the plaintiff had failed to meet the legal standard for demand futility.

The court agreed. It held that the complaint had a fundamental flaw: it contained no allegations showing demand futility on a director-by-director basis. Instead, the court held that the complaint alleged only that demand against the Board as a whole would have been futile because of the social stigma implicated by the plaintiff's allegations of wrongdoing. In the court's view, these "unspoken implications" were insufficient to establish director-by-director allegations of demand futility.

The court went on, moreover, to hold that Tractor Supply's statements were not actual false statements or misrepresentations, and that Tractor Supply's failure to have selected any Black individuals to join the Board was not the same as a failure to seek diverse individuals to include in the pool of potential board members. According to the court, the complaint failed to allege that the company failed to *seek* such individuals, which is what Tractor Supply's public statements had stated the company would do.

Finally, citing another lawsuit [recently discussed in this space](#) and a variety of diversity actions brought by corporate shareholders, the court went on to hold that the statements at issue here were “non-actionable puffery” and the plaintiff had failed to establish causation.

According to the defendants’ brief, this was the tenth lawsuit filed since the summer of 2020 challenging Black diversity at public companies. Thus far, none have made it past the motion to dismiss stage. Several have been transferred to Delaware, either voluntarily or via [dismissal pursuant to a forum selection clause](#); one such dismissal was [recently affirmed](#) by the Ninth Circuit. Multiple others have failed to overcome the Rule 23.1 hurdle. Absent more particular, individualized allegations, it appears these diversity lawsuits will continue to struggle in courts around the country.

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