

Does Guzman Supply An Answer To Moelis?

Article By:

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I always enjoy hearing from readers of this blog. Recently, I [wrote](#):

Reading these statutes together, it is relatively clear that Nevada, like Delaware, permits the articles of incorporation to vary the mandate that the directors run the corporation. They do not, however, answer the question of whether the Nevada courts will follow *Moelis* and invalidate shareholder agreements that impinge on mandate of board control set forth in NRS 78.115.

This prompted the following question from [Michal Barzuza](#) at the University of Virginia School of Law:

[W]hat about *Guzman*, and the contract that prohibited the board to look for better price for the company?

As discussed in this [post](#), the Nevada Supreme Court in *Guzman v. Johnson*, 37 Nev. 126, 483 P.3d 531 (2021) held that that the “inherent fairness standard,” which obligated directors “to show [a transaction's] inherent fairness from the viewpoint of the corporation and those interested therein,” no longer applies in Nevada.

My answer to Professor Barzuza is as follows:

AMC had an investment agreement with RLJ Entertainment in *Guzman*. However, the Nevada Supreme Court’s decision did not address the question of whether the investment agreement usurped the Board’ authority. The plaintiff alleged that the existence of the agreement precluding other offers itself demonstrated a breach of fiduciary duty. The Nevada Supreme Court, however, disagreed noting that the plaintiff failed to show how it used these rights to force a merger or improperly influence the decision to the detriment of the minority. The court did not mention NRS 78.037, 78.115, or 78.120.

It is no surprise that the Supreme Court did not mention these statutes because the appellant did not mention them in her briefing. At the time, of course, Vice Chancellor Laster's ruling in *West Palm*

Beach Firefighters Pension Fund v. Moelis & Co., 311 A.3d 809 (Del. Ch. 2024) was many years in the future.

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