Published on *The National Law Review* https://natlawreview.com

Court of Chancery Holds That Structurally Coercive Stockholder Vote Does Not Ratify Fiduciary Actions Related To Shares Issuance and Proxy Grant To Stockholder

Article By:

Remsen Kinne

In *Sciabacucchi v. Liberty Broadband Corporation*, C.A. No. 11418-VCG (Del. Ch. May 31, 2017), the Court of Chancery ruled on a motion to dismiss by defendants Liberty Broadband Corporation ("Liberty"), a stockholder of Charter Communications, Inc. ("Charter") and officers and directors of Charter. The Court held that facts alleged by plaintiff, a Charter stockholder, supported the inference that a vote by Charter stockholders approving a shares issuance to and voting proxy agreement with Liberty was structurally coercive. The Court determined that since the vote was coercive, it did not ratify actions by Liberty and Charter's directors and officers claimed by plaintiff to have breached fiduciary duties of loyalty. As a result, the Court held, defendants were not entitled to dismissal of plaintiff's claims solely on the basis that stockholder vote ratification operated to "cleanse" fiduciary duties breaches.

The vote considered by the Court approved two proposals that Charter submitted to a vote by its stockholders not controlled by or affiliated with Liberty, after Charter's board of directors approved a purchase of Bright House Networks, LLC ("Bright House"), and a merger of Charter with Time Warner Cable ("TWC"). The first proposal was to approve the Bright House and TWC acquisition transactions. The second proposal was to approve a $700 million purchase of Charter shares by Liberty and an agreement granting to Liberty a proxy that increased Liberty's voting power by up to 6% of Charter's outstanding shares. Plaintiff's complaint alleged that Liberty's and Charter's directors' and officers' actions related to the Liberty shares issuance and proxy agreement breached fiduciary duties of loyalty owed to Charter's stockholders by unfairly transferring voting and economic power to Liberty, represented by the shares purchased by and proxy granted to Liberty.

The Court characterized a structurally-coerced vote as one where "facts extraneous to the challenged transaction . . . have driven the vote, and not a determination by the stockholders that the transaction was in the corporate interest." In reaching the conclusion that the vote on the second proposal was structurally coercive, the Court referred to the following facts alleged by plaintiff: Charter informed its stockholders that the Bright House and TWC acquisitions covered in the first proposal were expressly conditioned on approval of the Liberty transactions covered in the second proposal. Charter's board did not determine that the Liberty shares issuance and proxy agreement were necessary to effect the Bright House and TWC acquisitions. The proxy materials provided by Charter to its stockholders did not state that the Liberty transactions were in the corporate interest

and the financial advisor fairness opinion delivered to Charter's board did not address fairness of the Liberty transactions independent of the Bright House and TWC acquisitions. There was no evidence that the Liberty transactions were integral to the acquisition transactions. Although Liberty provided $5 billion in financing for the TWC acquisition, this contribution was relatively insignificant to the total TWC transaction deal value of $78.7 billion. The Court held that these alleged facts supported an inference that the defendants may have used the value of the Bright House and TWC transactions to obtain favorable votes on the Liberty transactions, to the potential detriment of Charter.

The Court determined that since the vote on the second proposal was coercive, it did not "cleanse" the alleged breaches of fiduciary duties, so as to subject the actions to review only under the business judgment rule standard, instead of under the entire fairness standard. The Court observed that if the vote had not been coercive, the vote would have had that cleansing effect by ratifying Liberty's and Charter's directors' and officers' related fiduciary actions as in the corporate interest, under *Corwin v. KKR Financial Holdings, LLC*, 125 A.3d 304 (Del. 2015).

In determining that *Corwin* did not apply to the second proposal vote, the Court also found that Liberty was not a controlling stockholder of Charter at the time of the vote because a stockholders agreement prevented Liberty from acquiring more than 35% of Charter's voting stock, from designating more than four of the ten directors, and from soliciting proxies or consents. In addition, Charter's certificate of incorporation required certain director and stockholder approval for transactions such as the Liberty shares issuance and proxy agreement. The Court reached this conclusion notwithstanding the fact that Liberty had filed public letters to the SEC explaining that it had "primary control" of Charter, asserting that it was therefore exempt from regulation under the Investment Company Act of 1940. Consistent with its conclusion, the Court rejected defendants' argument that the vote should be treated as ratifying fiduciary actions subject to Liberty's control as a controlling stockholder pursuant to *Kahn v. M&F Worldwide Corporation*, 88 A.3d 635 (Del. 2014).

Finally, the Court reserved decision on the motion to dismiss under Court of Chancery Rules 12(b)(6) and 23.1, pending supplemental briefing regarding whether plaintiff's claims were direct or derivative, as each required a different burden of proof.

Copyright 2025 K & L Gates

National Law Review, Volume VII, Number 194

Source URL:https://natlawreview.com/article/court-chancery-holds-structurally-coercive-stockholder-vote-does-not-ratify