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*DELAWARE BUSINESS COURT INSIDER*

# Revlon Does a 'Mindbody' Good

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Any law school corporations class dabbles in Revlon claims, but in reality, such claims are infrequently litigated in the Delaware Court of Chancery. Although Revlon requires the board of directors to obtain the best price available for the stockholders in change-of-control situations, Revlon claims can be "cleansed" by *Corwin* if the transaction does not involve a controlling stockholder and was approved by a majority of the corporation's fully informed, uncoerced and disinterested stockholders. *Corwin* cleansing became popular as boards used special committees and a majorityoftheminority vote, resulting in few plaintiff stockholders succeeding on Revlon claims because upon a *Corwin* cleanse the deferential business judgment rule applied. But in the 120-page opinion for In re Mindbody, C.A. No. 2019-0442-KSJM (Del. Ch. March 15, 2023), Chancellor Kathaleen McCormick throws shade on *Corwin*, finding Mindbody's sales process run by Richard Stollmeyer—founder and then-CEO—was not cleansed by *Corwin* and holding him and Mindbody's private equity acquirer, Vista Equity Partners, liable. In finding "a single disclosure deficiency will defeat *Corwin* cleansing," the court ensured viability of post-merger Revlon claims and reinforced the significance (to both sellers and buyers) of avoiding conflicts and making full disclosures.

At the outset of its legal analysis, the court discussed the various burdens of proof—noting the "conflict between the allocation of the burden of proof on *Corwin* cleansing and the claim for breach of the duty of disclosure." The difference between entire fairness and the business judgment rule leads to totally different "stories … where all of the plaintiffs' adventures lead to liability and all of [the defendant's] adventures lead to exoneration." But here the court found that any disclosure claim defeats *Corwin*, meaning the plaintiffs' hurdle for defeating *Corwin* has been set very low. Ultimately, the court decided on a single framework to avoid a "choose-your-own-adventure" analysis, landing on the analysis as to whether the fiduciary's conduct "fell outside the range of reasonableness."

Using that framework, the court found Stollmeyer's and Vista's actions were not reasonable, but instead fit the "paradigmatic Revlon claim."

The court found that Stollmeyer, who founded Mindbody, Inc., in 2001, "suffered disabling conflicts of interest" in relation to the sale. Having made substantial financial commitments to the company, Stollmeyer was looking for a big liquidity event, which he never experienced despite growing Mindbody to over $1 billion market capitalization. Feeling like he was "living at or near the precipice of financial ruin," and only being able to sell tiny bits of shares at a time, he felt like he was "sucking through a very small straw."

He was “tired” and concerned about some recent “rocky” moves made by the company. Additionally, his 19.8% voting block was about to be reduced to 4% through a sunset provision conversion, which was also going to affect IVP, Mindbody’s second largest stockholder. Although at the time they together controlled 44% of the voting power, which was going to diminish rapidly. Stollmeyer became very interested in selling and selling quickly. IVP was too.

But the court found Stollmeyer’s conflicts ran deeper than his mere desire to sell fast. In August 2018, Stollmeyer met an investment banker, Jeff Chang at Qatalyst, who reconnected Stollmeyer with Vista, a private equity firm known for its speed and use of a truncated sales process. Stollmeyer, without authority from Mindbody’s board of directors (board), immediately told Vista he wanted “to find a good home for his company” and he was leaving the board in two to three years, a fact he hadn’t even revealed to the board.

Stollmeyer became further entrenched when he attended Vista’s CXO Summit, “an annual gathering of [ex-]senior executives from Vista portfolio companies and select industry guests.” After meeting with various Vista executives, he relayed to others that the presentations were “mind blowing,” took screenshots of the “money shots” and told others Vista “loves me, I love them.” His interactions with Vista and reactions to the summit were kept secret from the Board. Because of his conflicts, the court found Stollmeyer “tilted the sales process in Vista’s favor,” because he “became uniquely smitten with Vista before the formal sale process began.” Thinking Vista was “his solution,” Stollmeyer was “laser focused on a sale to Vista.” Thus, Vista began “sprinting”—trying to “push hard to get to signing very fast” in order to “get ahead of any competitors in the company’s sale process.” To assist Vista, Stollmeyer was only “dribbling” out information to the board. By waiting 23 days after Vista’s expression of interest to even inform the Board (which later formed the Transaction Committee to head the sales process), Stollmeyer gave Vista a massive head start.

And, instead of abiding by the Transaction Committee’s “neutrality” guidelines to ensure a conflict-free sales process, Stollmeyer instead continued to contact Vista, tipping them as to the start of the sales process, as well as a minimum deal price. This information allowed Vista to be in a position to make a formal offer just three days after the data room opened. While Mindbody’s financial adviser (Qatalyst, the same adviser that connected Stollmeyer with Vista) had contacted other potential bidders, no one had enough time to conduct a market study or do adequate due diligence to make a bid, especially given Vista’s 24-hour deadline on its offer. Stollmeyer’s “unabashed” preference for Vista did not stop there. He rejected other bidders for personal reasons and left for vacation during the go-shop period, emailing management not to contact him about go-shop presentations “[un]less it’s urgent.” The court found he also tried to depress Mindbody’s stock in order to make it more attractive to Vista. In prepping for the Q4 earnings call, Stollmeyer unilaterally pushed for a conservative guidance range, taking all the “good stuff” out of the earnings call script. His “depressed” tone left investors and the Street “in shock,” resulting in a 20% stock decline. But Stollmeyer knew low guidance made a sale more attractive to Vista, and it worked. In total, these facts proved to be “the paradigmatic context for a good Revlon claim,” calling into question the reasonableness of the decision-making process. Thus the court had “overwhelming support” that Stollmeyer’s interests weren’t aligned with shareholders as a whole, noting, “He said it best himself: He loved Vista, and they loved him.” The court then turned to whether the board’s actions could support the reasonableness of the sales process or whether *Corwin* could cleanse it. Neither did. While “directors can manage conflicts if they are aware of them,” the board was in the dark, not knowing about Stollmeyer’s and IVP’s near-term exit strategy; Stollmeyer’s meetings and statements to Vista; or Vista’s considerable head start on the sales process. The stockholders were equally oblivious. The proxy materials (which were blessed by Stollmeyer and Vista) lacked the same material information about conflicts or favoritism given to Vista, which the court found “more than sufficient to defeat a *Corwin* defense.”

As to the claims against Vista, the court denied plaintiffs’ post-trial motion to assert an aiding and abetting the sales-process breach claim, finding that doing so would be too prejudicial, as Vista did not have the opportunity to “mount a defense to the claim at trial.” As to the aiding and abetting the disclosure claims, the court found Vista knew the proxy materials omitted pre-process disclosures and the significance of such information, given that Vista had scrubbed the same information from internal materials. Vista was contractually required to review and correct any disclosures under the merger agreement, and its failure to do so aided and abetted Stollmeyer’s disclosure breaches.

In the end, the court awarded a $1 per share stock price bump, finding Vista would have likely paid that had Stollmeyer not corrupted the process. This award was based in part on pre-merger bets by the Vista team, wagering on the final deal price.

While the court found this case certainly had a lot of “bad facts for the defendants,” it stands as a reminder to practitioners and fiduciaries alike that Revlon claims are alive in Delaware. The decision not only highlights the need for adequate board oversight but also for full disclosure of material facts to both the board and stockholders, not “sterilizing” the parties’ interactions.

Otherwise, *Corwin* is inapplicable. The decision could also serve as somewhat of a reversal to the post-*Trulia* trend that decreased the significance of disclosure claims. While *Trulia* rejected disclosure-only settlements unless the resulting supplemental disclosure were “plainly material,” the disclosure issues in *Mindbody* related to a serious underlying breach of fiduciary duties. Even still, it will likely influence future disclosure violation litigation.

The decision is equally a reminder for private equity firms that trying to get ahead and “sprint” to the finish line to prevent a target company (and its fiduciaries) from extracting the best deal price may come with a hefty price tag. While any buyer always wants the leg up on their competition, they need to be wary and should protect themselves from potentially aiding and abetting a breach of duties.

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