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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE FREDERICK'S OF HOLLYWOOD, INC. SHAREHOLDERS LITIGATION	))	CONSOLIDATED C.A. No. 15944

MEMORANDUM OPINION

Date Submitted: October 27, 1999
Date Decided: January 31, 2000

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JACOBS, VICE CHANCELLOR

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The plaintiffs in this consolidated class action, who are former shareholders of Frederick's of Hollywood, Inc., ("Frederick's"), attack a cash merger whereby Knightsbridge Capital Corp. ("Knightsbridge") acquired Frederick's on September 29, 1997. The individual defendants, who were the directors of Frederick's at the time of the merger (the "Director Defendants"), are charged with having breached their fiduciary duties of care and loyalty by failing to obtain the highest available price for shareholders in the sale of Frederick's, and also by misstating and omitting material information from the Consent Solicitation Statement ("CSS") disseminated to shareholders in connection with the merger.

The Director Defendants have moved under Court of Chancery Rule 12 (b)(6) to dismiss the amended complaint for failure to state a claim upon which relief can be granted. The four dismissal grounds being advanced are that: (i) the exculpatory clause in Frederick's certificate of incorporation bars any money damages recovery against the directors for a breach of the duty of care; (ii) the plaintiffs have alleged no cognizable breach of the directors' duty of loyalty and seek no relief other than money damages; and (iii) the plaintiffs have failed to allege any misdisclosures that are material. Defendant Hugh H. Hunter has also moved separately for dismissal on the independent ground that he cannot be held liable for actions taken by the Frederick's board after he resigned as a director.[1]

I. BACKGROUND

The pertinent facts, as disclosed by the complaint, are as follows:

A. The Parties

Frederick's is a Delaware corporation with its principal executive offices located in Los Angeles, California. It operates a nationwide mail order business and a chain of women's intimate apparel stores in 39 states. As of December 6, 1996, Frederick's had issued and outstanding (a) 2,995,309 shares of Frederick's Class A stock (which had one vote per share) that were held by approximately 500 shareholders of record, and (b) 5,903,118 shares of Class B common stock (which were non-voting) that were held by approximately 504 shareholders of record. Frederick's shares were traded on the New York Stock Exchange.

The plaintiffs are a class consisting of the holders of Class A and/or Class B Frederick's common stock at the time of the merger. The Director Defendants are Frederick's board of directors (the "Board") at the time of the transaction. Those

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[1]Shortly after filing their complaint the plaintiffs moved to enjoin the merger between Knightsbridge and Frederick's The Court denied that motion on September 29, 1997. On October 29, 1998, the plaintiffs tiled an Amended Complaint, which the Knightsbridge Defendants moved to dismiss as to them. In a memorandum opinion issued on July 9, 1998, the Court granted that motion, leaving only the former Frederick's directors as parties defendant in the case.

directors were: George W. Townson ("Townson") who was Frederick's Chairman of the Board, President and Chief Executive Officer; William J. Barrett ("Barrett") who was a Senior Vice President of Janney Montgomery Scott, Inc., Frederick's investment advisor ("JMS"); Richard 0. Starbird ("Starbird"); Merle A. Johnston ("Johnston"); and Hugh V. Hunter ("Hunter") who was Co-Trustee of the Harriet R. Mellinger Trust and the Frederick N. Mellinger Trust (the "Trusts").[2]

These five directors all voted to approve the first merger agreement under which Knightsbridge would acquire Frederick's for $6.14 cash per share. Except for Hunter (who had previously retired), these directors also voted to approve the ultimate merger agreement being challenged here, in which Knightsbridge acquired Frederick's for $7.75 per share cash.

B. Frederick's Commences an Auction

In June 1996, Frederick's announced that it had retained JMS as its financial advisor in connection with a possible sale of Frederick's. During the next fifteen months, JMS conferred with over one hundred prospective purchasers including Knightsbridge. In April 1997, Knightsbridge proposed to purchase all of Frederick's outstanding common stock for between $6.00 and $6.25 per share,

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[2] As Co-Trustee of the Trusts, Mr. Hunter voted the Trusts' shares, which represented 41% of Frederick's Class A stock and 51% of its Class B stock.

cash, in a two-step tender offer/merger transaction. That offer was conditioned upon Knightsbridge having the exclusive opportunity to conduct due diligence.

C. The $6.14 Knightsbridge Offer

On June 13, 1997, Frederick's and Knightsbridge executed an agreement whereby Knightsbridge would acquire Frederick's for $6.14 per share cash in a merger. The merger agreement permitted the Board to pursue transactions proposed by third parties if their fiduciary obligations so required, but it prohibited Frederick's from soliciting any indications of interest by potential third party acquirors. The merger agreement also permitted Frederick's to terminate the Merger unilaterally if the Board approved a transaction with an acquiror other than Knightsbridge, but in that case Knightsbridge would be entitled to a breakup fee of $1.8 million.

The complaint alleges that Townson, who was Frederick's CEO, would receive significant sums of money under agreements he entered into with Knightsbridge in connection with the merger. Under a Termination and Release Agreement, Townson would receive $750,000 when the merger became effective; and under a Non-Competition and Consulting Agreement, Townson would receive $250,000, plus sixteen additional $100,000 quarterly payments beginning the calendar quarter after the merger effective date. The complaint further alleges that

Townson would receive (in addition to the merger consideration of $6.14 per share for each of his Frederick's shares) a cash payment of $.05 for each option having an exercise price over $6.14 -- a payment claimed to represent value for "underwater options" that otherwise would be valueless in the merger.

The plaintiffs also allege that Barrett, as a Senior Vice President of JMS, also stood to benefit financially from the merger, in that a May 14, 1996 engagement agreement entitled JMS to an approximately $2 million fee if the merger was consummated.

Before the Board voted on that proposed merger, two directors, Sylvan Lefcoe and Morton Fields resigned on June 12, 1997 and June 13, 1997, respectively. The plaintiffs claim that the reasons for those resignations were material facts that Frederick's should have disclosed in the solicitation materials sent to shareholders.[3]

The Frederick's board approved the $6.14 per share Knightsbridge offer at a special meeting held later on in the day of June 13, 1997. Thereafter, the board caused a Consent Solicitation Statement ("CSS") to be mailed, seeking stockholder approval of the merger. Stockholders were asked to deliver their

[3]The record does not disclose the reasons why those directors resigned.

consents no later than August 27, 1997, the expected merger closing date.

D. Frederick's Receives Other Offers

While the $6.14 per share Knightsbridge merger proposal was pending, Milton Partners submitted, on August 21, 1997, a fully financed offer to acquire Frederick's for $7.00 per share cash. In response, and while the Board was considering that offer, Knightsbridge and the Trusts entered into an agreement (the "Stock Purchase Agreement") under which Knightsbridge obtained the right to buy the Trusts' Frederick's stock, which represented about 43% of the Class A voting shares. Importantly, the Trusts were given the right to terminate the Stock Purchase Agreement if the merger agreement was terminated in accordance with its terms.

On August 28, 1997, a second "third party" offer was submitted -- this one by Veritas Capital Fund, L.P. ("Veritas") -- to purchase all of Frederick's outstanding stock for $7.75 per share cash. Veritas emphasized that its offer was not binding. Later that same day, the Board responded by postponing the scheduled closing of the merger with Knightsbridge in order to evaluate the Veritas proposal.[4]

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[4]The Board rejected the offer by Milton Partners, which later dropped out of the bidding contest after Veritas and Knightsbridge made higher offers.

On September 2, 1997 the Board sent Veritas a memorandum outlining certain conditions that Veritas would have to satisfy in order for the Board to consider Veritas' offer. The conditions were that Veritas deposit $2.5 million in an escrow account and also be willing to execute a merger agreement substantially identical to the Knightsbridge merger agreement.

In response to the September 2, 1997 memorandum, Veritas sent a letter to the Board requesting that Frederick's issue Veritas a "dilutive option," that would dilute Knightsbridge's significant stock interest. Veritas also submitted to Frederick's a "marked up" merger agreement plus a $2.5 million escrow deposit.

In reaction to Veritas' offer, Knightsbridge approached the Trusts with a proposal to amend the Stock Purchase Agreement. The negotiated result was an amended stock purchase agreement (the "Supplement") that eliminated the Trusts' contractual right to terminate the Stock Purchase Agreement if the merger agreement were terminated.[5] The next day, Knightsbridge exercised its acquisition rights under the Agreement and Supplement, and purchased the Trusts'

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[5]The Supplement also provided that: (I) the Trusts would sell their shares to Knightsbridge even if the merger agreement were not consummated; (ii) Knightsbridge had the right to pay for and receive the Trusts' shares before consummation of the merger; (iii) the Trusts would indemnify Frederick's in connection with the Supplement; and (iv) if Knightsbridge resold the shares acquired from the Trusts to a third party at a price above $6.90 per share before March 1, 1998, the Trusts would receive the price increase.

Frederick's stock. Knightsbridge then informed Frederick's Board that it would use its newly-acquired stock "for purposes of effecting the Merger [with Knightsbridge]" and that Knightsbridge would not "vote in favor of the bid submitted by Veritas or any other bid to acquire the Company."

E. The Revised Knightsbridge Offer and Its Terms

In further response to the Veritas $7.75 per share cash proposal, Knightsbridge increased its offer to $7.75 per share, subject to four conditions, namely, that: (1) Frederick's would agree to a "no talk provision" prohibiting any Frederick's director, officer, employee or agent from negotiating with any other bidder; (2) the break-up fee would be increased from $1.8 million to $4.5 million; (3) Frederick's would grant Knightsbridge the right to appoint an "observer"' who would attend all Frederick's board meetings; and (4) if Frederick's granted an option to purchase its stock to any third party, Frederick's would grant an identical option to Knightsbridge.

On September 8, 1997, Frederick's announced that the Board had accepted the revised Knightsbridge Offer, including these four conditions. The plaintiffs claim that by agreeing to those conditions, the Director Defendants had prematurely ended the bidding and therefore left itself unable to ascertain whether they had obtained the best value available for the shareholders.

To further strengthen its position, on September 9, 1997, Knightsbridge purchased an additional 195,000 shares of Frederick's Class A stock on the open market, That purchase gave Knightsbridge absolute voting control, even though Knightsbridge could not vote those 195,000 shares in favor of the merger because they were acquired after the record date.

In counter-response to these developments, Veritas responded on September 11, 1997 with an unsolicited $9.00 per share "non-binding offer" for all of Frederick's outstanding shares. This time the Board did not respond to Veritas' "offer;" instead, it accepted the Knightsbridge's $7.75 per share proposal. The Board allegedly did so for several reasons. First, the "no-talk" provision in the final merger agreement did not provide the Director Defendants with a "fiduciary out," and it also obligated Frederick's not to engage in any acquisition-related communications. Second, the shares Knightsbridge had acquired both in the open market and from the Trusts, represented a majority of each class of Frederick's stock, which Knightsbridge refused to vote in favor of any bid other than its own. Third, Veritas had requested a dilutive option, the legal validity of which the Board had questioned.

F. The Consent Solicitation Statement

On September 18, 1997, Frederick's issued Amendment No. 1 to the CSS, which disclosed that the consent solicitation would end on September 29, 1997, and that the merger would be consummated on that date. As explained elsewhere in more detail, the plaintiffs claim that the defendants made false disclosures and material omissions in the CSS.

The merger with Knightsbridge was consummated on September 29, 1997. This lawsuit followed.

II. CONTENTIONS

The complaint alleges two claims. The first is that the Director Defendants failed to meet the fiduciary requirement under Revlon v. MacAndrews & Forbes Holdines. Inc.[6] that in a sale of corporate control the Board must obtain the highest value reasonably available for the shareholders.[7] The plaintiffs claim that the Board knew or should have known that the Trusts had entered into a Stock Purchase Agreement with Knightsbridge, and that bargaining with Knightsbridge would become more difficult if Knightsbridge controlled the Trusts' stock. Despite that knowledge, the Board failed to enact defensive measures (such as a poison pill) designed to prevent Knightsbridge from gaining voting control of

[6] Del. Supr., 506 A.2d 173 (1986).

[7] Paramount Communications. Inc. v. OVC Network. Inc., Del. Supr., 637 A.2d 34, 48 (1994).

Frederick's That failure, plaintiffs allege, amounted to a breach of the fiduciary duties of care and loyalty that the Board owed to Frederick's shareholders.

The duty of loyalty claim is premised on the allegation that Director Defendants Townson and Barrett stood to obtain financial benefits that would not be shared by other shareholders generally. Specifically, (i) Townson would receive a cash payment for his underwater options, as well as under two highly lucrative contracts previously described, and (ii) Barrett, the Senior Vice President of JMS stood to benefit because JMS would receive a substantial fee for its services.

The plaintiffs' second claim is that the defendants misrepresented two material facts, and omitted to disclose a third material, in the CSS. Specifically, the defendants allegedly misrepresented that: (1) Frederick's, or its agent, had orally advised Veritas and Milton to submit their "best, final offer" by September 4, 1997, but in fact that never occurred, and (2) Frederick's materially overstated its reservations about accepting the Veritas Offer by reason of Veritas having requested a dilutive option. That was an overstatement, it is claimed, because the draft merger agreement submitted by Veritas left the amount of to-be-optioned shares blank, which evidenced that Veritas was willing to negotiate and be flexible about the size of the option. Finally, the complaint alleges that the board improperly omitted to disclose the reasons why two Board members resigned before the vote on the $6.14 per share Knightsbridge merger proposal.

In support of the pending motion, the Director Defendants argue that the fiduciary claims must be dismissed because an award of money damages, which is the only remedy being sought here, is barred by the exculpatory clause in Frederick’s certificate of incorporation; and also because the complaint does not allege any cognizable duty of loyalty claims. The Director Defendants further contend that the disclosure claims must be dismissed because as a matter of law the misstatements and the omitted disclosure were not material.

These contentions are next addressed.

III. ANALYSIS

A motion to dismiss under Court of Chancery Rule 12 (b)(6) will be granted where it is clear from the allegations of the complaint that the plaintiff would not be entitled to relief under any set of facts that could be proven to support the claim.’ All well-pleaded facts alleged in the complaint will be accepted as true, but inferences and conclusions that are unsupported by specific factual allegations

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[8] In re Tri-Star Pictures, Inc. Litig., Del. Supr., 634 A.2d 319,326 (1993); see also Loudon v. Archer-Daniel+Midland Co., Del. Supr., 700 A.2d 135, 140 (1997).

will not be accepted as true.[9]

A. The Revlon Claim

I first address the plaintiffs' Revlon claim, which is that the sale of Frederick's for cash was a sale of the entire company, which triggered the Board's fiduciary duty to obtain "the best value reasonably available to the stockholders,“” a duty it is alleged the Board failed to satisfy. Critical to the legal sufficiency of that claim, at least in this case, is the reason why the directors (allegedly) failed to satisfy that duty. As Vice Chancellor Lamb aptly put it, "A corporate board's failure to obtain the best value for its stockholders may be the result of illicit motivation (bad faith), personal interest divergent from shareholder (disloyalty) or a lack of due care.“” Although the plaintiffs allege Revlon-based breaches of duty, and plead that they arise from violations of the board's duty of care and loyalty, I conclude that the complaint alleges only a breach of the duty of care -- a claim that is not cognizable because of the exculpatory clause in Frederick's charter. Because I further find that the complaint does not adequately allege bad

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[9]See Vanderbilt Income and Growth Assocs.. L.L.C. v. Arvida/JMB Managers. Inc., Del. Supr., 691 A.2d 609,613 (1996).

[10]Id. at 48.

[11]In re Lukens, Inc. Shareholders Litig., Del. Ch., C.A. No. 16102, Lamb, V.C., Mem. Op. at 21 (Dec. 1, 1999) (citing Mills Acquisition Co. v. Macmillan. Inc., Del. Supr., 559 A.2d 1261, 1279-82 (1989).

allege bad faith or disloyalty, dismissal of the Revlon claim is required.

1. The Duty of Care Claim

I first consider the duty of care branch of the Revlon claim. The complaint alleges that the directors breached their duty of care by allowing one bidder (Knightsbridge) to acquire voting control and thereby circumvent the Board's ability to conduct a meaningful auction process. Plaintiffs claim that although the Board knew that Knightsbridge was seeking to buy the Trusts' stock for $6.90 per share, and that bargaining with Knightsbridge would become more difficult if Knightsbridge succeeded, the Board failed to enact defensive measures (such as a poison pill) protective of the interests of Frederick's shareholders. That failure to act, plaintiffs maintain, culminated in Knightsbridge acquiring a majority of Frederick's stock, which it was then able to use as leverage to end the auction and force a sale to itself, by refusing to vote its control shares in favor of any competing bid.

Assuming that these facts state a claim for violation of the Director Defendants' duty of care, the exculpatory clause found in Article Twelfth of Frederick's Certificate of Incorporation bars any recovery of money damages as a consequence of such a breach.[12] Article Twelfth provides:

> A director of this Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction for which the director derived an improper personal benefit.

The plaintiffs claim that the Delaware Supreme Court's decision in Emerald Partners v. Berlin[13] precludes any consideration of this § 102(b)(7) defense on a motion to dismiss, because Emerald Partners holds that a § 102(b)(7) charter provision is "in the nature of an affirmative defense. . . [and that the Defendants] will normally bear the burden of establishing each of its elements."[14] Relying on this language, the plaintiffs argue that the Frederick's exculpatory provision cannot provide a basis to dismiss the complaint at the pleading stage, because the

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[12]It is well established Delaware law that an exculpatory provision in a certificate of incorporation that is authorized by 8 Del C § 102 (b)(7) shields the corporation's directors against a judgment for money damages except for judgments arising out of breaches of duty of loyalty, claims for acts constituting bad faith, and claims for the receipt of improper benefits. See **In** re Datanroducts Corn. Shareholders Litig., **Del. Ch.,** C.A. No. 11164, V.C. Jacobs, Mem. Op. at 11 (August 22, 1991).

[13]Del. Supr., 726 A.2d 1215 (1999).

[14]Id. at 1224.

applicability of the charter provision can be determined only on a developed factual record.

The plaintiffs misread Emerald Partners. This Court has interpreted the above-quoted language as not precluding a Rule 12(b)(6) dismissal of claims that the directors breached their fiduciary duty of care on the basis of an exculpatory charter provision, so long as a dismissal on that ground does not prevent a plaintiff from pursuing well-pleaded claims that the directors breached their fiduciary duty of loyalty.[15] Under this reading of Emerald Partners, where a complaint alleges actionable disloyalty the burden will shift to the defendants to show the immunizing effect of the charter provision,[16] but where the complaint only alleges a breach of the duty of care, that claim may be dismissed at the pleading stage.

Because it is not cognizable under Article Twelfth and 8 Del C § 102(b)(7), and because I conclude that no duty of loyalty claim is pleaded, the duty of care claim will be dismissed. I turn to the duty of loyalty component of the Revlon claim.

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[15]In re General Motors Class H Shareholders Litig., Del. Ch., 734 A.2d 611, 619 at n. 7 (1999); see also In re Lukens, C.A. No. 16102 at 25 n.33

[16]In re Lukens, C.A. No. 16102 at 26.

2. The Duty of Loyalty Claim

The complaint alleges that the Director Defendants breached their duty of loyalty, in that two of the four directors who approved the $7.75 merger with Knightsbridge received a personal benefit from the transaction that was not enjoyed by all shareholders generally. As a consequence (plaintiffs claim), the merger was not approved by a majority of disinterested directors, for which reason the Defendant Directors must show that the merger was entirely fair. I disagree and conclude that the pleaded facts show that only one of the four directors was interested, and as a result, the merger was approved by a majority of disinterested directors. Accordingly, the duty of loyalty claim fails for lack of a valid premise.

To be sufficient to trigger entire fairness review, this complaint must allege that the sole interested director dominated or controlled the remaining directors, which the complaint here does not do. The complaint alleges that both Townson and Barrett had conflicting self-interests at the time they voted to approve the merger, and that they received benefits not enjoyed by the remainder of the shareholders. As for Townson, the pleaded facts, if assumed to be true, would establish a disabling conflict, allegedly because the Knightsbridge transaction offered Townson a cash payment of $.05 for each of his options having an exercise price exceeding $6.14 -- options that would otherwise be worthless.

Townson would also receive substantial payments under two lucrative contracts. Under the Termination and Release Agreement, he would receive $750,000 when the merger became effective, and under the Non-Competition and Consulting Agreement, he would receive $250,000 on the merger's effective date, plus sixteen additional quarterly $100,000 payments beginning the calendar quarter following the effective date. These payments would constitute personal benefits not enjoyed by the shareholders generally, for which reason Townson would be deemed "interested" in the merger.

But, I cannot agree that the complaint states a cognizable claim that Barrett personally benefitted from the merger in a manner that was not enjoyed by the shareholders generally. Barrett was a Senior Vice President of JMS, Frederick's financial advisor. Under its engagement letter, JMS was entitled to receive an approximately $2 million fee for its services when the merger was consummated. The difficulty with this claim is that JMS would receive a fee for its services regardless of who the buyer was; moreover, the amount of the fee JMS was to receive would increase as the merger price increased. Thus, Barrett's (and JMS's) interests were completely aligned with the interests of the shareholders in obtaining the highest possible price for Frederick's shares. For these reasons, the complaint fails to state a claim that Barrett had a disabling self-interest. It follows from this that only one of Frederick's four directors voting on the Knightsbridge merger was interested.

Because the complaint fails to allege facts that establish that the merger was not approved by a majority of disinterested directors, the breach of loyalty claims cannot survive a motion to dismiss.

B. The Disclosure Claims

Lastly, the plaintiffs claim that the Director Defendants misrepresented material facts, and also failed to disclose a material fact, in the CSS. The fiduciary duty of disclosure requires that solicitation materials disclose all information in the defendants' possession material to the transaction at issue.[17] The test of materiality is whether "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. . .[t]here must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[18]

The plaintiffs first claim that the defendants misrepresented in the CSS that Frederick's agent orally advised Veritas and Milton Partners to submit their "best,

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[17]Malone v. Brincat, Del. Supr., 722 A.2d 5, 9 (1998).

[18]Rosenblatt v. Gettv Oil Co., Del. Supr., 493 A.2d 929,944 (1985).

final offer" by September 4, 1997. That disclosure was allegedly false because Veritas never received this advice. Assuming that the CSS falsely disclosed that the Board informed Veritas to submit its "best, final offer." I find that misstatement immaterial as a matter of law. The CSS was mailed after Veritas had increased its $7.75 offer to $9.00 and the CSS fully disclosed the $9.00 bid. With that disclosure the shareholders were told the facts that were material -- all the bids that were on the table and their amounts and other terms. Whether or not Veritas was asked to submit its best and final offer at the time of its $7.75 proposal became irrelevant after Veritas had increased its bid to $9.00 -- which (according to plaintiffs) was the high bid -- and the shareholders were so informed.

The second disclosure claim concerns the disclosure in the CSS that the Board's reservations about accepting the Veritas Offer were based partially upon Veritas' request for a dilutive option. The plaintiffs argue that the CSS materially overstated this concern, because the draft merger agreement submitted by Veritas left blank the amount of shares subject to the dilutive option, thereby demonstrating Veritas' willingness to negotiate the terms of the option.

This argument is unpersuasive. The CSS disclosed that one of the Board's reasons for not accepting the Veritas Offer was that the Veritas Offer was conditioned on Frederick's issuing a dilutive option. The plaintiffs claim that because the number of to-be-optioned shares was left open for future negotiation, the requested dilutive option could not have been a subject of serious concern. The logic of this argument escapes me. Even if Veritas was willing to negotiate the size of the dilutive option, it does not follow that the Board had no reason to be concerned about its legality.[19] An option's size and its legality are two distinct issues, at least where (as here) the complaint alleges no facts that suggest a linkage.

Finally, the plaintiffs claim that the CSS omitted to disclose a material fact, specifically, why two directors resigned before voting on the merger. I conclude that in these circumstances the reasons for the directors' resignations are immaterial. The two directors, Lefcoe and Field, resigned from the Board on June 12 and 13, 1997 -- three months before the Board considered the final offers for Frederick's. The complaint fails to allege facts that suggest any connection between the resignations and the merits of the Knightsbridge merger ultimately voted on. Therefore, the reasons for Lefcoe and Field's resignations are immaterial as a matter of law. Stated differently, the reasons for resignations that

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[19] See Mendel v. Carroll, Del. Ch., 651 A.2d 297, 304-305 (1994).

occurred three months earlier and in the context of an earlier proposal would have had no significance in the deliberations of a reasonable stockholder being asked to vote on a different proposal.[20]

V. CONCLUSION

For the foregoing reasons, the defendants' motions to dismiss the complaint is granted.[21] IT IS SO ORDERED.

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[20]Arnold v. Society for Savings Bancorp, Inc., Del. Supr., 650 A.2d 1270, 1287 (1994).

[21]Because I have determined to dismiss the fiduciary duty and the disclosure claims, it become unnecessary to discuss Hunter's separate motion to dismiss on the ground that he resigned before the board voted on the final Knightsbridge offer.