IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

B.F. RICH CO., INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1896-N
	)	
RICHARD E. GRAY, SR., individually,	)	
	)	
Defendant.	)	
	)	
-and-	)	
	)	
RICH REALTY, INC., a Delaware corporation,	)	
	)	
Nominal Defendant.	)	

MEMORANDUM OPINION

Submitted: July 14, 2006
Decided: November 9, 2006

Michael F. Bonkowski, Esquire, Chad J. Toms, Esquire, SAUL EWING LLP, Wilmington, Delaware, *Attorneys for Plaintiff B.F. Rich Co., Inc.*

Richard E. Gray, Sr., Keene, New York, *Defendant Pro Se*

Henry A. Heiman, Esquire, Susan E. Kaufman, Esquire, HEIMAN GOUGE & KAUFMAN, LLP, Wilmington, Delaware, *Attorneys for Nominal Defendant Rich Realty, Inc.*

PARSONS, Vice Chancellor.

B.F. Rich & Co., Inc. ("B.F. Rich"), a shareholder of Rich Realty, Inc. ("Rich Realty"), brought this action under 8 *Del. C.* § 225 to determine the proper directors and officers of Rich Realty. B.F. Rich contests the election by written consents of Defendant Richard Gray, Sr. ("Gray"), Carson M. Gray, and B. David Gray as directors of Rich Realty and Gray, Carson Gray, Henry Heiman, and B. David Gray as officers. B.F. Rich alleges that Gray improperly purported to replace the directors and officers of Rich Realty by exercising written consents for stock owned by his minor children. Plaintiff alleges that Gray lacks the legal authority to vote these shares. Under Section 225 of the Delaware General Corporation Law ("DGCL"), B.F. Rich seeks a declaratory judgment on Gray's authority to vote his minor children's shares and that his efforts to elect himself as a director and officer of Rich Realty exceeded his authority and are invalid.

The Court conducted a trial on B.F. Rich's claims on March 15, 2006. For the reasons stated in this opinion, I conclude that the written consents are legally effective, and that as a consequence, Gray, Carson M. Gray, and B. David Gray were properly elected as *de jure* directors and officers of Rich Realty.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff, B.F. Rich, is a Delaware corporation with its principal place of business in Newark, Delaware. The corporation manufactures and distributes custom vinyl

windows and aluminum storm products in the remodeling and new construction markets.[1] B.F. Rich owns 18 of the 118 shares in Rich Realty[2] and leases space from Rich Realty in a building in Newark.[3] Before Gray purported to exercise the written consents, two officers of B.F. Rich, Richard Rebmann and George Simmons, were the officers of Rich Realty, as well.[4]

Nominal Defendant Rich Realty is also a Delaware corporation, formed on July 3, 1997, solely for the purpose of facilitating the acquisition of property in Newark, Delaware, upon which B.F. Rich intended to construct and occupy a building. Rich Realty now leases that building to B.F. Rich.[5] A valuation report submitted by B.F. Rich directly ties the value of Rich Realty stock to lease payments made by B.F. Rich.[6]

Defendant Gray is an individual residing in New York. He owns no stock in Rich Realty. Gray's minor children, Adelia H. Gray ("Adelia") and Richard E. Gray, Jr. ("Richard"), each own 29 shares of Rich Realty, as does Carson Gray, an adult child of

---

1 Am. Compl. ¶¶ 1, 4. Unless otherwise noted, the facts recited in this opinion are undisputed. *See* June 21, 2006 Transcript of Post-Trial Argument at 53.

2 *Id.* at ¶¶ 6, 8. B.F. Rich acquired these shares between September 1999 and September 2004.

3 Rich Realty, Inc.'s Post-Trial Br. at 8-9.

4 *Id*. at 9.

5 Am. Compl. ¶¶ 3, 5.

6 Pl.'s Ex. 52. References in this form are to Plaintiff's Proposed Trial Exhibits.

Defendant.[7] The remaining shares of B.F. Rich are owned by B.F. Rich, Jepsco, Ltd. and Gray's niece Josslyn Gray.[8]

B. Gray's Exercise of His Minor Children's Stock Voting Rights

In 2005, Gray was involved in a contested divorce proceeding with his ex-wife Sabele Foster ("Foster") in the Superior Court of the State of Connecticut. On December 10, 2005, the Connecticut Court approved a Post-Judgment Stipulation of the Parties ("Stipulation") resolving that and other litigation between Gray and Foster. Among other things, the Stipulation provided:

> Defendant [Gray] will have the right to pursue, and will pursue without any active involvement on the part of Plaintiff [Foster], the rights of the minor children Adelia and Teddy [Richard E. Gray, Jr.], by virtue of their respective ownerships of the capital stock of Rich Realty, Inc. At Plaintiff's request, Defendant shall keep Plaintiff or a representative designated by Plaintiff periodically advised as to the status of his efforts on the children's behalf. Plaintiff will not oppose any motions or other court proceedings initiated by Defendant on behalf of the children for the purpose of pursuing the aforementioned rights on behalf of the minor children, and will execute any documents necessary to such pursuit with respect thereto as requested by Defendant or his representatives. Defendant will indemnify and hold Plaintiff harmless from and against any liability or other obligations relating to his efforts on behalf of the minor children and any document execution by Plaintiff.[9]

---

7 Am. Compl. at ¶ 8.

8 *Id.*

9 Am. Compl. p. 2; Ex. 2; *see also* March 15, 2006 Trial Transcript ("Tr.") at 4-5. In this action, Gray represents himself *pro se*. Perhaps, due to that fact and the parties' mutual desire for a relatively expedited trial on the merits and general agreement on the underlying facts, the pleadings in this proceeding never formally

Gray's minor children hold their shares in Rich Realty in their own names; they did not receive them under Connecticut's Uniform Transfers to Minors Act.[10] In addition, all parties acknowledge that Gray has not been appointed as custodian or guardian of his children's estates or assets.[11] Hence, the court-approved Stipulation is the sole source of authority in Gray to exercise voting rights in his minor children's stock.

On August 5, 2004, a year before the Stipulation, B.F. Rich received a letter from Gray, notifying Rebmann and Simmons, as officers of Rich Realty, that a "Written Consent by Holders Of In Excess of 50% of the Issued and Outstanding Capital Stock in Lieu of Meeting" ("2004 Shareholder Consent") had been executed by Gray, on behalf of Adelia and Richard, and by his adult daughter Carson Gray.[12] The 2004 Shareholder Consent purported to remove James Kelly as a director and elected Carson Gray, B. David Gray, and Gray as new directors of Rich Realty.[13] On or about August 13, 2004, Gray sent a letter to Kelly, Rebmann and Simmons advising them that the new directors of Rich Realty had acted by written consent to remove them as officers of the company

---

closed. In particular, neither Defendant ever filed an answer to the Amended Complaint. Likewise, the parties failed to submit a final pretrial order in accordance with Court of Chancery Rule 16.

10 Conn. Gen. Stat. §§ 45a-546 to 45a-561 (1972).

11 *See* Tr. at 32-33 (Gray); April 12, 2006 Letter from B.F. Rich to Court n.2 and Ex. A (acknowledging Gray's discontinuance of a petition for guardianship of his minor children's estates).

12 Am. Compl. ¶ 70; Ex. F.

13 *Id.*

and to name Gray, B. David Gray, and Carson Gray as president, secretary, and treasurer of Rich Realty. Gray also requested that the former officers turn over certain books and records.[14] Upon receipt of the request, Rebmann requested further corroboration of the signatures and Gray's authority to sign the consents on behalf of the minors.[15] Although Gray undertook to, and did, provide documentation verifying the actions taken, the parties evidently never reached agreement on the effect, if any, of the 2004 Shareholder Consent.[16]

On or about December 6, 2005, Gray served an "Action by Consent of the Shareholders of Rich Realty, Inc." ("2005 Shareholder Consent") on the registered agent of Rich Realty.[17] Like the 2004 Shareholder Consent, Gray signed on behalf of Adelia and Richard; B. David Gray signed on behalf of minor shareholder Josslyn Gray; and Carson Gray signed on her own behalf.[18] The 2005 Shareholder Consent elected Carson Gray and Gray as directors of Rich Realty.[19] A second written consent, signed by the new directors of Rich Realty, purports to name Gray as President and Treasurer, Carson Gray as Vice President, Henry Heiman as Secretary, and B. David Gray as Assistant

---

14 Am. Compl. Ex. G.

15 Am. Compl. Ex. I.

16 Am. Compl. Ex. H.

17 Am. Compl. ¶ 75.

18 *Id.*; Ex. J.

19 Am. Compl. Ex. J.

Treasurer.[20] B.F. Rich again requested additional documentation. In response, Gray submitted a redacted copy of the Stipulation from the Connecticut Superior Court.

C. Procedural History

On or about October 1, 2005, Carson Gray filed C.A. No. 1710-N in this Court seeking inspection of certain books and records of Rich Realty pursuant to 8 *Del. C.* § 220. After receiving the 2005 Shareholder Consent, B.F. Rich brought this action pursuant to 8 *Del. C.* § 225 seeking a declaration that the Consent is invalid and a declaration of the proper directors and officers of Rich Realty. On February 22, 2006, I stayed the 220 action pending resolution of this action. Following a trial in B.F. Rich's § 225 action on March 15, 2006, the parties submitted post-trial briefs and later presented oral argument on the validity of the written consents.

II. PARTIES' CONTENTIONS

Plaintiff alleges that Gray has had a checkered past as a director of other corporations and suggests that this Court take these allegations into consideration when determining the rightful directors of Rich Realty. B.F. Rich cites to a 2004 opinion by the United States District Court for the District of Delaware[21] that found that Gray, in his capacity as sole director of the company involved, violated his fiduciary duties by engaging in self-dealing transactions and usurping corporate opportunities. Plaintiff also points to a number of New York State Supreme Court orders, including a preliminary

---

[20] Am. Compl. Ex. K.

[21] *In re Summit Metals, Inc. v. Gray*, 2004 WL 1812700 (D. Del. Aug. 6, 2004); Am. Compl. Ex. E.

injunction against Gray based on alleged breaches of fiduciary duty. In subsequent proceedings, the court found Gray in contempt for violating the injunction by transferring assets to entities he controlled, and ultimately committed him to two years in prison based on the contempt.[22]

In support of its challenge to the 2005 Shareholder Consent, B.F. Rich broadly alleges that Gray lacks legal authority to vote the shares of his minor children. In support of this argument, B.F. Rich contends that Connecticut General Statutes Section 45a-631(a) ("Section 45a-631(a)") requires the appointment of a guardian of the estate of a minor whenever a parent (like Gray) receives or uses property of the minor child having a value in excess of ten thousand dollars.

Defendants Gray and Rich Realty contend that the Stipulation gives Gray the authority to vote his children's shares. In that regard, Defendants dispute B.F. Rich's interpretation of Section 45a-631(a). According to Defendants, Gray's voting his minor children's stock in Rich Realty will help protect their interests and does not amount to receipt or use of their property within the meaning of the statute.

Gray and Rich Realty also challenge B.F. Rich's motivation and standing to challenge the Stipulation approved by the Connecticut Superior Court. They emphasize that two of B.F. Rich's officers are also Rich Realty's officers. Thus, Rich Realty, the landlord of the building in Newark, is essentially a captive entity of B.F. Rich, the tenant, even though B.F. Rich owns only 15% of the Rich Realty stock. Based on these facts,

---

[22] Am. Compl. pp. 5-18.

Defendants argue that B.F. Rich has every interest in preserving the status quo and cannot reasonably claim to be acting for the benefit of Gray's minor children.[23]

III. ANALYSIS

A. The Scope of an Action Under 8 *Del. C.* § 225

Plaintiff seeks review of Gray's authority to exercise his minor children's votes under Section 225 of the DGCL. Section 225 authorizes the Court of Chancery, upon application of any stockholder, to hear and determine the validity of any election, appointment, removal, or resignation of any director, or officer of any corporation, and the right of any person to hold or continue to hold such office.[24] Thus, the court may adjudicate disputes over the validity of votes for the election of corporate directors or officers.[25] Section 225 also authorizes inquiry into the validity of actions taken by written consent.[26]

The scope of a § 225 action is narrowly limited to the validity of the election or vote and the right to hold office.[27] Consequently, the court must disregard collateral

---

23 Def. Rich Realty's Post-Trial Br. at 9.

24 *Nevins v. Bryan*, 885 A.2d 233, 244 (Del. Ch. 2005).

25 *See, e.g., Atkins v. Hiram*, 1993 Del. Ch. LEXIS 274, at *13 (Dec. 23, 1993); *Infinity Investors, Ltd. v. Takefman*, 2000 Del. Ch. LEXIS 13, at *12 (Jan. 28, 2000).

26 *See, e.g.*, *In re Bigmar, Inc.*, 2002 Del. Ch. LEXIS 45 (Apr. 5, 2002) (reviewing an election by written consent).

27 *Id.* at n.34; 8 *Del. C.* § 225.

issues outside of this realm.[28] For example, in *Bachmann v. Ontell*,[29] the Court of Chancery addressed the validity of an election process. Defendants proffered evidence to show that installing the plaintiff-directors in office might injure the stockholders, even if the evidence showed they were properly elected.[30] The court summarily rejected this argument as beyond the scope of a § 225 action.[31]

Here, B.F. Rich disputes the validity of the written consents giving rise to the challenged elections of directors and officers. To determine whether the written consents are valid, this Court must consider the substantive effect of the Stipulation. This inquiry, however, is not necessarily limited to an inspection of the face of the document purportedly establishing the party's right to take office. Under Section 225, this Court has jurisdiction to resolve the disputed elections of both the directors and officers of Rich Realty and, in doing so, may determine the effect of the 2005 Shareholder Consent and the underlying Stipulation authorizing Gray to vote his minor children's shares.

In its pleadings and arguments, Plaintiff repeatedly emphasizes the likely harm to Rich Realty and to B.F. Rich should Gray be determined to be a *de jure* director and

---

28 *Id.*

29 1984 Del. Ch. LEXIS 569, Brown, C. (Nov. 5, 1984).

30 *Id.* at *1-2.

31 *Id.* (observing that "[Defendants] would have the Court bar plaintiffs . . . from holding office because of fiduciary improprieties."); *see also Louden v. Archer-Daniels-Midland Co.*, 1996 Del. Ch. LEXIS 12, at *9-10 (Feb. 20, 1996) (determining that the appropriate scope of Section 225 review includes only those issues pertinent to determining the validity of the election), *aff'd*, 700 A.2d 135 (Del. 1997).

officer. This Court's jurisdiction under Section 225, however, is limited to determining the validity of the written consents themselves. If any of the parade of horribles B.F. Rich envisions occurs in the future, it can seek appropriate relief based on claims of breaches of fiduciary duty or other substantive wrongs.

B. Does Section 45a-631(a) Apply to Gray's Exercise of His Children's Voting Rights?

B.F. Rich alleges that Gray's ex-wife Foster, as a parent of the minor children, had no right under Connecticut law to "assign" or "transfer" her children's voting rights to Gray in the Stipulation.[32] Instead, Plaintiff argues that Section 45a-631(a) applies to this situation because both parties stipulated that the stock's value exceeds $10,000,[33] and Foster "used" the stock in her divorce proceeding by exchanging the minor children's rights in it in consideration for settling the divorce.[34] Because Foster was not appointed guardian before the Stipulation and because Foster "used" the children's stock as consideration in a divorce settlement, Plaintiff contends that Foster lacked legal authority to assign the rights attendant to the minors' stock to Gray.[35] Thus, B.F. Rich argues that

---

32 June 21, 2006 Tr. at 5-6.

33 *Id.* at 3-4.

34 *See, e.g.*, Tr. at 42. B.F. Rich, characterizing the Stipulation as a grant or assignment of rights, argues: "And what does Miss Foster get as a part of that grant [transfer of minor children's rights in the Stipulation]? She gets a number of things that are set forth in that settlement agreement. There's the dismissal of litigation against her. There's dismissal of litigation against her family. Surely this is consideration use—gained through the use of the broad grant of stock rights that belong to the children." *Id.*

35 Pl.'s Post-Trial Br. at 13.

the portion of the Stipulation relating to the children's voting rights and Gray's purported authority to exercise them cannot be recognized by this Court.

B.F. Rich also contends that Gray's actions are invalid under Section 45a-631. Plaintiff argues that because the minor children's stock is worth more than $10,000, and Gray was not appointed as guardian of their estates, Gray had no legal authority to vote his children's stock when he executed the 2005 Shareholders Consent.[36]

Defendants deny that Foster or Gray used or received the disputed voting rights. Specifically, Gray argues that the operative phrase of Section 45a-631, "receive or use," is not implicated in this series of transactions. Because the Stipulation did not require a transfer of the Rich Realty stock from the children's names into Gray's, Defendants contend that as a matter of statutory interpretation no "receipt" occurred in this case.[37] Further, Defendants argue that Connecticut courts have interpreted "use" to mean an expenditure of the minor's property. Because the children still own the property (stock),[38] Gray argues that no "use" has occurred that would trigger the statutory requirement that a guardian be appointed. Accordingly, Defendants respond that neither

---

36 *Id.*

37 Def. Rich Realty, Inc.'s Post-Trial Br. at 3.

38 At trial and in Rich Realty's Post-Trial Brief, they introduced a new argument, interpreting the statute to mean that the financial value of the vote, not the value of the stock itself, must exceed $10,000. Although Defendants' failure to raise this argument sooner is problematic and B.F. Rich sought to exclude it as untimely, I need not resolve that issue for purposes of this opinion. Instead, I assume *arguendo* that the value of the stock itself controls.

Foster nor Gray needed to be appointed as guardian to settle the divorce and related proceedings or vote their children's shares in Rich Realty.

1. The applicable Connecticut law

Connecticut law distinguishes between two types of guardianship for minors: guardianship of the person and guardianship of the estate of a minor.[39] A guardian of the person has the right to custody and responsibility for the care of the minor.[40] Under Section 45a-606, the father and mother of a minor child are automatically recognized as joint guardians of the person of the minor.[41] A guardian of the estate manages the property of the minor, other than property managed under the Uniform Transfers to Minors Act.[42] There is no parallel provision to Section 45a-606 that recognizes the father and mother as default joint guardians of the estate of a minor.

Connecticut General Statutes § 45a-629 frames the circumstances where the Court of Probate can appoint a guardian of the estate. Under this subsection, a Court of Probate can schedule a hearing when a minor is entitled to property.[43] The statute requires

---

39 *Doe v. City of Waterbury*, 2004 WL 726899, at *5 (D. Conn. Mar. 31, 2004).

40 *Id.*

41 Conn. Gen. Stat. § 45a-606 (1991).

42 *Doe v. City of Waterbury*, 2004 WL 726899, at *5; Uniform Transfers to Minors Act, Conn. Gen. Stat. §§ 45a-557 to 45a-560b (allowing for appointment of a custodian authorized to supervise a gift of cash or property to a minor).

43 Conn. Gen. Stat. § 45a-629 (1991).

appointment of a guardian upon the receipt or use of a minor's property by a parent, guardian, or spouse. Section 45a-631(a) states that:

> A parent of a minor, guardian of the person of a minor. . . shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor, except that such parent . . .may hold property as a custodian under the provisions of [The Uniform Transfers to Minors Act] without being so appointed.[44]

Very few cases have interpreted this section, and in particular, the phrase "receive or use." In each of those cases, however, a court appointed a guardian of the estate of the minor where a minor was entitled to financial or real property through the court system and where underlying public policy required procedural protections to ensure proper oversight. Connecticut courts have held, for example, that a parent must obtain court approval to settle a personal injury claim by a minor if the amount of the settlement exceeds $10,000.[45] Similarly, a court must appoint a guardian of the estate when a minor receives monetary damages resulting from a personal injury claim.[46] Though a minor is entitled to full enjoyment and immediate possession, the use of the injury recovery must be exercised by a guardian of the estate.[47] The probate court also will appoint a guardian

---

44 Conn. Gen. Stat. §45(a)-631(a). Gray's minor children have never held their Rich Realty shares subject to the Uniform Transfers to Minors Act; accordingly, it does not apply here.

45 *Saccente v. LaFlamme*, 2003 WL 21716586, at *5 (Conn. Super. 2003).

46 *Coakley v. Silvermine Farm, Inc.*, 1994 WL 34209, at *1-2 (Conn. Super. 1994) (interpreting prior version of statute where threshold amount was $5,000).

47 *Lametta v. Conn. Light & Power Co.*, 92 A.2d 731 (Conn. 1952).

of the estate when a minor child obtains a tort recovery to ensure that the award is conserved for its proper purposes or receives monies through probate.[48] Connecticut courts do not apply §45a-631 to child support because they treat that as a payment to the mother and not the minor child's property.[49]

Connecticut courts also have held that a guardian of the minor's estate need not be appointed in certain other circumstances. For example, in *Lametta v. Connecticut Light & Power Co.*, the Supreme Court considered a previous version of Section 45a-631(a) in an action to recover for injuries sustained by a minor child.[50] The plaintiff's father filed the action on the plaintiff's behalf as a next friend suit.[51] The defendants contended that the potential recovery was sufficiently high that the statute barred the father from pursuing the suit for his minor child without being appointed as guardian of his estate.[52] The court rejected this interpretation and granted the father standing to pursue his minor child's claims. In so holding, the court underscored the practical probability that granting next friend suits by a parent or other interested party would ensure assertion of a minor

---

48 *Langs v. Harder*, 338 A.2d 458 (Conn. 1973); *See United States Trust Co. v. Bohart*, 495 A.2d 1034, 1037 (Conn. 1985).

49 *Steinmann v. Steinmann*, 186 A. 501, 504 (Conn. 1936) (holding that child support monies in a divorce settlement received by parent are not minor child's property for purposes of prior version of statute).

50 *Lametta v. Conn. Light & Power Co.*, 92 A.2d 731 (Conn. 1952).

51 *Id.* at 731-32.

52 *Id.*

child's interests.[53] Furthermore, the court recognized that the statute did not preclude an action by a next friend under common law and observed that the "powers and responsibilities of each [next friend and guardian of the estate] in prosecuting a suit for the infant are the same."[54] It is only upon the date of a judgment in the minor's favor that the rights must be exercised by an appointed guardian of the estate.[55]

The Connecticut Supreme Court crystallized this distinction in *Cottrell v. Connecticut Bank & Trust Co.*,[56] where the court analyzed the purpose of a next friend suit. The court confirmed the established practice of having an individual bring an action on behalf of the minor child by a next friend, even in the absence of the court's authorization of guardianship representation.[57] This practice fosters the protection and representation of the minor's interests that might otherwise not be pursued.[58]

The relevant cases reflect the courts' concern that in certain situations there is a greater risk that the holder of a minor's property will fail to use it for its proper purpose. A guardian is more likely to be required in those circumstances. For example, in *Doe v.*

---

53 *Id.*

54 *Id.*

55 *Id.*

56 398 A.2d 307 (Conn. 1978).

57 *Id.* at 311.

58 *Id.* (quoting *Collins v. York*, 267 A.2d 668, 672 (Conn. 1970)).

City of Waterbury,[59] Jane Doe and Susan Roe filed tort actions in federal court on behalf of their respective minor children. Subsequently, the Commissioner of the Department of Children and Families was appointed legal guardian of the children by the Superior Court of Waterbury and sought to intervene and be substituted for Doe and Roe, alleging that the parents would wrongfully obtain or misuse any recovery.[60] In denying the Commissioner's motion to intervene, the court cited Section 45a-631 and concluded that it provided sufficient protection against any misuse of funds by the parents in that a guardian of the minor's estate would have to be appointed before receipt of any recovery.[61] Absent a showing of prejudice, the court concluded that the parents could adequately represent the minor children's interests.[62] In *Doe*, the court distinguished between a parent pursuing a claim in litigation on behalf of a minor, which does not require a guardianship, and receiving funds for the minor from the resolution of any such litigation, which does require appointment of a guardian.

---

59 2004 U.S. Dist. LEXIS 5522 (D. Conn. Mar. 31, 2004).

60 *Id.* at *7. The court concluded that the Commissioner was acting as guardian for the person, but not the estate of the children.

61 *Id.* at *9-10.

62 *Id.* at *9-11. During the litigation, Roe withdrew as next friend and the court appointed a guardian ad litem to represent her child. In moving to intervene, the Commissioner sought to replace the guardian ad litem, as well. For purposes of this opinion, the discussion of the parents includes the guardian ad litem.

Similarly, in the 1923 case *Ryle v. Reedy*,[63] decided before the enactment of the current Section 45a-631, a Connecticut court determined that where a payment to a minor would have satisfied a debt, the payment of cash to the child's mother directly, rather than as a guardian for the child's estate, did not satisfy the debt. In *Ryle*, the brother of the decedent was appointed administrator and the estate was left to the sole distributee, their mother. Defendant owed money to the decedent, but upon offering the sum to the administrator, was directed to pay it to the distributee's grandson (the defendant's son) in consideration for services provided before decedent's death. The defendant, acting accordingly, gave the amount of the debt to his wife, Nora, to hold for their minor child. Nora was not the guardian of her son's estate. The court found, however, that legal payment to a minor must be paid to the legally appointed guardian because otherwise a danger exists "whereby the person paying may get back the sum paid."[64] The court held that defendant's payments to the child's mother were not sufficiently protected to be considered a payment to the son. According to the court, allowing a parent to control monies intended by a third party to be given to a minor child is tantamount to "effect[ing] nothing by the transfer of the money."[65] Thus, the *Ryle* case illustrates the statutory requirement for appointment of a guardian for the estate of a minor when a liquid asset, such as cash, is received.

---

63 121 A. 460 (Conn. 1923).

64 *Id.* at 461.

65 *Id.*

2. Does B.F. Rich Have Standing to Challenge the Stipulation Based on Section 45a-631(a)?

Defendants contend that, under Connecticut law, B.F. Rich has no standing to collaterally attack the Stipulation and Order of the Connecticut Superior Court.[66] As a "stranger" to the Connecticut action in which the Stipulation was entered, Defendants argue, B.F. Rich cannot challenge its validity. Plaintiff responds that, as a Rich Realty shareholder, it has standing to challenge an alleged election of Rich Realty's directors. B.F. Rich further asserts that under Section 225 this Court has jurisdiction to examine all pertinent evidence to determine where justice lies.[67] In particular, B.F. Rich argues that this case is procedurally similar to *Kahn Brothers & Co. Inc. v. Fischbach Corp.*,[68] in which, in the context of a § 225 action, the Court of Chancery reviewed a Florida court order that granted the voting control that led to the contested election of directors.[69] The *Kahn* case is instructive and warrants careful review.

Kahn involved a suit by shareholders of Fischbach Corporation challenging the election of Victor Posner as chairman of its board of directors and of his designees for a majority of the other director positions. In 1980, Posner and Fischbach entered into a standstill agreement providing that neither Posner nor his affiliates would acquire more

---

66 Def. Rich Realty, Inc.'s Post-Trial Br. at 9-10.

67 Pl.'s Post-Trial Reply Br. at 15, citing *In re Canal Constr., Inc.*, 182 A. 545 (Del. 1936).

68 1988 Del. Ch. LEXIS 147 (Nov. 15, 1988).

69 Pl.'s Post-Trial Reply Br. at 15-16.

than approximately 25% of Fischbach's stock, unless certain conditions were satisfied.[70] Posner later claimed one of the conditions had been met and litigation on that issue ensued in Florida. As part of a settlement of that litigation, a Florida court approved a stipulation that, among other things, released Posner from continuing obligations under the standstill agreement.[71] Posner then acquired a majority of Fischbach's stock, designated himself as chairman and designated a majority of the board positions.[72]

Shareholders of Fischbach brought a § 225 challenge in the Court of Chancery, alleging that, through the settlement, Posner deceived the then incumbent board, which enabled him to avoid the standstill agreement and acquire majority control of the company.[73] The plaintiff shareholders also contended that the claim leading to the settlement agreement releasing Posner from his obligations under the standstill agreement was procured by deception and therefore invalid. The defendants in *Kahn* filed a motion to dismiss for failure to state a claim, asserting that the stipulated Florida judgment should be accorded full faith and credit and precluded the shareholders from relitigating an essential element of their claims.

Chancellor Allen noted that this court could not give greater effect to a judgment of another state than would the courts of that state under either the full faith and credit

---

70 *Kahn Bros. & Co., Inc. v. Fischbach Corp.*, 1988 Del. Ch. LEXIS 147, at *4-5 (Nov. 15, 1988).

71 *Id.* at *5-6.

72 *Id.* at *2-3.

73 *Id.* at *2-4.

clause or principles of comity. The court then identified Florida law that permits judgments to be collaterally attacked if procured by extrinsic fraud. This court in *Kahn* held that the plaintiffs had alleged facts that, if proven, would show that Posner had obtained the Florida judgment by extrinsic fraud perpetrated against Fischbach. Thus, the court concluded that a Florida court would permit the stipulated judgment to be set aside upon such proof, and that it could do likewise.[74]

Although this case bears some resemblance to *Kahn*, it also differs from *Kahn* in material respects. Both cases involve Section 225 actions and challenges to the rights of certain persons to serve as corporate directors or officers based on orders entered by non-Delaware courts. On its face, the Connecticut Stipulation at issue here appears to provide the necessary authority for Gray to have executed the disputed written consents. The question is whether this Court, at B.F. Rich's urging, can look beyond the face of the Stipulation and determine the validity under Conn. Gen. Stat. § 45a-631(a) of the provision purporting to authorize Gray to vote the Rich Realty shares owned by his minor children. *Kahn* examined the effect to be given to a Florida judgment under principles of comity and the full faith and credit clause. Chancellor Allen held that he could not "accord[] to the Florida stipulation of dismissal greater effect than would the courts of that state."[75] The same reasoning applies to this case.

---

74 *Id.* at *18-19.

75 *Kahn v. Fischbach*, 1988 Del. Ch. LEXIS 147, at *18.

At this point, however, the circumstances of the two cases diverge. In the context of ruling on a motion to dismiss, the court in *Kahn* held that the plaintiff's allegations of fraud perpetrated by Posner against Fischbach provided sufficient grounds, if proven, for a Florida court, and thus the Delaware Court of Chancery, to set aside the earlier stipulation of dismissal. The court also at least implicitly concluded that the shareholder plaintiff could have sued derivatively in Florida, if necessary, to open the judgment there.[76] Compared to the facts in *Kahn*, the analogous question in this case is quite different: whether B.F. Rich would have standing in Connecticut to challenge the validity under Section 45a-631(a) of the provision in the Stipulation purporting to give Gray the right to vote his minor children's shares.

In Connecticut, a person not a party to prior divorce proceedings has no standing to attack collaterally the divorce decree where the person has no legally protected interest adversely affected by the decree itself at the time it was rendered.[77] For example, in *Fattibene v. Fattibene*, a defendant in an action by his wife to dissolve their marriage challenged the validity of his marriage on the ground that his spouse's divorce decree from a former marriage was void.[78] The Connecticut court held that to have standing to

---

[76] *Id*. at *19.

[77] *See, e.g.*, *Tippin v. Tippin*, 166 A.2d 448, 450-51 (Conn. 1960); *Tyler v. Aspinwall*, 47 A. 755, 756 (Conn. 1901) (holding that it is not error to refuse to entertain a collateral challenge to a divorce from a "mere stranger whose rights are not at all affected by the judgment he seeks to have set aside"); *Fattibene v. Fattibene*, 441 A.2d 3, 5 (Conn. 1981).

[78] 441 A.2d at 5.

make such an attack, the defendant would have to prove that he had a legally protected interest adversely affected by the prior decree when it was rendered. The court then determined that since defendant failed to prove that he had such an interest, he had no standing to attack the divorce decree collaterally.

The Delaware law on standing is similar. In the absence of a specific statutory grant of review, the test for standing, set forth most recently in *Dover Historical Society v. City of Dover Planning Commission*,[79] provides that a plaintiff or petitioner must demonstrate first, that he or she sustained an 'injury in fact'; and second, that the interests he or she seeks to protect are within the zone of interests to be protected.[80]

In this case, B.F. Rich failed to identify any legally protected interest it had in the Stipulation between Foster and Gray *when* the Connecticut Superior Court granted it. B.F. Rich was a stranger to the divorce proceedings and had no interest in the divorce or standing to participate in those proceedings. Furthermore, unlike the situation in *Kahn*, B.F. Rich's challenge to the Stipulation is not based on a wrong committed against it. Rather, B.F. Rich complains that the Stipulation giving Gray the right to vote his children's stock without his first being appointed guardian of their estates violates Section 45a-631(a) and is therefore invalid. The intent of that statute, however, plainly is

---

79 838 A.2d 1103 (Del. 2003).

80 *Id.* at 1110. *See also O'Neill v. Town of Middletown*, 2006 Del. Ch. LEXIS 10, at *138 (Jan. 18, 2006). This statement of the law of standing has been called the "*Data Processing* test." *See Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 903 (Del. 1994) (citing *Ass'n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 153-54 (1970)).

to protect the interests of the minor children affected. In contrast, the interests B.F. Rich seeks to protect are its own interests in preserving the status quo, under which it as a 15% stockholder of Rich Realty controls the day-to-day operations of the company, including the administration of the lease of Rich Realty's primary asset to B.F. Rich itself. Not surprisingly, I find that those interests fall outside the zone of interests to be protected by Section 45a-631(a). Thus, B.F. Rich does not have standing to attack collaterally in this action the validity of the Stipulation entered by the Connecticut Superior Court as it relates to Gray's right to vote his children's shares.

3. Assuming arguendo that B.F. Rich has standing to challenge the stipulation, is it entitled to full faith and credit in this court?

Even if B.F. Rich did have standing to challenge the Stipulation on the ground that the provision purporting to give Gray the right to vote his children's stock in Rich Realty violates Section 45a-631(a), I do not consider that challenge persuasive. Plaintiff argues that the Connecticut Superior Court exceeded its authority when it approved the Stipulation,[81] and that it therefore is not entitled to full faith and credit. B.F. Rich further contends that this Court cannot interpret the Stipulation as an appointment of Gray as a guardian for the estates of his children, because only the Connecticut Probate Court has jurisdiction to appoint a guardian of a minor's estate. Both these contentions are

[81] Both Plaintiff and Defendants presented their arguments on the premise that the Connecticut Superior Court approved the Stipulation. *See, e.g.*, Pl.'s Pre-Trial Br. at 9-10; Def. Rich Realty, Inc.'s Post-Trial Br. at 1. The evidence on this point is less than clear in terms of whether the Superior Court affirmatively approved the Stipulation or whether it simply was filed with the Court. Absent any dispute about it, however, I infer that the Superior Court did approve the Stipulation.

premised on B.F. Rich's argument that Gray's voting of the shares constituted a "receipt" or "use" within the meaning of Section 45a-631(a) of an asset of his minor children having a value in excess of $10,000. Because Defendants dispute that proposition, I turn to it next.

The Rich Realty stock of Adelia and Richard always has been in their names; the Stipulation did not change that. Hence, Gray never received the stock itself. B.F. Rich appears to argue that by virtue of the Stipulation Foster transferred or assigned to Gray the voting rights in the children's stock. I do not agree with that characterization. As the parents of Adelia and Richard, Foster and Gray both could have voted the shares in their children's behalf. The effect of the Stipulation was not to convey a right to Gray that he did not have already. Rather, the Stipulation reflected Foster's decision not to exercise her right as a parent to vote the shares, or to participate actively in or to oppose Gray's attempt to vote them on behalf of the children.

If the disputed shares were in a publicly traded company, like IBM, it is unlikely that anyone would claim that only a guardian could vote them. Because Rich Realty is a private company with only a handful of stockholders and the minor children hold approximately 49% of the shares, however, Plaintiff contends that the exercise of the voting rights associated with those shares constitutes a "use" requiring a guardian. The parties have not identified, and the Court has not found, any Connecticut case addressing the applicability of Section 45a-631(a) to voting rights in stock. The most analogous case law is that relating to suits commenced and prosecuted on behalf of minors by a parent or

next friend. In *Doe v. City of Waterbury*,[82] discussed previously, for example, the court held that the mother of a minor could pursue tort litigation on the child's behalf, and that to do so a guardian of the minor's estate did not have to be appointed. The Commissioner of the Department of Children and Families sought to intervene in that case as a guardian. In denying that application, the court observed that the Commissioner's concern seemed to be that the mother would wrongfully obtain or misuse any recovery from the tort case. The court rejected that concern, citing Section 45a-631(a) as providing adequate protection if a recovery was achieved.[83]

Although it involved an incompetent adult, as opposed to a minor, the *Cottrell* case[84] also sheds some light on whether a guardian is needed to vote the minor's shares here. The *Cottrell* court held that a person adjudged incompetent could not pursue an appeal in her own name until the determination of incompetency was changed.[85] In that context, the court explained the importance of allowing certain actions by a "next friend."

> It should be remembered, however, that the purpose of authorizing a guardian ad litem is to ensure that the interests of the ward are well represented. Its purpose is not . . . to burden nor hinder them in enforcing their rights; nor to confer any privilege or advantage on persons who claim adversely to them. In order that this purpose be fulfilled, certain exceptional situations warrant the allowance of suit on behalf of the incompetent *by a next friend*. . . .

---

82 2004 WL 726899, at *3 (D. Conn. 2004).

83 *See id.*

84 *Cottrell v. Conn. Bank & Trust Co.*, 398 A.2d 307 (Conn. 1978).

85 *Id.* at 309.

> It is significant that the legal disability of an incompetent is analogous to that of a minor. In each case, the purpose of providing representation is to ensure that the legal disability imposed will not undermine adequate protection of a ward's interest. Indeed, the forerunner of *General Statutes* § 45-54, which provided for the appointment of a guardian ad litem only for minors, was amended in 1939, § 1286e, to extend such coverage to incompetents without distinction between either class, an act indicative of the similarity of concern shown to each group by the legislature. Because it has long been an established practice in this state for a minor to bring a court action by a next friend[,] even in the absence of the court's authorization of such representation[,] allowance of such a practice on behalf of an incompetent is in accord with the tradition of this court as well as the intent of the legislature as expressed in *General Statutes* § 45-54.[86]

The same reasoning applies in this case and warrants the conclusion that Gray's ability to vote the stock in Rich Realty of his minor children does not represent a "use" of a valuable asset of theirs under Section 45a-631(a).

A failure to vote the children's stock in these circumstances effectively would prevent the holders of a collective majority of shares from voting altogether, and preserve the status quo. As a result, the holders of 15% of the company's stock (B.F. Rich) would continue to control the board of Rich Realty. By doing so, B.F. Rich also would continue to control its landlord. For the same reasons I concluded B.F. Rich lacks standing to insist that only a guardian could vote these shares, I am skeptical of their argument on the merits.

---

[86] *Cottrell v. Conn. Bank & Trust Co.*, 398 A.2d 307, 310 (Conn. 1978).

Additionally, this situation does not implicate the public policy concerns that motivate the requirement of a guardian of a minor's estate. Unlike many of the Connecticut cases, Gray's situation does not contemplate the transfer of a liquid asset from an outside or third party to a minor, such as was involved in the *Ryle* case. The case law reflects numerous appointments of guardians of the estate, but in the context of tort or personal injury awards and settlements, wills, and trusts where a parent otherwise might take control of the asset and dissipate it to the detriment of the minor. Here, the stocks and the economic interest in them have always been and remain in the children's names. As in *Doe v. City of Waterbury* discussed *supra*, B.F. Rich's primary concern seems to be that Gray will misuse the children's voting rights to benefit himself and thereby undermine the rights of B.F. Rich, as well as the children. Based on Gray's troublesome history as a corporate fiduciary, these concerns are understandable. Adelia and Richard and, for that matter, B.F. Rich, have other means, however, to protect their respective interests against such wrongdoing. In the case of the children, their mother continues to have moral and fiduciary duties to them, and she, as well as others who might sue as next friend on behalf of the minors, could seek appropriate relief if Gray breached any applicable duty.

Furthermore, based on my review of the record and relevant Connecticut law, I find Plaintiff's argument that the Superior Court exceeded its jurisdiction when approving the Stipulation in conjunction with the divorce proceedings unpersuasive. The Superior Court of Connecticut is a court of general jurisdiction, including jurisdiction

over *de novo* guardianship appeals from the Probate Court,[87] appointment of a guardian where the child has no living parent,[88] termination petitions,[89] and custody-guardianship matters concerning dependent or neglected children.[90] In particular, I find persuasive the Superior Court's general knowledge and jurisdiction with respect to guardianship issues and its ability, by way of appeal, to remand and transfer cases to the Probate Court following a *de novo* review of the guardianship issues. In this case, the Superior Court had exclusive jurisdiction to assess and approve the divorce proceeding and could have transferred this portion of the Stipulation (which explicitly deals with the Rich Realty stock) to the Probate Court had it found it necessary to do so. Instead, the Superior Court approved the Stipulation as presented. Without evidence casting material doubt on the Superior Court's approval of the Stipulation, this Court is reluctant to second guess a Connecticut court of competent jurisdiction on a novel issue of Connecticut law.

---

87 *See In re Jeremy P.*, 2000 Conn. Super. LEXIS 2437, at *3 (Aug. 24, 2000) (reviewing guardianship appeal and resolving the dispute. "The Superior Court redetermines the issues within the appeal and not merely whether the Probate Court abused discretion.")

88 *See Joshua S.*, 2000 Conn. Super. LEXIS 2132, at *35 (Aug. 21, 2000). "[The Superior Court of Connecticut] has jurisdiction of all matters expressly committed to it and of all others cognizable by any law court of which the exclusive jurisdiction is not given to some other court." *Id*.

89 *Favrow v. Vargas*, 647 A.2d 731 (Conn. 1994).

90 *See Joshua S.*, 1999 Conn. Super. LEXIS 2940, at *8-9 (Oct. 28, 1999) (citing *Bristol v. Brundage*, 589 A.2d 1 (Conn. App. 1991), which rejected Probate Court as court of exclusive jurisdiction where brother was named guardian of person and estate of surviving minor child).

Consequently, I reject Plaintiff's argument that the Superior Court lacked jurisdiction to approve the Stipulation entered in Foster and Gray's divorce proceeding.

Thus, I give the Stipulation approved by the Connecticut Superior Court full faith and credit and find that it grants Gray the ability to vote his minor children's shares.

IV. CONCLUSION

For the reasons stated, I hold that the written consents are legally effective, and that as a consequence, Gray, Carson M. Gray, and B. David Gray were elected as *de jure* directors and officers of Rich Realty. I also hereby vacate the stay of the co-pending action under 8 *Del. C.* § 220.

IT IS SO ORDERED.