

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

ANDRE G. BOUCHARD
CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: May 7, 2014

Date Decided: May 19, 2014

Stuart M. Grant, Esquire
Michael J. Barry, Esquire
Mary S. Thomas, Esquire
Grant & Eisenhofer P.A.
123 Justison Street
Wilmington, DE 19801

Christine S. Azar, Esquire
Labaton Sucharow LLP
300 Delaware Avenue, Suite 1225
Wilmington, DE 19801

Blake A. Bennett, Esquire
Cooch & Taylor P.A.
1000 West Street, 10th Floor
Wilmington, DE 19899

Ryan M. Ernst, Esquire
O'Kelly Ernst & Bielli, LLC
901 North Market Street, Suite 1000
Wilmington, DE 19801

Gregory P. Williams, Esquire
Blake Rohrbacher, Esquire
Susan M. Hannigan, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Collins J. Seitz, Jr., Esquire
Garrett B. Moritz, Esquire
Seitz Ross Aronstam & Moritz LLP
100 South West Street, Suite 400
Wilmington, DE 19801

RE: *In re KKR Financial Holdings LLC Shareholder Litigation*
Civil Action No. 9210-CB

Dear Counsel:

On March 12, 2014, Master LeGrow orally issued a final report
recommending that the Court grant a stay of discovery in this action pending a

decision on defendants' motion to dismiss. Plaintiffs took exception to the recommendation in the final report. Briefing on that issue was completed on May 7, 2014. For the reasons explained below, the Court agrees with the Master's conclusion based on its *de novo* review and will grant the motion to stay discovery.

This action involves a challenge to a stock-for-stock merger between KKR Financial Holdings LLC ("KFN") and KKR & Co. L.P. ("KKR"). Plaintiffs did not seek to enjoin the transaction, which closed on April 30, 2014. The Verified Consolidated Class Action Complaint seeks compensatory damages for alleged breaches of fiduciary duty and aiding and abetting.

Plaintiffs allege that KKR owned approximately 0.1% of KFN's common shares before the transaction closed.¹ Notwithstanding KKR's low level of equity ownership in KFN, plaintiffs argue that KKR controlled every facet of KFN's operations pursuant to the terms of a management agreement and thus should be deemed a controlling stockholder. Based on this premise, plaintiffs argue that the challenged transaction should be evaluated under the entire fairness standard, making it unlikely that defendants can succeed on a motion to dismiss and,

¹ Am. Compl. ¶ 44.

therefore, making it inappropriate to stay discovery pending the resolution of such a motion.

In their stay motion filed on March 7, 2014, defendants argued that the entire fairness standard would not apply (and, implicitly, that the business judgment rule would apply) because (1) controlling legal precedent precludes plaintiffs' claim that a holder of less than one percent of stock in a widely held company can be a controlling stockholder, (2) the management agreement did not turn KKR into a controlling stockholder, (3) the transaction received the unanimous recommendation of a committee of independent directors unaffiliated with KKR and would be subject to an affirmative vote of KFN stockholders not affiliated with KKR, and (4) plaintiffs have failed to plead sufficient conflicts or relationships among KFN's directors to properly allege that a majority of them are interested or lack independence.

"The standard of review for a master's findings, both factual and legal, is *de novo*." *In re Real Estate of Jamies's L.L.C.*, 2006 WL 644473, at *1 (Del. Ch. Mar. 1, 2006) (citing *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999)).

A party seeking a stay of discovery need only "show that it has practical reasons for staying discovery." *Skubik v. New Castle Cnty.*, 1998 WL 118199, at

*2 (Del. Ch. Mar. 5, 1998). “[T]hose reasons need not rise to a level of unusual or difficult circumstances.” *Id.* (citation omitted). “[A]voiding unnecessary discovery is usually sufficient justification for a stay of discovery pending resolution of a potentially dispositive motion.” *TravelCenters of Am. LLC v. Brog*, 2008 WL 5101619, at *1 (Del. Ch. Nov. 21, 2008). “This burden is often easily met because avoiding unnecessary discovery is usually sufficient” to justify a stay. *Id.*

On the other hand, denial of a request to stay discovery is appropriate in a number of circumstances. “The threat, for example, that information may be unavailable later would tend to suggest the appropriateness of continued discovery during the presentation of such a motion. A colorable claim of irreparable injury and a request for preliminary injunction would also require the court to evaluate the fairness to plaintiff of staying discovery.” *In re McCrory Parent Corp.*, 1991 WL 137145, at *1 (Del. Ch. July 3, 1991).

Having independently considered the arguments that were presented to the Master, the Court concludes that practical reasons exist to grant a stay of discovery pending the resolution of defendants’ motion to dismiss. In particular, in their stay motion, defendants provided sufficient support to credibly argue that the

challenged transaction may be subject to business judgment review and thus that this action may be amenable to disposition on a motion to dismiss.² Moreover, no preliminary injunctive relief was sought in this case and no argument has been made that the evidence plaintiffs seek will become unavailable or that any other special circumstance exists to warrant imposing on the parties the burden and expense of undertaking discovery concerning a significant transaction before the resolution of a potentially dispositive motion to dismiss.

For these reasons, defendants' motion to stay discovery pending the resolution of the defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

Sincerely,

/s/ Andre G. Bouchard

Chancellor

AGB/gp

² Of course, the Court reaches no conclusion on this issue at this time.