



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARY S. SCHAHEEN,	§	
	§	
Defendant-Below,	§	No. 13, 2014
Appellant,	§	
	§	Court Below: Court of Chancery
v.	§	
	§	C.A. No. 8160-VCN
JOHN A. BORIS AND ANN S. BORIS,	§	
	§	
Plaintiffs-Below,	§	
Appellees.	§	

Submitted: September 10, 2014  
Decided: September 12, 2014

Before **STRINE**, Chief Justice, **HOLLAND**, **RIDGELY**, and **VALIHURA**,  
Justices, and **WALLACE**,<sup>1</sup> Judge, constituting the Court *en Banc*.

**ORDER**

This 12th day of September 2014, the Court, having considered this matter on the briefs filed by the parties and after oral argument, has determined that:

(1) One of the primary issues in this appeal is whether certain disputed issuances of common stock were made in conformity with the Delaware General Corporation Law, and, if not, whether any defects in the issuances rendered them void or voidable. If any defect in the approval process rendered the issuances voidable, rather than void, the appellant had a right to have her equitable defenses considered on the merits. A full record was developed in support of those defenses at trial.

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<sup>1</sup> Sitting by designation under Del. Const. art. IV, § 12 and Supr. Ct. R. 2 and 4.

(2) At oral argument, the Court was told by the parties that a related matter is currently pending before the Court of Chancery in an action titled *Numoda Corporation v. Numoda Technologies, Inc. and Numoda Capital Innovations, LLC*.<sup>2</sup> Trial in that case was held before Vice Chancellor Noble on July 8-11, 2014, and a post-trial oral argument is scheduled for September 25, 2014. That matter involves two actions that were consolidated, one brought by the appellees, and another brought by the appellant and other parties who contend they were also issued the shares of common stock disputed by the appellees in this action. Among other contentions, the appellant and the parties aligned with her claim relief under a new section of the DGCL, Section 205, which permits the Court of Chancery to validate and declare effective a “defective corporate act” or “putative stock” issuance. The section specifically enables the Court of Chancery to “declare that shares of putative stock are shares of valid stock or require a corporation to issue and deliver shares of valid stock in place of any shares of putative stock.”<sup>3</sup> In making the determination of whether to provide relief under Section 205, the statute expressly allows the Court of Chancery to consider any “factors or considerations” it “deems just and equitable,” thus illustrating the overlap in the issues between this case and the one now pending.<sup>4</sup>

(3) If, in that litigation, the appellant succeeds in proving that the disputed issuances occurred as she said and that the equities warrant a ruling in her favor, the Court of Chancery’s decision will have a profound effect on this case, and potentially

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<sup>2</sup> C.A. No. 9163-VCN.

<sup>3</sup> 8 *Del. C.* § 205(b)(6).

<sup>4</sup> 8 *Del. C.* § 205(d)(5).

moot all the issues before us, including important issues raised regarding whether a written instrument is required in connection with the issuance of common stock.

(4) For that reason, we are staying this appeal until *Numoda Corporation v. Numoda Technologies, Inc. and Numoda Capital Innovations, LLC* is decided. In order for the record to be complete, the Court of Chancery may consider any equitable defenses raised by the appellant in connection with this matter, *Boris v. Schaheen*, including the trial record, along with the record developed in the pending case. The Court of Chancery may exercise its discretion to consolidate this case and the related matter, if that is more efficient for the parties and the Court of Chancery itself.<sup>5</sup>

IT IS ORDERED.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice

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<sup>5</sup> See, e.g., *Levinhar v. MDG Medical, Inc.*, 2009 WL 4263211, at \*11 (Del. Ch. Nov. 24, 2009) (“[Consolidation] requests have been granted by this court, and this court has tried related plenary and Section 225 claims simultaneously”); *Laster v. Waggoner*, 581 A.2d 1127 (Del. 1990) (affirming the Court of Chancery in a case in which it consolidated a § 225 action with a related plenary action to enjoin an asset sale).