



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHESTER COUNTY RETIREMENT )  
SYSTEM, individually, and on behalf of )  
all those similarly situated, )  
)  
Plaintiff-Below, )  
Appellant, ) No. 603,2016  
)  
v. ) Court Below:  
) Court of Chancery of the State of  
JOSHUAL. COLLINS, DAVID A. ) Delaware  
WILLMOTT, ROBERT E. BEASLEY, ) C.A. No. 12072-VCL  
JR., RONALD CAMI, ANDREW C. )  
CLARKE, NELDA J. CONNORS, E. )  
DANIEL JAMES, HAROLD E. )  
LAYMAN, MAX L. LUKENS, DANIEL )  
J. OBRINGER, BLOUNT )  
INTERNATIONAL, INC., AMERICAN )  
SECURITIES LLC, P2 CAPITAL )  
PARTNERS, LLC, P2 CAPITAL )  
MASTER FUND I, L.P., ASP BLADE )  
INTERMEDIATE HOLDINGS, INC., )  
ASP BLADE MERGER SUB, INC. and )  
GOLDMAN, SACHS & CO., )  
)  
Defendants-Below, )  
Appellees )

**APPELLEES P2 CAPITAL PARTNERS, LLC, P2 CAPITAL MASTER  
FUND I, L.P., AMERICAN SECURITIES LLC, ASP BLADE  
INTERMEDIATE HOLDINGS, INC. AND ASP BLADE MERGER SUB,  
INC.'S CORRECTED ANSWERING BRIEF**

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Dated: March 23, 2017

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## NATURE OF PROCEEDINGS

This is an appeal from the Court of Chancery's order dismissing Plaintiff-Below/Appellant's verified amended class action complaint (the "Amended Complaint"), which alleged breach of fiduciary duty and aiding and abetting claims in connection with the acquisition of Blount International, Inc. ("Blount" or the "Company") by American Securities LLC ("American Securities"), P2 Capital Partners LLC and P2 Capital Master Fund I, L.P. (together, "P2") and, together with their acquisition entities ("Merger Subs"), the "Buyers." Blount's fully informed, independent stockholders approved a merger transaction in which such stockholders received an 86% premium to the closing price for Blount stock on the day before the transaction was announced (the "Merger"). Consistent with the guidance set forth in *Corwin v. KKR Financial Holdings LLC*, 125 A.3d 304 (Del. 2015), the Court of Chancery dismissed Plaintiff's claims for breach of fiduciary duty against the director defendants. In turn, the Court also dismissed Plaintiff's claim of aiding and abetting against the Buyers predicated on the alleged breach.

The Buyers join in Appellees Blount Defendants' Answering Brief (the "Blount Defendants' Answering Brief"), and incorporate its arguments by reference. This Answering Brief briefly addresses the Buyers' alternate argument -- raised in the court below but not ruled upon by the Court of Chancery in its dismissal order -- that Plaintiff's failure to plead that the Buyers knowingly

participated in any alleged breach of fiduciary duty by the director defendants provides an alternate ground for affirming the dismissal of the aiding and abetting claim against the Buyers.

## **SUMMARY OF ARGUMENT**

1. Denied. The Court of Chancery properly held that the fully informed, uncoerced approval of the Merger by the holders of a majority of Blount's outstanding shares not affiliated with the Buyers required the application of the business judgment rule, thereby barring all claims but waste, which Plaintiff did not allege, and requiring dismissal of the aiding and abetting claim against the Buyers.

2. Cannot be admitted or denied. The Court of Chancery's dismissal of the aiding and abetting claim against the Buyers may be affirmed on the further and independent ground, not argued in Plaintiff's opening brief, that Plaintiff failed to allege adequately that the Buyers knowingly participated in any underlying breach of fiduciary duty, even if one existed.

## **COUNTERSTATEMENT OF FACTS**

In the interest of economy and to avoid duplication, the Buyers adopt the Counterstatement of Facts contained the Blount Defendants' Answering Brief. Blount Defs. Ans. Br. at 5-21.



## ARGUMENT

### **I. THE COURT OF CHANCERY PROPERLY DISMISSED PLAINTIFF’S AIDING AND ABETTING CLAIM AGAINST THE BUYERS FOR FAILURE TO PLEAD ADEQUATELY AN UNDERLYING BREACH OF FIDUCIARY DUTY.**

#### **A. Question Presented.**

Whether the Court of Chancery correctly held that the fully informed, uncoerced approval of the Merger by the holders of a majority of Blount’s outstanding shares not affiliated with the Buyers required the application of the business judgment rule, thereby barring all claims but waste, which Plaintiff did not allege, and requiring dismissal of the aiding and abetting claim against the Buyers. (Preserved at B140-42, B205-24).

#### **B. Scope of Review.**

“The decision of the Court of Chancery granting a motion to dismiss under Court of Chancery Rule 12(b)(6) is reviewed by this Court *de novo*.” *Feldman v. Cutaia*, 951 A.2d 727, 730 (Del. 2008). While “[t]his Court . . . is required to accept the well-pled allegations of the [complaint] as true and draw reasonable inferences in favor of the plaintiff, . . . conclusory allegations need not be treated as true, nor should inferences be drawn unless they truly are reasonable.” *Id.* at 731.

### **C. Merits of Argument.**

For the reasons stated in the Blount Defendants' Answering Brief, Plaintiff failed to plead an underlying breach of fiduciary duty. Blount Defs. Ans. Br. at 21-40. Accordingly, no claim for aiding and abetting can be sustained against the Buyers, and the Court of Chancery's dismissal of such claim was proper. *See, e.g., Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001) (to plead a claim for aiding and abetting, complaint must allege predicate breach of fiduciary's duty); *Malone v. Brincat*, 722 A.2d 5, 14-15 (Del. 1998) (where there is no primary breach of fiduciary duty violation, there can be no claim for aiding and abetting that violation).

**II. ALTERNATIVELY, THIS COURT CAN AFFIRM DISMISSAL OF THE AIDING AND ABETTING CLAIM BECAUSE PLAINTIFF FAILED TO ALLEGE THAT THE BUYERS KNOWINGLY PARTICIPATED IN ANY ALLEGED BREACH OF FIDUCIARY DUTY.**

**A. Question Presented.**

Whether the Court of Chancery’s dismissal of the aiding and abetting claim against Buyers may be affirmed on the further and independent ground that Plaintiff has failed to plead knowing participation on the part of any of the Buyers. (Preserved at A585-87, B194-203).

**B. Scope of Review.**

“[T]his Court may affirm on the basis of a different rationale than that which was articulated by the trial court” and “may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court.” *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

**C. Merits of Argument.**

The dismissal of Plaintiff’s aiding and abetting claim against the Buyers may be affirmed for an additional reason beyond that relied upon by the Court of Chancery, namely that Plaintiff has not alleged that any of the Buyers had knowledge of, or participated in, any breach. *See In re Lukens Inc. S’holders Litig.*, 757 A.2d 720, 734-35 (Del. Ch. 1999) (“Knowing participation, though it need not be pleaded with particularity, must be reasonably inferred from the facts

alleged in the complaint.”), *aff’d sub nom. Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000) (TABLE).

**1. The Amended Complaint Fails to Allege That The Buyers Had Knowledge of a Breach.**

Plaintiff has not sufficiently alleged that any of the Buyers not only participated in an underlying breach of fiduciary duty, but also did so “with the knowledge that the conduct advocated or assisted constitutes such a breach.” *Malpiede*, 780 A.2d at 1097; *In re Radnor Hldgs. Corp.*, 353 B.R. 820, 844 (Bankr. D. Del. 2006).

Plaintiff alleges, without explanation, that P2 and American Securities knew that management supposedly had given the Blount directors “manipulated projections,” A120-21, “t[ook] advantage of the Company at a cyclical low point . . . [to] enrich themselves,” A120-21, and “leverag[ed] the conflicts of interest” among various parties. A119. These types of conclusory assertions are insufficient to state a claim for aiding and abetting a breach of fiduciary duty. *See, e.g., In re Santa Fe Pac. Corp. S’holder Litig.*, 669 A.2d 59, 72 (Del. 1995) (“conclusory statement” that defendants “had knowledge of [Board of Directors’] fiduciary duties and knowingly and substantially participated and assisted in the . . . breaches of fiduciary duty” insufficient to state a claim). *See also* B195-96. Similarly, Plaintiff’s allegation that P2 had “insider information” from discussions with Collins and Willmott in 2014, A119-20, and its suggestion that P2 or

American Securities failed to disclose material information, are untenable. *See* B193-94, B196.

**B. The Amended Complaint Fails to Allege That P2 or American Securities Participated in a Breach.**

Even assuming that P2 or American Securities had knowledge of a breach of fiduciary duty, Plaintiff must plausibly allege that P2 or American Securities participated in such breach. *See, e.g., Oliver v. Boston Univ.*, 2000 WL 1091480, at \*9 (Del. Ch. July 25, 2000) (knowledge of fiduciary duty breaches alone insufficient to establish aiding and abetting liability). Participation in the transaction itself is insufficient. *See, e.g., In re Radnor Hldgs.*, 353 B.R. at 844 (citing *HMG/Courtland Props., Inc. v. Gray*, 749 A.2d 94, 121 (Del. Ch. 1999)) (“[A] plaintiff must prove that the defendant knowingly participated not just in the transactions but in the breach of fiduciary duties.”). Rather, Plaintiff must allege that P2 and American Securities “directly sought to induce the breach of a fiduciary duty or make factual allegations from which knowing participation may be inferred.” *In re BJ’s Wholesale Club, Inc. S’holders Litig.*, 2013 WL 396202, at \*14 (Del. Ch. Jan. 31, 2013) (citation and internal quotation marks omitted). Plaintiff fails to do so.

The Amended Complaint asserts that “propelled by their own improper motives, P2 [and] American Securities . . . assisted the Individual Defendants in failing to conduct a reasonable and independent process to actively seek and obtain

the best price available for Blount’s unaffiliated stockholders.” A121. As explained in the Buyers’ opening brief before the Court of Chancery, B198-99, the Amended Complaint does not allege any motive on the Buyers’ part other than the desire to pay as little as possible, and a party’s efforts to reduce the sales price through arm’s-length negotiations cannot give rise to liability. *Malpiede*, 780 A.2d at 1097; *see also Dent v. Ramtron Int’l Corp.*, 2014 WL 2931180, at \*18 (Del. Ch. June 30, 2014) (rejecting the argument that “[the acquirer] got too good a deal” as insufficient to state a claim for aiding and abetting). Nor does Plaintiff even try to explain how the Buyers played any role in influencing the Blount directors’ sale process.

Similarly, that the Buyers obtained certain deal protections that are routinely upheld by Delaware courts does not support an inference that they participated in a breach of fiduciary duty. *See, e.g., In re BJ’s Wholesale Club, Inc. S’holders Litig.*, 2013 WL 396202, at \*13; *In re Micromet, Inc. S’holders Litig.*, 2012 WL 681785, at \*4 n.8, \*9-10 (Del. Ch. Feb. 29, 2012). *See also* B202-03.

In addition, Plaintiff’s implications that the Buyers’ general discussions with leveraged finance professionals at Goldman Sachs regarding the status of the credit markets were improper ignores that Goldman Sachs had decided not to provide financing in the transaction. A087.

Allegations that P2 Partners participated in a breach by gaining “insider information” and developing a relationship with Collins and Willmott, A119-20, similarly lack a basis in well-pled facts. *See* B200.

Finally, the possibility that the Buyers would retain Blount management to run the Company after the proposed transaction, A091-92, does not support any inference that the parties violated the Special Committee’s instruction that Collins and Willmot not communicate with the Buyers regarding post-merger employment, A091-92. *See* B200-01.

In sum, the Amended Complaint lacks allegations that could support a reasonable inference that the Buyers knowingly participated in a breach of fiduciary duty, and the Court of Chancery’s dismissal of the aiding and abetting claim against Buyers may thus be affirmed on this separate basis.

**CONCLUSION**

For the foregoing reasons, the Buyers respectfully request that this Court affirm the decision of the Court of Chancery granting the Defendants' Motion to Dismiss.

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