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IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE CIRILLO FAMILY TRUST, Plaintiff-Below, Appellant, v. ARAM MOEZINIA, LEWIS TEPPER, MARK WALTER, and DAVA PHARMACEUTICALS, INC., Defendants-Below, Appellees.	)	No. 130, 2019 Court Below: Court of Chancery of the State of Delaware C.A. No. 10116-CB

APPELLANT'S REPLY BRIEF

June 20, 2019

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ARGUMENT

I. The Director Defendants Were Self-Interested with respect to the Notice of Appraisal Rights

Defendants make three arguments here: (1) That the Cirillo Trust did not properly appeal from the Court of Chancery's decision below; (2) that the Court of Chancery properly concluded that the directors were not self-interested in connection with the Merger, and (3) that the directors reasonably relied on Dava's outside counsel in connection with the Notice. (AB at 21-43)[1]. The first argument mis-states what was appealed, the second focuses on the wrong issue with respect to the directors' self-interest, and the third ignores that "reasonable reliance" under Section 141(e) is not dispositive where the duty of loyalty is involved.

A. The Cirillo Trust's claim that the directors were self-interested in the Notice was raised and decided in the Court of Chancery, and was properly appealed from

Defendants' claim that the Cirillo Trust did not properly appeal from the Court of Chancery's decision below mis-states (or misunderstands) what occurred both below and on appeal.

In the Court of Chancery, the Cirillo Trust raised a claim, in Count II of its first amended complaint, that the Notice of Appraisal Rights sent to the Cirillo Trust in connection with the Merger (the "Notice") lacked any financial or operational information of Dava, and thus was a breach of the directors' fiduciary

[1] Appellees' Answering Brief (Trans. ID 63324747) ("AB").

duty. (B0013-B0014).[2] In response to defendants' renewed motion for summary judgment with respect to this amended complaint (Trans. ID 59988534) (A0047), the Cirillo Trust argued that the directors were self-interested in the Notice, because they wanted to keep secret (a) the massive dilution to which the Cirillo Trust (and other stockholders) had been subjected (a dilution in which affiliates of all the Director Defendants participated)[3] and (b) the apparently-shady deals which benefitted some obscure foreign entities (apparently affiliated with several of the directors) at the expense of Dava. (*See* A0445-A0449). Defendants never cite to any of this.

The Court of Chancery analyzed what it believed to be the Cirillo Trust's claim, determined that the directors were not self-interested in the Merger, and granted defendants' motion for summary judgment as a result. (Op. 25-29).[4] As explained in the Cirillo Trust's opening brief on appeal (OB 25-30), it was in this

[2] References to "A__" are to the Appendix to Appellant's Opening Brief. References to "B__" are to the Appendix to Appellees' Answering Brief (Trans. ID 63335383).

[3] Defendants claim that the Cirillo Trust made a "false assertion" when it contended that Dava's "*directors* were self-interested because they received warrants issued in connection with a debt purchase in January 2013." (AB 25 n.13) (emphasis added). The Trust has argued consistently that it was the directors' *affiliates* who received the warrants. (*See, e.g.*, OB 11).

[4] All undefined terms have the same meaning as defined in Appellant's Opening Brief (Trans. ID 63231933) ("OB").

analysis where the Court of Chancery improperly focused on whether the directors were self-interested in the *Merger* (which we agree they were not), not on whether they were self-interested in the contents of the *Notice* (which they were). Again, defendants mention none of this.[5]

The Cirillo Trust then timely appealed from the grant of summary judgment (Trans. ID 63093608) and argued this issue in detail in its opening brief on appeal. (OB 25-30). That is all the Trust needed to do to preserve its right to contest the Court of Chancery's determination on this issue, including the Trust's right to argue that the Court of Chancery never focused on, and therefore did not decide, the Trust's actual argument that the directors were self-interested in the contents of the Notice.

In support of their argument that the Cirillo Trust did not properly preserve its appeal rights, defendants incorrectly focus on the Trust's proposed Second Amended Complaint (B0366-B0404) (the "SAC"). That proposed complaint was filed by the Trust to add additional claims uncovered in discovery;[6]

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[5] Defendants try to defend the massive dilution resulting from the renegotiation of the Wachovia loan (AB 19-20), setting forth their own version of the factual record. For plaintiffs more complete explanation of what occurred, *see* OB 7-12. The Court of Chancery never made factual determinations on this issue.

[6] These included claims against two of the defendants (Aram Moezinia and Lewis Tepper) in their capacity as officers, claims against the directors for permitting the improper dilution of the Cirillo Trust's stock, a claim against the directors that the Notice failed to disclose material information relating to the dilution, and a claim

it also added many facts uncovered in discovery that related either to the new claims or provided additional information concerning the existing two claims. The Court of Chancery denied (with one exception) the Trust's efforts to further amend its complaint, determining that the proposed new claims were either futile or moot. (OB 24, citing Op. 41). As explained in the Trust's opening brief on appeal, plaintiff did not appeal the denial of this motion to amend, because a successful appeal on the issues it has raised here should grant it the necessary relief. (OB 24).

And defendants are wrong in their implicit argument that, to rely on appeal on the facts set forth in the proposed SAC, the Cirillo Trust was required to appeal from the denial of its motion to amend. Those facts did not need to be included in the SAC so that the Trust's original cause of action about the directors' self-interested failure to have the Notice include necessary information would meet pleading standards. That cause of action was raised in the first amended complaint, for which the Trust only needed to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Ct. Ch. R. 8(a)(1); *Loudon v. Archer-Daniels-Midland Co.*, 700 A.2d 135, 140 (Del. 1997). The Trust's pleadings certainly met those requirements, and defendants do not argue here (and did not argue below) to the contrary.

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against Dava, the acquiror Endo and another entity for improper retention of the Cirillo Trust's merger consideration. (B0366-B0404; *see* OB 21).

When faced with defendants' motion for summary judgment, the Trust was entitled to rely upon any admissible evidence in the record, whether or not it was included in the complaint. Ct. Ch. R. 56(c); *Lynch v. Barba*, 2018 WL 1613834, at *4 n.29 (Del. Ch. Apr. 3, 2018). And the Trust did so (without any claim by the defendants that it could not do so because these facts were only set forth in the SAC). None of this factual reliance required the Trust to appeal from the denial of its motion to amend. And none of this factual reliance prevents this Court from considering admissible evidence in the record before the Court of Chancery.

B. The Directors were self-interested in the Notice

In their substantive response, defendants argue that the Merger was an arm's-length transaction with a third party, and thus was a transaction in which the directors had no self-interest. (AB 25). When defendants do focus on the dilutive issuance of the warrants as part of the restructuring of the Wachovia Loan (*see* OB 9-11), they note that this was a different transaction than the Merger. We agree, but this again was not what the Cirillo Trust argued below and in its opening brief on appeal.

Instead, as the Trust explained at length both in the Court of Chancery and here on appeal, the directors had strong reasons to avoid having to defend against an appraisal case, where discovery likely would reveal the massive self-interested dilution they had approved, the directors' self-interested attempts to defraud the

smaller stockholders, and Dava's suspicious payments to questionable foreign entities that appeared to be affiliated with some of the directors. Thus, the directors were very interested in not having the Notice reveal anything that could cause the Cirillo Trust to use the "gun" that Delaware law had placed in its hands–filing an appraisal action in which the directors could not realistically avoid material discovery obligations. (OB 19, 27).

When defendants do address the Cirillo Trust's actual argument about self-interest, they mislead, arguing that the directors did disclose the dilution resulting from the issuance of the warrants. (AB 26). As explained in the Trust's opening brief on appeal, when Mr. Cirillo (on behalf of the Trust) asked how the Trust's stake in Dava had been diluted, Mr. Tepper (one of the directors) avoiding disclosing the identities of the warrant recipients, which would have revealed the self-interested nature of their issuance and no doubt piqued Mr. Cirillo's interest further. Instead, Mr. Tepper only talked about the mechanics of how the stock was diluted. (OB 18). Defendants never respond to this point.

C. Reliance on outside counsel is not a complete defense to a breach of loyalty claim

As the Trust explained in its opening brief on appeal, where the duty of loyalty is implicated, reliance on counsel, and the protections of Section 141(e), do not automatically insulate directors from liability. (OB 31-32). Instead, it is only a non-dispositive factor in evaluating whether directors have shown the entire fairness

of the transaction under attack. In support, the Trust cited *Valeant Pharmaceuticals International v. Jerney*, 921 A.2d 732, 751 (Del. Ch. 2007), *Owen v. Cannon*, 2015 WL 3819204, at *30-31 (Del. Ch. June 17, 2015) and *Encite LLC v. Soni*, 2011 WL 5920896, at *22 (Del. Ch. Nov. 28, 2011) (OB 31-32). As these cases explain, the directors' self-interest should prevent them from relying on Section 141(e) as a bar to their liability.

Defendants never respond to this argument. Instead, they argue factually that their reliance was reasonable, again focusing on the directors not being interested in the *Merger*. (AB 28).[7] But, because the correct focus is on whether the directors were self-interested in the *Notice* (an issue which defendants do not mention here), this incorrect focus does not help them.

Thus, the directors do not meet the standard for complete vindication of their conduct under Section 141(e).

[7] Defendants also argue that the Trust is trying to have this Court "adopt and apply an unprecedented higher and unbounded duty for directors to double-check the work of their outside counsel." (AB 30). What defendants miss in all of this is that the directors here were self-interested, and thus should not be able to use the protections of Section 141(e) as a complete bar to liability.

II. Delaware Corporations Should Have the Same Disclosure Obligations with respect to a Notice of Appraisal as the Directors and Officers

A. Plaintiff Addressed this Issue as Directed by the Court of Chancery

In their answering brief, defendants assert that the Cirillo Trust did not properly raise before the Court of Chancery and preserve for appeal any argument concerning whether Delaware corporations and their fiduciaries should have the same obligations to stockholders with respect to a Notice of Appraisal Rights. (AB 33). As explained in the Trust's opening brief, the Court of Chancery, in a letter to the parties dated January 26, 2018, asked for briefing regarding the question whether 8 *Del. C.* § 262(d)(2) imposes an obligation on a corporation to disclose available material facts that would enable a stockholder to make an informed decision whether to accept the merger consideration being offered in a transaction or pursue appraisal rights. (OB 33-34; A1068-1070). The parties thereafter briefed this issue. (A1071-A1090; A1091-A1111). Thus, this issue was raised by the Court of Chancery, fully briefed by the parties in that Court, properly appealed from ((Trans. ID 63093608), and therefore can be considered on appeal. *See Greenfield v. Miles*, – A.3d –, 2019 WL 2295466, at *11 (Del. May 30, 2019) ("Even though Greenfield waived her

other due process claims from Count II of her Complaint, Greenfield briefed and preserved her state-created danger claim from Count III of her Complaint").[8]

After raising the issue, the Court of Chancery then declined to decide it in the Opinion because "the Trust has not attempted to assert a claim against the successor entity under Section 262." (Op. 47 n.168). Of course, this fact was known when the Court asked for additional briefing on the subject, and thus it is unclear why the Court thereafter did not decide this issue.

While defendants argue that "[t]he record is undeveloped, and the Chancellor was never afforded an opportunity to reach a thoughtful ruling on this subject" (AB 37-38), that is not an argument they made before the Court of Chancery and is contradicted by the record in the trial court. Indeed, nowhere do defendants point to anything material in the record that is "undeveloped" about this issue.

Nor does the authority cited by defendants mandate that this Court decline to address this issue. The Cirillo Trust does not seek to transform the Court of Chancery into a forum that provides improper "legal advice" and "guidance" to litigants (any more than courts already do when they issue opinions). However,

[8] As explained in the Trust's opening brief on appeal (OB 34, n. 11), had the Court of Chancery determined that a cause of action existed with respect to Dava's responsibility for sending a full and complete Notice of Appraisal Rights, the Trust would have filed such a claim. This was an unusual state of affairs, which occurred because of the Court of Chancery's apparent interest in finding some cause of action here.

when the trial court raises an issue, it is not improper to expect a ruling on that issue, if it is relevant to the case. And it certainly is relevant here.

B. The Corporation Should be Required to Include in a Notice of Appraisal More Information than is Set Forth in Section 262(d)(2)

On the merits, mandating that corporations disclose to their stockholders the same information as the fiduciaries of those corporations are required to disclose in connection with stockholders' appraisal rights increases the likelihood that the stockholders actually will receive that necessary information and that they will have a realistic remedy if they do not received it.

The question on this appeal is whether corporations have an obligation to provide financial and other information in a notice of appraisal identical to that which the directors and officers of those corporations are required to provide. (OB 33-41). Construing the appraisal statute to impose identical disclosure requirements on corporations and fiduciaries in connection with the dissemination of a notice of appraisal will lead to more equitable results in cases such as this. From a policy standpoint, imposition of such a requirement is sound because with respect to corporations for which the directors have been exculpated from breaches of the duty of care (which describes most public corporations), there is a weak enforcement mechanism for stockholders to remedy disclosure violations when a deficient notice of appraisal is issued. This is because not only do stockholders need to prove a non-

exculpated claim, they will also frequently have to overcome a Section 141(e) reliance on counsel defense, because it is typically counsel who prepares the notice of appraisal. Thus, absent some means of imposing liability on the corporation that issued the deficient notice, stockholders will be left without a remedy.[9]

Defendants assert that the only disclosure obligations that are imposed on corporations are those expressly set forth in Section 262, and that is how it should be (AB 38). However, a decision by this Court that ensures that both parties bear responsibility for issuing a notice containing the legally required information would not "invite[] impermissible legislation from the courts," as defendants suggest (AB 39). In another circumstance, the Court of Chancery has noted that Delaware corporations are subject to case-law made additional obligations beyond those required by a section of the DGCL. *See TCV VI, L.P. v. TradingScreen Inc.*, 2015 WL 1598045, at *5 (Del. Ch. Feb. 26, 2015) (Case law spanning the last century makes clear that "'in addition to the strictures of Section 160, the undoubted weight of authority teaches that a corporation cannot purchase its own shares of stock when the purchase diminishes the ability of the company to pay its debts, or lessens the security of its creditors.'") (citation omitted).

[9] As explained above, the Cirillo Trust is in an unusual position because the directors here were self-interested in the Notice. That probably will not be the typical situation.

And this is an ideal place for this Court to step in, because of the importance of disclosures to stockholders. As this Court explained in *Glassman v. Unocal Exploration Corp.*, 777 A.2d 242, 248 (Del. 2001): "[w]here the only choice for the minority stockholders is whether to accept the merger consideration or seek appraisal, they must be given all the factual information that is material to that decision." The decision of the Delaware courts to interpret Section 262's statutory notice requirements to include substantive disclosure obligations is in keeping with a regime designed to ensure stockholders possess all of the requisite information needed to make an informed decision. That regime would be undercut if there is no viable means for enforcing disclosure violations.

Defendants' rely on language from *Gilliland v. Motorola, Inc.*, 859 A.2d 80, 86 (Del. Ch. 2004) (AB 39-40), in which the Court of Chancery distinguished between the express statutory obligation to apprise stockholders of their right to seek appraisal (and other information) and the common law fiduciary duty of providing financial information. In addition to being dicta, the Court of Chancery did not address the issue of whether the corporation also has a duty to provide that information to stockholders in a notice of appraisal rights. It appears that the Court of Chancery was not focused on any differences between the information that a corporation (as opposed to its fiduciaries) must include in a notice of appraisal.

Finding a disclosure obligation by the corporation that overlays the notice requirements contained in Section 262 would be in keeping with the theory behind other cases in the disclosure context. In *Berger v. Pubco Corp.*, 2008 WL 2224107 (Del. Ch. May 30, 2008), *rev'd on other grounds*, 976 A.2d 132 (Del. 2009), the Court of Chancery found that there was a disclosure violation in connection with the notice of appraisal issued to minority stockholders after the majority stockholder effected a short-form merger. *Id.* at *1. The Court of Chancery held that the failure to set forth the valuation methodology employed by the corporation constituted a disclosure violation. *Id.* at *3 ("where so little information is available about the Company, such a disclosure would significantly change the landscape with respect to the decision of whether or not to trust the price offered by the parent"). The Court of Chancery recognized that, in the appraisal context, "the question is partially one of trust: can the minority shareholder trust that the price offered is good enough, or does it likely undervalue the Company so significantly that appraisal is a worthwhile endeavor?" *Id.*

Another case highlighting the importance of disclosure obligations, albeit not in the context of a notice of appraisal, is *Dubroff v. Wren Holdings, LLC*, 2009 WL 1478697 (Del. Ch. May 22, 2009). There, the Court of Chancery found that a Section 228 notice provided to stockholders in connection with a proposed recapitalization was deficient because it failed to disclose "who benefited from the

Recapitalization and what benefits" they achieved as a result. *Id.* at *6. The Court also acknowledged the plaintiffs' argument that had the notice contained sufficient disclosures, the plaintiffs could have brought a claim for rescissory relief; the Court found that it was reasonable to infer under the circumstances that "the board deliberately omitted material information with the goal of misleading the Plaintiffs and other shareholders about the Defendants' material financial interest in, and benefit conferred by, the Recapitalization...." *Id.* at *5-6.

Consistent with the teachings of *Berger* and *Dubroff*, the questions of trust and the practical impact of a transaction represent the appropriate framework for analyzing whether a notice of appraisal contains the necessary disclosures to allow stockholders to determine whether to pursue their appraisal rights or accept the merger consideration.

Here, the Cirillo Trust was not provided with enough information to determine whether it could trust that the merger consideration being offered was adequate or if it would be better off instituting a statutory appraisal proceeding. The Court of Chancery agreed on this point, explaining in its Opinion that the Notice "did not contain legally required information" and "was totally bereft of information required under Delaware law." (Op. 1-2; 30). There was no information about the dilutive warrant issuance in the Notice and so the Cirillo Trust was deprived of information that would have weighed in favor of a decision to pursue appraisal

because it could have sought to value any breach of fiduciary duty claim in an appraisal proceeding. *See, e.g.*, *Nagy v. Bistricer*, 770 A.2d 43, 55-56 (Del. Ch. 2000) (in certain circumstances, because breach of fiduciary duty claims "are assets of the corporation being valued, the court must place a value on those assets in coming to a fair value determination"); *Porter v. Texas Commerce Bancshares, Inc.*, 1989 WL 120358, at *5 (Del. Ch. Oct. 12, 1989) ("If the company has substantial and valuable derivative claims, they, like any asset of the company, may be valued in an appraisal.") (citation omitted).

As in *Dubroff*, the directors here ensured that the Cirillo Trust was kept in the dark with respect to the practical impact the merger had on the directors and their affiliates. Accordingly, the ability to hold the successor entity to Dava accountable for the deficient Notice could be necessary here to ensure that the Cirillo Trust obtain relief and is highly likely in other circumstances to be the only realistic avenue for stockholders who receive an insufficient Notice of Appraisal Rights.

C. No other remedies realistically were available to the Trust

Rather than acknowledge that it was their failure to follow Delaware law that created this lawsuit, defendants instead argue that it was all the problems here were the Cirillo Trust's fault–that the Trust should have handled things differently.

In support, defendants argue that, prior to the Merger, the Trust never requested additional information or challenged the disclosures made in the Notice, never requested an injunction, and never demanded appraisal. (AB 41-42). Instead, defendants claim that the Trust (the implication is that this was done deliberately) "waited to seek post-closing damages" and "made a tactical choice to take action after there was no possibility of a disclosure-based cure." (AB 41). This latter claim is citation-free–it is nothing but defendants' wish that it should be true. There is no evidence that the filing of the lawsuit was a deliberate "tactical choice" by the Trust. Indeed, Mr. Cirillo (the trustee of the Cirillo Trust) testified that he never discussed with anyone about not asking for information from Dava so that he could file a lawsuit after the Merger closed. (B0318 at 133). And he did not, on behalf of the Trust, consent to the Merger "[b]ecause I didn't have any information on how this deal was done." (B0318 at 133). Defendants are entirely responsible for those omissions.

None of defendants' arguments make sense. The Cirillo Trust did not seek appraisal here because (as Mr. Cirillo explained) the Notice contained nothing that would alert a reader that there was any reason why appraisal would be a viable option. Of course, this is the whole purpose of the requirements that the Notice contain sufficient information so that the stockholders *can* decide whether or not to seek appraisal.

As for requesting additional information, although the Trust had no duty to do so, Mr. Cirillo did try to understand why the Trust's holdings in Dava had been diluted. However, when he asked Mr. Tepper (one of the directors) to explain the dilution, Mr. Tepper carefully explained only the mathematics of the dilution–he never told Mr. Cirillo, or even hinted at, who the beneficiaries of the massive dilution had been. It certainly appears that Mr. Tepper (who was acting for the other directors, as well) did not want to reveal information that might have caused the Trust to use the "gun" that Delaware law had put "in his hands." So, when defendants now represent (without citation to any evidence) that "DAVA's directors would have identified the disclosure problem and would have supplemented the Notice" (AB 41), this is not what they did at the time, when actually confronted with a request for information. Of course, it is much easier to claim now that you would have handled everything perfectly then, than actually doing so when it could have made a difference.

While the Trust did not seek a pre-closing injunction, such a move would have been very unlikely to succeed. Indeed, defendants never attempt to explain what the Trust would have been required to do, or the timeline on which the Trust would have been required to do it, had it sought an injunction.

Although defendants note that 34 days elapsed between the date of the Notice (July 3, 2014) and when the Merger closed (August 6, 2014) (AB 42), that

would not have been the relevant time period to obtain an injunction. Under Section 262(d)(2) of the Delaware General Corporation Law, stockholders have 20 days from the mailing of the Notice to file an appraisal action. The Notice is dated July 3; we have assumed it was mailed on the same day. Thus, from the date that it received the Notice (we do not know when that was), if the Cirillo Trust wanted to obtain an injunction that would have a real effect on a demand for appraisal, if had until July 23, 2014 to do all of the following:[10]

a. Hire an attorney who knew the requirements of Delaware appraisal law;[11]

b. Have that attorney research the facts;

c. Draft and file a complaint and related injunction papers;

[10] The typical case attempting to enjoin a public-company merger has much more time to work with. Complaints in those cases frequently are filed upon the first public hint of a deal, and typically before the merger proxy has even been sent to the stockholders. Gideon, Mark, *Multijurisdictional M&A Litigation*, 40 J. Corp. L. 291, 294 n.17 (Winter 2015) ("[p]laintiffs often file an M&A suit before the firm issues a preliminary proxy statement. Plaintiffs typically amend the complaint later to include the allegations based on the proxy disclosures") (citation omitted). Here, no one could have presumed the enormous mistakes in the Notice, and thus no consideration of a lawsuit could have been made before receipt and review of that Notice.

[11] From experience, this first step likely would have been the most difficult. As we saw in this case, contacting a large, multi-national law firm is not necessarily sufficient.

d. Obtain a hearing from the Court to present the request for expedited injunctive relief;

e. Respond to whatever papers defendants file; and

f. At that hearing, have the Court of Chancery order that a new Notice be sent to the Cirillo Trust, so that the time to demand appraisal is delayed.

Defendants mention none of this. Nor do they mention that, despite their castigating the Trust now for failing to do all of this immediately after reviewing the Notice, defendants likely would have fought this request every step of the way. In particular (given what other defendants have argued on motions to enjoin deals), defendants no doubt would have argued that any new Notice would have delayed the closing of the Merger, and thus put that deal at risk. *In re Dollar Thrifty Shareholder Litigation*, 14 A.3d 573, 617-18 (Del. Ch. 2010) (noting that an injunction "would introduce a period of uncertainty and delay"); *Phelps Dodge Corp. v. Cyprus Amax Minerals Co.*, 1999 WL 1054255, at *2 (Del. Ch. Sept. 27, 1999) (delay resulting from injunction "poses a clear and present risk to the potential Cyprus/Asarco transaction which the shareholders may be in favor of.").

Because the Court of Chancery moves quickly when there is a need to do so, it would not have been impossible for the Trust to accomplish all of this, but

would have been very, very difficult. And defendants, no doubt, would have done their best to make it more difficult.

Realistically, because of the uselessness of the Notice and the tight statutory time frames of Section 262, a post-closing remedy was all that was going to be available. And that is a principal difference between the situation faced by the Cirillo Trust and the situation present in *Arnold v. Society for Savings Bancorp, Inc.*, 678 A.2d 533 (Del. 1996). Although defendants rely heavily on *Arnold* (*see, e.g.*, AB 41-43), there is a critical factual distinction with the situation here: the Notice was barren of *anything* that would have enabled the Trust to determine whether or not to seek appraisal. And, as explained above, that barrenness can be tied directly to the directors' self-interest in seeking to avoid an appraisal action.[12]

[12] By contrast, there was no self-interest argued in *Arnold*, and the alleged disclosure deficiencies there (the partial disclosure of an earlier bid for one the corporation's subsidiaries was misleading) pale in comparison with the total lack of information here.

CONCLUSION

As explained above and in the Cirillo Trust's opening brief on appeal, the Trust requests that this Court determine that the Trust is entitled to some remedy–whether against the Director Defendants or against Dava (or its successor). Accordingly, the Order of the Court of Chancery should be reversed (on this issue), and this case remanded for further proceedings.

June 20, 2019

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