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When Shareholders Interrupt The Broadcast: A Stream TV Networks Bulletin

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In a previous alert, we covered the Delaware Chancery Court's decision in *Stream TV Networks* last year. After Stream TV's independent directors negotiated a consensual transfer of collateral to its lenders in full and final satisfaction of their secured debt in March 2020, the interested directors, at the urging of two brothers who serve as the company's co-founders and shareholders, filed a lawsuit to stop the transaction on the grounds that it violated both Stream TV's corporate charter and Delaware General Corporation Law (DGCL) because the parties had not obtained shareholder consent prior to the transfer of collateral.

The Chancery Court ruled that Delaware law did not require shareholder consent for a transfer of collateral through a consensual foreclosure, and appeared to pave the way for future restructurings without interference from out-of-the-money shareholders. The interested directors and the shareholders then appealed the decision to the Delaware Supreme Court.

In a stark reversal of the Chancery Court's decision, just last month, the Delaware Supreme Court unanimously ruled that both Stream TV's corporate charter and 271 of the DGCL ***did***, in fact, require shareholder consent before the parties could execute a consensual foreclosure of assets.

Moreover, in a subsequent hearing, Vice Chancellor Laster of the Chancery Court rejected a plea by the secured lenders for injunctive relief against Stream TV and the shareholder brothers, instead allowing the assets to return to Stream TV and the control of the incumbent board of directors, provided the company agree to a notification provision that requires Stream TV to give the Chancery Court notice before it enters into any material transactions outside of the ordinary course.

How those claims play out and what comes next remain to be seen (the litigation has been ongoing for two years now), but the decision has particular import because Delaware is a favored jurisdiction for corporate organization and otherwise persuasive jurisprudence. As a practical matter, the decision may embolden out-of-the-money shareholders of Delaware corporations to try to exert undue leverage for personal gain (as was the case in Stream TV) from other stakeholders. But such actions by out-of-the-money shareholders are not without risk, as the Vice Chancellor cautioned that the secured lenders likely have a colorable claim against the interested directors and the shareholders for breach of duty and unjust enrichment.

A strict foreclosure is a fast and efficient tool to effectuate a consensual restructuring that a board of directors, consistent with its fiduciary duties, has determined is in the best interests of the company and its shareholders. Shareholders do not owe fiduciary duties to creditors and, in fact, may act in their own self-interest (perhaps, as the Vice Chancellor noted, with some liability risk). Some shareholders may view this as added leverage.

In our experience, in most cases, we have sought and obtained shareholder consent as part of an out-of-court consensual restructuring or have been able structure around recalcitrant shareholders. Also, there are structures that can be implemented at the documentation stage to mitigate, or avoid, this result. The best solution, however, would be for Delaware to change DGCL 271 to eliminate the need for shareholder consent in such circumstances.

Related Professionals

- **Peter J. Antoszyk**
  Partner
- **Vincent Indelicato**
  Partner