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STATE OF INCORPORATION

Delaware Supreme Court Reverses and Vacates *Moelis* as Time-Barred

By Colin B. Davis, Jonathan D. Fortney, Julia Lapitskaya, Jason J. Mendro, Mark H. Mixon, Jr., and Russell Shapiro

On January 20, 2026, the Delaware Supreme Court, sitting *en banc*, issued an opinion bringing an end to one chapter of the “DExit” saga.¹ The unanimous opinion, authored by Justice Gary F. Traynor, effectively reversed a controversial ruling by the Delaware Court of Chancery that certain provisions in a stockholder agreement between a public company and its stockholder founder were unenforceable under Section 141(a) of the Delaware General Corporation Law (DGCL).

Rather than addressing the validity of the disputed provisions, however, the Delaware Supreme Court held that (a) the provisions were at most voidable (as opposed to void *ab initio*), and thus claims challenging them were subject to equitable defenses (such as laches), and (b) the plaintiff’s claim was time-barred under the laches doctrine because it fully accrued upon adoption of the provisions nine years before the complaint was filed, and not within the three-year limitations period under the “continuing-wrong doctrine.”

The public’s negative reaction to the trial court’s decision was so fierce that the Delaware General Assembly promptly adopted Section 122(18) of the DGCL, authorizing the inclusion in stockholder agreements of corporate-governance provisions like those that had been challenged in this case as facially invalid.

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Although Section 122(18) retroactively authorized the relevant governance provisions in stockholder agreements entered into before the statute’s August 1, 2024 effective date, the statute had no effect on litigation completed or pending before such date. Thus, although the Delaware legislature did not reverse the trial court’s decision entirely, it limited its prospective application. Now, the Delaware Supreme Court’s opinion has eliminated its application altogether.

The Trial Court’s Decision

Nine years after a public company and its founder entered into a stockholder agreement, a minority stockholder challenged the facial validity of certain provisions granting governance rights to the founder as inconsistent with Section 141(a) of the DGCL. The company moved for summary judgment, arguing among other things that the stockholder’s challenge was time-barred by the doctrine of laches and the challenged provisions were valid under Section 141(a).

The trial court rejected the company’s laches defense on two bases. First, the trial court determined that the equitable defense of laches was not available because, assuming the challenged provisions conflicted with Section 141(a), they were void *ab initio*—rather than merely voidable—and equitable defenses like laches are not applicable to void acts as a matter of law. The trial court reasoned that any contract provision adopted in a manner exceeding a board’s or management’s authority—as the challenged provisions allegedly were—is void *ab initio*.

Second, the trial court held in the alternative that, even if laches were an available defense, the

stockholder's challenge was timely under the "continuing wrong" doctrine. In doing so, the trial court rejected the company's argument that the plaintiff's claim accrued when the challenged provisions were adopted nine years earlier, and accepted the plaintiff's argument that the company's continuing operation under the constraints of the challenged provisions constituted ongoing violations of Section 141(a).

Then the trial court proceeded to hold that the challenged provisions were unenforceable because they deprived the board of a significant portion of its authority under Section 141(a) and did not appear in the company's charter. The parties appealed both decisions to the Delaware Supreme Court, which reversed the trial court's ruling on laches and declined to reach the validity of the provisions.

Voidability

In reversing the laches ruling, the Delaware Supreme Court held that the trial court misapplied the law for determining voidability. Under Delaware law, contract provisions in the corporate-governance context are void as *ultra vires* or against public policy if the corporation cannot, in any case, lawfully adopt them; whereas such provisions are only voidable if the corporation could lawfully adopt them in an appropriate manner. To apply this rule, the Court explained, courts should focus on the subject matter of the provisions, not the manner in which they were adopted.

Ultimately, the Court held that the plaintiff had failed to carry its burden of establishing that the challenged provisions were void because it had identified no mandatory provision of the DGCL or other Delaware law that would prohibit the company from adopting the challenged provisions by charter amendment or other method. In other words, the plaintiff had failed to establish that the challenged provisions' subject matter—and not merely their presence outside of the charter—conflicted with Delaware law.

Thus, the Court concluded that the challenged provisions were, at most, voidable, not void *ab initio*,

and therefore the plaintiff's claim was subject to a laches defense.

Laches

Next, the Court held that the trial court erred in determining that laches would not bar the claim. First, the Court rejected the trial court's application of the "continuing wrong" method of determining when the plaintiff's claim accrued, reasoning that, under Delaware law, a corporation's performance under a contract—and associated effects or implications—are not continuing wrongs even if the manner in which the contract was adopted might have been unlawful.

Instead, the Court explained, the plaintiff's claim "fit neatly" within the "discrete act method," which applies when a claim arises at a distinct point in time and is effectively complete as of that date, because the challenged provisions were allegedly adopted improperly at a distinct point in time, and complete and adequate relief was available to the plaintiff during the following three years.

Having held that the plaintiff's claim accrued when the challenged provisions were adopted nine years earlier, the Court concluded that the plaintiff had presumptively delayed unreasonably in bringing its claims outside the three-year limitations period and the company presumptively would be prejudiced if forced to defend the lawsuit.

The Court therefore reversed the trial court's decision on timeliness and vacated the trial court's order implementing its rulings on the parties' cross-motions for summary judgment.

Takeaways

- The opinion reinforces the maxim that "[e]quity aids the vigilant, not those who slumber on their rights," by restricting the maintenance of lawsuits where, like here, the plaintiff has no excuse for a nine-year delay.
- Together with the Delaware General Assembly's prompt adoption of Section 122(18), the

Delaware Supreme Court's decision continues the State of Delaware's long commitment to not only maintaining the quality and balance of the DGCL, but also preserving the correct and predictable application of common law principles of law and equity. In that regard, the decision is an important reminder for practitioners that appealing an adverse decision at the trial court level is a viable path to success in Delaware.

- The opinion clarified the “knotty” and “vex[ing]” distinction between corporate acts that are voidable or void *ab initio*. Under Delaware law, voidable acts are those that a corporation has authority to take in a prescribed manner but that were taken in some legally defective manner. Void acts, on the other hand, are those that a corporation lacks authority to take in any manner. Voidable acts are curable through various means, including as prescribed by Sections 204 and 205 of the DGCL, and subject to equitable defenses like laches; void acts, on the other hand, and incurable and not subject to equitable defenses.
- In the opinion, the Delaware Supreme Court cabined its holding by indicating that, even

where *facial* challenges were time-barred, *as-applied* challenges arising from specific circumstances “may be advanced after the period for bringing facial challenges has expired.”

- The opinion was careful to emphasize that the Court was not addressing whether the provisions were consistent with Section 141(a) of the DGCL. As-applied challenges filed after August 1, 2024 will have to contend with the Delaware General Assembly's authorization of such provisions in Section 122(18). It remains to be seen how Delaware courts will handle timely facial challenges pending as of that date.

All parties to stockholder or investors' rights agreements containing corporate-governance provisions should consider reviewing or revisiting those agreements in light of, not only the Delaware General Assembly's authorization of such provisions in Section 122(18) of the DGCL, but also the Delaware Supreme Court's decision in this case, to determine whether any modification may be warranted.

Note

1. See *Moelis & Co. v. West Palm Beach Firefighters' Pension Fund*, -- A.3d --, No. 340, 2024 (Del. 2025) (the Opinion).

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