

Redstone v. National Amusements, Inc. (motion to dismiss, claim alleging improper removal from board, misappropriation of corporate funds and oppression, and seeking corporate dissolution)

In *Redstone v. National Amusements, Inc.* [¹], Plaintiff Brent Redstone (“Redstone”) filed suit in the Circuit Court for Baltimore City pursuant to Md. Code Ann., Corps & Ass'ns §3-413(b)(2) seeking dissolution of Defendant National Amusements, Inc. (“NAI”), a closely held Maryland corporation that operates movie theaters and is the controlling shareholder of Viacom, Inc., Midway Games, Inc. and CBS Corporation. Redstone alleged that he had been removed from his Viacom board position, frozen out of NAI and that his father, as chairman of the boards of NAI, Viacom and CBS, had engaged in self-dealing, usurped corporate opportunities and misappropriated funds. NAI sought to dismiss the suit or, in the alternative, sought judicial decision under Md. Rule 2-502, arguing that Redstone could not seek dissolution of NAI because he had received his shares as a gift and thus all of his reasonable expectations had been met. NAI also argued that Redstone’s suit had to be dismissed because, as a result of the filing the suit, he had triggered the terms of a stock repurchase agreement which provided for a way for Redstone to salvage his investment. The Court denied NAI's motion to dismiss the suit and for judicial decision.

In denying NAI's motion, the Court cited Md. Code Ann. Corps. & Ass'ns §3-413(b) for the premise that any stockholder entitled to vote in the election of directors of a corporation could petition a court of equity to dissolve the corporation on grounds that the acts of directors or those in control are illegal, oppressive or fraudulent. Despite the statutory language that “any” stockholder could file a claim for oppression, NAI attempted to argue that because Redstone received his shares as a gift, he could not, as a matter of law or equity, prove oppression. NAI relied on *Edenbaum v. Schwarz-Osztreicherne* [²] for its claim that (i) oppression exists only when the majority conduct substantially defeats expectations that are both reasonable under the circumstances and central to the petitioner's decision to join the venture and (ii) there exists no effective means of salvaging the petitioner's investment. However, the Court agreed with Redstone that *Edenbaum* did not establish a rigid two-part test for determining oppression but that it did make clear that oppression would be determined on a case-by-case analysis. The Court also distinguished *Edenbaum* from this case due to the fact that *Edenbaum* did not address the issues of whether the expectations of dispossessed or minority shareholder were reasonable or whether a shareholder that received shares as a gift could bring an action for oppression. And, while NAI could offer no cases that held as a matter of law that a shareholder that received their shares by a gift could not bring an action for oppression, Redstone cited to a number of cases from various jurisdictions where shareholders who received shares by gift had successfully maintained oppression actions. See *Keating v. Keating* [³], *Meiselman v. Meiselman* [⁴], *Isaacs v. Am. Iron & Steel Co.* [⁵] and *Bonavita v. Corbo* [⁶].

¹ Maryland Business and Technology Case Management Program, Case No. 24-C- 06-001493 (8/7/06, Omega Cannon, J.), available at http://www.baltocts.state.md.us/about/publications/opinions/Memorandum_on_Motion_to_Dismiss_Final.pdf.

² 165 Md. App. 233 (2005).

³ 2003 WL 23213143 (Mass. Super. 2003).

NAI also cited several cases, *Mueller v. Cedar Shore Resort, Inc.* [⁷] and *Gimpel v. Bolstein* [⁸], in an attempt to argue that a shareholder that received shares by gift had different and lower expectations that someone who made a financial investment to obtain shares. However, the Court, while accepting those cases to the extent that they held that determination of what expectations are reasonable is fact-based, concluded that Redstone had pleaded sufficient facts to defeat a motion to dismiss on this issue.

The Court further disagreed (i) with NAI's argument that any reasonable expectations the plaintiff may have had were satisfied because he could have no reasonable expectation that he could receive any price for his shares above the price contained in the Stock Repurchase Agreement and (ii) with the assertion that the filing of the suit triggered the terms of that agreement. NAI cited two New York cases, *Doniger v. Rye Psychiatric Hops. Center* [⁹] and *Johnsen v. ACP Distribution, Inc.* [¹⁰], for its assertion that the filing of Redstone's suit triggered the Stock Repurchase Agreement and that in oppression situations, such an agreement would mandate the price which Redstone could receive for his shares. The Court noted that the price dictated by a shareholders' agreement in connection with a sale of shares voluntarily sought and desired by a shareholder does not control when the sale is the result of claimed oppression or some other wrongdoing. The Court's holding was consistent with decisions from several other courts that have held that a Stock Repurchase Agreement is not necessarily triggered or determinative of the value of the stock when there is a suit alleging oppression.

Finally, the Court held that, unless NAI was going to admit oppression, judicial decision to determine the remedy was not appropriate prior to a finding that oppression had in fact occurred.

⁴ 307 S.E.2d 551, 563 (N.C. 1983).

⁵ 2006 WL 163498, *4 (Minn. App. 2006).

⁶ 2006 WL 163498, *4 (Minn. App. 2006).

⁷ 643 N.W.2d 56, 64 (S.D. 2002).

⁸ 125 Misc.2d 45, 53 (1984).

⁹ 505 N.Y.S.2d 920 (N.Y. App. Div. 1986).

¹⁰ 814 N.Y.S.2d 142 (N.Y. App.Div. 2006).