

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MERCER CHRISTIAN PUBLISHING CO. and :
SUSAN BEARD, :
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 : Plaintiffs, :
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 :
 : v. : C.A. No. 8974-CD
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 : PRAISE VIDEO, INC., a Delaware corporation, :
 : JACOB BISSINGER, FRANCIS PENNOCK, :
 : MARK VAN ZANDT, HOWARD METCALF, :
 : PETER HORNBERGER, NEW HOPE :
 : PUBLISHING CO., and PRAISE NEW :
 : HOPE CORP., :
 :
 : Defendants. :

MEMORANDUM OPINION

Date Submitted: January 9, 2014
Date Decided: January 14, 2014

P. Clarkson Steele, Esquire, Kenneth J. Lafferty, Esquire, and David C. Collins, Esquire, of Young & Grant, P.A., Wilmington, Delaware, Attorneys for Plaintiffs.

Stephen C. Beck, Esquire, Anne C. Proctor, Esquire, and Henry E. Heyman, Esquire, of Slate, Potter, Morris, & Richards, LLP, Wilmington, Delaware, Attorneys for Defendants.

DEVELIN, Chancellor

Introduction

Last month, the directors of Praise Video, Inc., a Delaware corporation (“Praise Video”) approved an agreement to merge Praise Video with a wholly-owned subsidiary of New Hope Publishing Co., a Delaware corporation (“New Hope”). Under that agreement, Praise Video’s stockholders’ shares would be converted into the right to receive \$41 per share in cash. In approving that transaction (the “Merger”), Praise Video’s directors deliberately rejected a firm, fully financed offer by plaintiff Mercer Christian Publishing Co. (“Mercer”) to acquire Praise Video for \$50 per share. The directors also granted to New Hope what would typically be described as a “crown jewel” option, to acquire Praise Video’s core profitable line of business for a price that the directors acknowledge is at least \$12 million (about 40%) below its true value. The directors openly and intentionally approved these actions, they say, because of their belief that ownership of Praise Video by New Hope would be more faithful to the religious principles embodied in Praise Video’s express corporate mission.

In our now traditional corporate law, the directors’ actions would be considered unthinkable by any well-advised board of directors, because of their apparent inconsistency with the teachings of *Revlon*¹ and its progeny. About two years ago, a similar case came before this court involving a charter provision that arguably permitted what *Revlon* forbids, and this Court determined that the charter provision in question was invalid as in conflict with mandatory law.²

In the meantime, however, the Delaware General Assembly has adopted very significant statutory amendments, effective on August 1, 2013, that permit the formation of “public benefit

¹ *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

² *Consolidated Forest Products Co. v. BTRta Forest Products, Inc.*, C.A. No. 6943-CJ (Del. Ch. Jan. 26, 2012) (attached as Appendix A). That case was settled shortly after oral argument on appeal to the Delaware Supreme Court, so we do not have the benefit of that Court’s thinking on the subject.

corporations.”³ As more fully explained below, Praise Video is such a corporation. In this case of first impression, the Court is therefore called upon to evaluate the directors’ conduct in light of the distinct statutory framework governing public benefit corporations. For the reasons expressed in this opinion, however, the Court concludes that the directors’ conduct, even in respect of a public benefit corporation like Praise Video, is inconsistent with their fiduciary obligations, and an order granting a preliminary injunction against consummation of the Merger will be issued.

Factual Background

A. The Parties

Praise Video was formed in September 2013 as a Delaware public benefit corporation. As such, it is able, indeed required, to identify in its charter “one or more specific public benefits to be promoted by the corporation.” Praise Video’s certificate of incorporation identifies what it characterizes as a positive effect of a religious nature (tracking language of the statutory definition of “public benefit”).⁴ That effect, as described in the certificate of incorporation, is “the promotion of the values articulated in the Confession of Faith in a Mennonite Perspective” (the “Confession of Faith”).⁵ The parties agree that this effect is properly identified as a “specific public benefit” for purposes of the public benefit corporation statute.

Praise Video’s business dates back to the mid-1970s, when it was first organized as a Delaware corporation (“Old Praise Video”). From the time of its formation as a small family-owned business operating out of two rooms in an office park in Lancaster, Pennsylvania, Praise

³ 79 Del. Laws ch. 122, enacting 8 Del. C. §§361-368.

⁴ 8 Del. C. §362(b).

⁵ See <http://www.mennolink.org/doc/cof/>.

Video⁶ has engaged in the production and distribution of filmed and digital entertainment, of what its web site describes as a wholesome nature and an alternative to violent or sexually offensive entertainment generally offered by secular media. Originally limited to renditions of Bible stories, Praise Video's product lines have diversified, most recently (since 2003) into video games with Christian themes. In particular, Praise Video's Ark of Justice® game, released in 2010, has gained wide recognition and praise in the gaming community generally, as well as among Christian gamers more specifically. Praise Video has enjoyed relatively modest but consistent financial success, with recent years' earnings averaging around \$4 million (about \$4 per share). At least 60% of that profit has been attributable to Praise Video's gaming division. Praise Video's headquarters, while still located in Lancaster, occupy the entirety of one of the larger office buildings in the area.

Jacob Bissinger has served as CEO and a director of Praise Video from its inception. Bissinger owns approximately 22% of Praise Video's outstanding shares of common stock. Along with Bissinger, Praise Video's directors (including the other individual defendants) and almost all of the other stockholders (approximately 250 in all) are members of the Mennonite Church USA (the "Church") or are related by blood or marriage to members of the Church.⁷ The directors other than Bissinger own in the aggregate about 4% of Praise Video's shares.

On September 30, 2013, shortly after Delaware's public benefit corporation statutes became effective, Old Praise Video merged into Praise Video, and each share of Old Praise Video common stock was converted into the right to receive one share of Praise Video common

⁶ In the context of describing the company's business and history, references to Praise Video should be understood to refer as well to Old Praise Video.

⁷ Praise Video's certificate of incorporation includes a qualification provision, authorized under 8 *Del. C.* §

stock. As required by the Delaware statute,⁸ over 90% of Old Praise Video's outstanding shares were voted in favor of that merger (hereafter identified as the "Reorganization Merger").

Plaintiff Susan Beard, the holder of about 3% of Praise Video's outstanding shares, was one of the few stockholders who did not vote in favor of the Merger. Beard, who left the Church many years ago, inherited her shares of Praise Video in 2008 following the death of her parents, who had previously owned the shares.⁹ Plaintiff Mercer acquired about 2% of Praise Video's shares shortly after the Reorganization Merger, for \$35 per share, from another stockholder who, like plaintiff Beard, had voted against the Reorganization Merger. Mercer is an indirect wholly-owned subsidiary of Mercer Media, Inc. ("Mercer Media"), a large, multinational media conglomerate headquartered in New York, New York, the stock of which is traded on the New York Stock Exchange. Mercer, which continues to maintain its headquarters in Coral Gables, Florida, was acquired by Mercer Media in 2009, and is known for best-selling Bibles, inspirational books, resources for church school curricula, and audio and digital Christian faith-based content. According to its web site, Mercer maintains an identity distinct from Mercer Media: its stated particular mission is to "spread inspiration by developing and distributing content that promotes biblical values and honors Jesus Christ."

The individual defendants have, with non-defendant Samuel Holbrook, constituted the board of directors of Praise Video at all relevant times. Holbrook is not named as a defendant

141(b), requiring that all directors of the corporation be members of the Church. Upon consummation of the Merger, Praise Video's certificate of incorporation, including the director qualification provision, is to be replaced by the certificate of incorporation of Praise New Hope, Inc., which does not contain any similar qualification provision, nor does it contain any public benefit provision.

⁸ 8 *Del. C.* §363(a). Neither Beard nor any other Old Praise Video stockholder exercised the right to seek appraisal of the shares of Old Praise Video as a result of the September 2013 merger. *See* 8 *Del. C.* §363(b).

⁹ There are not and have never been any restrictions in Praise Video's certificate of incorporation or bylaws, or in any generally applicable agreements with stockholders, that limit the transferability of Praise Video stock, by inheritance or otherwise. On the other hand, there is no established market for trading in Praise Video's shares.

because, for reasons explained more fully below, he declined to vote as a director to approve and recommend the Merger agreement.

New Hope, the purchaser in the Merger, is a newly organized Delaware corporation, formed for purposes of acquiring Praise Video. Defendant Francis Pennock is a significant stockholder (approximately 20%) of New Hope, and was the driving force behind its formation. Pennock plans to serve as Praise Video's CEO following the Merger. Praise New Hope, Inc. is New Hope's wholly-owned subsidiary that is to merge with Praise Video upon consummation of the Merger. New Hope's majority (80%) stockholder is Miller Price L.P., a Delaware limited partnership ("Miller Price"), which is engaged in venture capital investment focusing on portfolio companies that seek to balance financial gains with religious values. Isaac Miller, one of Miller Price's two principals, is a member of the Church, although his equal partner Stephen Price is not.¹⁰

B. *Background of the Merger*

The impetus for the Merger is rooted in defendant Bissinger's decision, made early in 2013, to retire as CEO of Praise Video within a year. In light of that decision, Bissinger began in March 2013 to explore ways to diversify his investments, and he soon concluded that selling his Praise Video shares would be an important step. After Bissinger informed the board of directors of his decision, the board retained financial adviser Norman Stoltzfus to explore possible alternatives. The board instructed Stoltzfus in particular to explore possible transactions in which Praise Video's stockholders in addition to Bissinger would be able to liquidate their investment.

¹⁰ Miller Price's limited partnership agreement provides that in the event of a deadlock between the two principals that is not resolved within 60 days by mandatory mediation, the principals are required to pursue a process that would lead to one principal acquiring the other's interest, a sale of both principals' interests, or a liquidation of the assets of the limited partnership.

By early June of 2013, Stoltzfus had identified a number of potential bidders to acquire Praise Video for stock or cash. One of those potential bidders was Mercer, which had made explicit its interest in acquiring and expanding Praise Video's gaming division. Mercer expressed the view that with a modest capital infusion and as a result of synergies with Mercer's own publications and gaming operations, Praise Video's customer base could be dramatically expanded. Mercer suggested that an acquisition of Praise Video at a price "north of \$40" was a distinct possibility.

Upon being informed of Mercer's interest and its views about the potential acquisition, the board of directors met on June 24, 2013, in what turned out to be a very tense gathering. At the outset, Stoltzfus reported to the board on the results of his exploration of strategic alternatives. Following his report, all of the directors complimented Stoltzfus on the quality of his work. In particular, all of the directors were pleased with the price suggested by Mercer, and they expressed gratitude that Stoltzfus had been able to identify potential bidders whose corporate identities appeared to support Christian precepts.

The waters soon became choppy, however, when Bissinger inquired about how Mercer would achieve the synergies and enhanced revenues it had predicted. In response, Stoltzfus indicated that considerable market growth might be anticipated in the area of combat-oriented video games. This indication provoked considerable consternation on the part of several of the directors, including Bissinger. Bissinger and Metcalf were particularly outspoken in their view that expansion into military-type games violated the religious obligation, expressed in formal Church doctrine, to "witness against all forms of violence, including war among nations, hostility among races and classes, abuse of children and women, violence between men and women,

abortion, and capital punishment.”¹¹ Holbrook expressed some reservations about the criticism from Bissinger and Metcalf: he certainly did not take issue with Church doctrine, but he suggested that it was inappropriate for the board of directors, as such, to attempt to dictate how Praise Video should be operated after a sale of the company, and that current stockholders selling their shares, and any acquirer, would need to look to their own individual consciences to determine how best to apply their financial and operational assets to satisfy their religious obligations. Holbrook also maintained that as stewards of the company, the directors were obligated to achieve the highest and best sale price, and had no legal or moral right to impose their individual views about how the company should operate after it is sold.

Holbrook’s statements at the June 24 board meeting had two direct and notable consequences. First, the directors asked Stoltzfus to redouble his efforts to identify potential bidders who might be able to offer the best price while at the same time addressing the expressed concerns about the direction of future operation of the company’s business. Second, the board asked Praise Video’s counsel to examine and report on Holbrook’s assessment of the directors’ legal obligations in connection with a sale of the company. Counsel soon reported back to Bissinger, informing him that Holbrook was essentially correct, given Praise Video’s current legal status, but that reorganization as a public benefit corporation under Delaware’s newly adopted statute would likely alter the directors’ legal obligations in a sale of the company. Based upon that report from counsel, the directors, with Holbrook dissenting, voted to approve the Reorganization Merger previously described. In presenting the Reorganization Merger for a vote of Praise Video stockholders, the directors informed the stockholders that the board was engaged in a process of exploring strategic alternatives, including a possible sale of the company, in

¹¹ Confession of Faith, Article 22. *See also id.*, Article 17 (“True faith means acting in peace and justice, rather than with violence or military means.”).

response to Bissinger's plan to retire and his interest in diversifying his investment, and that accomplishment of the Reorganization Merger would likely afford the directors greater legal flexibility in a sale of the company to take into consideration Mennonite values as well as maximization of financial wealth. The text of the Delaware public benefit corporation statutes was included in the notice of the meeting of Praise Video stockholders at which the Reorganization Merger was presented for a vote. As previously noted, the Reorganization Merger was approved at that meeting and became effective on September 30, 2013.

The board's request to Stoltzfus to extend the search for potential bidders also bore unexpected fruit. Defendant director Pennock concluded that he could assemble a bid that would provide a price at least as great as what Mercer had preliminary suggested, while continuing to operate Praise Video's business as it had been operated to date, and without expanding into new, religiously questionable forms of digital entertainment. Consistent with that conclusion, Pennock and Miller Price formed New Hope and communicated to Stoltzfus an interest in submitting a bid to acquire Praise Video.

At this point, in mid-November 2013, and with unanimous approval of Praise Video's board (with Pennock abstaining and absenting himself from further deliberation), Stoltzfus directed Mercer, New Hope, and the three other potential bidders to submit their best bids (accompanied by forms of merger agreement and any other related documentation) by the close of business on December 5, 2013. Only Mercer and New Hope submitted bids, of \$50 per share and \$41 per share, respectively. Both bids were fully financed, and conditioned, as usual, on approval by Praise Video's stockholders. Despite Praise Video's request for it, neither bidder agreed that the company's post-merger certificate of incorporation would include the public benefit provision in Praise Video's existing charter. Both bidders demanded no-shop

commitments of the standard sort, and both bidders proposed termination fees equal to about 3% of the enterprise value reflected in the bid.

New Hope, however, conditioned its bid on an additional concession: namely, the grant by Praise Video of an option (the “Gaming Option”) to acquire Praise Video’s gaming division for \$18 million, payable in 5-year installment notes, if the New Hope merger failed to gain the necessary Praise Video stockholder approval.¹² New Hope recognized that it would be unlikely to be able to outbid Mercer from a financial point of view, yet it wanted assurance that even a bid that was significantly inferior from a financial perspective would still have a strong chance of succeeding. In support of its request for the Gaming Option, New Hope undertook that Pennock would be the CEO of Praise Video following an acquisition, and so long as he remained CEO he would operate Praise Video to the best of his ability in a manner consistent with the values of the Church. New Hope thus submitted the agreement embodying the Gaming Option to Praise Video as part of its bid package. The impact of the Gaming Option has been much disputed in these proceedings, but only in degree. Having considered the opinions of the Praise Video directors and the parties’ expert witnesses, and acknowledging plaintiffs’ contention that the undervaluation is even greater, it is my preliminary conclusion that the exercise price in the Gaming Option is about \$12 million or some 40% below the actual \$30 million value of the gaming division, an increment equivalent to about \$12 per outstanding Praise Video share.

The directors of Praise Video met on December 9, 2013, for over seven hours, to evaluate and determine how to respond to the bids. As plaintiffs acknowledge, there was nothing material lacking in the directors’ informational base. Stoltzfus and the company’s counsel painstakingly

¹² More precisely, the Gaming Option becomes exercisable if (A) the Merger agreement is terminated due to failure of Praise Video stockholders to approve it, and at or prior to the time of such termination, a proposal to acquire Praise Video has been announced or made to Praise Video’s board and not *bona fide* withdrawn, and (B) within twelve months of such termination Praise Video is acquired or enters into a definitive agreement to be acquired.

reviewed the background of the bidding process, the likely impact of the Gaming Option, and the prospects for any further bids. The directors concluded, as do I, that the company had been thoroughly shopped and that there was no reasonable prospect that any bids superior in any overall respect to the New Hope and Mercer bids would be forthcoming in any reasonable time frame.

As in the June 24 board meeting, however, the central point of controversy was over the significance the directors should accord to the differences between New Hope and Mercer in terms of their ability to promote the public benefit specified by Praise Video's certificate of incorporation. As before, Bissinger and Metcalf expressed deep concern about the prospect that Praise Video, after an acquisition by Mercer, would expand its operations into games with combat simulations. In addition, and even though they recognized the religious integrity of Mercer's stated mission, they expressed misgivings about the potential impact of Mercer's status as a wholly-owned subsidiary (and thus subject to the ultimate control) of Mercer Media, a secular, multinational media conglomerate.

According to the minutes of the December 9 board meeting, the Praise Video directors carefully evaluated the details of the New Hope and Mercer bids and voted (4-1, with Holbrook dissenting and Pennock absenting himself) to approve the New Hope bid because it appropriately balanced the stockholders' pecuniary interests, the best interests of those materially affected by Praise Video's conduct, and the public benefit identified in its certificate of incorporation. According to Holbrook's uncontradicted testimony, however, Bissinger also stated at the December 9 board meeting that the possibility that Mercer would expand Praise Video's gaming operations into the combat simulation market space would, even with a generally Christian-

themed orientation, be unacceptable in light of Church doctrine, and that he could not support a merger with Mercer regardless of the difference between the Mercer and New Hope bid prices.

With respect to the Gaming Option, the Praise Video directors recognized that the acknowledged undervaluation reflected in the exercise price would likely encourage many Praise Video stockholders to vote in favor of the Merger, even if they individually would have preferred Mercer's higher cash bid under the circumstances. According to the minutes of the December 9 meeting, the directors (other than Holbrook and the absent Pennock) viewed this likely effect positively, because it would favor and facilitate the consummation of the bid that achieved the balance previously approved by the majority of the directors.

C. Procedural History

Plaintiffs brought this action on December 13, 2013, shortly after the announcement of the Merger. Their complaint, premised on claims of breach of fiduciary duty by Praise Video's directors, sought a preliminary injunction against consummation of the Merger. The parties have engaged in limited expedited discovery, and the facts recited in this opinion represent the Court's preliminary findings of fact based on the record developed through that discovery. Defendants have agreed, in the interest of an orderly disposition of the motion for preliminary injunction, to defer taking of the stockholder vote on, and consummation of, the Merger until as late as March 31, 2014, as necessary to permit a decision from this Court and, in the event of an appeal, from the Delaware Supreme Court.

Legal Analysis

A. *Standard for Preliminary Injunction*

As this Court has often had occasion to note, “[a] preliminary injunction is an extraordinary remedy that is granted sparingly.¹³ The Plaintiffs must demonstrate: (1) a reasonable probability of success on the merits; (2) that absent injunctive relief, immediate and irreparable harm will result; and (3) that the harm to the plaintiff, if the injunction is denied, will exceed the harm to the defendant, if the injunction is issued.”¹⁴ In this case, defendants concede that if plaintiffs were to demonstrate a reasonable probability of success on the merits at a final hearing, a preliminary injunction would be appropriate.¹⁵ Accordingly, the balance of this opinion addresses that probability.

B. *Probability of Success on the Merits*

1. Section 362(b)’s Balance Requirement

The directors of Praise Video contend that their decision to approve the Merger with New Hope, and the related Gaming Option agreement, was “both informed and disinterested and not such that no person of ordinary, sound judgment would approve,” and that DGCL Section 365(b) therefore requires that the directors be deemed to have satisfied their “fiduciary duties to stockholders and the corporation.” In particular, and tracking the language of DGCL Section 362(b), the directors maintain that their decisions were made “in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by the corporation’s conduct, and the public benefit or public benefits identified in its certificate of incorporation.”

¹³ *In re Plains Exploration & Prod. Co. Stockholder Litig.*, Cons. C.A. No. 8090-VCN, slip op. at 9 (Del. Ch. May 9, 2013), citing *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998).

¹⁴ *Id.*

¹⁵ Plaintiffs likewise do not challenge the sufficiency of any of the disclosures made by the defendants in connection with the vote on the Merger.

Plaintiffs have a different view of the matter. In their view of things, the directors' judgment failed the balancing requirement of Section 362 and violated their fiduciary duties, for several reasons. First, they maintain that as a for profit corporation (even though a public benefit corporation), Praise Video has no corporate interest in promoting religious values as such. They rely in particular on the opinion of the Court of Appeals for the Third Circuit from July 2013 to the effect that for profit, secular corporations cannot engage in religious exercise.¹⁶ I do not see any likelihood, however, that the plaintiffs would make substantial headway with this argument: whether or not the Third Circuit was correct in this respect in relation to an ordinary for profit corporation – and that is a matter that is currently contested in the United States Supreme Court – I do not find it likely that a public benefit corporation like Praise Video, with an explicitly religious corporate purpose along with a profit-making purpose, can be said to have no corporate interest in promoting religious values.

Second, and somewhat more persuasively, plaintiffs argue that even if the corporation could claim an interest in promoting religious values, the religious-oriented conduct of the corporation's business after the time that the corporation essentially ceases to exist post-merger could not have been an appropriate concern to be taken into account by Praise Video's directors. I have some misgivings about this argument as well: accepting this argument could undermine much of the justification for the establishment of public benefit corporations, at least where it can be said that stockholders are choosing voluntarily whether to accept less monetary value in a sale of the company in exchange for what they perceive as a greater contribution toward fulfillment of the company's stated public benefit.

¹⁶ *Conestoga Wood Specialties Corp. v. Secretary of Health and Human Services, et al.*, No. 13-1144 (3rd Cir. July 26, 2013); *cf. Hobby Lobby Stores, Inc. v. Sebelius*, No.12-6294, 2013 WL 3216103 (10th Cir. June 27, 2013). The United States Supreme Court has granted *certiorari* in these cases and is widely expected to hear oral argument in them this spring.

Third, and most troubling in this Court's view, plaintiffs claim that the directors have demonstrably failed to engage in the balancing required by the statute because their treatment of the matter involved no balancing at all: essentially, plaintiffs say that the directors have apparently concluded that their religious-oriented concern is dispositive, and that even the slightest potential that the company might be operated post-merger in a way that the directors would find problematic from the point of view of Church doctrine outweighs any profit or other stockholder interest whatsoever. In this regard plaintiffs rely heavily on Bissinger's statement during the December 9 board meeting, as evidence that considerations of religious purpose effectively trumped any balancing effort.

I find it inappropriate, however, to attempt to resolve these very interesting legal issues of first impression on a motion for a preliminary injunction, at least where I find it possible to resolve the motion on an alternative basis, as explained below.

2. *Blasius*

Plaintiffs have presented an alternative argument that they claim independently warrants preliminary injunctive relief. Specifically, they claim that the Gaming Option conflicts with the stockholders' statutory right to vote on the transaction, because it effectively deprives that vote of any voluntary quality: in other words, they say, the vote is coerced because it effectively forces the stockholders to vote for the \$41 deal with New Hope because no deal with Mercer is possible if the Gaming Option is effective. Nothing in the public benefit corporation law, plaintiffs claim, purports to override the stockholders' entitlement to an effective vote on the merger, as provided in Section 251(c) of the Delaware General Corporation Law.¹⁷ And nothing

¹⁷ As plaintiffs point out, public benefit corporations remain subject to generally applicable provisions of Delaware corporate law, except to the significant but nonetheless limited extent that the specific public benefit statutory provisions require a different outcome. 8 *Del. C.* §361 (providing in part that "[i]f a corporation elects to become a public benefit corporation under this subchapter in the manner prescribed in this subchapter, it shall be subject in all

in the public benefit corporation law, they say, overrides the proposition, perhaps best expressed in *Blasius*,¹⁸ that when a board acts "for the sole or primary purpose of thwarting a shareholder vote," it must sustain "the heavy burden of demonstrating a compelling justification for such action."¹⁹

As I see it, defendants (like the defendants in *Blasius*) acknowledge that their intent was to affect the stockholder vote, in this instance to promote the accomplishment of the Merger with New Hope. And I find that, like the defendants in *Blasius*, the defendant directors acted with the utmost good faith, in the genuine belief that the acknowledged likely effect of the Gaming Option would promote the public benefit identified in Praise Video's certificate of incorporation. But as in *Blasius*, however, this Court concludes, at least for purposes of the motion for preliminary injunction, that even with that good faith purpose, the directors cannot intentionally deprive the stockholders of their statutorily-mandated right to vote on a merger, and to determine for themselves whether the balance of pecuniary considerations and public benefit warrant a favorable vote on the transaction.

Conclusion

For the foregoing reasons, plaintiff's motion for a preliminary injunction is granted, and an appropriate order will be entered upon notice.

_____/s/ Sean Develin_____
Chancellor

respects to the provisions of this chapter, except to the extent this subchapter imposes additional or different requirements, in which case such requirements shall apply.”)

¹⁸ *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. Ch. 1988).

¹⁹ *Id.* at 661.