



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE APPRAISAL OF COLUMBIA) Consolidated
PIPELINE GROUP, INC.) C.A. No. 12736-VCL

ORDER DENYING MOTION TO STAY PROCEEDINGS

1. The petitioners have moved to stay this appraisal proceeding in light of this court's decision in *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.*, 2018 WL 922139 (Del. Ch. Feb. 15, 2018). They posit that, by relying on a company's unaffected market price as evidence of fair value, *Aruba* substantially changed the scope and types of evidence that they need to submit at trial. At the same time, they argue that *Aruba* misapplied the Delaware Supreme Court's recent decisions in *DFC Global Corporation v. Muirfeld Value Partners, L.P.*, 172 A.3d 346 (Del. 2017) and *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, 177 A.3d 1 (Del. 2017). The petitioners in this case observe that the petitioners in *Aruba* have said they will appeal, and the petitioners in this case argue that they should not be forced to litigate under the cloud of uncertainty that the *Aruba* decision ostensibly created. Accordingly, they ask that this case be stayed pending the outcome of the forthcoming appeal in *Aruba*. Alternatively, they ask to extend the fact discovery cutoff from the current deadline of April 6, 2018, until June 5. This extra time, they say, will enable them to conduct discovery into the efficiency of the market for the subject company's shares.

2. The respondent argues that the motion should be summarily denied. The respondent points out that *Aruba* strived to implement the teachings of *DFC*

and *Dell* and did not independently break new ground. Indeed, the statements of law in *Aruba* consisted almost entirely of direct quotations from *DFC* and *Dell*. The respondent further explains that it put the petitioners on notice as early as an interrogatory response dated November 6, 2017, that the respondent would rely on the market price of the company's common stock as an indication of fair value.

3. In my view, the respondent is correct. Delaware courts have long considered a company's unaffected stock market price as evidence of fair value in an appraisal proceeding. *See generally* Jesse A. Finkelstein & John D. Hendershot, *Appraisal Rights in Mergers & Consolidations*, 38-5th C.P.S. §§ IV(H)(3), at A-57 to A-59 (BNA) (collecting cases). "[T]here is extensive case law on [the use of stock] market value because of its role as one of the three elements of the Delaware Block Method." *Id.* at A-57. The petitioners thus should have been considering the implications of the company's market price from the start.

4. What some might view as a more recent development is the Delaware Supreme Court's embrace of the efficient capital markets hypothesis, resulting in greater deference to stock prices generated by a market exhibiting attributes associated with the premises underlying the hypothesis. That development occurred at the latest in *DFC*, a decision that issued on August 1, 2017. *See DFC*, 172 A.3d at 367, 369-70. In *Dell*, the Delaware Supreme Court reiterated that "the price produced by an efficient market is generally a more reliable assessment of fair value than the view of a single analyst, especially an expert witness who caters her valuation to the litigation imperatives of a well-

heeled client.” 177 A.3d at 17. The high court further explained that the efficient capital markets hypothesis had been “long endorsed by this court.” *Id.* (citing *DFC*, 172 A.3d 346). At least since August 1, 2017, the petitioners have been on notice of this dimension of the fair value inquiry.

5. The *Aruba* decision held that, on the facts presented in that case, the company’s unaffected market price provided the most reliable evidence of fair value, particularly when the other reliable valuation indicator consisted of a deal price that had to be adjusted to eliminate synergies and other elements of value arising from the accomplishment or expectation of the merger. *See* 8 *Del. C.* § 262(h). The *Aruba* decision did not introduce a new valuation methodology or analytical approach. It simply gave exclusive weight to a type of valuation evidence that Delaware courts had long considered and which the Delaware Supreme Court had emphasized in *DFC* and *Dell*. The outcome in *Aruba* did not alter how the petitioners would approach an appraisal case.

6. Assuming for the sake of analysis that the petitioners are correct and that the *Aruba* decision erred when applying *DFC* and *Dell*, that scenario would not warrant altering the schedule for this proceeding. Counsel can develop a factual record and submit expert testimony, and they can argue why this case should come out differently than *Aruba*.

Because an appraisal decision results from litigation in which adversarial parties advance arguments and present evidence, the issues that the court considers and the outcome that it reaches depend in large part on the arguments that the advocates make and the evidence they present. An argument may carry the day in a

particular case if counsel advance it skillfully and present persuasive evidence to support it. The same argument may not prevail in another case if the proponents fail to generate a similarly persuasive level of probative evidence or if the opponents respond effectively.

Merion Capital L.P. v. Lender Processing Servs., Inc., 2016 WL 7324170, at *16 (Del. Ch. Dec. 16, 2016).

7. In support of their request for a stay, the petitioners observe that I stayed proceedings in *Aruba* pending the issuance of the Delaware Supreme Court's decision in *DFC*. That was a different situation. The proceedings in *Aruba* were almost complete, with only post-trial argument to go. The *DFC* appeal had been argued, and a decision was expected within ninety days. On those facts, a short stay of the *Aruba* case seemed warranted. Here, by contrast, the parties are in the midst of discovery. Meanwhile, in *Aruba*, the petitioners have moved for reargument, additional post-decision issues may arise, a final judgment has yet to be entered, and any appeal has yet to commence.

8. In my view, the petitioners have not shown good cause either for a stay or for altering the schedule. The petitioners should have known from the outset that the market price of the company's shares would be a factor in this proceeding. At most, the *Aruba* decision revealed that, after *DFC* and *Dell*, exclusive weight could be afforded to that factor when it was the most persuasive indicator of fair value. The *Aruba* decision did not introduce anything new, whether as a matter of doctrine or for purposes of the parties' case strategy or trial tactics. The petitioners' motion is therefore DENIED.



Vice Chancellor J. Travis Laster
Dated: March 7, 2018