

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SCHUFF INTERNATIONAL, INC.) CONSOLIDATED
STOCKHOLDERS LITIGATION) C.A. No. 10323-VCZ

**HC2’S OPPOSITION TO FAIR VALUE’S
OBJECTION EXTENSION REQUEST**

HC2¹ respectfully opposes Fair Value Investments Inc.’s (“FVI”) Motion for Enlargement of Time to File Objections to Revised Settlement (Dkt. 152) (the “Motion”), and in support of a shorter extension period states as follows.

BACKGROUND

1. In response to the concerns the Court expressed at the February 13, 2020 settlement hearing, the Parties negotiated the Revised Settlement Framework. The Parties structured the Revised Settlement Framework to address directly the Court’s stated concerns about how a settlement of the Action potentially would affect the Non-Tendered Stockholders. The Parties filed the Stipulation on May 8, 2020. *See* Dkt. 144.

2. On May 12, 2020, the Court entered the Scheduling Order, which established the following deadlines (Dkt. 146):

May 26, 2020: Plaintiff’s Brief in Support of the Settlement

¹ Undefined capitalized terms have the meanings from the Stipulation and Agreement of Compromise, Settlement, and Release filed on May 8, 2020 (the “Stipulation”). *See* Dkt. 144.

June 26, 2020: Objections to the Settlement

July 28, 2020: Additional Briefs in Support of the Settlement

August 11, 2020: Settlement Hearing

3. Prior to filing the Stipulation, HC2’s counsel repeatedly invited FVI’s counsel to propose a settlement framework that addressed the concerns the Court stated at the February 13 settlement hearing. HC2’s counsel informed FVI’s counsel of the terms of the Revised Settlement Framework and that the objector with the largest DBMG stock ownership—AB Value Partners, L.P. and its affiliate (“AB Value”)—planned to withdraw its objections in response to the Revised Settlement Framework. *See* Dkt. 145. FVI did not respond.

4. On May 21, 2020, the Court granted Plaintiff’s unopposed motion to file Plaintiff’s opening settlement brief on June 5, 2020—a ten day extension. *See* Dkt. 148. On June 5, 2020, Plaintiff filed his brief pursuant to the Court’s order. *See* Dkt. 149. The Parties expedited the process of filing a public version of Plaintiff’s brief, and HC2’s counsel provided the public brief to FVI’s counsel on June 9, 2020. Mot. ¶ 10.

5. HC2’s counsel have been in frequent contact with FVI’s counsel during May–June 2020, but FVI has yet to explain what bases FVI believes it might have to object to the Revised Settlement Framework.

6. On June 23, 2020, FVI filed the motion requesting a three-week extension to the deadline for objections, which would extend the deadline for objections until July 17, 2020. Under FVI's proposal, FVI would have 70 days from the filing of the Stipulation, and 38 days from its receipt of Plaintiff's brief, to file an objection. By contrast, FVI's proposal would leave the Parties with only *11 days* to respond to any objection.

ARGUMENT

7. FVI's proposed schedule is unduly burdensome and should be rejected. FVI has had two-and-a-half months to evaluate the Revised Settlement Framework. Although the Stipulation and the Revised Settlement Framework speak for themselves, the parties have bent over backwards to provide FVI and/or FVI's counsel with information that might be useful to evaluate the proposed settlement. Nevertheless, FVI has not identified any basis for an objection. This failure is unsurprising, as AB Value withdrew its objection the same day the Parties announced the Revised Settlement Framework.

8. Court of Chancery Rule 6(b) authorizes the Court to amend scheduling deadlines "for good cause shown[.]" Although the Motion is governed

by the “ordinary good cause” standard of Rule 6(b)(1), the Court should not grant an unsupported extension request if it would prejudice other parties.²

9. FVI has identified no reason why it is unable to comply with the current Scheduling Order deadline. Although FVI notes the ten day extension Plaintiff received to file his brief, FVI does not even assert that Plaintiff’s brief or anything else has affected its decision of whether to object to the Revised Settlement Framework that FVI received in detail on May 8, 2020.

10. FVI’s proposal will prejudice the Parties. The Parties purposefully extended the briefing deadlines for the Revised Settlement Framework to provide the Court and the Parties ample time to address the proposed settlement during the summer months. FVI’s proposal unnecessarily compresses the Parties’ response period to 11 days. There is no reason to force the Parties in the currently restricted operating environment to respond in such a compressed time period in late July or

² See Steven S. Gensler & Lumen N. Milligan, *1 Federal Rules of Civil Procedure, Rules and Commentary* Fed. R. Civ. P. R. 6 (Feb. 2020 Update) (available on Westlaw); see also 6A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (3d ed.) (available on Westlaw) (“However, an application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.”) (citing cases). Because the Delaware Court of Chancery Rules are patterned on the Federal Rules of Civil Procedure, authorities and treatises addressing the federal rules are relevant in interpreting their Delaware counterparts. See, e.g., *Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1191 n.11 (Del. 1988).

to provide FVI with 70 days to respond to the Revised Settlement Framework, while requiring the parties to respond in only 11 days.³

11. HC2 does not oppose a shorter extension of the objections deadline until Tuesday, July 7, 2020—an 11 day extension. This shorter extension would provide the Parties with three weeks to respond to any objections, while still providing FVI with a disproportionately longer period to evaluate the Revised Settlement Framework.

CONCLUSION

12. For the foregoing reasons, HC2 respectfully requests the Court to deny the Motion.

³ FVI cites the Court of Chancery Guidelines for the proposition that five days to respond to settlement objections is sufficient. Mot. ¶ 11. However, the Guidelines provide that “the Court does not intend that these Guidelines, or the sample forms attached hereto, be cited as authority in the context of any dispute before the Court.” Ct. Ch. Guidelines at 1. Moreover, the fact that five days to respond to objections may be possible in some hypothetical context does not mean such a compressed schedule is wise for late July or that FVI should receive nearly seven times longer to consider an objection than the Parties would have to respond to it.

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2020, my firm served true and correct copies of the foregoing *HC2's Opposition to Fair Value's Objection Extension Request* upon the following counsel of record by File & ServeXpress:

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